

WSR 20-22-007
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-235—Filed October 21, 2020, 4:09 p.m., effective October 21, 2020, 4:09 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to close currently scheduled razor clam seasons by repealing WSR 20-21-052.

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

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

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

Reasons for this Finding: This emergency rule is needed to close recreational razor clam seasons. Department of health marine toxin tests show concentrations of toxin exceed the threshold to support safe consumption of razor clams. 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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 21, 2020.

Kelly Susewind
 Director

REPEALER

The following section of the Washington Administrative Code is repealed effective immediately:

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

WSR 20-22-013
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-236—Filed October 22, 2020, 2:32 p.m., effective October 22, 2020, 2:32 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 220-358-03000V; and amending WAC 220-358-030.

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

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

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

Reasons for this Finding: This rule extends tanglenet fisheries to provide additional opportunity at the end of the season, which is consistent with the preseason fishery plan. 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, October 6, and October 22, 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. 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.

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 22, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-358-0300W 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:**

(a)

Open Dates	Open Days	Open Time	Open Duration
October 23	Friday	5:00 a.m. - 6:00 p.m.	13 hrs
October 26	Monday	5:00 a.m. - 6:00 p.m.	13 hrs
October 28	Wednesday	5:00 a.m. - 6:00 p.m.	13 hrs
October 30	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.

(b) **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.

(c) **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.

(d) **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.

(e) **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

(f) **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.

(g) **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.

(h) **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

(i) **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 northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker located on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island:

(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 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.

(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 pm - 8:00 am	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 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.

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:

WAC 220-358-03000V Columbia River seasons below Bonneville Dam. (20-224)

WSR 20-22-016

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed October 23, 2020, 8:24 a.m., effective October 23, 2020, 8:24 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The health care authority (HCA) is adopting emergency amendments to WAC 182-507-0130 Refugee medical assistance. Based on federal waiver approval from the federal office of refugee resettlement, these amendments will implement extended refugee medical assistance benefits during this time of economic hardship caused by the COVID-19 (also known as coronavirus) pandemic.

Citation of Rules Affected by this Order: Amending WAC 182-507-0130.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: Emergency adoption of this rule protects the health, safety, and general welfare of Washington residents by supporting ongoing access to public assistance under the refugee medical assistance program during this time of economic hardship caused by the COVID-19 (also known as coronavirus) pandemic. Since the previous emergency rule making filed under WSR 20-14-081, which is set to expire on October 28, 2020, the agency completed the permanent rule-making process and filed a CR-103P Rule-making order on October 8, 2020 (WSR 20-21-008). The permanent rule is effective November 8, 2020. This emergency will cover the gap between expiration of the emergency rule and effective date of the permanent rule.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: October 23, 2020.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-19-001, filed 9/5/12, effective 10/6/12)

WAC 182-507-0130 Refugee medical assistance (RMA). (1) An individual is eligible for refugee medical assistance (RMA) if the following conditions are met. The individual:

(a) Meets immigration status requirements of WAC 182-507-0135;

(b) Has countable resources below one thousand dollars on the date of application;

(c) Has countable income equal to or below two hundred percent of the federal poverty level (FPL) on the date of application. The following income is not considered when determining eligibility for RMA:

(i) Resettlement cash payments made by the voluntary agency (VOLAG);

(ii) Income of a sponsor is not counted unless the sponsor is also part of the individual's assistance unit; and

(iii) Income received after the date of application.

(d) Provides the name of the VOLAG which helped bring the individual to the United States so that the department of social and health services (DSHS) can promptly notify the VOLAG (or sponsor) about the medical application.

(2) An individual who receives refugee cash assistance (RCA) is eligible for RMA as long as the individual is not otherwise eligible for medicaid or a children's health care program as described in WAC 182-505-0210. An individual does not have to apply for or receive RCA in order to qualify for RMA.

(3) An individual is not eligible to receive RMA if the individual is:

(a) Already eligible for medicaid or a children's health care program as described in WAC 182-505-0210;

(b) A full-time student in an institution of higher education unless the educational activity is part of a DSHS-approved individual responsibility plan (IRP); or

(c) A nonrefugee spouse of a refugee.

(4) If approved for RMA, the agency or its designee issues an approval letter in both English and the individual's primary language. The agency or its designee also sends a

notice every time there are any changes or actions taken which affect the individual's eligibility for RMA.

(5) An individual may be eligible for RMA coverage of medical expenses incurred during the three months prior to the first day of the month of the application. Eligibility determination will be made according to medicaid rules.

(6) A victim of human trafficking must provide the following documentation and meet the eligibility requirements in subsections (1) and (2) of this section to be eligible for RMA:

(a) Adults, eighteen years of age or older, must provide the original certification letter from the United States Department of Health and Human Services (DHHS). No other documentation is needed. The eight-month eligibility period will be determined based on the entry date on the individual's certification letter;

(b) A child victim under the age of eighteen does not need to be certified. DHHS issues a special letter for children. Children also have to meet income eligibility requirements;

(c) A family member of a certified victim of human trafficking must have a T-2, T-3, T-4, or T-5 visa (derivative T-Visas), and the family member must meet eligibility requirements in subsections (1) and (2) of this section.

(7) The entry date for an asylee is the date that the individual's asylum status is granted. For example, an individual entered the United States on December 1, 1999, as a tourist, then applied for asylum on April 1, 2000, interviewed with the asylum office on July 1, 2000, and was granted asylum on September 1, 2000. The date of entry is September 1, 2000, and that is the date used to establish eligibility for RMA.

(8) RMA ends on the last day of the eighth month from the month the individual entered the United States. For example, an individual who entered the United States on May 28, 2011, is eligible through the end of December 2011. You may receive RMA benefits for more months if the federal Office of Refugee Resettlement extends your eligibility period.

(9) An individual approved for RMA is continuously eligible through the end of the eighth month after the individual's entry to the United States, regardless of an increase in income.

(10) The agency, or its designee, determines eligibility for medicaid and other medical programs for an individual's spouse when the spouse arrives in the United States. If the spouse is not eligible for medicaid due to the countable income of the individual, the spouse is still eligible for RMA for eight months following the spouse's entry into the United States.

(11) An individual who disagrees with a decision or action taken on the case by the agency, or its designee, has the right to request a review of the case action(s) or request an administrative hearing (see chapter 182-526 WAC). The request must be received by the agency, or its designee, within ninety days of the date of the decision or action.

WSR 20-22-017
EMERGENCY RULES
WALLA WALLA
COMMUNITY COLLEGE

[Filed October 23, 2020, 9:36 a.m., effective October 23, 2020, 9:36 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and are scheduled to take effect on August 14, 2020. This requires emergency updates to the college's student conduct code to be compliant with federal regulations.

Citation of Rules Affected by this Order: New student code of conduct procedures, WAC 132T-100-010, 132T-100-020, 132T-100-030, 132T-100-040, 132T-100-045, 132T-100-050, 132T-100-060, 132T-100-065, 132T-100-070, 132T-100-100, 132T-100-105, 132T-100-108, 132T-100-111, 132T-100-114, 132T-100-117, 132T-100-120, 132T-100-123, 132T-100-126, 132T-100-129, 132T-100-132, 132T-100-135, 132T-100-138, 132T-100-141, 132T-100-144, 132T-100-147, 132T-100-150, 132T-100-153, 132T-100-156, 132T-100-159, 132T-100-162, 132T-100-165, 132T-100-168, 132T-100-200, 132T-100-210, 132T-100-220, 132T-100-230, 132T-100-240, 132T-100-250, 132T-100-260, 132T-100-270, 132T-100-280, 132T-100-290, 132T-100-292, 132T-100-295, 132T-100-300, 132T-100-350, 132T-100-400, 132T-100-500, 132T-100-510, 132T-100-520, 132T-100-530, 132T-100-540, 132T-100-550, 132T-100-560, 132T-100-570, and 132T-100-580.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

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: Walla Walla Community College is required by the United States Department of Education to comply with the recently adopted Title IX regulations, which take effect on August 14, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 56, 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 56, 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 23, 2020.

Jerri Ramsey

Chapter 132T-100 WAC

STUDENT CODE OF CONDUCT

NEW SECTION

WAC 132T-100-010 Preamble. Walla Walla Community College (herein referred to as "WWCC" or "the college") is supportive of diversity among ideas, cultures, and student characteristics in the pursuit of advancing one's education. A responsibility to secure, respect, and protect such opportunities and conditions is shared by all members of the academic community. As a member of this community, students are expected to uphold and be accountable for this student code of conduct both on and off campus, and acknowledge that the college has the authority to take disciplinary action when a student violates these policies. As an agency of the state of Washington, WWCC must respect and adhere to all laws established by local, state, and federal authorities. This student code of conduct has been developed to educate students and protect the welfare of the community.

NEW SECTION

WAC 132T-100-020 Statement of student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community. The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy, and are deemed necessary to achieve the educational goals of the college including:

(1) Academic freedom - Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public. Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b). Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors. Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) Due process - The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed. No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges. A student accused of

violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

NEW SECTION

WAC 132T-100-030 Definitions. The following definitions shall apply for the purpose of this student conduct code unless such terms are defined otherwise herein:

Advisor - A person of the complainant's or respondent's choosing who can accompany the complainant or respondent to any conduct-related meeting or proceeding. This person cannot be involved in the case either as a witness or a college employee who has been involved in the matter. In cases involving allegations of Title IX violations, the Title IX coordinator will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to choose an advisor.

Assembly - Any overt activity engaged in by one or more persons, the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any person, persons, or group of persons.

Business day - A weekday, excluding weekends, college holidays, or other days the college is closed.

College facilities - Any and all real property controlled or operated by the college, including all buildings and appurtenances affixed thereon or attached thereto.

College premises - All campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college including adjacent streets and sidewalks.

Complainant - A person who reports that a violation of the student code of conduct has occurred towards themselves, another person, a group of people, or college property.

Complaint - A description of facts that allege a violation of student code of conduct or other college policy.

Conduct review officer - The vice president of student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code.

Disciplinary action - The process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

Disciplinary appeal - The process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or an expulsion or dissolution of a student organization are heard by the student conduct board. Appeals of all other appealable disciplinary action shall be reviewed by the conduct review officer through brief adjudicative proceedings.

Instructional day - Any regularly scheduled instructional day designated in the academic year calendar, including summer quarter, as a day when classes are held or during final examination week. Saturdays and Sundays, and any full-day campus closures due to holidays or other circumstances are not regularly scheduled instructional days.

Policy - The written regulations of the college as found in, but not limited to, the student code of conduct and any other official regulation written or in electronic form.

Preponderance of the evidence - The standard of proof used with all student disciplinary matters at WWCC that are within the jurisdiction of the student code of conduct, which means that the amount of evidence must be at fifty-one percent or "more likely than not" before a student is found responsible for a violation.

President - The chief executive officer appointed by the board of trustees or, in such president's absence, the acting president or other appointed designee. The president is authorized to delegate any of their responsibilities and reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

Respondent - The student or student organization alleged to have violated WWCC policy including this code of conduct or against whom disciplinary action is being taken or initiated.

Rules of the student code of conduct - The rules contained herein as now exist or which may be hereafter amended.

Service or filing - The process by which a document is officially delivered to a party. Service or filing is deemed complete and computation of time for deadlines begins upon personal delivery of the document or upon the date the document is electronically mailed and/or deposited into the mail. Documents required to be filed with the college such as requests for appeals, are deemed filed upon actual receipt by the office as designated herein during office hours.

Student - Any person taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students" for purposes of this chapter.

Student conduct board - Also referred to as the "SCB" is a three member panel which presides over cases that could result in a sanction of expulsion, suspension for more than ten days, revocation of a degree, and/or loss of recognition of a student organization using the full adjudicative process pursuant to the Administrative Procedure Act, chapter 34.05 RCW.

Student conduct committee - Also referred to as the "SCC" is a three member panel which presides over cases involving Title IX allegations pursuant to WAC 132T-100-500 through 132T-100-580.

Student conduct meeting - The conduct meeting with the student conduct officer using the brief adjudicative process to determine responsibility for violations of the student code of conduct.

Student conduct officer - Also referred to as "conduct officer" and/or "SCO" is the person designated by the college president to be responsible for the administration of the student code of conduct or, in such person's absence, the acting SCO or other appointed designee. The SCO is authorized to

delegate any and all of their responsibilities as may be reasonably necessary.

Student organization - Any number of persons who have complied with the formal requirements for college recognition, such as clubs and associations, and are recognized by the college as such.

ARTICLE I

AUTHORITY FOR THE STUDENT CODE OF CONDUCT

NEW SECTION

WAC 132T-100-040 Authority. The board of trustees, acting pursuant to RCW 28B.50.140(13), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures may be delegated by the president. Unless otherwise specified, the student conduct officer or delegate shall serve as the principal investigator and administrator for alleged violations of this code.

NEW SECTION

WAC 132T-100-045 Statement of jurisdiction. The student conduct code shall apply to student conduct that occurs on college premises; at or in connection with college-sponsored activities; or to off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives. Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences, or any other college-sanctioned social or club activities. Students are responsible for their conduct from notification of acceptance at the college through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The student conduct officer has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off campus.

NEW SECTION

WAC 132T-100-050 Good standing. The award of a degree or certificate is conditioned upon the student's good standing in the college and satisfaction of all program requirements. "Good standing" means the student has resolved any unpaid fees, or acts of academic or behavioral misconduct, and has complied with all sanctions imposed as a result of any misconduct. WWCC shall deny award of a degree or certificate if the student is dismissed from the college based on their misconduct. The college may withhold awarding a degree or certificate until the completion of the

process set forth in the student code of conduct, including the completion of all sanctions imposed, if any.

NEW SECTION

WAC 132T-100-060 Student conduct board. The college will have a SCB composed of three members who shall be vice presidents or deans or directors as designated by the college and trained to conduct the full adjudicative process. The SCB will serve as a standing committee until a final decision is made regarding the student conduct matter for which it was convened. Any SCB member who has a personal relationship with either party or any personal or other interest which would prevent a fair and impartial review and decision, will be recused from the proceedings. One member, acting as the chairperson, will preside at the disciplinary hearing and will provide administrative oversight throughout the hearing process. Any three members constitute a quorum of a conduct board and may act accordingly. The college may retain an advisor to the SCB, including an assistant attorney general. The CRO will convene the members of the SCB when necessary to adjudicate student code of conduct decisions. All SCB members will receive annual training in investigating and adjudicating student conduct matters in a manner that protects the safety and due process rights of the parties.

NEW SECTION

WAC 132T-100-065 Student conduct committee. The college will have a SCC composed of three members designated by the college to serve in matters pursuant to WAC 132T-100-500 through 132T-100-580. The SCC will serve as a standing committee until a final decision is made regarding the student conduct matter for which it was convened. Any SCC member who has a personal relationship with either party or any personal or other interest which would prevent a fair and impartial review and decision, will be recused from the proceedings. One member, acting as the chairperson, will preside at the disciplinary hearing and will provide administrative oversight throughout the hearing process. Any three members constitute a quorum of a SCC and may act accordingly. The college may retain an advisor to the SCC, including an assistant attorney general. The SCO will convene the members of the SCC when necessary to adjudicate student code of conduct decisions. All SCC members will receive annual training in investigating and adjudicating student conduct matters in a manner that protects the safety and due process rights of the parties.

NEW SECTION

WAC 132T-100-070 Decisions. All student conduct decisions are made using the preponderance of evidence standard of proof. These decisions become final after twenty-one days from the date of notification to the student unless a written appeal is filed prior to that final date. Decisions to document a complaint without sanction are not eligible for appeal. All decision notifications by the SCO, SCB, or president will include a statement of the decision, a summary of relevant facts upon which the decision was based, and the procedures

for appealing that decision if applicable. The notification will be personally delivered, sent electronically to the student's WWCC email address, or by mail to the student's most recent address on file with the college within twenty instructional days of the student conduct proceeding. Students are responsible for promptly notifying the college of changes to their mailing address. Decisions of findings or sanctions by the SCO which do not include sanctions of expulsion, suspension for more than ten days, withholding or revocation of a degree, or loss of recognition of a student organization may be appealed to the CRO. Decisions of findings of all violations of the student code of conduct which include sanctions of expulsion, suspension for more than ten days, revocation of a degree, or loss of recognition of a student organization can be appealed to the SCB. Decisions of findings or sanctions from the CRO or SCB may be appealed to the college president. Decisions made by the college president are final.

ARTICLE II

PROHIBITED CONDUCT

NEW SECTION

WAC 132T-100-100 Conduct—Rules and regulations. The attendance of a student at WWCC is a voluntary entrance into the academic community. By such entrance, the student assumes obligations of performance and behavior reasonably imposed by the college relevant to its lawful missions, processes, and functions. It is the college's expectation that students will:

- (1) Conduct themselves in a responsible manner;
- (2) Comply with rules and regulations of the college and its departments;
- (3) Respect the rights, privileges, and property of other members of the academic community;
- (4) Maintain a high standard of integrity and honesty; and
- (5) Not interfere with legitimate college business appropriate to the pursuit of educational goals.

A student or student organization is responsible for the conduct of their invited guests, advisors and representatives on or in college-owned or controlled property and at activities sponsored by the college or sponsored by any recognized college organization. Any student club or organization shall comply with the student code of conduct. When a member or members of a student club or organization violates the student code of conduct, the members and/or individual member may be subject to appropriate sanctions authorized by this student code of conduct. Any student or student organization that, either as a principal or participator or by aiding or abetting, commits or attempts to commit or who incites, encourages, or assists another person to commit to violate any of the prohibited conduct, rules and regulations, or college policy will be subject to disciplinary action.

NEW SECTION

WAC 132T-100-105 Abusive conduct. Physical and/or verbal abuse, threats, intimidation, harassment, online harassment, coercion, bullying, cyberbullying, retaliation,

stalking, cyberstalking, and/or other conduct which threatens or endangers the health or safety of any person or which has the purpose or effect of creating a hostile or intimidating environment.

NEW SECTION

WAC 132T-100-108 Abuse of the student conduct process. Abuse of the student conduct process which includes, but is not limited to:

- (1) Failure to comply with any notice from a college official to appear for a meeting or hearing as part of the student conduct process.
- (2) Willful falsification, distortion, or misrepresentation of information during the conduct process.
- (3) Disruption or interference with the orderly conduct of a college conduct proceeding.
- (4) Filing fraudulent charges or initiating a college conduct proceeding in bad faith.
- (5) Attempting to discourage an individual's proper participation in, or use of, the student conduct process.
- (6) Attempting to influence the impartiality of a member of the college conduct process prior to, during, and/or after any college conduct proceeding.
- (7) Harassment (written, verbal, or physical), retaliation, and/or intimidation of any person or persons involved in the conduct process prior to, during, or after any college conduct proceeding.
- (8) Failure to comply with the sanction(s) imposed under the student code of conduct.

NEW SECTION

WAC 132T-100-111 Academic dishonesty. Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication. Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment. Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course. Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

NEW SECTION

WAC 132T-100-114 Dishonesty. Any acts of dishonesty. Such acts include, but are not limited to:

- (1) Forgery, alteration, submission of falsified documents, or misuse of any college document, record, or instrument of identification;
- (2) Tampering with an election conducted by or for college students; or
- (3) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

NEW SECTION

WAC 132T-100-117 Obstructive or disruptive conduct. Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:

(1) Instruction, research, administration, disciplinary proceeding, or other college activities, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(2) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

NEW SECTION

WAC 132T-100-120 Assault, intimidation, harassment. Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

NEW SECTION

WAC 132T-100-123 Cyber misconduct. Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and non-consensual distribution of a recording of sexual activity.

NEW SECTION

WAC 132T-100-126 Property violation. Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this section includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

NEW SECTION

WAC 132T-100-129 Failure to comply with directive. Failure to comply with the directive of a college officer or employee who is acting in the legitimate performance of their duties, including conduct directives contained in a program student handbook, and including failure to properly

identify oneself to such a college employee when requested to do so.

NEW SECTION

WAC 132T-100-132 Weapons. Carrying, exhibiting, displaying or drawing any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons, subject to the following exceptions:

(1) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(2) The president may grant permission to bring a weapon on campus upon a determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated in the written permission; and

(3) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

NEW SECTION

WAC 132T-100-135 Hazing. Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

NEW SECTION

WAC 132T-100-138 Alcohol, drug, and tobacco violations. (1) Alcohol. The use, possession, delivery, sale of any alcoholic beverage except as permitted by law and applicable college policies or being observably under the influence of any alcoholic beverage.

(2) Marijuana. The use, possession, delivery, or sale of marijuana or the psychoactive compounds found in marijuana intended for human consumption, regardless of form, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(3) Drugs. The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(4) Tobacco, electronic cigarettes, and related products. The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove

cigarettes, water pipes, hookahs, smokeless tobacco, vaporizers, and snuff.

NEW SECTION

WAC 132T-100-141 Lewd conduct. Conduct which is lewd or obscene that is not otherwise protected under the law.

NEW SECTION

WAC 132T-100-144 Discriminatory conduct. Conduct which harms or adversely affects any member of the college community because of the member's race; color; national origin; sensory, mental, or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

NEW SECTION

WAC 132T-100-147 Sexual misconduct. The term "sexual misconduct" includes sexual harassment (as defined below and/or as prohibited by Title IX as defined in the supplemental Title IX student conduct procedures), sexual intimidation, and sexual violence.

(1) Sexual harassment. The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(a) Deny or limit the ability of a student to participate in or benefit from the college's educational program;

(b) Alter the terms or conditions of employment for a college employee(s); and/or

(c) Create an intimidating, hostile, or offensive environment for other campus community members.

(2) Sexual intimidation. The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(3) Sexual violence. "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(a) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

(d) Statutory rape. Consensual intercourse between a person who is eighteen years of age or older and a person who is under the age of sixteen.

(e) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(f) Dating violence, physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(i) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(ii) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(A) The length of the relationship;

(B) The type of relationship; and

(C) The frequency of interaction between the persons involved in the relationship.

(g) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(i) Fear for their safety or the safety of others; or

(ii) Suffer substantial emotional distress.

(4) For purposes of this code, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact, actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated, has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

NEW SECTION

WAC 132T-100-150 Harassment. Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational pro-

gram, that changes the terms or conditions of employment for a college employee, or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental, or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications.

NEW SECTION

WAC 132T-100-153 Retaliation. Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

NEW SECTION

WAC 132T-100-156 Misuse of electronic resources. Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

- (1) Unauthorized use of such resources or opening of a file, message, or other item;
- (2) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;
- (3) Unauthorized use or distribution of someone else's password or other identification;
- (4) Use of such time or resources to interfere with someone else's work;
- (5) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;
- (6) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;
- (7) Use of such time or resources in violation of applicable copyright or other law;
- (8) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or
- (9) Failure to comply with the college's electronic use policy.

NEW SECTION

WAC 132T-100-159 Unauthorized access. Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

NEW SECTION

WAC 132T-100-162 Safety violations. Nonaccidental conduct that interferes with or otherwise compromises any

college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

NEW SECTION

WAC 132T-100-165 Violation of other laws or policies. Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

NEW SECTION

WAC 132T-100-168 Ethical violation. The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

ARTICLE III

STUDENT CODE OF CONDUCT PROCEDURES

NEW SECTION

WAC 132T-100-200 Student conduct process. As an agency of the state of Washington, the college's student conduct officer (SCO), student conduct board (SCB), student conduct committee (SCC), conduct review officer (CRO), or president may be advised or represented by an assistant attorney general in any student code of conduct proceeding.

NEW SECTION

WAC 132T-100-210 Violation of law and college discipline. College disciplinary proceedings may be used to determine responsibility of a student for conduct that potentially violates the criminal law and this student code of conduct (that is, if both alleged violations result from the same factual situation) without regard to the pendency of civil or criminal litigation in court or criminal arrest and prosecution. Proceedings under this student code of conduct may be carried out prior to, simultaneously with, or following civil or criminal proceedings. Determinations made or sanctions imposed under this student code of conduct will not be subject to change because criminal charges arising out of the same facts giving rise to violation of college rules were dismissed, reduced, or resolved in favor of or against the criminal law defendant. In addition to initiating discipline proceedings for violation of the student code of conduct, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

(1) Initiation of disciplinary action. A request for disciplinary action for violation(s) of the student code of conduct must be made to the SCO as soon as possible following the violation. Conduct proceedings may be initiated when the SCO receives any direct or indirect report of conduct that

may violate this code, which includes, but is not limited to, a police report, an incident report, a witness statement, other documentation, or a verbal or written report from a complainant, witness, or other third party. The college may initiate disciplinary action under the student code of conduct regardless of whether or not the incident in question is the subject of criminal or civil proceedings. Any member of the college's administration, faculty, staff, or any student or non-student may make a request for disciplinary action and it must be a good faith claim. Formal rules of evidence, such as are applied in criminal or civil court, are not used in conduct proceedings. Relevant evidence, including hearsay, is admissible if it is the type of evidence that reasonable persons would rely upon in the conduct of their affairs. Unduly repetitious or irrelevant evidence may be excluded. The SCO, SCB, or college president will determine the admissibility of evidence and may seek clarification from witnesses as needed. If the complaint indicates that the matter involves sexual misconduct, the SCO will forward the complaint to the Title IX coordinator for review in accordance with the college's discrimination and harassment policy and grievance procedure. The SCO or designee will conduct an initial investigation of a complaint to determine whether it alleges conduct that may be prohibited by the student code of conduct. If it is determined through the initial investigation that the report has merit, the SCO will conduct an investigation to determine responsibility. Except in cases of sexual assault or sexual violence, the parties may elect to mediate the dispute, which shall be facilitated by the SCO or delegate. If the SCO has a conflict of interest or is the subject of a complaint by the student, the vice president for student services or designee shall, upon request and at their discretion, designate another person to fulfill any such disciplinary responsibilities relative to the request for disciplinary action.

(2) Notification requirements.

(a) If it is determined through the initial investigation that an alleged violation of the student code of conduct might have occurred and which is not eligible for referral to the Title IX officer, the SCO will provide the following written notification:

(i) That a report has been submitted alleging conduct which violates the student code of conduct and that a conduct investigation has been initiated to determine responsibility;

(ii) The specific sections of the student code of conduct which are alleged to have been violated;

(iii) That the student may either accept responsibility for the alleged violations or request a conduct meeting with the SCO to present evidence to refute the report;

(iv) That the student may provide evidence such as names and contact information of witnesses to aid the conduct investigation;

(v) The possible sanction outcomes and that the actual sanctions will depend on the determination of responsibility pending the results of the investigation; and

(vi) That if the student fails to participate in any stage of the conduct proceedings or to request a conduct meeting within fifteen days from the date of the notice, the college may move forward with the conduct proceeding without their participation.

(b) If the student requests a conduct meeting within fifteen days of the notice, the student will be provided a written notice to appear for a conduct meeting. The notice to appear will be personally delivered, sent electronically to the student's WWCC email address, or sent by mail to the most recent address in the student's record on file with the college, not later than fifteen instructional days after the request for a conduct meeting. The notice will not be ineffective if presented later due to the student's absence. Such notice will:

(i) Set forth the specific provisions of the student code of conduct and the specific acts which are alleged to be violations, as well as the date(s) of the violations, and a description of evidence, if any, of the violation.

(ii) Notify the student of the SCO's investigation and possible sanctions, if any.

(iii) Specify the time, date, and location where the student is required to meet with the SCO. The meeting will be scheduled no earlier than three instructional days, but within thirty instructional days of the date on the notice to appear sent to the student. The SCO may modify the time, date, and location of the meeting, either at the student's or college's request, for reasonable cause.

(iv) Inform the student that failure to attend the conduct meeting will not stop the disciplinary process and may result in a transcript/registration hold being placed onto the student's account, and disciplinary actions.

(v) Inform the student that they may be accompanied at the meeting by an advisor at their expense. The advisor cannot be a college employee or witness. If the student or their advisor is found to have tampered with witnesses or evidence, or destroyed evidence, the student will be held accountable in the conduct process for their acts and those of their advisor.

(vi) Inform the student that they may present evidence to support their assertions during the meeting.

(3) Student conduct meeting - Brief adjudicative process.

(a) During the student conduct meeting, the student will be informed of the following:

(i) The specific acts and the provision(s) of college policy that the student is alleged to have violated;

(ii) The disciplinary process;

(iii) The range of sanctions which might result from the disciplinary process and that the actual sanctions will depend on the findings of responsibility;

(iv) The student's right to appeal.

(b) The student will have the opportunity to review and respond to the allegation(s) and evidence and provide the SCO with relevant information, evidence and/or witnesses to the alleged violation(s), and/or explain the circumstances surrounding the alleged violation(s).

(c) The advisor may assist the student during the conduct meeting, however the student is responsible for presenting their own information and evidence. The advisor may only communicate with the student they are advising. Any disruptions or failure to follow the conduct process and/or directions of the SCO may result in the advisor being excused from the meeting.

(4) Decision by the SCO.

(a) After interviewing the student or students involved and/or other individuals as appropriate, and considering the evidence, the SCO may take any of the following actions:

(i) Determine that the student is not responsible for a violation of the student code of conduct and thereby terminate the student conduct process;

(ii) Determine that the student is responsible for a violation of the student code of conduct and impose disciplinary sanctions as provided herein;

(iii) Determine that further inquiry is necessary and schedule another meeting for reasonable cause;

(b) Notification of the decision by the SCO will be issued pursuant to WAC 132T-100-070 within thirty instructional days of the final student conduct meeting. Due to federal privacy law, the college may not disclose to the complainant any sanctions imposed on the responding student unless the complainant was the alleged victim of a violent crime as defined under the Federal Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99), or the responding student consents to such disclosure. A copy of the decision notification will be filed with the office of the SCO.

(c) Disciplinary action taken by the SCO is final unless the student exercises the right of appeal as provided herein.

NEW SECTION

WAC 132T-100-220 Appeal process. The student may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ten days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(1) The request for appeal must include a brief statement explaining the grounds for the appeal or why the student is seeking review. Disagreement with the finding and/or with the sanctions does not, by itself, represent grounds for appeals. Decisions may be appealed for one or more of the following:

(a) To determine whether there was a procedural error that substantially affected the outcome of the finding or sanctioning. Deviation from designated procedures is not a basis for sustaining an appeal unless significant prejudice results.

(b) To determine whether the sanction(s) imposed were appropriate and not excessively lenient or excessively severe for the violation of the student code of conduct for which the student was found responsible.

(c) To consider new information, sufficient to alter a decision, or other relevant facts not brought during fact finding, because such information and/or facts were not known, and the student bringing the appeal had no duty to discover or could not have reasonably discovered facts giving rise to the issues during investigation or fact-finding. The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(2) The parties to an appeal shall be the respondent and the conduct review officer.

(3) A student who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has

a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(4) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(5) Imposition of disciplinary action for violation of the student code of conduct shall be stayed pending appeal, unless respondent has been summarily suspended.

(6) The student conduct board shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of ten instructional days;

(b) Dismissals;

(c) Withholding or revocation of a degree; or

(d) Loss of recognition of a student organization.

(7) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(8) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final actions and are not subject to appeal.

(9) Disciplinary decisions of the SCO may be appealed for review by the CRO using the brief adjudicative process. Disciplinary decisions of the CRO may be appealed for review by the college president using the brief adjudicative process. Appeals of disciplinary decisions of the SCO, or decisions made by the SCC pursuant to WAC 132T-100-500 through 132T-100-580, involving sanctions of suspension for more than ten days, expulsion, withholding or revocation of a degree, or loss of recognition of a student organization will be referred to the SCB for a full adjudicative process in accordance with WAC 132T-100-240. Disciplinary decisions by the SCB may be appealed for review by the college president using the brief adjudicative process. The college president's decisions are final.

NEW SECTION

WAC 132T-100-230 Brief adjudicative process. (1) The brief adjudicative process is conducted in accordance with RCW 34.05.482 through 34.05.494.

(2) The SCO and CRO will use the brief adjudicative process to make decisions of findings of responsibility as provided in this code of conduct.

(3) The president will use the brief adjudicative process to review appeals of all disciplinary decisions made by the SCB.

(4) Within twenty days of filing the appeal, the CRO or president, as applicable, shall review the record of the preceding conduct decision and all relevant information provided by the parties, and based on a preponderance of the evidence, shall make a determination to affirm, reverse, or modify the findings and/or sanctions. The CRO and president shall have the discretion to seek clarification from witnesses as needed.

(5) Notification of the decision will be issued pursuant to WAC 132T-100-070.

NEW SECTION

WAC 132T-100-240 Full adjudicative process. The SCB will use the following full adjudicative process to determine responsibility for serious violations which include sanctions of suspension for more than ten days, expulsion, withholding or revocation of a degree, or loss of recognition of a student organization.

(1) The parties will be sent written notification of the SCB adjudication proceedings within ninety days from the date of the filing of the appeal. The notification will contain the following:

(a) The time, date, and location of the hearing, which shall not be less than seven days from the date of the notice of the hearing;

(b) The specific acts alleged and the provision(s) of college policy which those acts violated;

(c) The SCB procedures;

(d) The name and contact information for the SCB and their advisor, if any, representing the college. The notice will include the official title, work mailing address, and telephone number of each of these individuals;

(e) Unless otherwise ordered by the SCB chairperson, the name and mailing addresses of all parties to whom notice is being given and, if known, the names and addresses of their advisors; and

(f) A statement that if a party fails to attend or participate in a hearing or other stage of this adjudicative proceeding, they may be held in default in accordance with chapter 34.05 RCW and/or the college may continue the student conduct process, including the hearing, despite the party's absence.

(2) The respondent and complainant have the right to be assisted by one advisor of their choice and at their own expense. The advisor must be someone who is not employed by the college. If the respondent chooses to have an attorney serve as their advisor, the student must provide notice to the SCB no less than five instructional days prior to the hearing. The SCB hearing may not be delayed due to the scheduling conflicts of an advisor and such requests will be subject to the discretion of the SCB chairperson. If the student or their advisor is found to have tampered with witnesses or evidence, or destroyed evidence, the student will be held accountable in the conduct process for their acts and those of their representative/advisor. The respondent and/or complainant are responsible for presenting their own information, and therefore, during the hearing, advisors are not permitted to address the SCB, witnesses, the SCO, or any party or advisor invited by the parties to the hearing. An advisor may communicate with their advisee and recesses may be allowed for this purpose at the discretion of the SCB chairperson. The advisor may not disrupt or interfere with any aspect of the proceeding. The SCB chairperson shall have the right to impose reasonable conditions upon the participation of the advisor.

(3) The SCB and the parties will be provided reasonable access to the documentation and evidence which will be reviewed by the SCB, as well as the case file that will be retained by the SCO in accordance with applicable privacy laws.

(4) Any SCB member who participated in determining sanctions imposed under WAC 132T-100-570 may not serve on a SCB hearing an appeal of those sanctions.

(5) Any SCB member who has a personal relationship with either party or any personal or other interest which would prevent a fair and impartial review and decision will be recused from the proceedings. A party may make a written request to the SCB chairperson for the recusal of an SCB member no less than five instructional days prior to the hearing. The request must be for good cause, which must be shown by the party making the request. The SCB chairperson will consider the request and notify the student of their decision regarding the recusal prior to the hearing. If the SCB chairperson grants the recusal, a replacement for the recused SCB member will be made without unreasonable delay.

(6) The parties involved in the hearing will be required to submit their witness list and any evidence to be discussed at the hearing to the SCB chairperson no less than five instructional days prior to the hearing. Each party is allowed a maximum of three character witnesses to appear on their behalf. The parties must submit a witness list which contains a written statement from each witness that includes a brief description of the relevant information the witness will provide during the hearing. Witnesses not listed will not participate in the hearing.

(7) Discovery in the form of depositions, interrogatories, and medical examinations of parties are not permitted in student conduct adjudications. Other forms of discovery which ensure the prompt and thorough completion of the adjudication process may be permitted at the discretion of the SCB chairperson.

(8) Hearings will be closed to the public except if consented to by all parties and at the discretion of the SCB chairperson. Witnesses may be allowed in the hearing room only during the time in which they provide their statements to the SCB. The complainant and respondent, depending on their preference and subject to orders of a court of law, such as protection orders, may be present for and observe the entire hearing. At the discretion of the SCB chairperson, and where the rights of the parties will not be prejudiced, all or part of the hearing may be conducted by telephone, video conference, or other electronic means. Each party shall have the opportunity to hear and if technically and economically feasible, to see the entire hearing while it is taking place. At all times, however, all parties, their advisors, the witnesses, and the public will be excluded during the deliberations of the SCB.

(9) The SCB chairperson will exercise control over the hearing to avoid needless consumption of time and to prevent the harassment or intimidation of witnesses. Any person, including the respondent and complainant, who disrupts a hearing or who fails to follow the directions of the SCB chairperson, may be excluded from the proceedings and may be subject to disciplinary action.

(10) Questions posed by any party to be answered by each other or by witnesses must be appropriate and respectful. The SCB chairperson may require any participant of the hearing to provide all questions in writing to the SCB chairperson. The SCB chairperson, if appropriate and at their sole discretion, will read the question to the individual to whom it is directed. Any question which the SCB chairperson has chosen not to read will be documented on record and kept

within the case file. The SCB chairperson will decide matters related to the order of the proceedings.

(11) In order that a complete record of the proceeding can be made to include all evidence presented, hearings will be recorded or transcribed, except for the deliberations of the SCB. The record will be the property of the college.

(12) After weighing and considering the evidence, the SCB will decide by majority vote whether the respondent is responsible or not responsible for a violation of the student code of conduct. If there is a finding of responsibility for a violation, the SCB shall impose sanctions as set forth herein.

(13) The SCB's decision is made on the basis of a "preponderance of the evidence" standard of proof, that is, whether it is more likely than not that the respondent violated the student code of conduct.

(14) The notice of decision of the SCB will be issued pursuant to WAC 132T-100-070. A copy of the SCB's decision will also be filed with the office of the SCO.

(15) Disciplinary action taken by the SCB is final unless the student exercises the right of appeal to the college president as provided herein.

NEW SECTION

WAC 132T-100-250 Academic dishonesty process.

(1) The class instructor is responsible for handling each case of academic dishonesty in the classroom and for determining a penalty grade as outlined in the course syllabus.

(2) If, within the instructor's professional judgment, reasonable evidence would suggest that a student engaged in academic dishonesty, the instructor will provide notice to the student, either written or verbal, of their assertion of academic dishonesty and of the academic penalty grade within thirty instructional days of the occurrence or when the instructor is made aware of the occurrence.

(3) The instructor will submit a report to the SCO of the assertion of academic dishonesty, the explanation of the notice or actual notice given to the student, and a copy of all relevant evidence. The instructor may request that the incident only be documented with the SCO, or refer the matter for disciplinary action. If the student has a previous academic dishonesty record, the SCO may choose to move forward with the disciplinary process without an instructor's request.

NEW SECTION

WAC 132T-100-260 Classroom conduct. Instructors have the authority to take appropriate action to maintain order and proper conduct in the classroom and to maintain the effective cooperation of the class in fulfilling the objectives of the course. An instructor may exclude a student from any single class/program session during which the student is currently being so disorderly or disruptive that it is difficult or impossible to maintain classroom decorum. The instructor will report any such exclusion from the class/program session to the SCO. The SCO may initiate disciplinary action under the student code of conduct.

NEW SECTION

WAC 132T-100-270 Sexual misconduct procedures.

(1) The college's Title IX coordinator or designee shall review and investigate reports of sexual misconduct in accordance with the college's discrimination and harassment policy and grievance procedure.

(2) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonable risk to the health, safety, and welfare of the complainant or other members of the college community, or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.

(3) Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in the disciplinary process, to simultaneously receive notifications, and to appeal the finding and/or sanction.

(4) Notification of the results of the investigation or disciplinary action, if any, will be personally delivered, sent electronically to the student's WWCC email address, or sent by mail to the most recent address in the student's record on file with the college.

(5) In the event of conflict between the sexual misconduct procedures and the student code of conduct, the sexual misconduct procedures shall govern.

(6) All college employees who coordinate, investigate, or adjudicate issues involving sexual misconduct shall receive annual training on domestic violence, dating violence, sexual assault, stalking, and investigation and adjudication processes that protect the safety and due process rights of the parties.

NEW SECTION

WAC 132T-100-280 Sexual misconduct appeal procedures.

(1) A party may appeal a sexual misconduct disciplinary decision for review according to the procedures as stated in this code of conduct by filing a written request for appeal with the office of the CRO within twenty-one days of the notification of the disciplinary decision.

(2) The college shall notify the other party of the appeal and provide that party an opportunity to respond to the appeal.

(3) Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall become final.

NEW SECTION

WAC 132T-100-290 Disciplinary sanctions and terms and conditions.

The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code. If the respondent is found responsible for any violation, the student's past disciplinary record may be considered in determining an appropriate sanction.

(1) Sanctions.

(a) Disciplinary warning. A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(b) Written reprimand. Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(c) Loss of privileges. Denial of specified privileges for a designated period of time. Services and approval to be withdrawn may include, but are not limited to, intramural sports, information technology services, library and/or tutoring services, club activities, student leadership roles, college facility use and rental, and involvement in organizational activities.

(d) Loss of recognition. A student organization's recognition may be withheld permanently or for a specific period of time. Loss of recognition is defined as withholding college services or administrative approval from a student organization. Services and approval to be withdrawn may include, but are not limited to, funding, information technology services, college facility use, and involvement in organizational activities.

(e) Disciplinary probation. Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college. Written notice of disciplinary probation will specify the period of probation and any condition(s) upon which their continued enrollment is contingent. Such conditions may include, but not be limited to, adherence to terms of a behavior contract or limiting the student's participation in extracurricular activities or access to specific areas of the college's facilities. Disciplinary probation may be for a specified term or for a period which may extend to graduation or award of a degree or certificate or other termination of the student's enrollment in the college.

(f) Removal from class. Behavior which has been disruptive to a class to the extent that the continued presence of the student in that class will impair, interrupt, or interfere with the instructor's ability to deliver instruction or other students' ability to obtain instruction, will result in a withdrawal from that class without a refund or grade penalty.

(g) Disciplinary suspension. Separation of the student from the college for a definite period of time, after which the student is eligible to return. Conditions for readmission may apply. Students who are suspended may be denied access to all or any part of the campus or other facilities for the duration of the period of suspension. There will be no refund of tuition or fees for the quarter in which the action is taken.

(h) Expulsion. Permanent separation of the student from the college. Students who are expelled may be permanently denied access to all or any part of the campus or other facilities. The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any

possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(i) Not in good standing. A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(j) Revocation of admission and/or degree or certificate. Admission to the college or a degree or certificate awarded from the college may be revoked for fraud, misrepresentation, or other violation of college standards in obtaining admission or the degree or certificate, or for other serious violations committed by a student prior to the award of a degree or certificate.

(2) Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) Restitution. A student may be required to make restitution for damage, loss, or injury or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of appropriate service and/or monetary or material replacement. Failure to make restitution within thirty instructional days or any period set by the SCO, CRO, SCB, or president will result in an administrative hold being placed on the student's registration, which will prevent future enrollment until the restitution is complete.

(b) Discretionary conditions. Work assignments, essays, service to the college, or other related discretionary assignments.

(c) Professional evaluation. Referral for drug, alcohol, psychological, or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(d) No contact order. An order that prohibits direct or indirect physical, verbal, written, and/or any other form of communication or contact with an individual or group. Direct and indirect contact includes, but is not limited to, phone calls, letters, going within sight of places of work or residence, email, social media, etc.

NEW SECTION

WAC 132T-100-292 Failure to comply. A student who fails to complete a sanction within the specified time frame may be charged with the student code of conduct violation, "failure to comply." It is the student's responsibility to notify the student conduct officer if there are mitigating circumstances that prevent the student from completing the sanction(s) by a specified time frame. The student conduct officer may extend the deadline time, at the SCO's discretion. It is the student's responsibility to complete all sanctions within the specified time frame to avoid a hold and/or a charge of "failure to comply."

NEW SECTION

WAC 132T-100-295 Disciplinary holds. A disciplinary hold will be placed on the records and registration of any student who:

(1) Fails to respond to a disciplinary notice by a judicial body. Any pending disciplinary matters must be resolved prior to reregistration or a student's graduation. No student will be allowed to register, graduate, obtain transcripts, or receive financial aid until the pending disciplinary case is completed;

(2) Is under an interim suspension from the college. The disciplinary hold will not be removed until the pending disciplinary case is completed;

(3) Is under suspension from the college. The disciplinary hold will not be removed until the student's suspension status has expired and/or the requirements as set forth by the judicial/appellate body for readmission have been successfully met; or

(4) Is under expulsion from the college. The disciplinary hold will only be removed, upon written request, for a student to obtain their transcript.

NEW SECTION

WAC 132T-100-300 Interim measures. (1) Interim measures may be taken pending an investigation or adjudication if there is cause to believe that a student or student organization poses an imminent risk of harm to anyone in the college community, or to property, or if the misconduct is so severe, persistent, or pervasive as to substantially disrupt or materially interfere with the college's operations and/or activities or with an individual's education/work activities. Interim measures may include counseling, extensions of time or other course related adjustments, modifications of class schedules, campus escort services, restrictions on contact between the parties, increased security and monitoring of certain areas of campus, restrictions on access to college-owned or operated property and/or events (notice of trespass), including classes, activities, and privileges, or any similar measures while the conduct process is pending.

(2) The student must adhere to the conditions of the interim restriction. If an interim restriction includes campus wide restricted access, the SCO may provide written permission for the student to enter campus for specific purposes such as meeting with the SCO or designee, faculty, staff, or

witnesses to prepare for an appeal, or to participate in the student conduct process.

(3) Notice of interim measure. The student will be provided written notice of the interim measure(s), stating:

(a) The time, date, place, and nature of the circumstances which created the need for interim measures.

(b) A description of any relevant evidence.

(c) The interim measure.

(d) The possible sanctions that could result from violation of the interim measure including arrest for criminal trespass if the student has been trespassed from campus.

(e) The student's right to either accept the interim measure or submit a written appeal of the interim measure within three instructional days to the CRO. An appeal is waived if not submitted within the prescribed time. If the student timely appeals, the interim measure shall remain in place during the appeal process. The CRO will provide written notification to the student of the decision to either maintain or discontinue the interim measure within five instructional days of receipt of the appeal.

(f) If the student has been trespassed from the campus, a notice against trespass shall be included that warns the student that their privilege to enter into or remain on college premises has been withdrawn, that they shall be considered trespassing and subject to arrest for criminal trespass if they enter the college campus other than to meet with the SCO as arranged by an appointment, or to attend a disciplinary hearing. The interim measure shall not replace the regular discipline process, which shall proceed as quickly as feasible in light of the interim restriction.

NEW SECTION

WAC 132T-100-350 Summary suspension. Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending. The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent has violated any provision of the student code of conduct; presents an immediate danger to the health, safety, or welfare of members of the college community; or poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice. The written notification shall be entitled "notice of summary suspension" and shall include the reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student code of conduct or the law allegedly violated; the date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and the conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the cam-

pus, a notice against trespass shall be included warning respondent that their privilege to enter into or remain on college premises has been withdrawn, and that the respondent shall be considered trespassing and subject to arrest for criminal trespass if they enter the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

Hearing. The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension. During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope. The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope. If the respondent fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings. As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal. To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

Sexual misconduct. In cases involving allegations of sexual misconduct, the complainant shall be notified that a summary suspension has been imposed on the same day that the summary suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the summary suspension order.

ARTICLE IV RECORDS

NEW SECTION

WAC 132T-100-400 Records of disciplinary action.

(1) Records of all disciplinary actions will become part of the student's disciplinary record and kept by the office of the SCO. Disciplinary records are "education records" as defined by FERPA and shall be maintained and disclosed consistent with FERPA and the college's educational records retention policies. All documentation of the student conduct proceedings will be preserved for at least seven years, except in disciplinary actions where no violation(s) of the student code of conduct was found. In such cases, only a record of the finding of no violation shall be maintained in the student's file or other college repository after the date of the student's graduation or award of a degree or certificate or for one calendar year, whichever is shorter. All records of expulsion will be kept for twenty-five years from the date of the decision.

(2) The office of the SCO will keep accurate records of all disciplinary actions taken by that office. Such records will

be placed in the student's disciplinary records. A student has a disciplinary record only after notification of a decision is made and the student is found responsible for a violation of the student code of conduct. A case that is currently under investigation or is classified as "documentation only" is not a disciplinary record.

(3) The Family Educational Rights and Privacy Act (FERPA) provides that an educational institution may notify a student's parent or legal guardian if the student is under the age of twenty-one and has violated a federal, state, or local law involving the use or possession of alcohol or a controlled substance.

ARTICLE V

SUPPLEMENTAL TITLE IX STUDENT CONDUCT PROCEDURES

NEW SECTION

WAC 132T-100-500 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 132T-100-200 through 132T-100-290, these supplemental procedures shall take precedence.

NEW SECTION

WAC 132T-100-510 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

For purposes of this supplemental procedure, "sexual harassment" encompasses the following conduct:

(1) Quid pro quo harassment. A college employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.

(2) Hostile environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college's educational programs or activities, or employment.

(3) Sexual assault. Sexual assault includes the following conduct:

(a) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(b) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body

part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(c) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

(d) Statutory rape. Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.

(4) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(5) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship;

(ii) The type of relationship; and

(iii) The frequency of interaction between the persons involved in the relationship.

(6) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

NEW SECTION

WAC 132T-100-520 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a college educational program or activity; and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the college exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this

section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the student conduct code.

(4) If the Title IX coordinator determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the Title IX coordinator will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

NEW SECTION

WAC 132T-100-530 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

(a) Set forth the basis for Title IX jurisdiction;

(b) Identify the alleged Title IX violation(s);

(c) Set forth the facts underlying the allegation(s);

(d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);

(e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:

(i) The advisors will be responsible for questioning all witnesses on the party's behalf;

(ii) An advisor may be an attorney; and

(iii) WWCC will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.

(3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

NEW SECTION

WAC 132T-100-540 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132T-100-210 (2)(b). In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.

NEW SECTION

WAC 132T-100-550 Rights of parties. (1) WWCC's student conduct procedures and this supplemental procedure shall apply equally to all parties.

(2) The college bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of their choosing on the party's behalf at no expense to the party.

NEW SECTION

WAC 132T-100-560 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) Relevance: The SCC chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) Cross-examination required: If a party or witness does not submit to cross-examination during the live hearing, the SCC must not rely on any statement by that party or witness in reaching a determination of responsibility.

(5) No negative inference: The SCC may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(6) Privileged evidence: The SCC shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

NEW SECTION

WAC 132T-100-570 Initial order. (1) The student conduct committee will be responsible for conferring and drafting an initial order that:

(a) Identifies the allegations of sexual harassment;

(b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(c) Makes findings of fact supporting the determination of responsibility;

(d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;

(e) Contains a statement of, and rationale for, the SCC's determination of responsibility for each allegation;

(f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;

(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college's educational programs or activities; and

(h) Describes the process for appealing the initial order.

(2) The SCC chair will serve the initial order on the parties simultaneously.

NEW SECTION

WAC 132T-100-580 Appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132T-100-220.

(2) The president shall serve the final decision on the parties simultaneously.

WSR 20-22-023**EMERGENCY RULES****DEPARTMENT OF HEALTH**

(Nursing Care Quality Assurance Commission)

[Filed October 23, 2020, 5:53 p.m., effective October 24, 2020]

Effective Date of Rule: October 24, 2020.

Purpose: WAC 246-841-420, 246-841-470, 246-841-490, 246-841-510 and 246-841-555, continuing the amendments to specific training requirements for nursing assistant certified (NAC) and nursing assistant registered (NAR) in response to the coronavirus disease (COVID-19) pandemic. This is the second emergency rule for these amendments, and it continues the initial emergency rule without change that was filed on June 26, 2020, under WSR 20-14-066.

The nursing care quality assurance commission (commission) is adopting emergency rules in response to COVID-19. These rules apply to specific training requirements for NAC and NAR. The amendments will allow the commission to survey online classes approved by the commission, assist

with demonstration of skills in a lab prior to clinical training, allow program directors to award clinical hours for NAR work, and provide instructions for documenting these work hours. More health care professionals will continue becoming available to respond to current demands because of these changes.

Citation of Rules Affected by this Order: Amending WAC 246-841-420, 246-841-470, 246-841-490, 246-841-510, and 246-841-555.

Statutory Authority for Adoption: RCW 18.88A.060.

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

Reasons for this Finding: The immediate amendment of these existing rules is necessary for the preservation of public health, safety, and general welfare. Essential functions including the increased availability of health care professionals must continue while taking necessary measures to help treat and prevent the spread of COVID-19. The state of emergency in Washington state due to the COVID-19 pandemic has led to a demand for more healthcare professionals, especially qualified nursing assistants. COVID-19 has created barriers for nursing assistant training. Amendments are necessary to allow program directors to award clinical hours for NAR work and provide instruction regarding work paths to remove training barriers. By awarding clinical practice hours for NAR work it allows additional opportunity for NAC students to obtain their clinical practice hours. COVID-19 has also impacted nursing assistant training by delaying access to clinical training due to restrictions on in-person training opportunities. Training programs historically are held in person, with the opportunity for the commission to specifically conduct an on-site survey. In response to COVID-19, classrooms have adapted to online training. An amendment to the language to allow surveys for an online classroom setting is essential to ensure that appropriate training is being provided. All of these actions will result in continuing to increasing [increase] the quantity of professionals able to respond to current demands. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to protecting immediate public interests.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 5, Repealed 0.

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

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: October 24, 2020.

Catherine Woodard
Director of Discipline
for Paula Meyer, RN, MSN, FRE
Executive Director

AMENDATORY SECTION (Amending WSR 08-06-100, filed 3/5/08, effective 4/5/08)

WAC 246-841-420 Requirements for approval of nursing assistant-certified training programs. To qualify as a nursing assistant-certified training program, an institution or facility must:

(1) Submit a completed application packet provided by the department of health. The packet will include forms and instructions to submit the following:

- (a) Program objectives.
- (b) Curriculum content outline.
- (c) Qualifications of program director and additional instructional staff.
- (d) Contractual agreements related to providing this training. For any program that uses another facility to provide clinical training, this includes an affiliation agreement between the training program and the facility. The affiliation agreement must describe how the program will provide clinical experience in the facility. The agreement must specify the rights and responsibilities of both parties, students and clients or residents.
- (e) Sample lesson plan for one unit.
- (f) Skills checklist.
- (g) Description of classroom facilities.
- (h) Declaration of compliance with administrative guidelines signed by the program director.
- (i) Verification that the program director has completed a course on adult instruction as required by WAC 246-841-470(3) or has one year of experience in the past three years teaching adults. Acceptable experience does not include in-service education or patient teaching. A program director working exclusively in a postsecondary educational setting is exempt from this requirement.

(j) Verification that the nursing assistant-certified training program or school is approved to operate in the state of Washington by:

- (i) The state board for community and technical colleges;
- (ii) The superintendent of public instruction; or
- (iii) The workforce training and education coordinating board.

(2) Agree to on-site survey of the training program((;)) or online survey of the approved online classes as requested by the commission. This on-site will be coordinated with other on-site review requirements when possible.

(3) Participate in the renewal process every two years. Failure to renew results in automatic withdrawal of approval of the program.

(4) Comply with any changes in training standards and guidelines in order to maintain approved status.

(5) Notify the commission and any other approving agency of any changes in overall curriculum plan or major curriculum content changes prior to implementation.

(6) Notify the commission and any other approving agency of changes in program director or instructors.

AMENDATORY SECTION (Amending WSR 08-06-100, filed 3/5/08, effective 4/5/08)

WAC 246-841-470 Program directors and instructors in approved nursing assistant-certified training programs. (1) The program director must hold a current license in good standing as a registered nurse (RN) in the state of Washington.

(2) The commission may deny or withdraw a program director's approval if there is or has been any action taken against the director's health care license or any license held by the director which allows him or her to work with vulnerable populations.

(3) The program director must complete a training course on adult instruction or have demonstrated that he or she has one year experience teaching adults.

(a) Acceptable experience does not include in-service education or patient teaching.

(b) The training course on adult instruction must provide instruction in:

- (i) Understanding the adult learner.
- (ii) Techniques for teaching adults.
- (iii) Classroom methods for teaching adults.
- (iv) Audio visual techniques for teaching adults.

(c) A program director working exclusively in a postsecondary educational setting is exempt from this requirement.

(4) The program director will have a minimum of three years of experience as an RN, of which at least one year will be in direct patient care.

(5) The program director must meet the requirements for additional staff under subsection (7)(b) of this section if the program director will also be acting as an instructor.

(6) Program director responsibilities:

(a) Develop and implement a curriculum which meets as a minimum the requirements of WAC 246-841-490. The program director is responsible for all classroom and clinical training content and instruction.

(b) Assure compliance with and assume responsibility for meeting the requirements of WAC 246-841-490 through 246-841-510.

(c) Assure that all student clinical experience is directly supervised. Direct supervision means that an approved program director or instructor is observing students performing tasks. The program director may also award clinical hours' credit for nursing assistant-registered (NAR) work completed under the supervision of a licensed nurse in a care facility with competency demonstrated and documented in accordance with the commission procedure and form "Nursing Assistant-Registered (NAR) Verification of Clinical Hours and Competency," available at www.doh.wa.gov or by request to the commission.

(d) Assure that the clinical instructor has no concurrent duties during the time he or she is instructing students.

(e) Create and maintain an environment conducive to teaching and learning.

(f) Select and supervise all other instructors involved in the course, including clinical instructors and guest lecturers.

(g) Assure that students are not asked to, nor allowed to, perform any clinical skill with patients or clients until first demonstrating the skill satisfactorily to an instructor in a practice setting or provide students with instruction regarding the NAR work pathway and how to demonstrate competency and have competency documented under the supervision of a licensed nurse in a care facility in accordance with commission procedure and form "Nursing Assistant-Registered (NAR) Verification of Clinical Hours and Competency," available at www.doh.wa.gov or by request to the commission.

(h) Assure evaluation of knowledge and skills of students before verifying completion of the course.

(i) Assure that students receive a verification of completion when requirements of the course have been satisfactorily met.

(7) The program director may select instructional staff to assist in the teaching of the course.

(a) Instructional staff must teach in their area of expertise.

(b) Instructional staff must have a minimum of one year experience within the past three years in caring for the elderly or chronically ill of any age or both.

(c) All instructional staff must hold a current Washington state license to practice as a registered or licensed practical nurse. The commission may deny or withdraw an instructor's approval if there is or has been any action taken against a health care license or any license held by the applicant which allows him or her to work with vulnerable populations.

(d) Instructional staff may assist the program director in development of curricula, teaching modalities, and evaluation. The instructor will be under the supervision of the program director at all times.

(e) A guest lecturer, or individual with expertise in a specific course unit may be used in the classroom setting for teaching without commission approval, following the program director's review of the currency of content. The guest lecturer, where applicable, must hold a license, certificate or registration in good standing in their field of expertise.

AMENDATORY SECTION (Amending WSR 08-06-100, filed 3/5/08, effective 4/5/08)

WAC 246-841-490 Core curriculum in approved nursing assistant-certified training programs. (1) The curriculum must be competency based. It must be composed of learning objectives and activities that will lead to knowledge and skills required for the graduate to demonstrate mastery of the core competencies as provided in WAC 246-841-400.

(2) The program director will determine the amount of time required in the curriculum to achieve the objectives. The time designated may vary with characteristics of the learners and teaching or learning variables. There must be a minimum of eighty-five hours total, with a minimum of thirty-five hours of classroom training and a minimum of fifty hours of clinical training.

(a) Of the thirty-five hours of classroom training, a minimum of seven hours must be in AIDS education as required by chapter 246-12 WAC, Part 8.

(b) Of the fifty hours of clinical training, at least forty clinical hours must be in the practice setting.

(c) Training to orient the student to the health care facility and facility policies and procedures are not to be included in the minimum hours above.

(3) Each unit of the core curriculum will have:

(a) Behavioral objectives, which are statements of specific observable actions and behaviors that the learner is to perform or exhibit.

(b) An outline of information the learner will need to know in order to meet the objectives.

(c) Learning activities such as lecture, discussion, readings, film, or clinical practice designed to enable the student to achieve the stated objectives.

(4) Clinical teaching in a competency area is closely correlated with classroom teaching to integrate knowledge with manual skills.

(a) Students must wear name tags clearly identifying them as students when interacting with patients, clients or residents, and families.

(b) An identified instructor(s) will supervise clinical teaching or learning at all times. At no time will the ratio of students to instructor exceed ten students to one instructor in the clinical setting. The program director may also award clinical hours' credit for NAR work completed under the supervision of a licensed nurse in a care facility with competency demonstrated and documented in accordance with commission procedure and form "Nursing Assistant-Registered (NAR) Verification of Clinical Hours and Competency," available at www.doh.wa.gov or by request to the commission.

(5) The curriculum must include evaluation processes to assess mastery of competencies. Students cannot perform any clinical skill on clients or residents until first demonstrating the skill satisfactorily to an instructor in the practice setting or provide students with instruction regarding the NAR work pathway and how to demonstrate and have competency documented under the supervision of a licensed nurse in a care facility in accordance with commission procedure and form "Nursing Assistant-Registered (NAR) Verification of Clinical Hours and Competency," available at www.doh.wa.gov or by request to the commission.

AMENDATORY SECTION (Amending WSR 08-06-100, filed 3/5/08, effective 4/5/08)

WAC 246-841-510 Administrative procedures for approved nursing assistant-certified training programs.

(1) The program must establish and maintain a file for each student enrolled. The file must include:

(a) Dates attended.

(b) Test results.

(c) A skills evaluation checklist with dates of skills testing and signature of instructor. If the program grants clinical hours' credit for students working as nursing assistants-registered, the student file must also include a fully completed commission-approved student form "Nursing Assistant-Reg-

istered (NAR) Verification of Clinical Hours and Competency," available at www.doh.wa.gov or by request to the commission.

(d) Documentation of successful completion of the course, or documentation of the course outcome.

(2) Each student file must be maintained by the program for a period of five years, and copies of documents made available to students who request them.

(3) Verification of successful completion of the course of training will be provided to the commission on forms provided by the commission.

(4) For those programs based in a health care facility: Verification of program completion and the application for state testing will not be withheld from a student who has successfully met the requirements of the program. Successful completion will be determined by the training program director separately from other employer issues.

AMENDATORY SECTION (Amending WSR 11-16-042, filed 7/27/11, effective 8/27/11)

WAC 246-841-555 Responsibilities of the program director in alternative programs. The program director of an alternative program is responsible for:

(1) Development and use of a curriculum which:

(a) Meets the requirements of WAC 246-841-545; or

(b) Meets the requirements of WAC 246-841-550.

(2) Ensuring compliance with the requirements of WAC 246-841-500 and 246-841-510.

(3) Verifying home care aides-certified have a valid certification before admission to the alternative program.

(4) Verifying medical assistants-certified have certification before admission to the alternative program.

(5) Direct supervision of all students during clinical experience. Direct supervision means an approved program director or instructor observes students performing tasks. The program director may also award clinical hours' credit for nursing assistant-registered (NAR) work completed under the supervision of a licensed nurse in a care facility with competency demonstrated and documented in accordance with commission procedure and form "Nursing Assistant-Registered (NAR) Verification of Clinical Hours and Competency," available at www.doh.wa.gov or by request to the commission.

(6) Ensuring the clinical instructor has no concurrent duties during the time he or she is instructing students.

(7) Maintaining an environment acceptable to teaching and learning.

(8) Supervising all instructors involved in the course. This includes clinical instructors and guest lecturers.

(9) Ensuring students are not asked to, or allowed to perform any clinical skill with patients or clients until the students have demonstrated the skill satisfactorily to an instructor in a practice setting or provide students with instruction regarding the NAR work pathway and how to demonstrate competency and have competency documented under the supervision of a licensed nurse in a care facility in accordance with commission procedure and form "Nursing Assistant-Registered (NAR) Verification of Clinical Hours and Com-

petency." available at www.doh.wa.gov or by request to the commission.

(10) Evaluating knowledge and skills of students before verifying completion of the course.

(11) Providing students a verification of completion when requirements of the course have been satisfied.

(12) Providing adequate time for students to complete the objectives of the course. The time may vary with skills of the learners and teaching or learning variables.

(13) Establishing an evaluation process to assess mastery of competencies.

WSR 20-22-024

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed October 23, 2020, 6:02 p.m., effective October 23, 2020, 6:02 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-840-010, 246-840-125, 246-840-210, 246-840-240, 246-840-361, 246-840-365, 246-840-367, 246-840-533, 246-840-534, 246-840-840, 246-840-930, and 246-841-405, licensed practical nurse (LPN), registered nurse (RN), and advanced registered nurse practitioner (ARNP) specific credential and license requirements. The nursing care quality assurance commission (commission) is continuing the adoption of emergency rules in response to the coronavirus disease (COVID-19). This is the third emergency rule for these amendments and it continues the emergency rule without change that was filed on June 26, 2020, under WSR 20-14-065.

This emergency rule retains the amendments adopted as WSR 20-10-014 and 20-14-065. The rules in chapter 246-840 WAC are the licensing requirements for LPNs, RNs, and ARNPs. The emergency rules amend training program options, delegation requirements, and remove additional continuing education hours for specific ARNP credentials. Additionally, the rules waive the requirements for an ARNP to submit evidence of completing continuing education in order to return to active status when holding an inactive license, or when returning to active status from expired status.

Citation of Rules Affected by this Order: Repealing WAC 246-840-210, 246-840-240 and 246-840-361; and amending WAC 246-840-010, 246-840-125, 246-840-365, 246-840-367, 246-840-533, 246-840-534, 246-840-840, and 246-[840-930].

Statutory Authority for Adoption: RCW 18.79.010, 18.79.050, 18.79.110, 18.79.260, and 18.79.340.

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

Reasons for this Finding: The immediate amendment of these rules is necessary for the preservation of public health, safety, and general welfare. Essential functions including increasing and maintaining the availability of health care pro-

professionals must continue while taking necessary measures to help treat and prevent the spread of COVID-19. The amendments remove specific barriers that nurses face to providing care in response to COVID-19. Waiving the requirement for continuing education removes a barrier for nurses with a retired active license and will allow them to immediately begin working. Waiving the restriction that ARNPs with an inactive or expired license must complete clinical practice hours and the newly amended continuing education requirements removes barriers to rejoining the health care workforce. Allowing LPN students to practice as nursing technicians addresses the demand for more healthcare professionals in the workforce. Amending language to add clarification to the preceptor rules and simulation rules eliminates current obstacles in nursing education to address the demand for more healthcare professionals. Amending the requirements for nurse delegation to waive requirements and streamline the process will remove barriers for nurses to complete high demand duties. More health care professionals will [be] available to continue responding to current demands because of these changes. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to protecting immediate public interests.

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 9, 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 9, Repealed 0.

Date Adopted: October 24, 2020.

Catherine Woodard
Director of Discipline
for Paula Meyer, RN, MSN, FRE
Executive Director

AMENDATORY SECTION (Amending WSR 16-08-042, filed 3/30/16, effective 4/30/16)

WAC 246-840-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advanced clinical practice" means practicing at an advanced level of nursing in a clinical setting performing direct patient care.

(2) "Advanced nursing practice" means the delivery of nursing care at an advanced level of independent nursing practice that maximizes the use of graduate educational preparation, and in-depth nursing knowledge and expertise in

such roles as autonomous clinical practitioner, professional and clinical leader, expert practitioner, and researcher.

(3) "Advanced registered nurse practitioner (ARNP)" is a registered nurse (RN) as defined in RCW 18.79.050, 18.79.240, 18.79.250, and 18.79.400 who has obtained formal graduate education and national specialty certification through a commission approved certifying body in one or more of the designations described in WAC 246-840-302, and who is licensed as an ARNP as described in WAC 246-840-300. The designations include the following:

- (a) Nurse practitioner (NP);
- (b) Certified nurse midwife (CNM);
- (c) Certified registered nurse anesthetist (CRNA); and
- (d) Clinical nurse specialist (CNS).

(4) "Associate degree registered nursing education program" means a nursing education program which, upon successful completion of course work, that includes general education and core nursing courses that provide a sound theoretical base combining clinical experiences with theory, nursing principles, critical thinking, and interactive skills, awards an associate degree in nursing (ADN) to prepare its graduates for initial licensure and entry level practice as an RN.

(5) "Bachelor of science degree registered nursing education program" means a nursing education program which, upon successful completion of course work taught in an associate degree nursing education program, as defined in subsection (28) of this section, plus additional courses physical and social sciences, nursing research, public and community health, nursing management, care coordination, and the humanities, awards a bachelor of science in nursing (BSN) degree, to prepare its graduates for a broader scope of practice, enhances professional development, and provides the nurse with an understanding of the cultural, political, economic, and social issues that affect patients and influence health care delivery.

(6) "Certifying body" means a nongovernmental agency using predetermined standards of nursing practice to validate an individual nurse's qualifications, knowledge, and practice in a defined functional or clinical area of nursing.

(7) "Client advocate" means a licensed nurse who actively supports client's rights and choices, including the client's right to receive safe, high quality care, and who facilitates the client's ability to exercise those rights and choices by providing the client with adequate information about their care and options.

(8) "Commission" means the Washington state nursing care quality assurance commission.

(9) "Competency" means demonstrated knowledge, skill and ability in the practice of nursing.

(10) "Conditional approval" is the approval given a nursing education program that has not met the requirements of the law and the rules of the commission. Conditions are specified that must be met within a designated time to rectify the deficiency.

(11) "Dedicated education unit" means a clinical learning experience within a health care facility, as part of the curriculum of a nursing education program.

(12) "Delegation" means the licensed nurse transfers the performance of selected nursing tasks to competent individuals in selected situations. The nurse delegating the task is

responsible and accountable for the nursing care of the client. The nurse delegating the task supervises the performance of the unlicensed person. Nurses must follow the delegation process following the RCW 18.79.260. Delegation in community and in-home care settings is defined by WAC 246-840-910 through 246-840-970.

(13) "Distance education" or "distance learning" means instruction offered by any means where the student and faculty are in separate physical locations. Teaching methods may be synchronous, where the teacher and student communicate at the same time, or asynchronous, where the student and teacher communicate at different times, and shall facilitate and evaluate learning in compliance with nursing education rules.

(14) "Full approval" of a nursing education program is the approval signifying that a nursing program meets the requirements of the law and the rules of the commission.

(15) "Good cause" as used in WAC 246-840-860 for extension of a nurse technician registration means that the nurse technician has had undue hardship such as difficulty scheduling the examination through no fault of their own; receipt of the examination results after thirty days after the nurse technician's date of graduation; or an unexpected family crisis which caused him or her to delay sitting for the examination. Failure of the examination is not "good cause."

(16) "Good standing" as applied to a nursing technician, means the nursing technician is enrolled in a registered nursing program approved by the commission and is successfully meeting all program requirements.

(17) "Health care professional" means the same as "health care provider" as defined in RCW 70.02.010(18).

(18) "Home state" is defined as where the nursing education program has legal domicile.

(19) "Host state" is defined as the state jurisdiction outside the home state where a student participates in clinical experiences or didactic courses.

(20) "Immediately available" as applied to nursing technicians, means that an RN who has agreed to act as supervisor is on the premises and is within audible range and available for immediate response as needed which may include the use of two-way communication devices which allow conversation between the nursing technician and an RN who has agreed to act as supervisor.

(a) In a hospital setting, the RN who has agreed to act as supervisor is on the same patient care unit as the nursing technician and the patient has been assessed by the RN prior to the delegation of duties to the nursing technician.

(b) In a nursing home or clinic setting, an RN who has agreed to act as supervisor is in the same building and on the same floor as the nursing technician and the patient has been assessed by the RN prior to the delegation of duties to the nursing technician.

(21) "Initial approval" of nursing education program is the approval status conferred by the commission to a new nursing program based on its proposal prior to the graduation of its first class.

(22) "Licensed practical nurse (LPN)" is a nurse licensed as defined in RCW 18.79.030(3), with a scope of practice defined in RCW 18.79.020 and 18.79.060.

(23) "Limited educational authorization" is an authorization to perform clinical training when enrolled as a student through a commission approved refresher course. This authorization does not permit practice for employment.

(24) "Minimum standards of competency" means the knowledge, skills, and abilities that are expected of the beginning practitioner.

(25) "National nursing education accreditation body" means an independent nonprofit entity, approved by the United States Department of Education as a body that evaluates and approves the quality of nursing education programs within the United States and territories.

(26) "Nontraditional program of nursing" means a school that has a curriculum which does not include a faculty supervised teaching and learning component in clinical settings.

(27) "Nursing education program administrator" is an individual who has the authority and responsibility for the administration of the nursing education program.

(28) "Nursing education program" means a division or department within a state supported educational institution or other institution of higher learning, charged with the responsibility of preparing nursing students and nurses to qualify for initial licensing or higher levels of nursing practice.

(29) "Nursing faculty" means an individual employed by a nursing education program who is responsible for developing, implementing, evaluating, updating, and teaching nursing education program curricula.

(30) "Nursing technician" means a nursing student preparing for RN or LPN licensure who meets the qualifications for licensure under RCW 18.79.340 who is employed in a hospital licensed under chapter 70.41 RCW or a nursing home licensed under chapter 18.51 RCW, or clinic. The nursing student must be in a nursing educational program in the United States or its territories that is approved by the National Council Licensure Examination-RN or National Council Licensure Examination-PN. Approved nursing education programs do not include nontraditional schools as defined in subsection ((27)) (26) of this section.

(31) "Philosophy" means the beliefs and principles upon which a nursing education program curriculum is based.

(32) "Practical nursing education program" means a nursing education program which, upon successful completion of course work that includes core nursing course to provide a sound theoretical base combining clinical experiences with nursing principles, critical thinking, and interactive skills for entry level practical nursing, awards a certificate that the graduate is prepared for interdependent practice to prepare a practical nurse for interdependent practice as an LPN.

(33) "Registered nurse" or "RN" is a licensed nurse as defined in RCW 18.79.030(1), 18.79.040, 18.79.240, and 18.79.260.

(34) "Supervision" of licensed or unlicensed nursing personnel means the provision of guidance and evaluation for the accomplishment of a nursing task or activity with the initial direction of the task or activity; periodic inspection of the actual act of accomplishing the task or activity; and the authority to require corrective action.

(a) "Direct supervision" means the licensed RN who provides guidance to nursing personnel and evaluation of nursing

tasks is on the premises, is quickly and easily available, and has assessed the patient prior to the delegation of the duties.

(b) "Immediate supervision" means the licensed RN who provides guidance to nursing personnel and evaluation of nursing tasks is on the premises, is within audible and visual range of the patient, and has assessed the patient prior to the delegation of duties.

(c) "Indirect supervision" means the licensed RN who provides guidance to nursing personnel and evaluation of nursing tasks is not on the premises but has given either written or oral instructions for the care and treatment of the patient and the patient has been assessed by the registered nurse prior to the delegation of duties.

(35) "Traditional nursing education program" means a program that has a curriculum which includes a faculty supervised teaching and learning component in clinical settings.

AMENDATORY SECTION (Amending WSR 16-04-097, filed 2/1/16, effective 3/3/16)

WAC 246-840-125 Retired active credential. (1) A registered or licensed practical nurse may place their credential in "retired active" status by meeting the requirements of this section.

(2) A registered or licensed practical nurse who holds a retired active credential may only practice in intermittent or emergent circumstances.

(a) Intermittent means the registered or licensed practical nurse will practice no more than ninety days a year.

(b) Emergent means the registered or licensed practical nurse will practice only in emergency circumstances such as earthquakes, floods, times of declared war, or other states of emergency.

(3) To obtain a retired active credential a registered or a licensed practical nurse must:

(a) Meet the requirements in WAC 246-12-120.

(b) Pay the appropriate fee in WAC 246-840-990.

(4) To renew a retired active credential the registered nurse or licensed practical nurse must:

(a) Meet the requirements in WAC 246-12-130. The retired active credential fee is in WAC 246-840-990.

(b) ~~((Have completed forty five hours of continuing nursing education every three years in compliance with WAC 246-840-220 (2)(b). Education may include CPR and first aid.~~

~~(c) Demonstrate they have practiced at least ninety six hours every three years. Practice may be paid or volunteer, but must require nursing knowledge or a nursing license.~~

~~((d)) Renew their retired active credential every year on their birthday.~~

(5) To return to active status the registered or licensed practical nurse must:

~~((a)) meet the requirements in WAC 246-12-140. The active renewal fee is in WAC 246-840-990.~~

~~((b) Meet the continuing competency requirements in WAC 246-840-230 (5)(d).~~

~~(6) A registered or licensed practical nurse who holds a retired active credential is subject to a continuing compe-~~

teney audit as outlined in WAC 246-840-220, 246-840-230, and 246-840-240-))

AMENDATORY SECTION (Amending WSR 19-08-031, filed 3/27/19, effective 4/27/19)

WAC 246-840-365 Inactive and reactivating an ARNP license. To apply for an inactive ARNP license, an ARNP shall comply with WAC 246-12-090 or 246-12-540, if military related.

(1) An ARNP may apply for an inactive license if he or she holds an active Washington state ARNP license without sanctions or restrictions.

(2) To return to active status the ARNP:

(a) Shall meet the requirements identified in chapter 246-12 WAC, Part 4;

(b) Must hold an active RN license under chapter 18.79 RCW without sanctions or restrictions;

(c) Shall submit the fee as identified under WAC 246-840-990; and

(d) Shall submit evidence of current certification by the commission approved certifying body identified in WAC 246-840-302(1)(;

~~(e) Shall submit evidence of thirty contact hours of continuing education for each designation within the past two years; and~~

~~(f) Shall submit evidence of two hundred fifty hours of advanced clinical practice for each designation within the last two years.~~

~~(3) An ARNP applicant who does not have the required practice requirements, shall complete two hundred fifty hours of supervised advanced clinical practice for every two years the applicant may have been out of practice, not to exceed one thousand hours.~~

~~(4) The ARNP applicant needing to complete supervised advanced clinical practice shall obtain an ARNP interim permit consistent with the requirements for supervised practice defined in WAC 246-840-340 (4) and (5)).~~

~~((5)) (3) To regain prescriptive authority after inactive status, the applicant must meet the prescriptive authority requirements identified in WAC 246-840-410.~~

AMENDATORY SECTION (Amending WSR 19-08-031, filed 3/27/19, effective 4/27/19)

WAC 246-840-367 Expired license. When an ARNP license is not renewed, it is placed in expired status and the nurse must not practice as an ARNP.

(1) To return to active status when the license has been expired for less than two years, the nurse shall:

(a) Meet the requirements of chapter 246-12 WAC, Part 2;

(b) Meet ARNP renewal requirements identified in WAC 246-840-360; and

(c) Meet the prescriptive authority requirements identified in WAC 246-840-450, if renewing prescriptive authority.

~~(2) ((Applicants who do not meet the required advanced clinical practice requirements must complete two hundred fifty hours of supervised advanced clinical practice for every~~

~~two years the applicant may have been out of practice, not to exceed one thousand hours.~~

~~(3) The ARNP applicant needing to complete supervised advanced clinical practice shall obtain an ARNP interim permit consistent with the requirements for supervised practice defined in WAC 246-840-340 (4) and (5).~~

~~(4)) If the ARNP license has expired for two years or more, the applicant shall:~~

(a) Meet the requirements of chapter 246-12 WAC, Part 2;

(b) Submit evidence of current certification by the commission approved certifying body identified in WAC 246-840-302(3);

~~(c) ((Submit evidence of thirty contact hours of continuing education for each designation within the prior two years;~~

~~(d)) Submit evidence of two hundred fifty hours of advanced clinical practice completed within the prior two years; and~~

~~((e)) (d) Submit evidence of an additional thirty contact hours in pharmacology if requesting prescriptive authority, which may be granted once the ARNP license is returned to active status.~~

~~((5)) (3) If the applicant does not meet the required advanced clinical practice hours, the applicant shall obtain an ARNP interim permit consistent with the requirements for supervised advanced clinical practice as defined in WAC 246-840-340 (4) and (5).~~

AMENDATORY SECTION (Amending WSR 19-08-026, filed 3/27/19, effective 4/27/19)

WAC 246-840-533 Nursing preceptors, interdisciplinary preceptors, and proctors in clinical or practice settings for nursing students located in Washington state.

(1) Nursing preceptors, interdisciplinary preceptors, and proctors may be used to enhance clinical or practice learning experiences after a student has received instruction and orientation from program faculty who confirm the student is adequately prepared for the clinical or practice experience. For the purpose of this section:

(a) A nursing preceptor means a practicing licensed nurse who provides personal instruction, training, and supervision to any nursing student, and meets all requirements of subsection (4) of this section.

(b) An interdisciplinary preceptor means a practicing health care provider who is not a licensed nurse, but provides personal instruction, training, and supervision to any nursing student, and meets all requirements of subsection (5) of this section.

(c) A proctor means an individual who holds an active credential in one of the professions identified in RCW 18.130.040 who monitors students during an examination, skill, or practice delivery, and meets all requirements of subsection (6) of this section.

(2) Nursing education faculty are responsible for the overall supervision and evaluation of the student and must confer with each primary nursing and interdisciplinary preceptor, and student at least once during each phase of the student learning experience:

(a) Beginning;

(b) Midpoint; and

(c) End.

(3) A nursing preceptor or an interdisciplinary preceptor shall not precept more than two students at any one time.

(4) A nursing preceptor may be used in nursing education programs when the nursing preceptor:

(a) Has an active, unencumbered nursing license at or above the level for which the student is preparing;

(b) Has at least one year of clinical or practice experience as a licensed nurse at or above the level for which the student is preparing;

(c) Is oriented to the written course and student learning objectives prior to beginning the preceptorship;

(d) Is oriented to the written role expectations of faculty, preceptor, and student prior to beginning the preceptorship; and

(e) Is not a member of the student's immediate family, as defined in RCW 42.17A.005(27); or have a financial, business, or professional relationship that is in conflict with the proper discharge of the preceptor's duties to impartially supervise and evaluate the nurse.

(5) An interdisciplinary preceptor may be used in nursing education programs when the interdisciplinary preceptor:

(a) Has an active, unencumbered license in the area of practice appropriate to the nursing education faculty planned student learning objectives;

(b) Has the educational preparation and at least one year of clinical or practice experience appropriate to the nursing education faculty planned student learning objectives;

(c) Is oriented to the written course and student learning objectives prior to beginning the preceptorship;

(d) Is oriented to the written role expectations of faculty, preceptor, and student prior to beginning the preceptorship; and

(e) Is not a member of the student's immediate family, as defined in RCW 42.17A.005(27); or have a financial, business, or professional relationship that is in conflict with the proper discharge of the preceptor's duties to impartially supervise and evaluate the nurse.

(6) A proctor who monitors, teaches, and supervises students during the performance of a task or skill must:

(a) Have the educational and experiential preparation for the task or skill being proctored;

(b) Have an active, unencumbered credential in one of the professions identified in RCW 18.130.040;

(c) Only be used on rare, short-term occasions to proctor students when a faculty member has determined that it is safe for a student to receive direct supervision from the proctor for the performance of a particular task or skill that is within the scope of practice for the nursing student; and

(d) Is not a member of the student's immediate family, as defined in RCW 42.17A.005(27); or have a financial, business, or professional relationship that is in conflict with the proper discharge of the preceptor's duties to impartially supervise and evaluate the nurse.

(7) A practice/academic partnerships model may be used to permit practice hours as a nursing technician, as defined in WAC 246-840-010(30), to be credited toward direct care nursing program clinical hours, and academic credit. Use of this model must include:

(a) A nursing preceptor or nursing supervisor who has experience and educational preparation appropriate to the faculty-planned student learning experience. The nursing preceptor or nursing supervisor must be responsible for ensuring the requirements of WAC 246-840-880 are met;

(b) Nursing program faculty that work with health care facility representatives to align clinical skills and competencies with the nursing student-employee work role/responsibilities;

(c) Nursing student-employees with faculty-planned clinical practice experiences that enable the student to attain new knowledge, develop clinical reasoning/judgment abilities, and demonstrate achievement of clinical objectives and final learning outcomes of the nursing program if the nursing student-employee is in the final nursing course;

(d) The nursing student-employee use of reflection on the development or achievement of clinical objectives and final learning outcomes as designed by nursing education faculty;

(e) Nursing education faculty responsible for the overall supervision and evaluation of the nursing student-employee on a weekly basis;

(f) Evaluation by nursing education faculty to include documentation of the nursing student-employee achievement of clinical objectives and final learning outcomes and competencies of the nursing program; and

(g) Nursing technicians be enrolled in a commission-approved nursing program and be in good standing to receive academic credit.

AMENDATORY SECTION (Amending WSR 16-17-082, filed 8/17/16, effective 9/17/16)

WAC 246-840-534 Use of simulation for clinical experiences in LPN, RN, or RN to BSN nursing education programs located in Washington state. (1) An LPN, RN, or RN to BSN nursing education program may use simulation as a substitute for traditional clinical experiences, after approval by the commission, not to exceed fifty percent of its clinical hours (~~(for a particular course)~~) across the curriculum required for the program type.

(a) Simulation as used in this section means a technique to replace or amplify real experiences with guided experiences evoking or replicating substantial aspects of the real world in a fully interactive manner.

(b) The nursing education program shall have an organizing framework providing adequate fiscal, human, technological, and material resources to support the simulation activities.

(c) Simulation activities must be managed by an individual who is academically and experientially qualified and who demonstrates currency and competency in the use of simulation while managing the simulation program.

(d) The nursing education program shall have a budget sustaining simulation activities and training of the faculty.

(e) The nursing education program shall have appropriate facilities, educational and technological resources and equipment to meet the intended objectives of the simulation.

(f) All faculty involved in simulations, both didactic and clinical, shall have training in the use of simulation and shall

engage in ongoing professional development in the use of simulation.

(g) Faculty to student ratios in the simulation lab must be in the same ratio as identified in WAC 246-840-532 for clinical learning experiences.

(2) Faculty shall organize clinical and practice experiences based on the educational preparation and skill level of the student.

(3) Qualified simulation faculty must supervise and evaluate student clinical and practice experiences.

(a) The nursing education program shall demonstrate that simulation activities are linked to programmatic outcomes.

(b) The nursing education program shall have written policies and procedures on the following:

(i) Short-term and long-term plans for integrating simulation into the curriculum;

(ii) An identified method of debriefing each simulated activity; and

(iii) A plan for orienting faculty to simulation.

(c) Debriefing as used in this section means an activity following a simulation experience that is led by a facilitator, encourages reflective thinking, and provides feedback regarding the participant's performance.

(d) The nursing education program shall develop criteria to evaluate simulation activities.

(e) Students shall evaluate the simulation experience on an ongoing basis.

(f) The program shall include information about use of simulation in its annual report to the commission.

(4) The ratio of simulation hours to clinical experience hours will be calculated as follows:

(a) One clock hour of simulation may be considered equivalent up to two clock hours of clinical experience if the following conditions are met:

(i) The program holds full approval status by the commission, and is nationally accredited;

(ii) The program has received commission approval to conduct simulation, and is in alignment with the provisions of this section;

(iii) The program will collect evaluation data on simulation outcomes with tools provided by the commission.

(b) One clock hour of simulation may be considered equivalent to one clock hour of clinical experience if one or more of the following conditions are present:

(i) The program's approval status is conditional;

(ii) The program is not nationally accredited; unless the program is in pre-accreditation status, and the commission has specifically granted approval for a one-to-two ratio;

(iii) The program has not previously received commission approval to conduct simulation;

(iv) The program is not in alignment with the provisions of this section;

(v) The program is on a current plan of correction, unless the commission has specifically granted approval for a one-to-two ratio.

AMENDATORY SECTION (Amending WSR 13-15-064, filed 7/15/13, effective 8/15/13)

WAC 246-840-840 Nursing technician. The purpose of the nursing technician credential is to provide additional work related opportunities for students enrolled in an LPN, ADN or BSN program, within the limits of their education, to gain valuable judgment and knowledge through expanded work opportunities.

(1) The nursing technician is as defined in WAC 246-840-010(~~((48))~~) (30).

(2) The nursing technician shall have knowledge and understanding of the laws and rules regulating the nursing technician and shall function within the legal scope of their authorization under chapter 18.79 RCW and shall be responsible and accountable for the specific nursing functions which they can safely perform as verified by their nursing program.

(3) The nursing technician shall work directly for the hospital, clinic or nursing home and may not be employed in these facilities through a temporary agency.

AMENDATORY SECTION (Amending WSR 13-15-063, filed 7/15/13, effective 8/15/13)

WAC 246-840-930 Criteria for delegation. (1) Before delegating a nursing task, the registered nurse delegator decides the task is appropriate to delegate based on the elements of the nursing process: ASSESS, PLAN, IMPLEMENT, EVALUATE.

ASSESS

(2) The setting allows delegation because it is a community-based care setting as defined by RCW 18.79.260 (3)(e) (i) or an in-home care setting as defined by RCW 18.79.260 (3)(e)(ii).

(3) Assess the patient's nursing care needs and determine the patient's condition is stable and predictable. A patient may be stable and predictable with an order for sliding scale insulin or terminal condition.

(4) Determine the task to be delegated is within the delegating nurse's area of responsibility.

(5) Determine the task to be delegated can be properly and safely performed by the nursing assistant or home care aide. The registered nurse delegator assesses the potential risk of harm for the individual patient.

(6) Analyze the complexity of the nursing task and determine the required training or additional training needed by the nursing assistant or home care aide to competently accomplish the task. The registered nurse delegator identifies and facilitates any additional training of the nursing assistant or home care aide needed prior to delegation. The registered nurse delegator ensures the task to be delegated can be properly and safely performed by the nursing assistant or home care aide.

(7) Assess the level of interaction required. Consider language or cultural diversity affecting communication or the ability to accomplish the task and to facilitate the interaction.

(8) Verify that the nursing assistant or home care aide:

(a) Is currently registered or certified as a nursing assistant or home care aide in Washington state without restriction;

(b) Has completed ~~((both)) the ((basic-caregiver-training and))~~ core delegation training before performing any delegated task;

(c) Has a certificate of completion issued by the department of social and health services indicating completion of the required core nurse delegation training;

(d) Has a certificate of completion issued by the department of social and health services indicating completion of diabetes training when providing insulin injections to a diabetic client; and

(e) Is willing and able to perform the task in the absence of direct or immediate nurse supervision and accept responsibility for their actions.

(9) Assess the ability of the nursing assistant or home care aide to competently perform the delegated nursing task in the absence of direct or immediate nurse supervision.

(10) If the registered nurse delegator determines delegation is appropriate, the nurse:

(a) Discusses the delegation process with the patient or authorized representative, including the level of training of the nursing assistant or home care aide delivering care.

(b) Obtains written or verbal consent ~~((The patient, or authorized representative, must give written consent to the delegation process under chapter 7.70 RCW. Documented verbal consent of patient or authorized representative may be acceptable if written consent is obtained within thirty days;))~~ under chapter 7.70 RCW, which must be documented in the patient record. Electronic consent is an acceptable format. ~~((Written))~~ Consent is only necessary at the initial use of the nurse delegation process for each patient and is not necessary for task additions or changes or if a different nurse, nursing assistant, or home care aide will be participating in the process.

PLAN

(11) Document in the patient's record the rationale for delegating or not delegating nursing tasks.

(12) Provide specific, written delegation instructions to the nursing assistant or home care aide with a copy maintained in the patient's record that includes:

(a) The rationale for delegating the nursing task;

(b) The delegated nursing task is specific to one patient and is not transferable to another patient;

(c) The delegated nursing task is specific to one nursing assistant or one home care aide and is not transferable to another nursing assistant or home care aide;

(d) The nature of the condition requiring treatment and purpose of the delegated nursing task;

(e) A clear description of the procedure or steps to follow to perform the task;

(f) The predictable outcomes of the nursing task and how to effectively deal with them;

(g) The risks of the treatment;

(h) The interactions of prescribed medications;

(i) How to observe and report side effects, complications, or unexpected outcomes and appropriate actions to deal with them, including specific parameters for notifying the

registered nurse delegator, health care provider, or emergency services;

(j) The action to take in situations where medications and/or treatments and/or procedures are altered by health care provider orders, including:

(i) How to notify the registered nurse delegator of the change;

(ii) The process the registered nurse delegator uses to obtain verification from the health care provider of the change in the medical order; and

(iii) The process to notify the nursing assistant or home care aide of whether administration of the medication or performance of the procedure and/or treatment is delegated or not;

(k) How to document the task in the patient's record;

(l) Document teaching done and a return demonstration, or other method for verification of competency; and

(m) Supervision shall occur at least every ~~((ninety))~~ one hundred twenty days. With delegation of insulin injections, ~~((the supervision occurs at least weekly for the first four weeks, and may be more frequent))~~ after initial training on the task that the registered nurse considers appropriate, the registered nurse will assess the competence of the nursing assistant and determine further supervision needs as appropriate.

(13) The administration of medications may be delegated at the discretion of the registered nurse delegator, including insulin injections. Any other injection (intramuscular, intradermal, subcutaneous, intraosseous, intravenous, or otherwise) is prohibited. The registered nurse delegator provides to the nursing assistant or home care aide written directions specific to an individual patient.

IMPLEMENT

(14) Delegation requires the registered nurse delegator teach the nursing assistant or home care aide how to perform the task, including return demonstration or other method of verification of competency as determined by the registered nurse delegator.

(15) The registered nurse delegator is accountable and responsible for the delegated nursing task. The registered nurse delegator monitors the performance of the task(s) to assure compliance with established standards of practice, policies and procedures and appropriate documentation of the task(s).

EVALUATE

(16) The registered nurse delegator evaluates the patient's responses to the delegated nursing care and to any modification of the nursing components of the patient's plan of care.

(17) The registered nurse delegator supervises and evaluates the performance of the nursing assistant or home care aide, including direct observation or other method of verification of competency of the nursing assistant or home care aide. The registered nurse delegator reevaluates the patient's condition, the care provided to the patient, the capability of the nursing assistant or home care aide, the outcome of the task, and any problems.

(18) The registered nurse delegator ensures safe and effective services are provided. Reevaluation and documentation occurs at least every ~~((ninety))~~ one hundred twenty days. Frequency of supervision is at the discretion of the registered nurse delegator and may be more often based upon nursing assessment.

(19) The registered nurse must supervise and evaluate the performance of the nursing assistant or home care aide with delegated insulin injection authority ~~((at least weekly for the first four weeks. After the first four weeks the supervision shall occur at least every ninety))~~ as needed, but at least once every one hundred twenty days.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-840-210 Continuing competency definitions.

WAC 246-840-240 Extension.

WAC 246-840-361 Continuing education for ARNP license renewal.

AMENDATORY SECTION (Amending WSR 09-06-006, filed 2/18/09, effective 3/21/09)

WAC 246-841-405 Nursing assistant delegation. Provision for delegation of certain tasks.

(1) Nursing assistants perform tasks delegated by a registered nurse for patients in community-based care settings or in-home care settings each as defined in RCW 18.79.260 (3) (e).

(2) Before performing any delegated task:

(a) Nursing assistants-registered must show the certificate of completion of ~~((both the basic caregiver training and))~~ core delegation training from the department of social and health services to the registered nurse delegator.

(b) Nursing assistants-certified must show the certificate of completion of the core delegation training from the department of social and health services to the registered nurse delegator.

(c) All nursing assistants must comply with all applicable requirements of the nursing care quality assurance commission in WAC 246-840-910 through 246-840-970.

(d) All nursing assistants, registered and certified, who may be completing insulin injections must give a certificate of completion of diabetic training from the department of social and health services to the registered nurse delegator.

(e) All nursing assistants must meet any additional training requirements identified by the nursing care quality assurance commission. Any exceptions to additional training requirements must comply with RCW 18.79.260 (3)(e)(v).

(3) Delegated nursing care tasks described in this section are:

(a) Only for the specific patient receiving delegation;

(b) Only with the patient's consent; and

(c) In compliance with all applicable requirements in WAC 246-840-910 through 246-840-970.

(4) A nursing assistant may consent or refuse to consent to perform a delegated nursing care task. The nursing assis-

tant is responsible for their own actions with the decision to consent or refuse to consent and the performance of the delegated nursing care task.

(5) Nursing assistants shall not accept delegation of, or perform, the following nursing care tasks:

(a) Administration of medication by injection, with the exception of insulin injections;

(b) Sterile procedures;

(c) Central line maintenance;

(d) Acts that require nursing judgment.

WSR 20-22-025

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 20-237—Filed October 24, 2020, 6:43 p.m., effective October 26, 2020]

Effective Date of Rule: October 26, 2020.

Purpose: The purpose of this rule is to close scheduled commercial gillnet and purse seine fisheries in Salmon Management and Catch Reporting Areas 10 and 11 from October 26 through October 30, 2020.

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

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 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. In-season fishery information so far, shows a lower than expected run-size than predicted preseason. 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. 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 24, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-16000H Puget Sound salmon—Gillnet—Open periods. Effective October 27 through October 30, 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 10/27, 10/29	

NEW SECTION

WAC 220-354-12000Y Puget Sound salmon—Purse seine—Open periods. Effective the day of October 26, 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	10/26

REPEALER

The following section of the Washington Administrative Code is repealed effective October 31, 2020:

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

The following section of the Washington Administrative Code is repealed effective October 27, 2020:

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

WSR 20-22-032

**EMERGENCY RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed October 26, 2020, 3:25 p.m., effective October 26, 2020, 3:25 p.m.]

Effective Date of Rule: Immediately upon filing.

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 (CMS).

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. This second emergency filing supersedes emergency rules filed as WSR 20-20-068 on October 1, 2020, and is necessary to correct some language that does not align with the CMS-approved waiver amendments that were unintentionally missed on the first filing. The department filed a CR-101 Preproposal statement of inquiry as WSR 20-20-100 on October 5, 2020, to begin the permanent rule-making process.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 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: October 22, 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

(ii) 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(~~s~~) 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 (bedbugs) 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

SERVICE	YEARLY LIMIT
<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))
Community inclusion	Limits determined by ((DDA assessment)) <u>the person-centered service plan</u>
((BEHAVIORAL HEALTH)) STABILIZATION SERVICES: ((Behavioral health)) Crisis diversion bed ((services Positive behavior support and consultation ((Specialized habilitation Staff and family consultation	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

SERVICE	YEARLY LIMIT
((Emergency assistance is only for basic plus-waiver aggregate services)) <u>Community engagement</u> <u>Environmental adaptations</u> <u>Occupational therapy</u> <u>Physical therapy</u> <u>Positive behavior support</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
Specialized ((medical)) equipment and supplies ((Specialized psychiatric services)) Speech, hearing, and language services Staff and family consultation ((and training)) Transportation Wellness education	
<u>Specialized habilitation</u>	<u>Limited to four thousand dollars per waiver year</u>
EMPLOYMENT SERVICES: Individualized technical assistance ((Prevocational services)) Supported employment	Limits determined by DDA assessment and employment status ((; no new enrollment in prevocational services after September 1, 2015))
Community inclusion	Limits determined by ((DDA assessment)) <u>the person-centered service plan</u>
((BEHAVIORAL HEALTH)) STABILIZATION SERVICES: ((Behavioral health)) Crisis diversion bed ((services)) ((Positive behavior support and consultation))	Limits determined by ((a behavioral health professional or DDA)) <u>the person-centered service plan</u>
Specialized ((psychiatric services)) habilitation Staff and family consultation	
Respite care	Limits determined by DDA assessment

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
((Chemical)) <u>Extermination of cimex lectularius (bed-bugs)</u> <u>Community ((guide)) engagement</u> Community transition Environmental ((adaptions)) <u>adaptations</u> Occupational therapy Physical therapy Positive behavior support and consultation Residential habilitation Risk assessment Skilled nursing	Determined by the person-centered service plan

(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)) Transportation	Determined by the person-centered service plan
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)) <u>habilitation</u> <u>Staff and family consultation</u>	Limits determined by ((a behavioral health professional or DDA)) <u>the person-centered service plan</u>

(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 Positive behavior support 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>

SERVICE	YEARLY LIMIT
Music therapy Equine therapy	Five thousand dollars per year for combination of services
Therapeutic adaptations	Limited to a single, one-time authorization not to exceed fifteen thousand dollars every five waiver years

(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	Total cost of waiver services must not exceed annual allocation determined by the person-centered service plan
Community engagement	
Environmental ((adaptations)) adaptations	
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)) habilitation	
Speech, hearing, and language services	
Staff and family consultation ((and training))	
Supported parenting services	
Transportation	

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

(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~~((s))~~.

(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~~((s))~~.

(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))~~ engagement;

(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;~~

~~((s)))~~ Speech, hearing, and language services;

~~((s)))~~ (i) Staff and family consultation ((and training)), which excludes individual and family counseling;

~~((s)))~~ (j) Transportation; and

(k) 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? (1)

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 ~~((behavioral health))~~ a 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 (~~placement~~) 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 integration. 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) Specialized habilitation must not be authorized to clients enrolled in residential habilitation.

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

(7) Specialized habilitation services, not provided as a 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 20-22-034

EMERGENCY RULES

WASHINGTON STATE UNIVERSITY

[Filed October 27, 2020, 8:22 a.m., effective October 27, 2020, 8:22 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The university is updating the rules regarding undergraduate housing requirements.

Note: This emergency rule-making order was originally filed on June 30, 2020, as WSR 20-14-109. A preproposal for similar permanent rules was filed on July 1, 2020, as WSR 20-14-116, with a proposal filed on September 2, 2020, as WSR 20-18-094, and intended for adoption on November 13, 2020.

Citation of Rules Affected by this Order: Amending WAC 504-24-030.

Statutory Authority for Adoption: RCW 28B.30.150.

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 emergency rule change for WAC 504-24-030 is being implemented as a result of the public health emergency resulting from COVID-19 and guidance/directives from public health officials, and is requested in order to (a) update and clarify procedural guidelines, (b) better allow the institution to respond to emergent student needs and special circumstances, and (c) delegate authority at the appropriate institutional level. This change is needed immediately in order to accommodate students, comply with guidance and directives from public health officials, and prepare for the fall 2020 term.

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

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

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

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

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

Date Adopted: October 27, 2020.

Deborah L. Bartlett, Director
Procedures, Records, and Forms
and University Rules Coordinator

AMENDATORY SECTION (Amending WSR 95-07-044, filed 3/8/95, effective 4/8/95)

WAC 504-24-030 Undergraduate housing requirement. (1) University-recognized housing includes residence halls, and university-approved fraternities, sororities, and co-op houses.

(2) Housing requirements for single undergraduate students. To the extent that room is presently available, as determined by the university, in an official university-recognized living group, all single undergraduate freshmen under twenty years of age are required to live in organized living groups which are officially recognized by the university (residence halls, fraternities and sororities) for one academic year.

(a) Exemptions. Exemptions will be considered when a student demonstrates to the ~~((department of residence life))~~ vice president for student affairs or designee that either:

(i) The student has attended an institution of higher education as a regularly enrolled student for at least two regular semesters or three regular quarters (excluding summer sessions);

(ii) The student is living with immediate family in a family situation (mother and/or father; legal guardian; aunt or uncle; or grandparent(s));

(iii) The student has secured a statement from a physician or psychologist stating that residence in recognized student housing would detrimentally affect the student's physical health or emotional well-being; or

(iv) The student demonstrates that living in recognized University housing would cause undue financial hardship or other extraordinary hardship.

(b) Process. Applications for permission to reside off campus are available from ~~((the))~~ Washington State University ~~((Department of Residence Life, Streit-Perham Office Suite, Pullman, WA 99164-1726))~~. Applications are reviewed and a determination is made whether an exemption will be granted. Persons applying for such exemption will be informed of the decision in writing. Requests for reconsideration of the decision may be submitted to the vice ~~((provost))~~ president for student affairs or designee. The vice ~~((provost))~~ president or ~~((his/her))~~ designee will evaluate the appeal and approve or deny the appeal.

rule-making process and received feedback on the rule that resulted in changes.

Citation of Rules Affected by this Order: New WAC 388-845-2019.

Statutory Authority for Adoption: RCW 34.05.350, 71A.12.030.

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: Enacting this rule on an emergency basis is necessary to address effects of the COVID-19 outbreak and it is in the public interest to do so, as following notice and comment requirements in the permanent rule-making process would delay temporary changes aimed to help clients avoid disruptions in service.

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 0, Repealed 0.

Date Adopted: October 22, 2020.

Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-845-2019 What modifications to waiver services apply during the COVID-19 outbreak? (1) Notwithstanding any contrary requirement under this title, changes under this section to DDA's home and community-based waivers are effective immediately and necessary to respond to managing the COVID-19 outbreak. All changes require prior approval by the DDA field services director or designee and will be assessed on a case-by-case basis. Once the emergency declaration regarding COVID-19 is expired, this rule will no longer be applicable, and allowances approved in this rule must end.

(2) The following changes to waiver services are temporary, effective immediately, and necessary to respond to managing the COVID-19 outbreak.

(a) Limits to the number of respite hours a client may receive that are generated in the CARE assessment are temporarily suspended. The amount of respite hours a client may receive are determined by DDA.

WSR 20-22-035

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed October 27, 2020, 8:22 a.m., effective October 28, 2020]

Effective Date of Rule: October 28, 2020.

Purpose: The department is enacting WAC 388-845-2019 on an emergency basis to make temporary modifications to developmental disabilities administration's (DDA) home and community-based services waivers in order to control the spread of the COVID-19 virus and to meet immediate health and safety needs. This is a subsequent emergency. The language differs from the emergency rule filed as WSR 20-14-101 because DDA is progressing through the permanent

(b) The basic plus, CIIBS, and individual and family services waiver aggregate budgets may be exceeded for COVID-19-related health and safety needs.

(c) Respite provided out-of-state may be provided in excess of thirty days.

(d) Community guide and community engagement may be provided to more than one client at a time.

(e) Staff and family consultation may be provided to more than one client at a time.

(f) Assistive technology is available on all five waiver programs when a waiver participant requires a basic technology in order to receive waiver-funded remote supports during the COVID-19 outbreak. Assistive technology is only available to the participant when access to technologies through other resources is not possible. Technology includes, tablets, switches, telephones, or other devices necessary for the client to receive remote supports from the waiver service provider.

(g) If transportation is necessary to prevent illness or meet a client's immediate health and safety needs, waiver transportation services may be used to travel to a place where the client will not be receiving waiver services (e.g., transportation to a family member's home).

(h) All waiver services except goods may be offered remotely by providers when travel to the waiver participant is not possible due to COVID-19 infection or exposure.

(3) If a client is displaced from their home because of quarantine or hospitalization, or if a provider is unavailable due to illness or business closure, the following waiver services may be provided in a hotel, shelter, church, other facility-based setting, or the home of a direct-care worker when those supports are not available through the medicaid state plan or another legally liable funding source:

(a) Residential habilitation;

(b) Respite care;

(c) Positive behavior support;

(d) Staff and family consultation;

(e) Behavioral health stabilization- positive behavior support;

(f) Behavioral health stabilization- crisis diversion beds;

(g) Nurse delegation; and

(h) Skilled nursing.

(4) Positive behavior support and staff and family consultation may be provided in an acute care setting such as a hospital or short-term institutional setting if:

(a) DDA determines that no other alternatives are available and a nonintegrated setting is the only setting available to meet the client's health and safety needs;

(b) The waiver service provider is not otherwise funded by another resource; and

(c) The waiver services do not duplicate services already available in that setting.

(5) The following changes to waiver service provider qualifications are temporary, effective immediately, and necessary to respond to managing the COVID-19 outbreak.

(a) Staff and family consultation may include emergency preparedness consultation support from a provider trained in emergency management or a similar field with a current DDA contract.

(b) Respite care may be provided by currently contracted positive behavior support providers.

(6) Specialized medical equipment and supply, specialized equipment and supply, and assistive technology provider types may include the use of a purchase card and community choice guides when supply or cost impacts occur due to COVID-19.

(7) The following changes to level-of-care evaluations and re-evaluations for waiver participants are temporary, effective immediately, and necessary to respond to managing the COVID-19 outbreak.

(a) A client's services may continue and the level-of-care reassessment may be postponed up to one year if due to illness or quarantine:

(i) The client, their representative, or a DDA employee are unable to participate in the reassessment; or

(ii) There is insufficient time for the case manager to complete the annual reassessment paperwork.

(b) On a case-by-case basis, the time limit for approving a client's expired person-centered service plan may be extended if:

(i) The plan currently meets the client's needs; and

(ii) Monthly remote or telephonic monitoring is provided to ensure the plan continues to meet the client's needs.

(c) Telephonic assessments may occur in place of face-to-face assessments on a case-by-case basis. An initial assessment may be conducted telephonically when needed to prevent potential exposure related to COVID-19.

(d) For initial CARE assessments, employees may complete the assessment and person-centered service plan via the telephone or other electronic means and then do a brief in-person visit before moving the assessment to current.

(e) If the previsit questionnaire response indicates it is not safe to do an in-person visit, services can be authorized prior to an in-person visit occurring.

(f) A person-centered service plan, or revisions to a person-centered service plan, may be approved with a retroactive approval date for service needs identified to mitigate harm or risk directly related to COVID-19 impacts. Telephonic (or other information technology medium) assessments may occur when the assessment cannot occur due to impacts of COVID-19.

(8) CIIBS waiver quarterly face-to-face meeting requirement may be provided telephonically when a face-to-face meeting cannot occur due to client or client representative health concerns or staffing availability.

WSR 20-22-046

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed October 28, 2020, 1:59 p.m., effective October 28, 2020, 1:59 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department of social and health services (DSHS) division of child support (DCS) files this subsequent CR-103E Rule-making order to extend emergency rules amending WAC 388-14A-3205 in order to implement sections 1 and 2, chapter 227, Laws of 2020, of SHB 2302,

regarding income calculation. Relevant provisions of SHB 2302 took effect on June 11, 2020. The department filed a CR-101 Preproposal statement of inquiry as WSR 20-14-021 on June 22, 2020, to begin the permanent rule-making process.

Citation of Rules Affected by this Order: Amending WAC 388-14A-3205.

Statutory Authority for Adoption: Emergency rule making is authorized under RCW 34.05.350 (1)(a) and (b) in order to implement sections 1 and 2, chapter 227, Laws of 2020, of SHB 2302, which takes effect on June 11, 2020. Further authority is found in RCW 26.09.105, 26.18.170, 26.19.011, 26.19.071, 26.23.050, 26.23.110, 34.05.020, 34.05.060, 34.05.220, 74.08.090, 74.20A.055, 74.20A.056.

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 legislature enacted SHB 2302 during the 2020 legislative session. Several provisions, including amendments to RCW 26.19.011 and 26.19.071, had a June 11, 2020, effective date. These provisions change the definition of full-time earnings to thirty-two hours a week for imputation purposes and clarify certain criteria for income calculation. Emergency rule making is necessary to effectuate these statutory changes. There was insufficient time between enactment of this legislation and the effective date to implement without emergency 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 1, Repealed 0.

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

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

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

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

Date Adopted: October 27, 2020.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-3205 How does DCS calculate my income? (1) The division of child support (DCS) calculates a parent's income using the best available information. If a parent is voluntarily unemployed or underemployed, either DCS

or the administrative law judge (ALJ), or both may impute income to that parent. In the absence of records of a parent's actual earnings, either DCS ((and/or)) or the administrative law judge (ALJ), or both may impute a parent's income under RCW 26.19.071(6) in the following order of priority:

(a) Full-time earnings at the current rate of pay;

(b) Full-time earnings at the historical rate of pay based on reliable information, such as employment security department data;

(c) Full-time earnings at a past rate of pay where information is incomplete or sporadic;

(d) ((Full-time)) Earnings of thirty-two hours per week at minimum wage in the jurisdiction where the parent resides if the parent ((has a recent history of minimum wage earnings;)) is on or recently coming off ((public assistance, disability lifeline benefits)) temporary assistance for needy families or recently coming off aged, blind, or disabled assistance benefits, pregnant women assistance benefits, essential needs and housing support, supplemental security income, or disability, has recently been released from incarceration, or is a ((high school student or)) recent high school graduate. Imputation at thirty-two hours per week under this subsection is a rebuttable presumption; ((or))

(e) Full-time earnings at minimum wage in the jurisdiction where the parent resides if the parent has a recent history of minimum wage earnings, has never been employed and has no earnings history, or has no significant earnings history; or

(f) Median net monthly income of year-round full-time workers as derived from the United States bureau of census, current population reports.

(2) When a parent is currently enrolled in high school full-time, either DCS or the ALJ, or both may consider the totality of the circumstances of both parents when determining whether each parent is voluntarily unemployed or voluntarily underemployed. If the parent who is enrolled in high school is determined to be voluntarily unemployed or voluntarily underemployed, either DCS or the ALJ, or both may impute earnings of twenty hours per week at minimum wage in the jurisdiction where the parent resides. Imputation of earnings at twenty hours per week under this subsection is a rebuttable presumption.

(3) DCS and the ALJ impute ((full-time)) earnings of thirty-two hours per week at the minimum wage to a TANF recipient in the absence of actual income information. You may rebut the imputation of income if you are excused from being required to work while receiving TANF, because:

(a) You are either engaged in other qualifying WorkFirst activities which do not generate income, such as job search; or

(b) You are excused or exempt from being required to work in order to receive TANF, because of other barriers such as family violence or mental health issues.

WSR 20-22-049
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-239—Filed October 29, 2020, 11:00 a.m., effective October 30, 2020]

Effective Date of Rule: October 30, 2020.

Purpose: The purpose of this rule is to close salmon fishing in channels created by exposed tidelands at the mouths of Chico Creek and Gorst Creek.

Citation of Rules Affected by this Order: Repealing WAC 220-313-06000W; and amending WAC 220-313-060.

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

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

Reasons for this Finding: Fishing in the tidal channels downstream of the mouths of Gorst and Chico creeks can lead to disorderly fishery activity such as illegal snagging, particularly during times of adult salmon returns to the streams. Fishing opportunity for returning adult salmon remains open in the marine waters adjacent to the creek mouths and tidal channels. Closure of these tidal channel areas is consistent with the department's mandate to promote orderly fisheries (RCW 77.04.012). 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 29, 2020.

Kelly Susewind
 Director

NEW SECTION

WAC 220-313-06000W Puget Sound salmon—Saltwater seasons and daily limits. Effective October 30, 2020 through November 15, 2020, the following provisions of WAC 220-313-060 regarding salmon seasons for Marine Area 10 shall be modified as described below. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

(1) Catch Record Card Area 10:

Free-flowing freshwaters are closed downstream of the mouths of Chico Creek (Kitsap County) and Gorst Creek (Kitsap County).

REPEALER

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

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

WSR 20-22-050
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-238—Filed October 29, 2020, 11:00 a.m., effective November 1, 2020]

Effective Date of Rule: November 1, 2020.

Purpose: The purpose of this rule is to open hatchery steelhead retention from the Dalles Dam to the Highway 395 Bridge at Pasco.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000B and 220-312-06000C; and amending WAC 220-312-060.

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

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

Reasons for this Finding: This rule is needed to allow retention of hatchery steelhead upstream of the Dalles Dam. Endangered Species Act impacts to A and B index steelhead are projected to be less than 0.1%, which is below the remaining available balance. This action is needed to make rules concurrent with those of Oregon and as agreed to pre-season during the North of Falcon process. There is insufficient time to adopt permanent regulations.

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 29, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000C Freshwater exceptions to statewide rules—Columbia River. Effective November 1 through December 31, 2020, the provisions of WAC 220-312-060 regarding recreational sturgeon seasons in the Columbia River downstream of Bonneville Dam and the Cowlitz River and Columbia River salmon and steelhead seasons from the mouth (Buoy 10) to the Hwy. 395 Bridge at Pasco, shall be as described below. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) From a true North and South line through Buoy 10 to a projected line from Rocky Point on the Washington bank through Red Buoy 44 to the red navigation marker 2 at Tongue Point on the Oregon Bank (the Rocky Point/Tongue Point line), and including Youngs Bay: Salmon and steelhead:

Effective November 1 through December 31, 2020: Daily limit 6. Up to 2 adults may be retained, of which no more than 1 may be a hatchery steelhead. Release all salmon other than Chinook and hatchery coho. Release wild steelhead.

(2) From the Rocky Point/Tongue Point line to Bonneville Dam: Salmon and steelhead:

Effective November 1 through December 31, 2020: Daily limit 6. Up to 2 adults may be retained, of which no more than 1 may be a hatchery steelhead. Release all salmon other than Chinook and hatchery coho. Release wild steelhead.

(3) From Bonneville Dam to Hood River Bridge: Salmon and steelhead:

Effective November 1 through December 31, 2020: Daily limit 6. Up to 2 adults may be retained, of which no more than 1 may be a hatchery steelhead. Release all salmon other than Chinook and hatchery coho. Release wild steelhead.

(4) From the Hood River Bridge to the Dalles Dam: Salmon and steelhead:

Effective November 1 through December 31, 2020: Daily limit 6. Up to 2 adults may be retained, of which no more than 1 may be a hatchery steelhead. Release all salmon other than Chinook and coho. Release wild steelhead.

(5) From the Dalles Dam to Hwy. 395 Bridge at Pasco: Salmon and steelhead:

Effective November 1 through December 31, 2020. Daily limit 6. Up to 2 adults may be retained, of which no more than 1 may be a hatchery steelhead. Release all salmon other than Chinook and coho. Release wild steelhead.

REPEALER

The following section of Washington Administrative Code is repealed, effective November 1, 2020:

WAC 220-312-06000B Freshwater exceptions to statewide rules—Columbia River. (20-218)

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

WAC 220-312-06000C Freshwater exceptions to statewide rules—Columbia River.

WSR 20-22-058 EMERGENCY RULES DEPARTMENT OF RETIREMENT SYSTEMS

[Filed October 30, 2020, 8:15 a.m., effective October 30, 2020, 8:15 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To comply with state and federal laws related to the shared work program and the Governor's Directive 20-15 concerning schools that have shifted to remote learning due to the COVID-19 pandemic.

Citation of Rules Affected by this Order: New WAC 415-02-170 Will a furlough or temporary layoff from my public employment affect my retirement benefit?

Statutory Authority for Adoption: RCW 41.50.050.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; 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: In accordance with Governor Inslee's Directive 20-15 regarding maintaining continuity in K-12 employment, the department of retirement systems must engage in emergency rule making to comply with requirements of the directive with respect to the shared work compensation plan program and RCW 50.60.030.

This rule is necessary to comply with the directive, state and federal laws related to the shared work program and schools' ability to qualify for participation in this federal program. This rule is necessary for the general welfare of the state and for the receipt of federal funds.

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

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

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

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

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

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

Date Adopted: October 30, 2020.

Tracy Guerin
Director

NEW SECTION

WAC 415-02-170 Will a furlough or temporary lay-off from my public employment affect my retirement benefit? If you work for an eligible employer as described in subsections (1) through (5) of this section, and your employer participates in the shared work program during the period of time you were furloughed or temporarily laid off, you will receive the same retirement benefit as if your hours had not been reduced. Participation in the shared work program under chapter 50.60 RCW will not impact, in any manner, the retirement benefits of any member employed by an eligible employer in a plan administered by the department of retirement systems. This does not apply to members whose employer does not participate in the shared work program.

An eligible employer for the purpose of this section includes:

- (1) All school districts including charter schools;
- (2) Educational service districts;
- (3) Tribal schools that have chosen to participate in the retirement system and have satisfied the requirements of RCW 28A.715.010(7);
- (4) Washington state school for the blind;
- (5) Washington state school for the deaf.

WSR 20-22-065
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed October 30, 2020, 11:43 a.m., effective November 1, 2020]

Effective Date of Rule: November 1, 2020.

Purpose: The department is adopting WAC 388-434-0015 Extension of certification periods and waiver of eligibility reviews and mid-certification reviews during the COVID-19 pandemic, to implement administrative flexibilities regarding certification periods and mid-certification reviews as allowed under H.R. 8337, Continuing Appropriations Act, 2021 and Other Extensions Act of 2020. The department filed a CR-101 Preproposal statement of inquiry as WSR 20-22-062 on October 30, 2020, to begin the permanent rule-making process.

Citation of Rules Affected by this Order: New WAC 388-434-0015.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120.

Other Authority: H.R. 8337.

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: Emergency adoption of this rule is required to implement administrative flexibilities that protect the health, safety, and general welfare of Washington residents by supporting ongoing access to public assistance.

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 1, Amended 0, Repealed 0.

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

Date Adopted: October 29, 2020.

Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-434-0015 Extension of certification periods and waiver of eligibility reviews and mid-certification reviews during the COVID-19 pandemic. (1) Recertification requirements for food assistance under WAC 388-434-0010 are waived in the months listed below and your certification period will automatically be extended as follows:

(a) Certification periods ending in November 2020 and December 2020 will be automatically extended by two months.

(b) Certification periods ending in January 2021 and February 2021 will be automatically extended by four months, if not previously extended.

(2) Eligibility review requirements for cash assistance under WAC 388-434-0005 are waived as follows:

(a) All eligibility reviews due in November 2020 and December 2020.

(b) Eligibility reviews, not already extended, due in January 2021 and February 2021.

(3) If your cash assistance eligibility review is waived under subsection (2) of this section, the following programs are included:

(a) Temporary assistance for needy families;

(b) State family assistance;

(c) Aged, blind or disabled cash assistance; and

(d) Housing and essential needs referral.

(4) If your working family support certification period ends under WAC 388-493-0010, your certification period will be extended as described in subsection (1) of this section.

(5) Mid-certification review requirements for cash and food assistance under WAC 388-418-0011 are waived from November 1, 2020 to June 30, 2021.

(6) You are still required to report changes under WAC 388-418-0005.

(7) The department will review and act upon any new information we receive from you during this time under WAC 388-418-0020.

**WSR 20-22-071
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 20-240—Filed October 31, 2020, 3:23 p.m., effective November 1, 2020]

Effective Date of Rule: November 1, 2020.

Purpose: The purpose of this rule is to close commercial gillnet and purse seine fisheries in Puget Sound Salmon Management and Catch Reporting Areas 10, 11, 12, 12B, and 12C.

Citation of Rules Affected by this Order: Repealing WAC 220-354-16000I and 220-354-12000Z; 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, and 12C.

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. An agreement on nontreaty commercial harvest targeting chum salmon could not be reached in-season between comanagers.

In-season information for nontribal commercial chum fisheries in Marine Areas 12 and 12B have indicated a run size of 354,358 which leaves a nontribal share of 130,398 chum. To date the nontreaty total harvest of chum is 54,191. These catches are well below the pre-season expected catch to date and the state believes the run size may be lower than what the in-season information indicates. The state agreed to close its fisheries to contribute to natural escapement goals and hatchery broodstock goals of chum salmon.

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 31, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-354-16000I Puget Sound salmon—Gillnet—Open periods. Effective November 1 through November 18, 2020, the following provisions of WAC 220-354-160 regarding commercial gillnet open periods for Salmon Management and Catch Reporting Areas 10, 11, 12, 12B, and 12C 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 11/1	
10, 11:	Closed	5 PM - 7 AM	Nightly 11/4	
12, 12B	Closed	7 AM - 7 PM	11/2, 11/4	
12, 12B	Closed	6 AM - 6 PM	11/10, 11/12, 11/16, 11/18	
12C	Closed	6 AM - 6 PM	11/10, 11/12, 11/16	

NEW SECTION

WAC 220-354-12000Z Puget Sound salmon—Purse seine—Open periods. Effective November 3 through November 17, 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, 12B, and 12C 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 - 5 PM	11/3, 11/5
12, 12B	Closed	7 AM - 5 PM	11/3, 11/5, 11/9, 11/17
12C	Closed	7AM - 5PM	11/3, 11/5, 11/9, 11/17

REPEALER

The following section of the Washington Administrative Code is repealed effective November 19, 2020:

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

The following section of the Washington Administrative Code is repealed effective November 18, 2020:

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

WSR 20-22-074
EMERGENCY RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed November 2, 2020, 3:33 p.m., effective November 2, 2020, 3:33 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule change would allow educators with permits expiring through June 30, 2021, to be issued one additional one-year permit.

Citation of Rules Affected by this Order: New WAC 181-79A-118.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

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

Reasons for this Finding: Educators are issued permits when they come in from out-of-state, and have met all certificate requirements with the exception of assessments. Permits allow educators to serve while they complete assessments. Testing centers are open, but they are operating at reduced capacity to allow for social distancing. This makes it challenging for educators to get an appointment date. This permit extension would provide additional flexibility for educators in completing their assessment requirements during COVID closures.

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

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

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

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

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

Date Adopted: November 2, 2020.

Maren Johnson
Rules Coordinator

AMENDATORY SECTION (Amending WSR 20-16-032, filed 7/25/20, effective 8/25/20)

WAC 181-79A-118 Expiration and lapse dates of certificates. (1) Certificates scheduled to expire June 30, 2020, under WAC 181-79A-117, or scheduled to lapse June 30, 2020, under WAC 181-85-100, excluding residency certificates that are subject to reissuance, are scheduled to expire or lapse June 30, 2021.

(2) Certificates scheduled to expire June 30, 2020, under WAC 181-79A-117, or scheduled to lapse June 30, 2020, under WAC 181-85-100, may have already been renewed. For these renewed certificates, the expiration or lapse date will be calculated as if the certificate expiring June 30, 2020, had an expiration or lapse date of June 30, 2021.

(3) Applications for renewal of certificates scheduled to expire June 30, 2021, may be submitted at any point prior to the June 30, 2021, expiration date.

(4) Limited certificates under WAC 181-79A-231, 181-77-014, and 181-77-081 expire as described in those sections.

(5) Permits under WAC 181-01-001, 181-02-001, 181-79A-128, and 181-79A-224 expire as described in those sections. Permits for candidates eligible under those sections which expired beginning July 1, 2019, and before (~~December 31, 2020~~) June 30, 2021, may be reissued once for one additional year.

WSR 20-22-088
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-241—Filed November 3, 2020, 10:50 a.m., effective November 3, 2020, 10:50 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule is to add an additional ram (male) bighorn sheep hunt for the Cleman Mountain hunt area (Sheep Unit 7). The hunt dates would be Nov. 4-29 and would include five permits.

Citation of Rules Affected by this Order: Amending WAC 220-415-120.

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

Other Authority: None.

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

Reasons for this Finding: Bighorn sheep in the Cleman Mountain herd have recently tested positive for Mycoplasma ovipneumoniae, which is a bacteria that causes pneumonia in wild bighorn and proves fatal for many of the bighorn that are infected. This pathogen is highly infectious and typically results in substantial die-offs when it first enters wild bighorn herds. The department has already started to receive reports of coughing or dead bighorn within this herd area. Providing hunters with additional opportunities to harvest rams would

reduce lost opportunities for hunters as a result of the pneumonia outbreak.

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

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

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

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

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

Date Adopted: November 3, 2020.

Bighorn Sheep Permit Hunts

Ram (male) bighorn sheep only				
Hunt Name	Permit Season	Permit Hunt Boundary Description	Special Restrictions	Permits
Cleman Mountain	Nov. 4-29	Sheep Unit 7	Any Legal Weapon	5

**WSR 20-22-112
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 20-243—Filed November 4, 2020, 11:34 a.m., effective November 5, 2020]

Effective Date of Rule: November 5, 2020.

Purpose: The purpose of this rule is to increase the daily adult salmon limit for Drano Lake.

Citation of Rules Affected by this Order: Repealing WAC 220-312-03000T; and amending WAC 220-312-030.

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

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

Reasons for this Finding: This rule is needed to increase the adult salmon daily limit for Drano Lake, for the following reasons:

Little White Salmon National Fish Hatchery has achieved the 2020 fall Chinook broodstock collection goal, allowing the adult daily limit to be increased for additional harvest opportunity.

There is insufficient time to adopt permanent rules.

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

Kelly Susewind
Director

NEW SECTION

WAC 220-415-12000A 2020 Bighorn sheep season and permit quotas. Effective November 4, 2020, the following provisions of WAC 220-415-120 regarding bighorn sheep seasons and permit quotas for the Cleman Mountain (Sheep Unit 7) special permits shall be as described below. All other provisions of WAC 220-415-120 not addressed herein, or otherwise amended by emergency rule, remain in effect:

It is unlawful to fail to comply with the bag, possession, and season limits described below. A violation of this section is punishable under RCW 77.15.410 Unlawful hunting of big game—Penalty.

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: November 4, 2020.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-03000T Freshwater exceptions to statewide rules—Southwest. The provisions of WAC 220-312-030 regarding salmon and hatchery steelhead seasons for Drano Lake, shall be modified during the dates and as described below. All other provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

Drano Lake (Skamania County): Salmon and hatchery steelhead: Effective November 5 through December 31, 2020:

Daily limit 6. Up to 2 adults may be retained, of which no more than 1 may be a hatchery steelhead.

REPEALER

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

WAC 220-312-03000T Freshwater exceptions to statewide rules—Southwest.