

WSR 22-08-004
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed March 23, 2022, 2:22 p.m., effective March 23, 2022, 2:22 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The developmental disabilities administration (DDA) is amending WAC 388-101D-0030 to temporarily allow providers to hire a person without a high school diploma or GED.

Citation of Rules Affected by this Order: Amending WAC 388-101D-0030.

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

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

Reasons for this Finding: This is the second emergency filing on this rule. This subsequent filing is necessary to keep the emergency rule in effect until DDA completes the permanent rule-making process. The department filed a CR-102 proposal, which is scheduled for public hearing April 26, 2022. DDA is adopting this rule on an emergency basis to help providers of residential habilitation address critical staffing shortages. Immediate adoption will allow providers to hire staff quickly, enabling providers to meet client health and safety needs.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.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: March 22, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4900.3

AMENDATORY SECTION (Amending WSR 16-14-058, filed 6/30/16, effective 8/1/16)

WAC 388-101D-0030 Staffing requirements. (1) The ((service)) provider must ensure each ((staff meets the following minimum requirements)) of its employees:

((~~(1) Have~~)) (a) Has a high school diploma or GED equivalent, unless the ((employees were)) employee was hired before September 1, 1991, or is exempt under subsection (2) of this section;

((~~(2) Be at least eighteen years of age~~)) (b) Is age 18 or older when employed as a direct ((care staff, or at least twenty-one years of age)) support professional who provides support services to a client;

(c) Is age 21 or older when employed as an administrator;

((~~(3) Have~~)) (d) Has a clear understanding of job responsibilities and knowledge of individual support plans and client needs; and ((~~(4) Passed~~)) (e) Passes the department background check ((as)) required ((by)) under WAC 388-101-3250.

(2) The provider may hire a person without a high school diploma or GED if while working directly with clients the employee has access to another employee or a volunteer who:

(a) Has a high school diploma or GED; or

(b) Was hired before September 1, 1991.

(3) If the provider hires a person under subsection (2) of this section, the provider must have a written plan that states when and how the person must contact another employee for assistance.

[WSR 16-14-058, recodified as § 388-101D-0030, filed 6/30/16, effective 8/1/16. Statutory Authority: Chapter 71A.12 RCW. WSR 08-02-022, § 388-101-3200, filed 12/21/07, effective 2/1/08.]

WSR 22-08-006
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-47—Filed March 23, 2022, 3:20 p.m., effective March 24, 2022]

Effective Date of Rule: March 24, 2022.

Purpose: The provisions of this emergency rule:

WAC 220-340-42000F:

(1) Requires all crab harvested to be delivered to an original receiver or recorded on a shellfish transportation ticket within 36 hours of harvest. Requires separate transportation tickets to be completed for each day's harvest not delivered to an original receiver that is stored off the fishing vessel. Implements a 10-day restriction on the length of time that crab may be stored off-vessel before being delivered to an original receiver.

(2) Implements a labeling requirement for crab that are stored off-vessel.

(3) Implements a labeling requirement for crab that are stored off-vessel and not delivered to an original receiver within 36 hours.

WAC 220-340-45500K:

(1) Defines subareas east and west of Marine Fish-Shellfish Catch Reporting Area 23C to align with agreed-to boundaries within the Region 3 2021-22 crab management plan.

(2) Closes Puget Sound commercial crab harvest in Region 3-1, effective March 25, due to projected quota attainment. Opens Region 3-4, effective March 24, due to a quota transfer allowing additional harvest. Maintains closures for Crab Management Regions 1, 2 East, 2 West, and 3-2.

(3) Closes Port Angeles Harbor to commercial crab harvest due to public health decrees.

(4) Repeals areas where recreational and tribal harvest has been allowed that state commercial harvest has been historically limited.

WAC 220-340-47000I:

(1) Allows deployment of up to 25 pots per license for the commercial harvest of Dungeness crab in Crab Management Region 3-1.

(2) Allows deployment of up to 60 pots per license for the commercial harvest of Dungeness crab in Crab Management Region 3-3.

(3) Allows deployment of up to 35 pots per license for the commercial harvest of Dungeness crab in Crab Management Region 3-4. Requires undeployed buoy tags to be retained for inspection.

WAC 220-352-34000U:

(1) Clarifies the Puget Sound commercial dealer quick reporting requirements.

(2) Implements a Puget Sound "stored crab" harvest report requirement for crab not delivered to an original receiver with 36 hours of harvest.

(3) Implements a Puget Sound sales report requirement for stored crab that have been reported but not landed.

(4) Implements a registration requirement for commercial license holders to notify the department of their fishing status and which crab management area a license will be fishing in if active.

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000E, 220-340-45500J, 220-340-47000H and 220-352-34000T; and amending WAC 220-340-420, 220-340-455, 220-340-470, and 220-352-340.

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: Commercial crab harvest in Crab Management Region 3-1 will close, effective March 25, due to projected quota attainment. Region 3-4 will open March 24 for the harvest of additional quota. Sufficient harvest quota remains available in Region 3-3 to accommodate continued commercial harvest.

Rules are consistent with comanager agreed regional management plans and in accordance with procedures outlined in the shellfish implementation plan for circumstances when agreement to annual regional management plans has not been reached. These management plans are entered into as required by court order. The Washington department of fish and wildlife-managed Puget Sound commercial Dungeness crab season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in these management plans. Further adjustment of season structure may be made pending updated harvest data.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 4, Amended 0, Repealed 4.

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: March 23, 2022.

Kelly Susewind
Director

NEW SECTION

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

(1) Crab Management Region 1 includes Marine Fish-Shellfish (MFSF) Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B. Crab Management Region 2E includes MFSF Catch Reporting Areas 24A, 24B, 24C, 24D, and 26A East. Crab Management Region 2 West includes MFSF Catch Reporting Areas 25B, 25D, and 26A West. Crab Management Region 3-1 includes MFSF Catch Reporting Areas 23A and 23B. Crab Management Region 3-2 includes MFSF Catch Reporting Areas 25A, 25E, and 23D. Crab Man-

agement Region 3-3 includes MFSF Catch Reporting Areas 23C East, and Crab Management Region 3-4 consists of 23C West and 29.

(2) Effective immediately, until further notice, all crab removed from a vessel licensed and fishing in Puget Sound that are not delivered to an original receiver within 36 hours must be recorded on a commercial fish and shellfish transportation ticket. Separate commercial fish and shellfish transportation tickets must be filled out for each day's harvest retained in this manner. It is illegal to retain and store crab prior to delivery and completion of a fish receiving ticket for more than 10 days.

(3) Effective immediately, until further notice, all crab retained and removed from a vessel licensed and fishing in Puget Sound must be stored in containers based on date retained and labeled with the following:

(a) Date of harvest,

(b) An estimate of pounds of crab in each container, and

(c) Either the MFSF Catch Reporting Area or the Crab Management Region the catch originated from.

(4) Effective immediately, until further notice, all crab retained and removed from a vessel licensed and fishing in Puget Sound that are not delivered to an original receiver within 36 hours must be stored in containers based on date retained and labeled with the following:

(a) Date of harvest,

(b) An estimate of pounds of crab in each container,

(c) Either the MFSF Catch Reporting Area or the Crab Management Region the catch originated from, and

(d) Commercial fish and shellfish transportation ticket number.

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NEW SECTION

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

(1) For the purposes of crab harvest allocation, fishing season, and catch reporting, the following Marine Fish-Shellfish (MFSF) Catch Reporting Areas are modified as follows:

(a) Catch Area 23C East (23C-E) includes those waters of Puget Sound westerly of a line due north from the Ediz Hook light to the international boundary; and easterly of a line projected due north from Low Point.

(b) Catch Area 23C West (23C-W) includes those waters of Puget Sound westerly of a line due north from Low Point to the international boundary; and easterly of a line projected due north from the mouth of the Sekiu River.

(2) Effective immediately, until further notice, the following areas are closed to commercial crab fishing: Crab Management Regions 1, 2E, 2W, and 3-2.

(3) It is permissible to harvest Dungeness crab for commercial purposes from the following areas, as listed:

(a) Crab Management Region 3-1: effective immediately until 1 hour after official sunset on March 25, 2022.

(b) Crab Management Region 3-3: effective immediately until further notice or until 1 hour after official sunset on April 15, 2022, whichever comes first.

(c) Crab Management Region 3-4: effective one hour before official sunrise on Thursday, March 24, 2022 until further notice or until 1 hour after official sunset on April 15, 2022, whichever comes first.

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

That portion of Marine Fish/Shellfish Catch Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

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NEW SECTION

WAC 220-340-47000I Commercial crab fishery—Gear limits—Puget Sound and Marine Fish-Shellfish Management and Catch Reporting Areas. Notwithstanding the provisions of WAC 220-340-470:

(1) Effective immediately until 1 hour after official sunset on March 25, 2022, it is unlawful for any person to harvest crabs for commercial purposes with more than 25 pots per license in Crab Management Region 3-1.

(2) Effective immediately, until further notice or until 1 hour after official sunset on April 15, 2022, whichever comes first, it is unlawful for any person to harvest crabs for commercial purposes with more than 60 pots per license in Crab Management Region 3-3.

(3) Effective one hour before official sunrise on Thursday, March 24, 2022 until further notice or until 1 hour after official sunset on April 15, 2022, whichever comes first, it is unlawful for any person to harvest crabs for commercial purposes with more than 35 pots per licenses in Crab Management Region 3-4.

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

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NEW SECTION

WAC 220-352-34000U Puget Sound crab—Additional reporting requirements. Notwithstanding the provisions of WAC 220-352-340,

(1) Effective immediately, until further notice, it is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab landed by WDFW licensed Puget Sound commercial crab harvesters to fail to report to the department the previous day's purchases by 10:00 a.m. the day following the purchase. Reports must be made online at the Puget Sound commercial crab reporting website, by fax to (360) 302-3031, or by e-mail at crab.report@dfw.wa.gov. Reports must include all of the following:

- (a) Dealer name,
- (b) Dealer license number,
- (c) Dealer phone number,

(d) Date of delivery of crab to the original receiver, and

(e) The total number of pounds of crab caught by WDFW licensed commercial fishers by Crab Management Region or Marine Fish-Shellfish Management and Catch Reporting Area.

(2) Effective immediately, until further notice, commercial harvesters of crab in Puget Sound must deliver all crab removed from their vessel to a licensed original receiver within 36 hours or submit a report of crab retained for delivery at a future date to the Department. Reports must be received within 36 hours following an offload. Reports must be made by online on the Puget Sound commercial crab reporting website or by e-mail at crab.report@dfw.wa.gov. Reports must contain all of the following:

(a) Harvester name,

(b) WDFW issued vessel ID,

(c) Puget Sound commercial license number,

(d) Date of harvest,

(e) An estimate of pounds of harvest retained by Crab Management Region or Marine Fish-Shellfish Management and Catch Reporting Area, and

(f) A commercial fish and shellfish transportation ticket number.

(3) Effective immediately, until further notice, commercial harvesters of crab in Puget Sound must report the delivery of all crab to an original receiver that were previously retained off-vessel by 10:00 a.m. the day following delivery to an original receiver. Reports must be made online at the Puget Sound commercial crab reporting website, or by e-mail at crab.report@dfw.wa.gov. Reports must contain all of the following:

(a) Harvester name,

(b) WDFW issued vessel ID,

(c) Puget Sound commercial license number,

(d) Date of sale,

(e) Dealer name,

(f) Commercial shellfish transportation ticket number(s) delivered, and

(g) Fish receiving ticket number(s) corresponding to landing date of delivery.

(4) Effective immediately, until further notice, Puget Sound commercial crab license holders, or their designated alternate operators, must register which Crab Management Region that gear will be deployed in for each license they hold prior to the opening date or if licenses are not being fished. Registrations must be updated when gear moves between areas or fishing activity stops. Registrations can be made by registering on the WDFW Puget Sound commercial crabbing web page or sending an email to crab.report@dfw.wa.gov, detailing the following information:

(a) Vessel Operator Name

(b) Vessel Name and Vessel Registration Number

(c) License Number(s) to be fished

(d) Crab Management Region to be fished or an indication that licenses will remain unfished

(e) Gear Deployment Date

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

REPEALER

The following sections of the Washington Administrative Code are repealed, effective March 24, 2022:

- WAC 220-340-42000E Commercial crab fishery—Unlawful acts.
(22-44)
- WAC 220-340-45500J Commercial crab fishery—Seasons and
areas—Puget Sound. (22-44)
- WAC 220-340-47000H Commercial crab fishery—Gear
requirements—Puget Sound. (22-44)
- WAC 220-352-34000T Puget Sound crab—Additional reporting
requirements. (22-44)

**WSR 22-08-015
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 22-48—Filed March 24, 2022, 2:07 p.m., effective April 1, 2022]

Effective Date of Rule: April 1, 2022.

Purpose: The purpose of this emergency rule is to open recreational razor clam seasons.

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

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

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

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 3, 4, and 5 for recreational harvest. Washington department of health has certified clams from these razor clam areas to be safe for human consumption. 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 Nongovernmental 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: March 24, 2022.

Kelly Susewind
Director

NEW SECTION

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

(1) Effective 12:01 a.m. April 1 through 11:59 a.m. April 6, 2022, razor clam digging is permissible in Razor Clam Areas defined in WAC 220-330-160 during afternoon and evening tides on dates and times listed below:

Razor Clam Area	Date	Time
Area 1	April 1 through April 6	From 12:01 a.m. to 11:59 a.m.

Razor Clam Area	Date	Time
Area 2	Closed	Closed
Area 3	April 1 through April 6	From 12:01 a.m. to 11:59 a.m.
Area 4	April 2, 4, and 6	From 12:01 a.m. to 11:59 a.m.
Area 5	April 1, 3, and 5	From 12:01 a.m. to 11:59 a.m.
Area 6	Closed	Closed
Area 7	Closed	Closed

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

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REPEALER

The following sections of the Washington Administrative Code are repealed effective 12:01 a.m. April 7, 2022:

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

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

WSR 22-08-016
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed March 25, 2022, 9:17 a.m., effective March 25, 2022, 9:17 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Modify the early achievers quality rating and improvement system requirements during the COVID-19 pandemic. More specifically, remove the deadline by which a provider must enroll in the program and the requirement to reach quality rating levels. Child care and early learning providers who participate in working connections and seasonal child care must still enroll in the early achievers program, follow its operating guidelines, submit attendance records electronically, and renew their facility ratings every three years.

Citation of Rules Affected by this Order: Amending WAC 110-15-0125 and 110-15-3750.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

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

Reasons for this Finding: Governor Jay Inslee issued Proclamation 20-05 declaring a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. The governor's proclamation directed state agencies to do everything reasonably possible to respond to and recover from the COVID-19 outbreak. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. The effects of its extreme risk of person-to-person transmission throughout Washington state significantly impact the life and health of our people, as well as our economy, and pose particular challenges to the availability of quality early learning and child care services for families with low incomes. The emergency amendments to WAC 110-15-0125 and 110-15-3750 address these challenges by waving and suspending some of the regulatory system requirements that delay child care providers from making child care available to the children of essential staff who are from low income families who require child care services during the COVID-19 pandemic. WAC 110-15-0125 and 110-15-3750 were amended on an emergency basis on March 30, 2020, under WSR 20-08-098; July 29, 2020, under WSR 20-16-072; November 25, 2020, under WSR 20-24-090; March 26, 2021, under WSR 21-08-014; July 26, 2021, under WSR 21-16-035; and November 24, 2021, under WSR 21-24-048. Proclamation 20-31.11 issued January 19, 2021, relieves providers from meeting certain early achievers program deadlines until the state of emergency terminates or the proclamation is rescinded. This change in circumstances makes it necessary for the emergency rules filed under WSR 21-24-048 to remain in force.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: March 25, 2022.

Brenda Villarreal
Rules Coordinator

[AMENDATORY SECTION] (Amending WSR 19-01-111 [22-05-007], filed 12/18/18 [2/3/22], effective 1/18/19 [3/6/22])

WAC 110-15-0125 Approved child care providers. (1) In-home/relative providers. To be approved to receive benefits under the WCCC program, an in-home/relative provider must comply with the applicable requirements contained in this chapter, chapter 43.216 RCW, and chapters 110-06 and 110-16 WAC.

(2) Licensed providers.

(a) To be approved to receive payment under the WCCC program, a licensed provider must comply with the requirements of this chapter, chapter 43.216 RCW, (~~and~~) chapter(~~s~~) 110-06, and chapter 110-300(~~, 110-300A, 110-300B, and~~) or 110-305 WAC.

(b) A provider who cares for a child who is a Washington resident in a state that borders Washington must:

(i) Be licensed to provide care in the bordering state;

(ii) Comply with the bordering state's licensing regulations;

(iii) Comply with the electronic attendance requirements contained in WAC 110-15-0126.

(c) The lesser of the following will be paid to a qualified, licensed child care provider in a state that borders Washington:

(i) The provider's private pay rate for that child; or

(ii) The DCYF maximum WCCC subsidy daily rate for the DCYF region where the child resides.

(d) A licensed provider in a state that borders Washington that receives WCCC subsidy payment to care for a child who is a Washington resident is not required or eligible to participate in the early achievers program or to receive quality improvement awards, tiered reimbursements, or other awards and incentives associated with the early achievers program.

(3) Certified providers. To be approved to receive payment under the WCCC program, a certified provider must comply with the certification requirements contained in this chapter, chapter 43.216 RCW, (~~and~~) chapter(~~s~~) 110-06, and chapter 110-300(~~, 110-300A, 110-300B, and~~) or 110-305 WAC. Certified providers include:

(a) Tribal child care facilities that meet the requirements of tribal law;

(b) Child care facilities on a military installation;

(c) Child care facilities operated on public school property by a school district; and

(d) Seasonal day camps that contract with DCYF to provide subsidized child care.

(4) (~~Early achievers program requirements for licensed and certified child care providers that~~) To be eligible to receive WCCC pay-

ments, licensed or certified Early Achiever program participants who receive their first WCCC payment on or after July 1, 2016 must:

~~(a) ((A licensed or certified child care provider that first receives a WCCC subsidy payment on or after July 1, 2016, for providing nonschool age child care must complete the following activities to be eligible to receive additional WCCC payments:~~

~~(i))) Enroll in the early achievers program; and ((within thirty days of receiving the first WCCC subsidy payment. A licensed or certified provider that fails to meet this requirement will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care;~~

~~(ii) Complete level 2 activities in the early achievers program within twelve months of enrollment. A licensed or certified provider that fails to meet this requirement will lose DCYF approval to receive DCYF subsidy payments for providing nonschool age child care;~~

~~(iii) Rate at a level 3 or higher in the early achievers program within thirty months of enrollment. A licensed or certified provider that fails to meet this requirement within thirty months of enrollment in the early achievers program, must complete remedial activities with DCYF and rate at a level 3 or higher within six months of beginning remedial activities. A licensed or certified provider that fails to rate at a level 3 or higher within six months of beginning remedial activities will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care; and~~

~~(iv))) (b) Renew their facility rating every three years ((and maintain a rating level 3 or higher)). If a licensed or certified provider fails to renew their facility rating ((or maintain a rating level 3 or higher)), the licensed or certified provider will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care.~~

~~((b))) (c) Licensed and certified providers must comply with the provisions for participation as outlined in the early achievers operating guidelines. Failure to comply with these guidelines may result in a licensed or certified provider's loss of DCYF approval to receive WCCC subsidy payments for providing nonschool age child care.~~

~~(5) ((Early achievers program requirements for licensed and certified child care providers that received a WCCC payment on or between July 1, 2015, and June 30, 2016:~~

~~(a-)) A licensed or certified child care provider that received a WCCC subsidy payment on or between July 1, 2015, and June 30, 2016((, for providing nonschool age child care, must complete the following activities to be eligible to receive additional WCCC subsidy payments:~~

~~(i) Enroll in the early achievers program by August 1, 2016. A licensed or certified provider that fails to meet this requirement will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care;~~

~~(ii) Complete level 2 activities in the early achievers program by August 1, 2017. A provider who failed to meet this requirement will lose DCYF approval to receive WCCC subsidy payments for nonschool age child care; and~~

~~(iii) Rate at a level 3 or higher in the early achievers program by December 31, 2019. A licensed or certified provider that fails to meet this requirement by December 31, 2019, must complete remedial activities with DCYF and rate at a level 3 or higher by June 30, 2020. A licensed or certified provider that fails to receive a rating by December 31, 2019, or fails to rate at a level 3 or higher by June 30,~~

2020, after completing remedial activities will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care.

~~(b) Licensed and certified providers~~) must renew their facility rating every three years. ~~((and maintain a rating level 3 or higher))~~. If a licensed or certified provider fails to renew their facility rating or maintain a rating level 3 or higher, ~~licensed or certified providers~~) they will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care.

(6) If a licensed or certified child care provider receiving WCCC subsidy payment for providing nonschool age has successfully completed all level 2 activities and is waiting to be rated, the licensed or certified provider may continue to receive WCCC subsidy payments ~~((pending the successful completion of the level 3 rating activity))~~.

(7) DCYF-contracted seasonal day camps must have a contract with ~~(DEL)~~ DCYF to provide subsidized child care.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 22-05-007, § 110-15-0125, filed 2/3/22, effective 3/6/22. Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-15-0125, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-15-0125, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0125, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0125, filed 4/15/16, effective 5/16/16. Statutory Authority: RCW 43.215.060, 43.215.070, 43.43.832(6), 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0125, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0125, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0125, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. WSR 02-12-069, § 388-290-0125, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0125, filed 12/19/01, effective 1/19/02.]

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

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

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.

[AMENDATORY SECTION] (Amending WSR 18-14-078 [22-05-007], filed 6/29/18 [2/3/22], effective 7/1/18 [3/6/22])

WAC 110-15-3750 Eligible child care providers. To receive payment under the SCC program, a consumer's child care provider must be:

(1) Currently licensed as required by chapter ~~((43.215))~~ 43.216 RCW and ~~((170-295, 170-296A, or 170-297))~~ chapters 110-300 or 110-305 WAC;

(2) Meeting their state's licensing regulations, for providers who care for children in states bordering Washington. The SCC program pays the lesser of the following to qualified child care facilities in bordering states:

- (a) The provider's private pay rate for that child; or
- (b) The state maximum child care subsidy rate for the ((DSHS)) DCYF region where the child resides; or
- (3) Exempt from licensing but certified by ((DEL)), DCYF such as:
- (a) Tribal child care facilities that meet the requirements of tribal law;
- (b) Child care facilities on a military installation; and
- (c) Child care facilities operated on public school property by a school district.
- (4) ~~((New child care providers, as defined in WAC 170-290-0003, who are))~~ To be eligible to receive a state subsidy payment, an agency as defined in RCW 43.217.010 that is subject to licensure, or ((are certified)) a person or facility authorized to receive state subsidy ~~((as required by chapter 43.215 RCW and as described by chapter 170-295, 170-296A, or 170-297 WAC))~~ under chapter 43.216 RCW, who received a subsidy payment for nonschool age child care on or after July 1, 2016, and received no such payments during the period July 1, 2015, through June 30, 2016, must:
- (a) Enroll in the early achievers program; ~~((within thirty days of receiving the initial state subsidy payment. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;~~
- (i) ~~Out-of-state providers that provide care for children receiving Washington state child care subsidies are neither required nor eligible to participate in early achievers; and~~
- (ii) ~~Out-of-state providers are not eligible to receive quality improvement awards, tiered reimbursement, or other awards and incentives associated with participation in early achievers.))~~
- (b) Adhere to the provisions for participation as outlined in the most recent version of the *Early Achievers Operating Guidelines*. Failure to adhere to these guidelines may result in a provider's loss of eligibility to receive state subsidy payments nonschool age child care; and
- (c) ~~Complete level 2 activities in the early achievers program within twelve months of enrollment. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;~~
- (d) ~~Rate at a level 3 or higher in the early achievers program within thirty months of enrollment. If an eligible provider fails to rate at a level 3 or higher within thirty months of enrollment in the early achievers program, the provider must complete remedial activities with the department and rate at a level 3 or higher within six months of beginning remedial activities. A provider who fails to receive a rating within thirty months of enrollment or fails to rate at a level 3 or higher within six months of beginning remedial activities will lose eligibility to receive state subsidy payments for nonschool age child care; and~~
- (e) ~~(c) Maintain an up to date rating by renewing their facility rating every three years ((and maintaining a rating level 3 or higher)). If a provider fails to renew their facility rating ((or maintain a rating level 3 or higher)), they will lose eligibility to receive state subsidy payments nonschool age child care.~~
- (5) Existing child care providers who are subject to licensure or are certified to receive state subsidy as required by chapter ~~((43.215))~~ 43.216 RCW and ~~as described by chapter 170-295, 170-296A, or 170-297 WAC,~~) who have received a subsidy payment for a nonschool age child in the period July 1, 2015, through June 30, 2016, must:

~~(a) Enroll in the early achievers program by August 1, 2016. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;~~

~~(i) Out-of-state providers that provide care for children receiving Washington state child care subsidies are neither required nor eligible to participate in early achievers; and~~

~~(ii) Out-of-state providers are not eligible to receive quality improvement awards, tiered reimbursement, or other awards and incentives associated with participation in early achievers.~~

~~(b) Complete level 2 activities in the early achievers program by August 1, 2017. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;~~

~~(c) Rate at a level 3 or higher in the early achievers program by December 31, 2019;~~

~~(d) If an existing provider fails to rate at a level 3 or higher by December 31, 2019, in the early achievers program, the provider must complete remedial activities with the department and rate at a level 3 or higher by June 30, 2020. A provider who fails to receive a rating by December 31, 2019, or fails to rate at a level 3 or higher by June 30, 2020, after completing remedial activities will lose eligibility to receive state subsidy payments for nonschool age child care; and~~

~~(e) Maintain an up to date rating by renewing their facility rating every three years ((and maintaining a rating level 3 or higher)). If a provider fails to renew their facility rating ((or maintain a rating level 3 or higher)), they will lose eligibility to receive state subsidy payments nonschool age child care.~~

~~(6) If a child care provider ((serving nonschool age children, as defined in WAC 170-290-0003, and)) receiving state subsidy payments for nonschool age child care has successfully completed all level 2 activities and is waiting to be rated, the provider may continue to receive a state subsidy. ((pending the successful completion of the level 3 rating activity.))~~

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 22-05-007, § 110-15-3750, filed 2/3/22, effective 3/6/22. WSR 18-14-078, recodified as § 110-15-3750, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-3750, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-3750, filed 4/15/16, effective 5/16/16; WSR 11-12-078, § 170-290-3750, filed 5/31/11, effective 7/1/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-3750, filed 10/28/09, effective 12/1/09.]

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

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

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

WSR 22-08-017
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed March 25, 2022, 9:20 a.m., effective March 25, 2022, 9:20 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: During the COVID-19 pandemic, relieve the department of children, youth, and families from (1) in-person contact for the purpose of receiving or fulfilling public records requests, copying public records, or allowing inspection of public records; and (2) the requirement to respond to a request for public records within five days of receiving the request.

Citation of Rules Affected by this Order: Amending WAC 110-01-0100 and 110-01-0200.

Statutory Authority for Adoption: RCW 43.216.065; and chapter 42.56 RCW.

Other Authority: Proclamations of the Governor 20-05 and 20-28.

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

Reasons for this Finding: Governor Jay Inslee issued Proclamation 20-05 declaring a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. The governor's proclamation directed state agencies to do everything reasonably possible to respond to and recover from the COVID-19 outbreak. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. Proclamation of the Governor 20-28 amends Proclamation 20-05 and directs state agencies to limit personal contact through social distancing and limit person-to-person contact. Proclamation 20-28 waives and suspends any in-person contact related to public records requests and the requirement that a state agency respond to requests within five days of receipt. WAC 110-01-0100 and 110-01-0200 were amended on an emergency basis on March 31, 2020, under WSR 20-08-123; July 29, 2020, under WSR 20-16-074; November 25, 2020, under WSR 20-24-089; March 26, 2021, under WSR 21-08-015; July 26, 2021, under WSR 21-16-037; and November 24, 2021, under WSR 21-24-047. Proclamation 20-28.15 issued January 19, 2021, relieves state agencies from complying with provisions of the Public Records Act that involve in-person contact until the state of emergency terminates or until rescinded. This change in circumstances makes it necessary for the emergency rules filed under WSR 21-24-047 to remain in force.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: March 25, 2022.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-01-0100 Availability of public records. Pursuant to proclamation 20-28 and any subsequent proclamation, or other gubernatorial or legislative action suspending the requirements of RCW 42.56.080, .090, or .100, public inspection is not permitted. ((Public records are available for inspection and copying during the department's normal business hours, Monday through Friday, 8 a.m. to 5 p.m., excluding legal holidays. A department staff person must be present at all times when a record is being inspected. Appointments are not required, but significantly help the department provide prompt and efficient service. Some department records may be stored in other locations, in computer storage systems, or the state records warehouse, and may take time to identify and gather. Other records may be exempt from disclosure. Original records cannot be removed from the inspection location. If required by law, department staff must redact information in a record before making it available for inspection. Department staff will make copies of records on request.))

[WSR 18-14-078, recodified as § 110-01-0100, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 42.56 RCW. WSR 18-13-009, § 170-01-0100, filed 6/6/18, effective 7/7/18. Statutory Authority: RCW 42.56.040, 43.215.070, and chapter 43.215 RCW. WSR 12-09-035, § 170-01-0100, filed 4/11/12, effective 5/12/12.]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-01-0200 How the department responds to public records requests. The department will respond to public record requests in a reasonable amount of time given the unique circumstances of the COVID-19 pandemic. ((Within five business days of receiving the request,)) When the department receives a request for records, the department will either:

- (1) Provide the record;
- (2) Acknowledge the request and give a reasonable time estimate of how long the department will take to provide records;
- (3) Contact the requestor to clarify the request if it isn't understood by the public records officer; or
- (4) Deny all or part of the request in writing, with reasons for the denial. The explanation will include the law that the department relied upon in its denial.

At his or her discretion, the public records officer may send the requested records by email, fax, postal mail, or commercial delivery. The records may be delivered on paper, computer or compact discs, or other methods.

[WSR 18-14-078, recodified as § 110-01-0200, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070 and chapter 42.56 RCW. WSR 18-13-009, § 170-01-0200, filed 6/6/18, effective 7/7/18. Statutory Authority: RCW 42.56.040, 43.215.070, and chapter 43.215 RCW. WSR 12-09-035, § 170-01-0200, filed 4/11/12, effective 5/12/12.]

WSR 22-08-028

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed March 28, 2022, 11:16 a.m., effective March 28, 2022, 11:16 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-310-806 Kidney disease treatment facilities— Concurrent review cycles. The department of health (department) is adopting an emergency rule to amend WAC 246-310-806(1) as it relates to special and nonspecial circumstances 1 concurrent review cycle. The amendment extends deadlines for kidney disease treatment facility applicants who are submitting applications during concurrent review cycle 1. This extension grants flexibility in meeting deadlines due to significant reporting errors in the new end stage renal disease quality reporting system (EQRS) database. It was recently discovered that EQRS, a new centers for medicare and medicaid services reporting system, is not able to correctly process dialysis patients receiving services in coronavirus disease (COVID-19) cohorted facilities and is incorrectly recording death dates or discharge dates. These errors have caused a significant number of counting errors within the reporting system. The department is unable to generate an accurate need methodology for the end stage renal disease providers as required by WAC 246-310-812 due to the incorrect data.

This emergency rule adopts the waived application deadlines for the special and nonspecial circumstances 1 concurrent review cycle. This change will allow time for the dialysis providers to work within EQRS to correct this data and allow the department to receive reliable data to formulate a reliable need methodology.

Citation of Rules Affected by this Order: Amending WAC 246-310-806.

Statutory Authority for Adoption: RCW 70.38.135.

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. Allowing an additional month for the kidney disease treatment facility concurrent review start cycle will allow time to receive and generate the data needed by applicants to appropriately fill health care needs in the appropriate areas. Ongoing work to review and revise the certificate of need rules cannot be completed in time for this review cycle. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

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

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

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

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

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

Date Adopted: March 27, 2022.

Kristin Peterson, JD
Deputy Secretary
Policy and Planning
for Umair A. Shah, MD, MPH
Secretary

OTS-2252.1

AMENDATORY SECTION (Amending WSR 17-04-062, filed 1/27/17, effective 1/1/18)

WAC 246-310-806 Kidney disease treatment facilities—Concurrent review cycles. The department will review kidney dialysis facility applications using the concurrent review cycles described in this section, unless the application was submitted as described in subsection (9) of this section. There are four concurrent review cycles each year.

(1) Applicants must submit applications for review according to the following table:

Concurrent Review Cycle	Letters of Intent Due	Application Submission Period			Department Action	Application Review Period		
		Receipt of Initial Application	End of Screening Period	Applicant Response		Beginning of Review	Public Comment Period (includes public hearing if requested)	Rebuttal Period
Special Circumstances 1	First working day of (April) May of each year.	First working day of (May) June of each year.	(May) June 15 or the first working day thereafter.	(June) July 15 or the first working day thereafter.	(June) July 22 or the first working day thereafter.	30-Day Public comment period (including public hearing). Begins (June) July 23 or the first working day thereafter.	7-Day Rebuttal period. Applicant and affected party response to public comment.	15-Day Exparte period. Department evaluation and decision.
Nonspecial Circumstance Cycle 1	First working day of (May) June of each year.	First working day of (June) July of each year.	Last working day of (June) July .	Last working day of (July) August .	(August) September 5 or the first working day thereafter.	30-Day Public comment period (including public hearing). Begins (August) September 6 or the first working day thereafter.	30-Day Rebuttal period. Applicant and affected party response to public comment.	75-Day Exparte period. Department evaluation and decision.

Concurrent Review Cycle	Letters of Intent Due	Application Submission Period			Department Action	Application Review Period		
		Receipt of Initial Application	End of Screening Period	Applicant Response		Public Comment Period (includes public hearing if requested)	Rebuttal Period	Exparte Period
Special Circumstances 2	First working day of October of each year.	First working day of November of each year.	November 15 or the first working day thereafter.	December 15 or the first working day thereafter.	December 22 or the first working day thereafter.	30-Day Public comment period (including public hearing). Begins December 23 or the first working day thereafter.	7-Day Rebuttal period. Applicant and affected party response to public comment.	15-Day Exparte period. Department evaluation and decision.
Nonspecial Circumstances Cycle 2	First working day of November of each year.	First working day of December of each year.	Last working day of December .	Last working day of January .	February 5 or the first working day thereafter.	30-Day Public comment period (including public hearing). Begins February 6 or the first working day thereafter.	30-Day Rebuttal period. Applicant and affected party response to public comment.	75-Day Exparte period. Department evaluation and decision.

(2) The department should complete a nonspecial circumstance concurrent review cycle within nine months, which begins the first day after letters of intent are due for that particular review cycle. The department should complete the regular review process within six months, which begins the first day after the letters of intent are due for that particular review cycle.

(3) The department will notify applicants fifteen days prior to the scheduled decision date if it is unable to meet the decision deadline on the applications. In that event, the department will establish and commit to a new decision date.

(4) When two or more applications are submitted for the same planning area, the department will first evaluate each application independently for meeting the applicable standards described in WAC 246-310-210, 246-310-220, 246-310-230, and 246-310-240. If two or more applications independently meet those four standards, the department will apply the superiority criteria in WAC 246-310-827 to determine the superior application under WAC 246-310-240(1).

(5) An applicant receiving points for the purposes of the superiority criteria under WAC 246-310-827 (3)(e), (f), or (g) may only apply for station need in one planning area per review cycle.

(6) An applicant receiving points for purposes of the superiority criteria under WAC 246-310-827 (3)(e), (f), or (g) must operate the newly awarded stations for a period of time long enough to have a full year of data reporting medicare cost report worksheets and a full year of data reporting the dialysis facility report prior to any future applications.

(7) The department will not accept new nonspecial circumstance applications for a planning area if there are any nonspecial circumstance applications for which the certificate of need program has not made a decision in that planning area filed under a previous concurrent review cycle. This restriction does not apply if the department

has not made a decision on the pending applications within the review timelines of nine months for a concurrent review and six months for a regular review. This restriction also does not apply to special circumstance applications.

(8) The department may convert the review of a nonspecial circumstance application that was initially submitted under a concurrent review cycle to a regular review process if the department determines that the nonspecial circumstance application does not compete with another nonspecial circumstance application.

(9) Pending certificate of need applications. Kidney dialysis facility applications submitted prior to the effective date of these rules will be reviewed and action taken based on the rules that were in effect on the date the applications were received.

[Statutory Authority: RCW 70.38.135. WSR 17-04-062, § 246-310-806, filed 1/27/17, effective 1/1/18.]

WSR 22-08-031

EMERGENCY RULES

DEPARTMENT OF AGRICULTURE

[Filed March 29, 2022, 6:23 a.m., effective March 29, 2022, 6:23 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To create a temporary hemp extract certification process, which will enable Washington state hemp processors to comply with other states' and countries' regulatory requirements that hemp extracts intended for use in consumable products must be sourced from a state that inspects or regulates hemp under a food safety program, until a permanent rule can be adopted. The rule-making order creates chapter 16-171 WAC, Hemp extract certification.

Citation of Rules Affected by this Order: New WAC 16-171-100, 16-171-110, 16-171-120, 16-171-130, 16-171-140, 16-171-150, and 16-171-160.

Statutory Authority for Adoption: RCW 69.07.020, 69.07.220.

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

Reasons for this Finding: In 2021, the legislature passed SB 5372 (chapter 104, Laws of 2021) authorizing the department to conduct rule making to establish the voluntary hemp extract certification process to allow for hemp extract products to be used as a food ingredient in another state that allows its use. This voluntary certification will allow a manufacturer to apply for a hemp extract certification, which will evaluate a hemp manufacturer's compliance with Washington state's inspection and good manufacturing practices requirements. Other states are also making changes to their hemp programs and establishing new markets for hemp products at an unprecedented pace. Many of these new opportunities require that hemp extracts intended for use in consumable products be sourced from a state that regulates hemp extracts under a food safety program.

One crucial example of this is the recent passage of California's Assembly Bill 45 (AB 45), which will allow for the inclusion of hemp extract in consumable products within the state. California will require out-of-state hemp extracts to be inspected under a food safety program. This opening of the California market presents a substantial opportunity and it is expected that many major national consumer product companies will rapidly introduce a number of food, beverage, and other branded products in the state. Supply lines and relationships for hemp ingredients to be included in these products will form rapidly. The California bill [AB 45] went into effect immediately upon signature by the governor.

The passage of AB 45 and the opening of the California market will undoubtedly draw hemp processors from around the country who are seeking to export their hemp products to California. Those processors who are able to promptly establish supply relationships to provide hemp products early on will have the opportunity to secure a market position that could last for many years to come. This presents a very significant opportunity for Washington's hemp processors, but the timeline necessary to establish permanent rules regarding hemp extract certification will put hemp extract processors in this state at a se-

vere disadvantage to processors in those states that already have similar regulations in place.

California has the largest market in the country and the economic consequences of failing to have Washington's hemp extract certification process in place at the time California's regulations are implemented would be expansive. Not only are Washington's hemp processors currently prevented from exporting their products into numerous existing markets until the permanent rules are in place, but if the processors miss out on the opportunity to establish key supply relationships at the onset of the California market, it will set Washington hemp industry back significantly and will exacerbate the existing competitive differences between the states. This setback will have a long lasting effect that will likely take many years to remedy, if in fact it can be remedied at all.

The department has determine[d] that establishing a temporary hemp certification process until the permanent rule can be adopted is necessary to protect the general welfare of Washington's hemp industry.

A CR-101, to make this rule permanent, was filed on July 20, 2021 (WSR 21-15-098).

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 7, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 7, 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 7, Amended 0, Repealed 0.

Date Adopted: March 28, 2022.

Derek I. Sandison
Director

OTS-3631.1

**Chapter 16-171 WAC
HEMP EXTRACT CERTIFICATION**

NEW SECTION

WAC 16-171-100 Hemp extract certification—Purpose. The purpose of this chapter is to:

(1) Establish requirements for new hemp extract certification applications and renewals.

(2) Establish an inspection criteria and a rating system that will be used to determine whether a hemp extract certification applicant is in compliance with chapters 69.07 and 15.130 RCW, and regulations adopted thereunder, including Title 21 C.F.R.

(3) Identify steps leading to enforcement actions by the department.

[]

NEW SECTION

WAC 16-171-110 Hemp extract—Definitions. (1) Definitions for terms used in this chapter may be found in chapters 69.07 and 15.130 RCW, and Title 21 C.F.R. as adopted in WAC 16-167-050, unless otherwise provided in this chapter.

(2) For the purposes of this chapter, the following definitions apply:

(a) **"Adequate"** means that which is needed to accomplish the intended purpose in keeping with good public health practice.

(b) **"Adulterate"** has the same meaning as provided in RCW 15.130.200 except that the department does not consider hemp extract itself to be adulterated when produced in compliance with RCW 69.07.220 and these rules for use as a food ingredient in another state that allows its use as a food ingredient.

(c) **"Certification criteria violation"** means any violation of the inspection criteria that must be met prior to the issuance of a hemp extract certification.

(d) **"Critical violation"** means a violation of the inspection criteria that results in hemp extract adulteration or that has the potential to contribute to conditions resulting in such adulteration.

(e) **"Department"** means the Washington state department of agriculture (WSDA).

(f) **"Director"** means the director of the department.

(g) **"Facility or hemp extract facility"** means any premise, plant, building, room, area, or facility which processes, prepares, or handles hemp for production of hemp extract for use as a food ingredient in another state that allows its use as a food ingredient.

(h) **"Hemp"** has the same meaning as provided for in RCW 15.140.020 and means the plant *Cannabis sativa L.* and any part of the plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

(i) **"Hemp extract"** means a substance or compound intended for human ingestion that is derived from, or made by, manufacturing hemp. The term does not include hemp seeds or hemp seed-derived ingredients that are generally recognized as safe by the United States Food and Drug administration.

(j) **"Hemp extract certification"** means a certification issued by the department to a hemp extract facility manufacturing hemp extract for export to other states, which certifies the hemp extract facility's compliance with Washington state's inspection and sanitation requirements.

(k) **"Hemp processor"** has the same meaning as provided for in RCW 15.140.020, and means a person who takes possession of raw hemp material with the intent to modify, package, or sell a transitional or finished hemp product.

(l) **"Sanitize"** means to adequately treat hemp extract contact surfaces by a process that is effective in destroying vegetative cells of microorganisms of public health significance, and in substantially reducing numbers of other undesirable microorganisms, but without adversely affecting the product or its safety for the consumer.

(m) **"Significant violation"** means any violation of the inspection criteria not deemed to be a critical violation as described in WAC 16-171-140.

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NEW SECTION

WAC 16-171-120 Hemp extract facility certification—New application and renewals—Inspection criteria. To qualify for a new hemp extract certification issued under chapter 69.07 RCW, the Washington Food Processing Act, a hemp processor must first make an application to the department. After the department receives a complete application, the department will inspect the facility. The facility must be in compliance with the following requirements prior to issuance of a certification:

(1) The applicant must submit an application that includes:

(a) The full name of the applicant and the location of the hemp extraction facility where the applicant intends to operate, and if the applicant is an entity, the full name of each officer, managing member, or other responsible individuals;

(b) The principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant; and

(c) The type of hemp extracts to be processed, the method of manufacturing, and any other necessary information to make an evaluation.

(2) A hemp processor holding a hemp extract certification must apply for renewal of the certification annually.

(3) The appropriate fee must accompany the application submitted to the department, as follows:

(a) For new applications, the fee is \$1,400.

(b) For a new certification inspection, the fee is \$3,000.

(c) For renewal applications, the fee is \$1,500.

(4) The hemp extract facility must be in substantial compliance with inspection criteria as described in WAC 16-171-150(2). Refer to WAC 16-171-140 for the inspection and certification criteria and WAC 16-171-130 for definitions of certain inspection criteria. For the purposes of certification, a hemp extract facility may incur a one-point debit of a licensing criteria that has sliding scale.

(5) To renew a certification, a hemp extract manufacturer must submit a renewal application and fees before the manufacturer's current certification expires. If the department has received receipt of a submitted renewal application and fees before the certification expiration date, the time period of the prior certification extends un-

til the department either issues the renewed certification or denies the renewal application. If a manufacturer does not timely submit a renewal application or fees, the prior certification expires upon the expiration date.

(6) Upon the approval of the application by the director the applicant shall be issued a new or renewal certification.

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NEW SECTION

WAC 16-171-130 Hemp extract certification—Inspection criteria definitions. This section provides definitions for certain criteria the department will use when conducting inspections to determine if a hemp extract facility complies with inspection criteria and good manufacturing practices for hemp extract certification. The complete set of inspection criteria is set forth in WAC 16-171-140.

(1) **"Clean and adequate protective clothing and hair restraints"** means the clothing, or the outside layer of clothing, which can occasionally or incidentally contact hemp extract, either directly or indirectly, is:

(a) Clean at the start of the work shift; and

(b) Changed when the clothing becomes so soiled during the course of the work shift that contamination of hemp extract, hemp extract packaging or hemp extract contact surfaces becomes imminent; and

(c) Suitable to the specific hemp extract manufacturing operation for protection against the contamination of hemp extract, hemp extract packaging, and hemp extract contact surfaces; and

(d) Clean and effective hair restraints, such as hairnets, or beard nets if appropriate, are worn for the protection of hemp extract from contamination. Hats, caps, scarves or other head cover are acceptable if the hair is properly contained to protect hemp extract from contamination. Hair spray and/or tying back the hair in pony-tails, etc., are not considered effective hair restraints.

(2) **"Adequate washing and sanitizing of hands as necessary"** means washing and sanitizing hands thoroughly to protect against contamination of hemp extract from undesirable microorganisms in an adequate hand wash facility by:

Using proper handwashing methods which consist of:

(a) Applying soap to hands;

(b) Using warm water;

(c) Scrubbing hands thoroughly;

(d) Rinsing and drying hands using methods that prevent hemp extract contamination;

(e) Washing hands before beginning work, after each absence from the work station, and any time hands become soiled or contaminated; and

(f) Sanitizing hands when appropriate in addition to, but not in place of, the proper handwashing methods.

(3) **"Garments and personal belongings stored appropriately; not a source of contamination"** means personal belongings and garments, either personal or supplied by the hemp extract facility, are stored or kept separately from hemp extract manufacturing, handling and storage operations such as in an area, locker, cupboard, or other closeable

unit that is dedicated to the storing or hanging of personal belongings and clothing so not to become a source of contamination to hemp extract, hemp extract packaging or hemp extract contact surfaces; and

No hemp extract, packaging materials, utensils or equipment used in the hemp extract manufacturing operation are kept, stored or commingled with personal belongings or garments.

(4) **"Processes separated as required"** means there is a separation of processes for the purpose of reducing potential contamination in hemp extract manufacturing operations where contamination is likely to occur. One or more of the following means may accomplish this:

- (a) Location;
- (b) Time;
- (c) Partition;
- (d) Air flow;
- (e) Enclosed systems; or
- (f) Other effective method.

(5) **"Adequate light"** means lighting is provided in handwashing, dressing and locker rooms, toilet rooms and in all areas where hemp extract is examined, manufactured or equipment is cleaned. Shatter resistant light bulbs or fixtures are to be used to protect against hemp contamination.

(6) **"Detergents, sanitizers and toxic materials properly identified"** means:

(a) Labeling any container containing detergent, sanitizer, or toxic material with the:

- (i) Product name;
- (ii) Chemical description;
- (iii) Directions for use;
- (iv) Any required precautionary and warning statements;
- (v) First-aid instructions;
- (vi) Name and address of the manufacturer or distributor; and
- (vii) Any other additional information required by the federal Environmental Protection Agency or other laws or rules; and

(b) Small transport or use containers for detergents, sanitizers, or toxic materials are used only under the following conditions:

(i) The contents are properly identified on the container. Labeling the container with the common name is acceptable if the original storage container is on hand and properly identified;

(ii) No hemp extract container is used as a container for detergents, sanitizers, or toxic materials;

(iii) No container used for detergents, sanitizers, or toxic materials, is used as a hemp extract container.

(7) **"Product contact surfaces clean and maintained in a sanitary condition, cleaned and sanitized prior to each use or as essential"** means:

(a) Product contact surfaces of equipment, utensils, containers and other articles used in the manufacturing of hemp extract, when its continued use is apparent, are cleaned as frequently as necessary to protect against contamination of hemp extract;

(b) Hemp extract residues are removed from product contact surfaces frequently enough to prevent residues from becoming unwholesome or unfit for food, decomposed, filthy, putrid, or injurious to health; and

(c) The hemp extract product contact surfaces are sanitized prior to use and after cleaning as necessary.

(8) **"Product contact surfaces clean and maintained in a sanitary condition, cleaned and sanitized prior to each use or as essential"**

Critical violation" means it is a critical violation if a hemp extract product contacts a surface that is not sanitized after cleaning or prior to use. Product contact surfaces that become contaminated, but are cleaned and sanitized prior to use, are not considered a critical violation.

(9) **"Nonproduct contact surfaces of equipment cleaned and maintained in a sanitary condition"** means nonproduct contact surfaces of equipment are kept reasonably free from dirt, old hemp extract residues, foreign material, dust, mold, mildew, slime and other accumulations that occur because of day-to-day hemp extract manufacturing operations.

(10) **"In-use hemp contact equipment and utensils appropriately stored: Protected from contamination between uses"** means the utensils used in the manufacturing of hemp, such as knives, scrapers, scoops, shovels, cutters, and other hand tools and equipment, are placed or stored in a manner to prevent hemp extract contact surfaces from being contaminated with filth. Filth includes, but is not limited to, nonpathogenic microorganisms, unsuitable toxic chemicals, and microscopic physical contaminants.

Storage and placement of utensils or equipment in the following manner is considered inappropriate storage:

(a) In contact with the floor, dirty equipment frames, other insanitary nonhemp extract contact surfaces;

(b) In contact with containers of nonpotable water (other than sterilizing solutions); and

(c) In contact with other contaminants.

(11) **"In-use hemp contact equipment and utensils appropriately stored: Protected from contamination between uses: Critical violation"** means that it is a critical violation when a utensil or piece of equipment is or has been stored in a manner that it becomes obviously contaminated with filth and its continued use is apparent.

Utensils and equipment that become contaminated are not considered a critical violation if the utensils and equipment are cleaned and sanitized prior to the next use.

(12) **"Water supply - Safe and of sanitary quality"** means the water supply used in the manufacturing of hemp is potable from an approved source and is monitored in accordance with applicable laws and rules with current satisfactory water tests as applicable. Water from an approved source and monitored in accordance with applicable laws and rules means:

(a) Hemp extract facilities with 25 or more employees and operating 60 days or more annually comply with the state department of health, division of drinking water requirements for a Group A water system (chapter 246-290 WAC).

(b) Hemp extract facilities with less than 25 employees or operating less than 60 days annually, comply with the state department of health, division of drinking water requirements for a Group B water system (chapter 246-291 WAC) unless connected to a Group A public water system.

(c) Private water supplies must meet the department of health, division of drinking water requirements for a Group B water system (chapter 246-291 WAC) with respect to monitoring for bacteriological properties. When water is incorporated into the product, chemical and physical properties must also be monitored.

(13) **"Current satisfactory water test"** means for water obtained from other than a municipal system, analysis verifying the bacteriological, physical and chemical safety of the water has been conducted

according to appropriate Group A or B water system monitoring schedules and that reports of analysis are on file at the manufacturing facility and available for review by the department during routine facility inspection.

(14) **"No cross connections, no back siphonage"** means there is no backflow from or cross connection between piping systems that discharge waste water sewage and piping systems that carry water for hemp extract manufacturing. This includes any cross connection between a potable water system and a nonpotable system.

(15) **"Adequate floor drains and plumbing to convey wastes and sewage from the manufacturing facility, into approved sewage disposal system"** means:

(a) Plumbing is designed, sized, installed and maintained in accordance with applicable state and local plumbing codes so that sewage and liquid disposable waste is readily conveyed from the plant;

(b) Floor drainage is sufficient to prevent excessive pooling of water or other disposable waste;

(c) Plumbing and drains do not provide a source of contamination to hemp or hemp extract, potable water, hemp extract contact surfaces or hemp extract packaging material or create any insanitary condition; and

(d) Sewage is disposed into a municipal sewer system or other system approved by a federal, state or local agency having jurisdiction.

(16) **"Adequate, readily accessible toilet facilities"** means a hemp extract facility provides its employees with toilet facilities that are located within a reasonable distance to the work area, and are maintained in accordance with local zoning ordinances.

(a) Toilet facilities are located on the premises of a hemp extract facility.

(b) If the hemp extract facility shares space in a multiple building complex, toilet facilities are located within the complex and within a reasonable distance from the work area.

(c) Outhouses, chemical toilets, or other nonflushing toilets may not be used.

(17) **"Toilets clean, in good repair, not opening directly into process areas, self-closing doors"** means toilet rooms are kept clean, free of trash and litter, in good repair and all toilet room doors are self-closing and do not open directly into a hemp extract manufacturing area.

(18) **"Handwash facilities adequate and convenient, with hot and cold or tempered water"** means employees and visitors in a hemp extract facility have access to one or more handwashing facilities with hot, cold, or tempered running water, and there is at least one handwash facility located in each restroom and one in the hemp extract manufacturing area in a convenient location for use when hands become soiled.

(19) **"Hemp extract protected from contamination in storage"** means hemp and hemp extract is stored under conditions that protect against physical, chemical and microbial contamination, as well as against deterioration of the hemp extract and the container.

(20) **"Hemp extract protected from contamination in storage: Critical violation"** means it is a critical violation when a storage situation allows potential contamination of products.

(21) **"Packaging material properly handled and stored"** means packaging material is protected from potential sources of contamination during handling and storage. This includes, but is not limited to:

- (a) Boxes, liners, and other primary containers are stored off floors or other insanitary surfaces;
- (b) Top containers in a nested stack of lined or primary containers are inverted or otherwise protected;
- (c) All single service containers, caps, roll stock, liner jars, bottles, jugs, and other preformed containers are stored in closed sanitary tubes, wrappings, boxes or cartons prior to use;
- (d) The forming, make-up or other package assembly is conducted in a manner that prevents contamination;
- (e) The handling of packaging material and containers prior to filling or wrapping is conducted as not to expose them to contamination by dust, foreign material, or other contaminants.

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NEW SECTION

WAC 16-171-140 Hemp extract facility—Inspection criteria. The following table identifies:

- (1) Inspection criteria and whether each criterion also represents a certification requirement;
- (2) Whether a violation is critical; and
- (3) The debit value for each significant violation.

	Criteria Item-Critical*	Debit Value	Certification Requirement?
1	Hemp extract products free from adulteration.	C	Yes
2	Persons with apparent infections or communicable diseases properly restricted.	C	Yes
3	Adequate washing and sanitizing of hands as necessary, gloves used in food handling sanitary conditions.	C	Yes
4	Product contact surfaces clean and maintained in a sanitary condition; cleaned and sanitized prior to each use or as essential.	C	Yes
5	In use hemp contact equipment and utensils appropriately stored; protected from contamination between uses.	C	No
6	Water used is safe and of adequate sanitary quality; from approved source.	C	Yes
7	No cross connections; no back-siphonage.	C	Yes
8	Hot and cold water, under pressure, in areas where foods are processed or equipment washed.	C	Yes
9	Adequate, readily accessible toilet facilities provided.	C	Yes
10	No evidence of human defecation or urination about the premises.	C	Yes
11	Handwash facilities adequate and convenient, including hot and cold or tempered water.	C	Yes
12	Hemp protected from contamination in storage.	C	No
* A critical violation results in an establishment not being in substantial compliance.			

	Criteria Item-Significant	Debit Value	Certification Requirement?
1	Jewelry, watches other personal items not a source of contamination.	1	No
2	Clean and adequate protective clothing and hair restraints.	1-2	No
3	Use of tobacco, eating and drinking of food and beverages and gum chewing restricted to appropriate areas.	1	No

	Criteria Item-Significant	Debit Value	Certification Requirement?
4	Garments and personal belongings stored appropriately, not a source of potential contamination.	2	No
5	Employee work procedures preclude contamination.	1-2	No
6	Grounds: Free from pest attractions, breeding places, harborage, excessive dust and other contaminants.	1	No
7	Suitable size and location, construction including walls, floors, ceiling, counters, shelving, other fixtures, smooth, readily cleanable and in good repair.	1-5	Yes
8	Processes separated as required.	1-2	Yes
9	No operations in domestic living or sleeping quarters (including domestic kitchens).	0	Yes
10	Adequate light.	1-2	Yes
11	Lights; glass over food protected; breakproof.	1	No
12	Adequate ventilation to minimize vapors, steams, noxious fumes.	1-2	Yes
13	Drip or condensate from ceiling, fixtures, pipes, ducts not a potential source of contamination.	1-3	No
14	Screened or protected to exclude pests.	1-2	No
15	Building, fixtures, facilities clean; including transport vehicles.	1-5	Yes
16	Detergents, sanitizers, toxic materials safely used and stored.	1-3	No
17	Detergents, sanitizers and toxic materials properly identified.	1-2	No
18	Product contact surfaces clean and maintained in a sanitary condition; cleaned and sanitized prior to each use or as essential.	1-2	No
19	Nonproduct contact surfaces of equipment clean and maintained in a sanitary condition.	1-2	No
20	In use hemp extract contact equipment and utensils appropriately stored; protected from contamination between uses.	1-2	No
21	Effective measures taken to exclude pests from the facility. No harborage/breeding areas.	1-2	No
22	Pesticides safely used and stored.	1-3	No
23	No evidence of rodents, insects, birds or other animals.	1-5	Yes
24	Current satisfactory water supply test.	5	Yes
25	Water supply sufficient in quantity for intended operations.	2	Yes
26	Adequate floor drains and plumbing to convey wastes and sewage from plant.	1-2	Yes
27	Sewage and waste lines protected not a source of contamination.	1-2	Yes
28	Adequate offal, rubbish and waste disposal.	1-2	Yes
29	Toilet facilities clean and in good repair, no direct opening to process area, self-closing door.	1-2	Yes
30	Soap and single service towels or suitable drying devices provided at handwash facilities. Adequate refuse receptacles provided.	1-2	No
31	Readily understandable handwash signs provided at handwash facilities.	1	No
32	Hand dips provided as necessary.	1-2	No
33	Design, material and workmanship durable, readily cleanable and in good repair. Contact surfaces nontoxic and corrosion resistant.	1-3	Yes
34	Design and use preclude contamination with lubricants, fuel, contaminated water, paint, rust, compressed air/gas and other contaminants.	1-3	No
35	Freezers and cold storage units equipped with adequate thermometers.	1	No

	Criteria Item-Significant	Debit Value	Certification Requirement?
36	Incoming raw materials or ingredients are from an approved source, in an obvious sanitary condition. Items inspected on receipt, suitable for intended use, segregated as necessary and properly stored (clean storage containers, facilities, products properly covered), ingredients properly identified; raw materials washed or cleaned as required.	1-5	No
37	No contaminating material used, stored or transported with supplies, ingredients or processed foods.	1-2	No
38	Packing material properly handled and stored.	1	No
39	Cleaning operations - Conducted to minimize contamination.	1-3	No

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NEW SECTION

WAC 16-171-150 Hemp extract facility inspection rating system—Inspection score. (1) A hemp extract facility is evaluated at the completion of an inspection conducted by the department as follows:

(a) A hemp extract facility will be debited the point value assigned to the inspection item listed in WAC 16-171-140 for each violation found during an inspection.

(b) The maximum point value possible is 100.

(c) The sum of the points debited for an inspection are subtracted from the maximum point value of 100. The remaining sum is the facility's score for that inspection.

(d) When the department identifies a critical violation during inspection of a hemp extract facility a failing score of "critical" will be listed unless the violation is satisfactorily corrected during the inspection.

(2) A hemp extract facility is considered in substantial compliance with the inspection criteria if:

(a) No critical violations are found, or if critical violations are found, they are corrected prior to completion of the inspection; or

(b) The facility's inspection score is 90 points or above.

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NEW SECTION

WAC 16-171-160 Hemp extract facilities—Basis for enforcement action. (1) The department may issue a notice of correction for:

(a) Hemp extract facilities that score less than 90 points on an inspection; or

(b) Critical violations found during an inspection of a hemp extract facility.

(2) The department may review and consider initiating enforcement action, such as certification suspension, civil penalties, and/or other actions provided in chapter 69.07 or 15.130 RCW when:

(a) Hemp extract facilities score less than 90 points on two separate inspections within a consecutive three-year period; or

(b) Hemp extract facilities fail to correct critical violations during an inspection.

(3) Nothing herein shall prevent the department from:

(a) Choosing not to pursue a case administratively.

(b) Issuing a notice of correction in lieu of pursuing enforcement action.

(c) Negotiating settlement(s) of cases on such terms and for such reasons as it deems appropriate.

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WSR 22-08-034

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed March 29, 2022, 2:35 p.m., effective March 29, 2022, 2:35 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is amending the definition of qualified alien in WAC 182-503-0535 to include certain persons from Iraq and Afghanistan. The agency is amending WAC 182-507-0135 to add certain persons from Iraq and Afghanistan to the individuals eligible for refugee medical assistance.

Citation of Rules Affected by this Order: Amending WAC 182-503-0535 and 182-507-0135.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: The agency is amending these rules to comply with medicaid eligibility changes made by federal law, specifically, the National Defense Authorization Act of 2006, the Afghan Allies Protection Act of 2009, and the Extending Government Funding and Delivering Emergency Assistance Act of 2021. This emergency filing is necessary to comply with the federal law immediately until the permanent rules take effect.

This emergency filing replaces the emergency rules filed under WSR 21-24-075 on November 30, 2021. The agency is refiled to continue the emergency rule until the permanent rules take effect. Since the last emergency filing, the agency completed the permanent rule-making process and filed the permanent rules under WSR 22-08-002, effective April 23, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 2, 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: March 29, 2022.

Wendy Barcus
Rules Coordinator

OTS-3506.1

AMENDATORY SECTION (Amending WSR 21-19-029, filed 9/9/21, effective 10/10/21)

WAC 182-503-0535 Washington apple health—Citizenship and immigration status. (1) Definitions.

(a) **Nonqualified alien** means someone who is lawfully present in the United States (U.S.) but who is not a qualified alien, a U.S. citizen, a U.S. national, or a qualifying American Indian born abroad.

(b) **Qualified alien** means someone who is lawfully present in the United States and who is one or more of the following:

(i) A person lawfully admitted for permanent residence (LPR).

(ii) An abused spouse or child, a parent of an abused child, or a child of an abused spouse who no longer resides with the person who committed the abuse, and who has one of the following:

(A) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse of an unmarried LPR younger than (~~(twenty-one)~~) 21 years of age.

(B) Proof of a pending application for suspension of deportation or cancellation of removal under the Violence Against Women Act (VAWA).

(C) A notice of prima facie approval of a pending self-petition under VAWA. An abused spouse's petition covers his or her child if the child is younger than (~~(twenty-one)~~) 21 years of age. In that case, the child retains qualified alien status even after he or she turns (~~(twenty-one)~~) 21 years of age.

(iii) A person who has been granted parole into the U.S. for one year or more, under the Immigration and Nationality Act (INA) Section 212 (d) (5), including public interest parolees.

(iv) A member of a Hmong or Highland Laotian tribe that rendered military assistance to the U.S. between August 5, 1964, and May 7, 1975, including the spouse, unremarried widow or widower, and unmarried dependent child of the tribal member.

(v) A person who was admitted into the U.S. as a conditional entrant under INA Section 203 (a) (7) before April 1, 1980.

(vi) A person admitted to the U.S. as a refugee under INA Section 207.

(vii) A person who has been granted asylum under INA Section 208.

(viii) A person granted withholding of deportation or removal under INA Section 243(h) or 241 (b) (3).

(ix) A Cuban or Haitian national who was paroled into the U.S. or given other special status.

(x) An Amerasian child of a U.S. citizen under 8 C.F.R. Section 204.4(a).

(xi) A person from Iraq or Afghanistan who has been granted one of the following:

(A) Special immigrant status under INA Section 101 (a) (27);

(B) Special immigrant conditional permanent resident; or

(C) Parole under Section 602 (b) (1) of the Afghan Allies Protection Act of 2009 or Section 1059(a) of the National Defense Authorization Act of 2006.

(xii) An Afghan granted humanitarian parole between July 31, 2021, and September 30, 2022, their spouse or child, or a parent or guardian of an unaccompanied minor who is granted parole after September 30, 2022, under Section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act of 2021.

~~((xii))~~ (xiii) A person who has been certified or approved as a victim of trafficking by the federal office of refugee resettlement, or who is:

(A) The spouse or child of a trafficking victim of any age; or

(B) The parent or minor sibling of a trafficking victim who is younger than ~~((twenty-one))~~ 21 years of age.

~~((xiii))~~ (xiv) A person from the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands living in the United States in accordance with the Compacts of Free Association.

(c) **U.S. citizen** means someone who is a United States citizen under federal law.

(d) **U.S. national** means someone who is a United States national under federal law.

(e) **Undocumented person** means someone who is not lawfully present in the U.S.

(f) **Qualifying American Indian born abroad** means someone who:

(i) Was born in Canada and has at least ~~((fifty))~~ 50 percent American Indian blood, regardless of tribal membership; or

(ii) Was born outside of the United States and is a member of a federally recognized tribe or an Alaska Native enrolled by the Secretary of the Interior under the Alaska Native Claims Settlement Act.

(2) **Eligibility.**

(a) A U.S. citizen, U.S. national or qualifying American Indian born abroad may be eligible for:

(i) Apple health for adults;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Classic medicaid.

(b) A qualified alien who meets or is exempt from the five-year bar may be eligible for:

(i) Apple health for adults;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Classic medicaid.

(c) A qualified alien who neither meets nor is exempt from the five-year bar may be eligible for:

(i) Alien medical programs;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Medical care services.

(d) A nonqualified alien may be eligible for:

(i) Alien medical programs;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Medical care services.

(e) An undocumented person may be eligible for:

(i) Alien medical programs;

(ii) State-only funded apple health for kids; or

(iii) State-only funded apple health for pregnant women.

(3) **The five-year bar.**

(a) A qualified alien meets the five-year bar if he or she:

(i) Continuously resided in the U.S. for five years or more from the date he or she became a qualified alien; or

(ii) Entered the U.S. before August 22, 1996, and:

(A) Became a qualified alien before August 22, 1996; or

(B) Became a qualified alien on or after August 22, 1996, and has continuously resided in the U.S. between the date of entry into the U.S. and the date he or she became a qualified alien.

(b) A qualified alien is exempt from the five-year bar if he or she is:

(i) A qualified alien as defined in subsection (1)(b)(vi) through ~~((xiii))~~ (xiv) of this section;

(ii) An LPR, parolee, or abused person, who is also an armed services member or veteran, or a family member of an armed services member or veteran, as described below:

(A) An active-duty member of the U.S. military, other than active-duty for training;

(B) An honorably discharged U.S. veteran;

(C) A veteran of the military forces of the Philippines who served before July 1, 1946, as described in Title 38 U.S.C. Section 107; or

(D) The spouse, unremarried widow or widower, or unmarried dependent child of an honorably discharged U.S. veteran or active-duty member of the U.S. military.

[Statutory Authority: RCW 41.05.021, 41.05.160. WSR 21-19-029, § 182-503-0535, filed 9/9/21, effective 10/10/21; WSR 15-10-002, § 182-503-0535, filed 4/22/15, effective 5/23/15. Statutory Authority: RCW 41.05.021, 41.05.160, Public Law 111-148, 42 C.F.R. § 431, 435, and 457, and 45 C.F.R. § 155. WSR 14-16-052, § 182-503-0535, filed 7/29/14, effective 8/29/14.]

OTS-3507.1

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

WAC 182-507-0135 Immigration status requirement for refugee medical assistance (RMA). (1) An individual is eligible for refugee medical assistance (RMA) if the individual provides documentation issued by the United States Citizenship and Immigration Services (USCIS) to show that the individual is:

(a) Admitted as a refugee under section 207 of the Immigration and Nationalities Act (INA);

(b) Paroled into the United States as a refugee or asylee under section 212 (d)(5) of the INA;

(c) Granted conditional entry under section 203 (a)(7) of the INA;

(d) Granted asylum under section 208 of the INA;

(e) Admitted as an Amerasian immigrant from Vietnam through the orderly departure program, under section 584 of the Foreign Operations Appropriations Act, incorporated in the FY88 continuing resolution P.L. 100-212;

(f) A Cuban-Haitian entrant who was admitted as a public interest parolee under section 212 (d)(5) of the INA;

(g) Certified as a victim of human trafficking by the federal Office of Refugee Resettlement (ORR);

(h) An eligible family member of a victim of human trafficking certified by ORR who has a T-2, T-3, T-4, or T-5 visa; or

(i) Admitted as special immigrant from Iraq or Afghanistan under one of the following:

(i) Special immigrant status under section 101 (a) (27) of the INA;

(ii) Special immigrant conditional permanent resident; or

(iii) Parole under section 602 (b) (1) of the Afghan Allies Protection Act of 2009 or section 1059(a) of the National Defense Authorization Act of 2006.

(j) An Afghan granted humanitarian parole between July 31, 2021, and September 30, 2022, their spouse or child, or a parent or guardian of an unaccompanied minor who is granted parole after September 30, 2022, under section 2502 of the Extending Government Funding and Delivering Emergency Assistance Act of 2021.

(2) A permanent resident alien meets the immigration status requirements for RCA and RMA if the individual was previously in one of the statuses described in subsection (1) (a) through ~~((g))~~ (i) of this section.

[Statutory Authority: RCW 41.05.021 and 2011 1st sp.s. c 15. WSR 12-19-001, § 182-507-0135, filed 9/5/12, effective 10/6/12.]

WSR 22-08-036
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-49—Filed March 29, 2022, 4:24 p.m., effective April 1, 2022]

Effective Date of Rule: April 1, 2022.

Purpose: The purpose of this emergency rule is to open commercial razor clam seasons.

Citation of Rules Affected by this Order: Repealing WAC 220-340-12000H; and amending WAC 220-340-120.

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: Based on historical catches and on-site inspection, there are adequate clams to support a 12-week commercial razor clam season. Washington department of health has confirmed biotoxin levels currently fall below the regulatory threshold. This emergency rule is needed to open the commercial razor clam season in Razor Clam Area 2. The department of natural resources will not require a right-of-entry agreement, so boat-in access language is necessary to prevent harvesters from accessing the spits by land. 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 Nongovernmental 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: March 29, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-12000H Commercial razor clams. Notwithstanding the provisions of WAC 220-340-120, effective April 1 through June 10, 2022, a person may dig for and possess razor clams for commercial purposes only in those waters and detached beaches of Razor Clam Area 2 lying south of the Willapa Bay Ship Channel, west of Ellen Sands, and north of the tip of Leadbetter Point. Access to Razor Clam Area 2 is by boat only.

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REPEALER

The following section of the Washington Administrative Code is repealed effective June 11, 2022:

WAC 220-340-12000H Commercial razor clams.

WSR 22-08-040
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-50—Filed March 30, 2022, 4:13 p.m., effective May 11, 2022]

Effective Date of Rule: May 11, 2022.

Purpose: The purpose of this emergency rule is to open recreational white sturgeon retention season downstream of the Wauna powerline crossing on the Columbia River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000M; 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 a limited harvest of white sturgeon in the Columbia River estuary. This population is managed under sustainable harvest guidelines and the legal-size population is large enough to allow for a limited retention fishery within the lower Columbia River. This action is consistent with decisions made by the states of Washington and Oregon during the Columbia River compact hearings on March 30, 2022. 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 Nongovernmental 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: March 30, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000P Freshwater exceptions to statewide rules—Columbia River. Effective May 11 through June 4, 2022, the provisions of WAC 220-312-060, WAC 220-312-030, and WAC 220-316-010 regarding white sturgeon retention seasons for the Columbia River, from a true north-south line through Buoy 10 (the mouth) upstream to the Wauna powerline crossing, including Youngs Bay and all adjacent Washington tributaries, shall be modified as follows. All other provisions of WAC

220-312-060, WAC 220-316-010, and WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

From a true north-south line through Buoy 10 upstream to the Wau-na powerline crossing, including Youngs Bay, and all adjacent Washington tributaries:

(a) It is permissible to retain white sturgeon on the following dates: May 11, 14, 18, 21, 25, 28, 30, and June 1, 4, 2022.

(b) On days open to white sturgeon retention the daily limit of white sturgeon is one fish between 44-inches minimum and 50-inches maximum fork length.

(c) Closed to angling for sturgeon at 2:00 pm daily on dates open to sturgeon retention.

(d) Catch and release angling is permissible on days not open to sturgeon retention.

[]

REPEALER

The following section of Washington Administrative Code is repealed, effective May 1, 2022:

WAC 220-312-06000M Freshwater exceptions to statewide rules—Columbia River. (22-46)

WSR 22-08-044

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed March 31, 2022, 9:56 a.m., effective March 31, 2022, 9:56 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-335-510, 246-335-545, 246-335-610, and 246-335-645, in-home services agencies. This emergency rule continues amendments originally filed August 3, 2021, under WSR 21-16-096 and extended on December 1, 2021, under WSR 21-24-099. The department of health (department) has also commenced permanent rule making on this topic under WSR 21-20-084.

Amendments to WAC 246-335-545 and 246-335-645 remove the requirement that supervision of aide services must be "during an on-site visit" and add language that the supervisory visit "may be conducted on-site or via telemedicine." This will allow home health and hospice agencies to perform supervision either on-site or via telemedicine.

Also, amendments to the definition of "telemedicine" in WAC 246-335-510 and 246-335-610 clarify that telemedicine applies to both delivery of health care services and supervision of direct care providers. Amendments also clarify how telemedicine may be used.

Federal and state coronavirus disease 2019 (COVID-19) pandemic-related guidelines and department waivers, filed under WSR 20-10-061, currently allow home health and hospice agencies to implement social distancing practices and to limit in-person contact to reduce the spread of the virus. Emergency rules adopted under WSR 21-24-099 align department rule with federal and state guidelines, allowing flexibility in how supervision is performed. Continuing the emergency rule amendments while permanent rule making is in progress will extend some aspects of current waivers past the eventual end of the COVID-19 declared emergency as Washington begins recovery.

Citation of Rules Affected by this Order: Amending WAC 246-335-510, 246-335-545, 246-335-610, and 246-335-645.

Statutory Authority for Adoption: RCW 70.127.120.

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

Reasons for this Finding: This emergency rule will allow home health and hospice agencies to perform supervision either on-site or via telemedicine.

As Washington continues to combat and recover from the COVID-19 pandemic, home health and hospice agencies need the option to continue conducting supervision via telemedicine when circumstances warrant it.

Supervision via telemedicine is a needed option in rural communities where health services are less available, vaccination rates are lower, and the necessity to limit in-person contact is greater. Home health and hospice agencies need the option to limit unnecessary in-person contact to keep patients and staff as safe as possible. Consistent with the federal "Patients over Paperwork" initiative, telemedicine supervisory visits allow hospice and home health nurse supervisors to dedicate more time performing clinical care by focusing on admitting new patients transitioning from institutional level care to a home and community-based setting.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: March 27, 2022.

Kristin Peterson, JD
Deputy Secretary
Policy and Planning
for Umair A. Shah, MD, MPH
Secretary

OTS-3165.3

AMENDATORY SECTION (Amending WSR 21-06-054, filed 2/25/21, effective 3/28/21)

WAC 246-335-510 Definitions—Home health. The definitions in the section apply throughout WAC 246-335-505 through 246-335-560 unless the context clearly indicates otherwise:

(1) "Acute care" means care provided by an in-home services agency licensed to provide home health services for patients who are not medically stable or have not attained a satisfactory level of rehabilitation. These patients require frequent monitoring by a registered nurse licensed under chapter 18.79 RCW, a physical therapist licensed under chapter 18.74 RCW, a respiratory therapist licensed under chapter 18.89 RCW, an occupational therapist licensed under chapter 18.59 RCW, a speech therapist licensed under chapter 18.35 RCW, a dietitian or nutritionist as defined in subsection (5) of this section, or social worker licensed under chapter 18.320 RCW to assess health status and progress.

(2) "Assessment" means an evaluation performed by an appropriate health care professional of a patient's needs.

(3) "Authorizing practitioner" means the individual practitioners licensed in Washington state, or another state according to the exemption criteria established in chapters 18.57, 18.71, and 18.79 RCW, and authorized to approve a home health plan of care:

(a) A physician licensed under chapter 18.57 or 18.71 RCW;

(b) A podiatric physician and surgeon licensed under chapter 18.22 RCW;

(c) A physician assistant licensed under chapter 18.71A or 18.57A RCW; or

(d) An advanced registered nurse practitioner (ARNP), as authorized under chapter 18.79 RCW.

(4) "Cardiopulmonary resuscitation" or "CPR" means a procedure to support and maintain breathing and circulation for a person who has stopped breathing (respiratory arrest) or whose heart has stopped (cardiac arrest).

(5) "Dietitian or nutritionist" means a person certified as such under chapter 18.138 RCW or registered by the Academy of Nutrition and Dietetics as a registered dietitian nutritionist; certified by the board for certification of nutrition specialists as a certified nutrition specialist; or certified by the American Clinical Board of Nutrition as a diplomate of the American Clinical Board of Nutrition.

(6) "Director of clinical services" means an individual responsible for nursing, therapy, nutritional, social, and related services that support the plan of care provided by in-home health and hospice agencies.

(7) "Home health agency" means a person administering or providing two or more home health services directly or through a contract arrangement to individuals in places of temporary or permanent residence. A person administering or providing nursing services only may elect to be designated a home health agency for purposes of licensure.

(8) "Home health aide" means an individual who is a nursing assistant certified or nursing assistant registered under chapter 18.88A RCW.

(9) "Home health aide services" means services provided by a home health agency or a hospice agency under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist who is employed by or under contract to a home health or hospice agency. Such care includes ambulation and exercise, assistance with self-administered medications, reporting changes in patients' conditions and needs, completing appropriate records, and personal care or homemaker services.

(10) "Home health services" means services provided to ill, disabled, or vulnerable individuals. These services include, but are not limited to, nursing services, home health aide services, physical therapy services, occupational therapy services, speech therapy services, respiratory therapy services, nutritional services, medical social services, and home medical supplies or equipment services.

(11) "Home medical supplies or equipment services" means diagnostic, treatment, and monitoring equipment and supplies provided for the direct care of individuals within a plan of care.

(12) "Licensed practical nurse" or "LPN" means an individual licensed under chapter 18.79 RCW.

(13) "Licensed nurse" means a licensed practical nurse or registered nurse under chapter 18.79 RCW.

(14) "Maintenance care" means care provided by in-home services agencies licensed to provide home health services that are necessary to support an existing level of health, to preserve a patient from further failure or decline, or to manage expected deterioration of disease. Maintenance care consists of periodic monitoring by a licensed nurse, therapist, dietitian or nutritionist, or social worker to assess a patient's health status and progress.

(15) "Medication administration" means assistance with the application, instillation, or insertion of medications according to a plan of care, for patients of an in-home services agency licensed to provide home health services and are under the direction of appropriate agency health care personnel. The assistance is provided in accordance with the Nurse Practice Act as defined in chapters 18.79 RCW and

246-840 WAC and the nursing assistant scope of practice as defined in chapters 18.88A RCW and 246-841 WAC.

(16) "Palliative care" means specialized care for people living with serious illness. Care is focused on relief from the symptoms and stress of the illness and treatment whatever the diagnosis. The goal is to improve and sustain quality of life for both the patient, loved ones, and other care companions. It is appropriate at any age and at any stage in a serious illness and can be provided along with active treatment. Palliative care facilitates patient autonomy, access to information, and choice. The palliative care team helps patients and families understand the nature of their illness, and make timely, informed decisions about care.

(17) "Patient" means an individual receiving home health services.

(18) "Professional medical equipment assessment services" means periodic care provided by a registered nurse licensed under chapter 18.79 RCW, a physical therapist licensed under chapter 18.74 RCW, an occupational therapist licensed under chapter 18.59 RCW, a respiratory therapist licensed under chapter 18.89 RCW, or dietitian or nutritionist as defined in subsection (5) of this section within their scope of practice, for patients who are medically stable, for the purpose of assessing the patient's medical response to prescribed professional medical equipment, including, but not limited to, measurement of vital signs, oximetry testing, and assessment of breath sounds and lung function (spirometry).

(19) "Registered nurse" or "RN" means an individual licensed under chapter 18.79 RCW.

(20) "Social worker" means a person with a degree from a social work educational program accredited and approved as provided in RCW 18.320.010 or who meets qualifications provided in 42 C.F.R. Sec. 418.114 as it existed on January 1, 2012.

(21) "Telehealth" means a collection of means or methods for enhancing health care, public health, and health education delivery and support using telecommunications technology. Telehealth encompasses a broad variety of technologies and tactics to deliver virtual medical, health, and education services.

(22) "Telemedicine" means the delivery of health care services, including supervision of direct care providers, through the use of HI-PAA-compliant, interactive audio and video technology (including web-based applications), permitting real-time communication between the patient at the originating site, direct care provider, and the supervising care provider, for the purpose of ((diagnosis)) supervision, consultation, education, or treatment. "Telemedicine" includes the provision of health care services and evaluating compliance with the plan of care using audio-visual technology instead of a face-to-face visit. "Telemedicine" does not include the use of audio-only telephone, facsimile, or electronic mail.

(23) "Therapist" means an individual who is:

- (a) A physical therapist licensed under chapter 18.74 RCW;
- (b) A respiratory therapist licensed under chapter 18.89 RCW;
- (c) An occupational therapist licensed under chapter 18.59 RCW;
- (d) A speech therapist licensed under chapter 18.35 RCW; or
- (e) A massage therapist licensed under chapter 18.108 RCW.

(24) "Therapy assistant" means a licensed occupational therapy assistant defined under chapter 18.59 RCW or physical therapist assistant defined under chapter 18.74 RCW.

[Statutory Authority: RCW 70.127.120 and 42 U.S.C. 1395f. WSR 21-06-054, § 246-335-510, filed 2/25/21, effective 3/28/21. Statutory Authority: RCW 70.127.120 and 43.70.250. WSR 18-06-093, § 246-335-510, filed 3/6/18, effective 4/6/18.]

AMENDATORY SECTION (Amending WSR 18-06-093, filed 3/6/18, effective 4/6/18)

- WAC 246-335-545 Supervision of home health services.** (1) A licensee must employ a director of clinical services;
- (2) The director of clinical services must designate in writing a similarly qualified alternate to act in the director's absence;
- (3) The licensee shall ensure the director of clinical services and the designated alternate completes a minimum of ten hours of training annually. Written documentation of trainings must be available upon request by the department. Training may include a combination of topics related to clinical supervision duties and the delivery of home health services. Examples of appropriate training include, but are not limited to:
- (a) Agency sponsored in-services;
 - (b) Community venues;
 - (c) Community classes;
 - (d) Conferences;
 - (e) Seminars;
 - (f) Continuing education related to the director's health care professional credential, if applicable; and
 - (g) Supervisory responsibilities in the event of a natural disaster, man-made incident, or public health emergency.
- (4) The director of clinical services or designee must be available during all hours patient care is being provided;
- (5) The director of clinical services or designee must ensure:
- (a) Coordination, development, and revision of written patient care policies and procedures related to each service provided;
 - (b) Supervision of all patient care provided by personnel and volunteers. The director of clinical services may delegate staff supervision responsibilities to a registered nurse or other appropriately credentialed professional;
 - (c) Evaluation of services provided by contractors;
 - (d) Coordination of services when one or more licensed agencies are providing care to the patient;
 - (e) Compliance with the plan of care;
 - (f) All direct care personnel, contractors, and volunteers observe and recognize changes in the patient's condition and needs, and report any changes to the director of clinical services or designee; and
 - (g) All direct care personnel, contractors, and volunteers initiate emergency procedures according to agency policy.
- (6) The licensee must document supervision including, but not limited to:
- (a) RN supervision when using the services of an RN or LPN, in accordance with chapter 18.79 RCW;
 - (b) For patients receiving acute care services, supervision of the home health aide services (~~during an on-site visit~~) with or without the home health aide present must occur once a month to evalu-

ate compliance with the plan of care and patient satisfaction with care. The supervisory visit may be conducted on-site or via telemedicine and must be conducted by a licensed nurse or therapist in accordance with the appropriate practice acts;

(c) For patients receiving maintenance care or home health aide only services, supervision of the home health aide services (~~during an on-site visit~~) with or without the home health aide present must occur every six months to evaluate compliance with the plan of care and patient satisfaction with care. The supervisory visit may be conducted on-site or via telemedicine and must be conducted by a licensed nurse or licensed therapist in accordance with the appropriate practice acts; and

(d) Supervision by a licensed therapist when using the services of a therapy assistant in accordance with the appropriate practice acts.

(7) The licensee using home health aides must ensure:

(a) Each home health aide reviews the plan of care and any additional written instructions for the care of each patient prior to providing home health aide services and whenever there is a change in the plan of care; and

(b) Each home health aide assists with medications according to agency policy and this chapter.

[Statutory Authority: RCW 70.127.120 and 43.70.250. WSR 18-06-093, § 246-335-545, filed 3/6/18, effective 4/6/18.]

AMENDATORY SECTION (Amending WSR 18-06-093, filed 3/6/18, effective 4/6/18)

WAC 246-335-610 Definitions—Hospice. The definitions in this section apply throughout WAC 246-335-605 through 246-335-660 unless the context clearly indicates otherwise:

(1) "Assessment" means an evaluation performed by an appropriate health care professional of a patient's physical, psychosocial, emotional and spiritual status related to their terminal illness and other health conditions. This includes evaluating the caregiver's and family's willingness and capability to care for the patient.

(2) "Authorizing practitioner" means the individual practitioners licensed in Washington state and authorized to approve a hospice plan of care:

(a) A physician licensed under chapter 18.57 or 18.71 RCW; or

(b) An advanced registered nurse practitioner as authorized under chapter 18.79 RCW.

(3) "Bereavement services" means emotional, psychosocial, and spiritual support and services provided before and after the death of the patient to assist with issues related to grief, loss, and adjustment.

(4) "Dietitian or nutritionist" means a person certified as such under chapter 18.138 RCW or registered by the Academy of Nutrition and Dietetics as a registered dietitian nutritionist; certified by the board for certification of nutrition specialists as a certified nutrition specialist; or certified by the American Clinical Board of Nutrition as a diplomate of the American Clinical Board of Nutrition.

(5) "Director of clinical services" means an individual responsible for nursing, therapy, nutritional, social, or related services that support the plan of care provided by in-home health and hospice agencies.

(6) "Home health aide" means an individual who is a nursing assistant certified under chapter 18.88A RCW.

(7) "Hospice agency" means a person administering or providing hospice services directly or through a contract arrangement to individuals in places of permanent or temporary residence under the direction of an interdisciplinary team composed of at least a nurse, social worker, physician, spiritual counselor, and a volunteer.

(8) "Hospice services" means symptom and pain management to a terminally ill individual, and emotional, spiritual and bereavement services for the individual and their family in a place of temporary or permanent residence, and may include the provision of home health and home care services for the terminally ill individual.

(9) "Interdisciplinary team" means the group of individuals involved in patient care providing hospice services including, at a minimum, a physician, registered nurse, social worker, spiritual counselor and volunteer.

(10) "Licensed practical nurse" or "LPN" means an individual licensed under chapter 18.79 RCW.

(11) "Medication administration" means assistance in the application, instillation or insertion of medications according to a plan of care, for patients of an in-home services agency licensed to provide hospice or hospice care center services and are under the direction of appropriate agency health care personnel. The assistance is provided in accordance with the Nurse Practice Act as defined in chapters 18.79 RCW, 246-840 WAC, and the nursing assistant scope of practice as defined in chapters 18.88A RCW and 246-841 WAC.

(12) "Medical director" means a physician licensed under chapter 18.57 or 18.71 RCW responsible for the medical component of patient care provided in an in-home services agency licensed to provide hospice services according to WAC 246-335-615 (4) (a).

(13) "Patient" means an individual receiving hospice services.

(14) "Palliative care" means specialized care for people living with serious illness. Care is focused on relief from the symptoms and stress of the illness and treatment whatever the diagnosis. The goal is to improve and sustain quality of life for both the patient, loved ones, and other care companions. It is appropriate at any age and at any stage in a serious illness and can be provided along with active treatment. Palliative care facilitates patient autonomy, access to information, and choice. The palliative care team helps patients and families understand the nature of their illness, and make timely, informed decisions about care.

(15) "Registered nurse" or "RN" means an individual licensed under chapter 18.79 RCW.

(16) "Restraint" means:

(a) Any manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a patient to move their arms, legs, body, or head freely. Restraint does not include devices, such as orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or other methods that involve the physical holding of a patient from falling out of bed, or to permit the patient to participate in activities without the risk of physical harm, or to physically guide a patient from one location to another; or

(b) A drug or medication when it is used as a restriction to manage the patient's behavior or restrict the patient's freedom of movement and is not a standard hospice or palliative care treatment or dosage for the patient's condition.

(17) "Seclusion" means the involuntary confinement of a patient alone in a room or an area from which the patient is physically prevented from leaving.

(18) "Social worker" means a person with a degree from a social work educational program accredited and approved as provided in RCW 18.320.010 or who meets qualifications provided in 42 C.F.R. Sec. 418.114 as it existed on January 1, 2012.

(19) "Spiritual counseling" means services provided or coordinated by an individual with knowledge of theology, pastoral counseling or an allied field.

(20) "Telehealth" means a collection of means or methods for enhancing health care, public health, and health education delivery and support using telecommunications technology. Telehealth encompasses a broad variety of technologies and tactics to deliver virtual medical, health, and education services.

(21) "Telemedicine" means the delivery of health care services, including supervision of direct care providers, through the use of HI-PAA-compliant, interactive audio and video technology (including web-based applications), permitting real-time communication between the patient at the originating site, direct care provider, and the supervising care provider, for the purpose of ((diagnosis)) supervision, consultation, education, or treatment. "Telemedicine" includes the provision of health care services and evaluating compliance with the plan of care using audio-visual technology instead of a face-to-face visit. "Telemedicine" does not include the use of audio-only telephone, facsimile, or electronic mail.

[Statutory Authority: RCW 70.127.120 and 43.70.250. WSR 18-06-093, § 246-335-610, filed 3/6/18, effective 4/6/18.]

AMENDATORY SECTION (Amending WSR 18-06-093, filed 3/6/18, effective 4/6/18)

WAC 246-335-645 Supervision of hospice services. (1) A licensee must employ a director of clinical services.

(2) The director of clinical services must designate in writing a similarly qualified alternate to act in the director's absence.

(3) The licensee shall ensure the director of clinical services and the designated alternate completes a minimum of ten hours of training annually. Written documentation of trainings must be available upon request by the department. Training may include a combination of topics related to clinical supervision duties and the delivery of hospice services. Examples of appropriate training include, but are not limited to:

- (a) Agency sponsored in-services;
- (b) Community venues;
- (c) Community classes;
- (d) Conferences;
- (e) Seminars;

(f) Continuing education related to the director's health care professional credential, if applicable; and

(g) Supervisory responsibilities in the event of a natural disaster, man-made incident, or public health emergency.

(4) The director of clinical services or designee must be available twenty-four hours per day, seven days per week.

(5) The director of clinical services or designee must ensure:

(a) Coordination, development, and revision of written patient and family care policies and procedures related to each service provided;

(b) Supervision of all patient and family care provided by personnel and volunteers. The director of clinical services may assign staff supervision responsibilities to a registered nurse or other appropriately credentialed professional;

(c) Evaluation of services provided by contractors;

(d) Coordination of services when one or more licensed agency is providing care to the patient and family;

(e) Compliance with the plan of care;

(f) All direct care personnel, contractors, and volunteers observe and recognize changes in the patient's condition and needs, and report any changes to the director of clinical services or designee; and

(g) All direct care personnel, contractors, and volunteers initiate emergency procedures according to agency policy.

(6) The licensee must document supervision including, but not limited to:

(a) RN supervision when using the services of an RN or LPN, in accordance with chapter 18.79 RCW;

(b) Licensed nurse supervision of home health aide services (~~(during an on-site visit)~~) with or without the home health aide present once a month to evaluate compliance with the plan of care and patient and family satisfaction with care. The supervisory visit may be conducted on-site or via telemedicine; and

(c) Supervision by a licensed therapist when using the services of a therapy assistant in accordance with the appropriate practice acts.

(7) The licensee using home health aides must ensure:

(a) Each home health aide reviews the plan of care and any additional written instructions for the care of each patient prior to providing home health aide services and whenever there is a change in the plan of care; and

(b) Each home health aide assists with medications according to agency policy and this chapter.

[Statutory Authority: RCW 70.127.120 and 43.70.250. WSR 18-06-093, § 246-335-645, filed 3/6/18, effective 4/6/18.]

WSR 22-08-045

EMERGENCY RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed March 31, 2022, 10:58 a.m., effective April 4, 2022]

Effective Date of Rule: April 4, 2022.

Purpose: Pursuant to RCW 34.05.410 (1)(a), the department hereby adopts the use of brief adjudicative proceedings for use in certain appeals. This process is being adopted to reduce the wait time for appeals to be resolved in circumstances where a claimant appeals an unemployment insurance benefit decision, and no employer is an interested party.

Citation of Rules Affected by this Order: New WAC 192-04-145.

Statutory Authority for Adoption: RCW 34.05.410 (1)(a), 50.32.060, 50.32.080, 34.05.220, 50.12.040, 50.12.010.

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

Reasons for this Finding: Due to unprecedented unemployment insurance claims during the COVID-19 pandemic, the department and the office of administrative hearings (OAH) have a backlog of 40,947 pending appeals as of December 31, 2021. For comparison, there were 27,127 pending appeals at the end of 2020, and 2,470 at the end of 2019. This backlog has led to an average wait time of 167.3 days for appeals closed during December of 2021, compared to an average wait time of 31.58 days during December of 2019. The United States Department of Labor's performance metric calls for 60 percent of appeals to be resolved within 30 days and 80 percent of appeals to be resolved within 45 days. In December 2019, the department closed 71 percent of cases within 30 days and 94 percent of cases within 45 days. In December 2021, only two percent of appeals were resolved within 30 days and four percent of appeals within 45 days.

Currently, the department is referring between 400 and 500 cases per day (2,000 to 2,500 per week) to OAH. This trend is expected to continue through the end of the year with continued unemployment insurance claims processing associated federal pandemic programs, such as the mixed earner unemployment compensation program.

With the adoption of brief adjudicative proceedings, the department would eliminate between 30 to 60 minutes per case. Using a brief administrative proceeding, administrative law judges (ALJ) would have the ability to organize cases around other full hearings and organize and resolve cases at their own pace. The department estimates that each ALJ will be able to close up to 60 more appeals per week. With 10 ALJs assigned to brief adjudicative proceedings, the department anticipates it could address the backlog by closing an additional 130 to 260 appeals each week.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: March 31, 2022.

Dan Zeitlin
Employment System Policy
and Integrity Director

OTS-3641.1

NEW SECTION

WAC 192-04-145 Brief adjudicative proceedings. (1) **Adoption of brief adjudicative proceedings.** Pursuant to RCW 34.05.410 (1)(a), the department hereby adopts the use of brief adjudicative proceedings for use in appeals.

(a) RCW 34.05.488 and 34.05.491 shall not apply to brief adjudicative proceedings under this rule.

(b) Brief adjudicative proceedings will only be used if:

(i) The appeal involves a claim for benefits;

(ii) The appeal is filed by a claimant;

(iii) No employer is an interested party pursuant to WAC 192-04-040; and

(iv) The presiding administrative law judge, in their sole discretion, determines a brief adjudicating proceeding is warranted.

(2) **Procedure for brief adjudicative proceedings.** The following procedural rules will apply to brief adjudicative proceedings:

(a) An administrative law judge with the office of administrative hearings will conduct the brief adjudicative proceeding.

(b) Not less than seven days before the date of the hearing, the office of administrative hearings shall serve notice on the claimant pursuant to WAC 10-08-040 that a brief adjudicative proceeding will occur. The notice of hearing will contain the following:

(i) Notice that the claimant may submit additional relevant documentary evidence and sworn oral statements, if desired, along with a date by which these submissions must be made and instructions for doing so;

(ii) Instructions for how the department or claimant may request that the brief adjudicative proceeding may be converted to a regular proceeding pursuant to subsection (4) of this section and the date by which such request must be submitted; and

(iii) The date of the brief adjudicative proceeding.

(c) The administrative law judge, in their sole discretion, may send a written request for additional evidence from the claimant or the department. The request will contain instructions for how to submit the additional evidence and the date by which additional evidence must be submitted.

(d) The administrative law judge's review will be limited to the record defined in subsection (3) of this section.

(e) If the claimant fails to provide any additional relevant documentary evidence or sworn oral statements, the administrative law judge will affirm the department's determination unless the evidence provided by the department is sufficient to resolve the matter in the claimant's favor.

(f) The administrative law judge shall issue a written decision consistent with WAC 192-04-150.

(3) **Record for brief adjudicative proceeding.** The record with respect to brief adjudicative proceedings will consist of the following:

(a) The department's determination letter;

(b) The claimant's appeal of the determination letter;

(c) All records relied upon by the department in support of its determination letter;

(d) Any additional records submitted by the department;

(e) Any additional records or sworn oral statements submitted by the claimant; and

(f) Any additional evidence submitted by the parties at the written request of the administrative law judge.

(4) **Conversion of brief adjudicative proceeding to regular proceeding.**

(a) A brief adjudicative proceeding will be converted to a regular proceeding if:

(i) The claimant files a conversion request by the deadline listed in the notice of the brief adjudicative proceeding. Such a request shall be automatically granted by the administrative law judge; or

(ii) The department files a conversion request by the deadline listed in the notice of the brief adjudicative proceeding. Such a request shall be automatically granted by the administrative law judge; or

(iii) The administrative law judge, at any time prior to issuing a written decision, determines the brief adjudicative proceeding shall be converted to a regular proceeding. Reasons the administrative law judge may convert the brief adjudicative proceeding to a regular proceeding may include, but are not limited to:

(A) The use of the brief adjudicative proceeding procedures violates any provision of law;

(B) The protection of the public interest requires that notice and an opportunity to be heard be given to persons other than the claimant and the department;

(C) A regular proceeding is required to adequately develop the record and decide the issues in the appeal; or

(D) The issues and interests involved otherwise warrant the use of the procedures in a regular proceeding.

(b) When a brief adjudicative proceeding is converted to a regular proceeding, the office of administrative hearings shall issue a new notice of hearing.

(5) **Right to petition for review.** A party aggrieved by a decision issued by an administrative law judge pursuant to a brief adjudicative proceeding shall have the same right to petition for review as contained in WAC 192-04-060. In conducting this review of the brief adjudicative proceeding, prior to rendering a decision, the commissioner shall order the taking of additional evidence by the office of administrative hearings to be made a part of the record in the case.

[]

WSR 22-08-053

EMERGENCY RULES

DEPARTMENT OF AGRICULTURE

[Filed April 1, 2022, 6:38 a.m., effective April 1, 2022, 6:38 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To allow veterinarians and field livestock inspectors certified by the department to conduct inspections at facilities not currently allowed to use veterinarians or field livestock inspectors when the department has notified a facility that department inspectors are not available to conduct inspections.

The rule-making order amends WAC 16-610-060 Veterinarian and field livestock inspector certification.

Citation of Rules Affected by this Order: Amending WAC 16-610-060.

Statutory Authority for Adoption: RCW 16.57.025, 16.57.350, 16.58.030, 16.65.020.

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

Reasons for this Finding: An outbreak of COVID-19 at a licensed public livestock market hindered the department's ability to conduct livestock inspections. With the pandemic continuing and new COVID-19 variants being identified, the department will allow the licensed facilities listed in WAC 16-610-060 (1)(b) to hire veterinarians or private field inspectors that are certified by the department to conduct inspections in order to avoid impacts to animal health and the related impacts on the public welfare of the loss of healthy animals from delayed livestock sales, and to protect the health of department employees. Licensed facilities are restricted to only hiring **certified** veterinarians and private field inspectors when the department provides notification to **the facility** that department inspectors are not available to conduct inspections during the time period specified in the notice.

A CR-101 to adopt the rule permanently was filed on December 2, 2021 (WSR 22-01-006).

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 Nongovernmental 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: March 31, 2022.

Derek I. Sandison
Director

AMENDATORY SECTION (Amending WSR 19-20-022, filed 9/23/19, effective 10/24/19)

WAC 16-610-060 Veterinarian and field livestock inspector certification. (1) (a) The director may certify veterinarians, who are licensed and accredited in Washington state and field livestock inspectors who comply with the requirements of this section, to issue livestock inspection certificates.

(b) Veterinarians and field livestock inspectors may not conduct inspections at certified feedlots, slaughter plants, public livestock markets, or special sales unless the department has notified the facility in writing that department inspectors are not available to conduct inspections. If the department notifies a facility that its inspectors are not available to conduct inspections, the facility may use a veterinarian or field livestock inspector to conduct inspections during the period, as specified by the department, in which department inspectors are not available.

(c) (i) Veterinarians and field livestock inspectors may not perform livestock inspections for an individual or business if a conflict of interest exists.

(ii) For the purpose of this rule, a "conflict of interest" includes, but is not limited to, a financial or other interest, direct or indirect, in the livestock, the facility in which the livestock are presented for sale, or the event at which the livestock are being exhibited.

(2) Veterinarians licensed and accredited in Washington state and field livestock inspectors who wish to issue inspection certificates for livestock must apply for certification on the department's application form (WSDA form #7028). The application must include the following:

(a) The full name, address, telephone number, and email address of the individual applying for certification;

(b) The applicant's Washington state veterinary license number if the applicant is a veterinarian;

(c) The geographic area in which the applicant will issue inspection certificates for livestock;

(d) A statement describing the applicant's experience with large animals, especially cattle and horses;

(e) A brief statement indicating that the applicant is requesting certification to issue inspection certificates for cattle, horses or both;

(f) The signature of the applicant; and

(g) Any other additional information as requested by the director.

(3) All applications must be accompanied by a check or money order for the amount of the certification fee of sixty dollars per applicant.

(4) Certifications expire on the third December 31st following the date of issuance. For example, if a certification was issued on October 14, 2003, it would expire on December 31, 2005. All applications for renewal of certification must be submitted on AGR Form 930-7089 and accompanied by a check or money order for the amount of the certification fee of sixty dollars per applicant.

(5) All applicants applying for certification or renewal of certification must complete department-provided training and pass a written test with no less than a score of ninety percent. The department will provide to each person applying for certification or renewal of

certification a copy of the most current brand book and any supplements issued to date to each certified veterinarian or field livestock inspector. Training will include, but will not be limited to, the:

- (a) Reading of printed brands;
 - (b) Reading of brands or other marks on animals, including the location of brands on animals;
 - (c) Reading of a microchip or other electronic official individual identification;
 - (d) Completion of official documents; and
 - (e) Review of satisfactory ownership documents.
- (6) The director will maintain a list of veterinarians and field livestock inspectors certified to perform livestock inspections. Interested parties may request a copy of the list by contacting the department at:

Washington State Department of Agriculture
Animal Services Division
1111 Washington Street S.E.
P.O. Box 42577
Olympia, WA 98504-2577
Email: livestockid@agr.wa.gov
Phone: 360-902-1855
Website: <https://agr.wa.gov/departments/animals-livestock-and-pets/livestock>

(7) Inspections by certified veterinarians and field livestock inspectors are conducted upon request and provided at the discretion of the veterinarian or field livestock inspector.

(8) Certified veterinarians and field livestock inspectors must submit all required inspection fees to the director and copies of each inspection certificate within thirty days of the date of issue.

(9) The director may deny certification or renewal of certification to issue inspection certificates if the veterinarian or field livestock inspector fails to meet the requirements of this section or knowingly makes false or inaccurate statements regarding his or her qualifications on the certification application.

[Statutory Authority: RCW 16.57.025, [16.57.]350, [16.57.]450(8), 16.58.030, 16.65.020, and [16.65.]350. WSR 19-20-022, § 16-610-060, filed 9/23/19, effective 10/24/19. Statutory Authority: RCW 16.57.160 and chapter 34.05 RCW. WSR 16-21-008, § 16-610-060, filed 10/7/16, effective 11/7/16. Statutory Authority: Chapters 16.57, 16.58, 16.65, and 34.05 RCW. WSR 10-21-016, § 16-610-060, filed 10/7/10, effective 11/7/10; WSR 07-14-057, § 16-610-060, filed 6/28/07, effective 7/29/07; WSR 04-01-171, § 16-610-060, filed 12/23/03, effective 1/23/04.]

WSR 22-08-054
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed April 1, 2022, 9:15 a.m., effective April 1, 2022, 9:15 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The working connections and seasonal child care subsidy programs is implementing enrollment-based payments, instead of the attendance-based payments that are regularly made, for participating child care providers starting April 2022 through June 2022, as provided for in SB [ESSB] 5693, section 229.

Citation of Rules Affected by this Order: Amending WAC 110-15-0034.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

Other Authority: SB [ESSB] 5693, section 229.

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: SB [ESSB] 5693 (2021-23 supplemental operating budget) authorizes enrollment-based payments to child care providers participating in working connections and seasonal child care programs starting April 2022 through June 2022. There is insufficient time between Governor Inslee's signing of the bill and April 1, 2022, to adopt permanent rules implementing these payments.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: April 1, 2022.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 22-05-007, filed 2/3/22, effective 3/6/22)

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

(1) Licensed or certified child care providers who accept child care subsidies must comply with all child care licensing or certification requirements contained in this chapter, chapter 43.216 RCW and chapters 110-06, 110-300, 110-300D, 110-300E, and 110-301 WAC.

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

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

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

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

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

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

(a) Attendance records must be provided to DCYF within 45 calendar days of the date of a written request from either department; and

(b) Attendance records must be provided to the state auditor's office within 30 calendar days from the date of a written request.

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

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

(a) Receipts from the previous 12 months must be available immediately for review upon request by DCYF;

(b) Receipts from one to five years old must be provided within 28 days of the date of a written request from either department.

(8) All child care providers must:

(a) Retain all records required by this chapter for a minimum of five years;

(b) Provide to the department records from the previous 12 months immediately upon the department's written request; and

(c) Provide to the department any records between 12 months and five years old within two weeks of the department's written request.

(9) All child care providers must collect copayments directly from the consumer or the consumer's third-party payor, and report to DCYF if the consumer has not paid a copayment to the provider within the previous 60 days.

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

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

(a) Claim a payment in any month a child has not attended at least one day within the authorization period in that month (~~(; however~~ er)), except:

(i) A licensed provider eligible for payment under WAC 110-15-0106 may submit a claim for payment based on enrollment for the period April 1 through June 30, 2022, and

(ii) ((in)) In the event a 10-day notice terminating a provider's authorization extends into the following month, the provider may claim

a payment for any remaining days of the 10 calendar day notice in that following month; or

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

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

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

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

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

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

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

(13) Providers who care for children in states bordering Washington state must verify they are in compliance with their state's licensing regulations and notify DCYF within 10 days of any suspension, revocation, or changes to their license.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 22-05-007, § 110-15-0034, filed 2/3/22, effective 3/6/22; WSR 19-12-058, § 110-15-0034, filed 5/31/19, effective 7/1/19. Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-15-0034, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-15-0034, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 17-12-035, § 170-290-0034, filed 5/31/17, effective 7/1/17. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0034, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0034, filed 4/15/16, effective 5/16/16; WSR 12-11-025, § 170-290-0034, filed 5/8/12, effective 6/8/12.]

WSR 22-08-062
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

[Filed April 4, 2022, 12:35 p.m., effective April 9, 2022]

Effective Date of Rule: April 9, 2022.

Purpose: The department is amending WAC 388-97-0140 and 388-97-0120 to waive and suspend the requirement for nursing homes to suspend certain transfers and discharges pending the outcome of a resident appeal of the nursing home transfer or discharge decision. The COVID-19 pandemic continues to require more rapid transfers and discharges than the rule permits. This emergency rule waives the requirement for nursing homes to suspend certain transfers and discharges pending the outcome of a resident appeal hearing, and improves resident safety by allowing faster grouping of COVID-19 positive residents in one facility, or grouping asymptomatic residents together. This helps expedite infection control processes, and maximizes the availability of nursing home beds. This amendment will align with federal rules. The department filed a CR-101 Preproposal under WSR 22-08-060 to begin the permanent process.

Citation of Rules Affected by this Order: Amending WAC 388-97-0120 and 388-97-0140.

Statutory Authority for Adoption: RCW 74.42.620.

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

Reasons for this Finding: The threat of COVID-19 to our most vulnerable populations is significant, especially for those receiving long-term care services in their homes and congregate settings, such as nursing homes. Currently WAC 388-97-0140 requires nursing homes to suspend a transfer or discharge pending the outcome of a resident appeal request to the office of administrative hearings (the office) when the appeal is received by the office on or before the date the resident actually transfers or discharges.

Strict compliance with these requirements will prevent, hinder, or delay certain transfers or discharges of nursing home residents to other long-term care facilities when they are necessary to expedite the grouping or cohorting of residents to reduce the spread of COVID-19, especially the delta variant, among our most vulnerable populations, and to relieve stress on our health care system to meet the increased demand of addressing COVID-19 related illnesses.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: April 4, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4908.3

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

WAC 388-97-0120 Individual transfer and discharge rights and procedures. (1) The skilled nursing facility and nursing facility must comply with all of the requirements of 42 C.F.R. § 483.10 and § 483.12, and RCW 74.42.450, or successor laws, and the nursing home must comply with all of the requirements of RCW 74.42.450 (1) through (4) and (7), or successor laws, including the following provisions and must not transfer or discharge any resident unless:

- (a) At the resident's request;
- (b) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
- (c) The transfer or discharge is appropriate because the resident's health has improved enough so the resident no longer needs the services provided by the facility;
- (d) The safety of individuals in the facility is endangered;
- (e) The health of individuals in the facility would otherwise be endangered; or
- (f) The resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility.

(2) The following notice requirements apply if a nursing home/facility initiates the transfer or discharge of a resident. The notice must:

- (a) Include all information required by 42 C.F.R. § 483.12 when given in a nursing facility;
- (b) Be in writing, in language the resident understands;
- (c) Be given to the resident, the resident's surrogate decision maker, if any, the resident's family and to the department;
- (d) Be provided thirty days in advance of a transfer or discharge initiated by the nursing facility, except that the notice may be given as soon as practicable when the facility cannot meet the resident's urgent medical needs, or under the conditions described in (1)(c), (d), and (e) of this section; or for cohorting purposes related to the COVID-19 pandemic as allowed under any applicable Centers for Medicare and Medicaid Services (CMS) emergency waivers; and

(e) Be provided fifteen days in advance of a transfer or discharge initiated by the nursing home, unless the transfer is an emergency.

(3) The nursing home must:

- (a) Provide sufficient preparation and orientation to the resident to ensure safe and orderly transfer or discharge from the nursing home;

(b) Attempt to avoid the transfer or discharge of a resident from the nursing home through the use of reasonable accommodations unless agreed to by the resident and the requirements of WAC 388-97-0080 are met; and

(c) Develop and implement a bed-hold policy. This policy must be consistent with any bed-hold policy that the department develops.

(4) The nursing home must provide the bed-hold policy, in written format, to the resident, and a family member, before the resident is transferred or goes on therapeutic leave. At a minimum the policy must state:

(a) The number of days, if any, the nursing home will hold a resident's bed pending return from hospitalization or social/therapeutic leave;

(b) That a medicaid eligible resident, whose hospitalization or social/therapeutic leave exceeds the maximum number of bed-hold days will be readmitted to the first available semi-private bed, provided the resident needs nursing facility services. Social/therapeutic leave is defined under WAC 388-97-0001. The number of days of social/therapeutic leave allowed for medicaid residents and the authorization process is found under WAC 388-97-0160; and

(c) That a medicaid eligible resident may be charged if he or she requests that a specific bed be held, but may not be charged a bed-hold fee for the right to return to the first available bed in a semi-private room.

(5) The nursing facility must send a copy of the federally required transfer or discharge notice to:

(a) The department's home and community services when the nursing home has determined under WAC 388-97-0100, that the medicaid resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility; and

(b) The department's designated local office when the transfer or discharge is for any of the following reasons:

(i) The resident's needs cannot be met in the facility;

(ii) The health or safety of individuals in the facility is endangered; or

(iii) The resident has failed to pay for, or to have paid under medicare or medicaid, a stay at the facility.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-0120, filed 9/24/08, effective 11/1/08.]

AMENDATORY SECTION (Amending WSR 20-03-103, filed 1/15/20, effective 2/15/20)

WAC 388-97-0140 Transfer and discharge appeals for resident in medicare or medicaid certified facilities. (1) A skilled nursing facility and a nursing facility that initiates transfer or discharge of any resident, regardless of payor status, must:

(a) Provide the required written notice of transfer or discharge to the resident and, if known or appropriate, to a family member or the resident's representative;

(b) Attach a department-designated hearing request form to the transfer or discharge notice;

(c) Inform the resident in writing, in a language and manner the resident can understand, that:

(i) An appeal request may be made any time up to ninety days from the date the resident receives the notice of transfer or discharge; and

(ii) Transfer or discharge will be suspended when an appeal request is received by the office of administrative hearings on or before the date the resident actually transfers or discharges unless the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility (the facility must document the danger that failure to transfer or discharge would pose); and

(iii) The nursing home will assist the resident in requesting a hearing to appeal the transfer or discharge decision.

(2) A skilled nursing facility or nursing facility must suspend transfer or discharge pending the outcome of the hearing when the resident's appeal is received by the office of administrative hearings on or before the date of the transfer or discharge set forth in the written transfer or discharge notice, or before the resident is actually transferred or discharged unless the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility. The facility must document the danger that failure to transfer or discharge would pose.

(3) The resident is entitled to appeal the skilled nursing facility or nursing facility's transfer or discharge decision. The appeals process is set forth in chapter 182-526 WAC and this chapter. In such appeals, the following will apply:

(a) In the event of a conflict between a provision in this chapter and a provision in chapter 182-526 WAC, the provision in this chapter will prevail;

(b) The resident must be the appellant and the skilled nursing facility or the nursing facility will be the respondent;

(c) The department must be notified of the appeal and may choose whether to participate in the proceedings. If the department chooses to participate, its role is to represent the state's interest in assuring that skilled nursing facility and nursing facility transfer and discharge actions comply substantively and procedurally with the law and with federal requirements necessary for federal funds;

(d) If a medicare certified or medicaid certified facility's decision to transfer or discharge a resident is not upheld, and the resident has been relocated, the resident has the right to readmission immediately upon the first available bed in a semi-private room if the resident requires and is eligible for the services provided by a nursing facility or skilled nursing facility;

(e) Any review of the administrative law judge's initial decision shall be conducted under chapter 182-526 WAC.

[Statutory Authority: RCW 74.42.620. WSR 20-03-103, § 388-97-0140, filed 1/15/20, effective 2/15/20. Statutory Authority: Chapters 18.51 and 74.42 RCW. WSR 11-22-077, § 388-97-0140, filed 11/1/11, effective 12/2/11. Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-0140, filed 9/24/08, effective 11/1/08.]

WSR 22-08-068
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

[Filed April 4, 2022, 4:34 p.m., effective April 7, 2022]

Effective Date of Rule: April 7, 2022.

Purpose: The department is extending the amendment of the rule listed below to assure [ensure] nursing homes are not significantly impeded from admitting and caring for residents during the COVID-19 epidemic [pandemic]. These amendments align state nursing home rules with federal rules that were suspended or amended to help facilitate care during the COVID-19 pandemic. The federal rules were amended to allow nursing facilities to provide clinical records to residents and resident representatives in 10 working days instead of two working days. Current state rules specify clinical records be accessible to residents and their representatives for review within 24 hours and copies must be provided within two working days. The amendment lengthens the time nursing homes have to provide the resident access to, or copies of the requested clinical record, from two to 10 days. The amendment does not permit the nursing facility to deny the resident access to records. The department filed a CR-101 Preproposal under WSR 20-19-009. In addition, under the rule development phase of rule making, the department continues discussions with interested parties about adding language to the rules to explain the circumstances and time periods under which suspension of rules due to COVID[-19] is necessary.

Citation of Rules Affected by this Order: Amending WAC 388-97-0300.

Statutory Authority for Adoption: RCW 74.42.620.

Other Authority: Chapter 74.34 RCW.

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

Reasons for this Finding: The continued threat of COVID-19 to our most vulnerable populations is significant, especially for those receiving long-term care services in their homes and congregate settings, such as long-term care facilities. Under nursing home rules, residents have the right to access and review their clinical record. Access to the record must be provided within 24 hours and if the resident or resident representative requests a copy of the record, it must be provided within two working days. The emergency rule lengthens the time nursing homes have to provide the resident access to, or copies of the requested clinical record. The amendment does not permit the nursing facility to deny the resident access to records. This amendment provides flexibility for nursing homes to prioritize direct care over nondirect care tasks while maintaining the resident's right to access their records.

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

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

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

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

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

Date Adopted: April 4, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4809.1

AMENDATORY SECTION (Amending WSR 14-12-040, filed 5/29/14, effective 6/29/14)

WAC 388-97-0300 Notice of rights and services. (1) The nursing home must provide the resident, before admission, or at the time of admission in the case of an emergency, and as changes occur during the resident's stay, both orally and in writing and in language and words that the resident understands, with the following information:

(a) All rules and regulations governing resident conduct, resident's rights and responsibilities during the stay in the nursing home;

(b) Advanced directives, and of any nursing home policy or practice that might conflict with the resident's advance directive if made;

(c) Advance notice of transfer requirements, consistent with RCW 70.129.110;

(d) Advance notice of deposits and refunds, consistent with RCW 70.129.150; and

(e) Items, services and activities available in the nursing home and of charges for those services, including any charges for services not covered under medicare or medicaid or by the home's per diem rate.

(2) The resident has the right(†

~~(a) Upon an oral or written request, to access all records pertaining to the resident including clinical records within twenty-four hours; and~~

~~(b) After receipt of his or her records for inspection,)) to purchase at a cost not to exceed twenty-five cents a page, photocopies of the records or any portions of them upon request and ((†two)) ten working days advance notice to the nursing home. For the purposes of this chapter, "**working days**" means Monday through Friday, except for legal holidays.~~

(3) The resident has the right to:

(a) Be fully informed in words and language that he or she can understand of his or her total health status, including, but not limited to, his or her medical condition;

(b) Accept or refuse treatment; and

(c) Refuse to participate in experimental research.

(4) The nursing home must inform each resident:

(a) Who is entitled to medicaid benefits, in writing, prior to the time of admission to the nursing facility or, when the resident becomes eligible for medicaid of the items, services and activities:

(i) That are included in nursing facility services under the medicaid state plan and for which the resident may not be charged; and

(ii) That the nursing home offers and for which the resident may be charged, and the amount of charges for those services.

(b) That deposits, admission fees and prepayment of charges cannot be solicited or accepted from medicare or medicaid eligible residents; and

(c) That minimum stay requirements cannot be imposed on medicare or medicaid eligible residents.

(5) The nursing home must, except for emergencies, inform each resident in writing, thirty days in advance before changes are made to the availability or charges for items, services or activities specified in section (4)(a)(i) and (ii), or before changes to the nursing home rules.

(6) The private pay resident has the right to the following, regarding fee disclosure-deposits:

(a) Prior to admission, a nursing home that requires payment of an admission fee, deposit, or a minimum stay fee, by or on behalf of an individual seeking admission to the nursing home, must provide the individual:

(i) Full disclosure in writing in a language the potential resident or his or her representative understands:

(A) Of the nursing home's schedule of charges for items, services, and activities provided by the nursing home; and

(B) Of what portion of the deposits, admissions fees, prepaid charges or minimum stay fee will be refunded to the resident if the resident leaves the nursing home.

(ii) The amount of any admission fees, deposits, or minimum stay fees.

(iii) If the nursing home does not provide these disclosures, the nursing home must not keep deposits, admission fees, prepaid charges or minimum stay fees.

(b) If a resident dies or is hospitalized or is transferred and does not return to the nursing home, the nursing home:

(i) Must refund any deposit or charges already paid, less the home's per diem rate, for the days the resident actually resided or reserved or retained a bed in the nursing home, regardless of any minimum stay or discharge notice requirements; except that

(ii) The nursing home may retain an additional amount to cover its reasonable, actual expenses incurred as a result of a private pay resident's move, not to exceed five days per diem charges, unless the resident has given advance notice in compliance with the admission agreement.

(c) The nursing home must refund any and all refunds due the resident within thirty days from the resident's date of discharge from the nursing home; and

(d) Where the nursing home requires the execution of an admission contract by or on behalf of an individual seeking admission to the nursing home, the terms of the contract must be consistent with the requirements of this section.

(7) The nursing home must furnish a written description of legal rights which includes:

(a) A description of the manner of protecting personal funds, under WAC 388-97-0340;

(b) In the case of a nursing facility only, a description of the requirements and procedures for establishing eligibility for medicaid, including the right to request an assessment which determines the extent of a couple's nonexempt resources at the time of institutionalization and attributes to the community spouse an equitable share of resources which cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in his or her process of spending down to medicaid eligibility levels;

(c) A posting of names, addresses, and telephone numbers of all relevant state client advocacy groups such as the state survey and certification agency, the state licensure office, the state ombuds program, the protection and advocacy network, and the medicaid fraud control unit; and

(d) A statement that the resident may file a complaint with the state survey and certification agency concerning resident abandonment, abuse, neglect, financial exploitation, and misappropriation of resident property in the nursing home.

(8) The nursing home must:

(a) Inform each resident of the name, and specialty of the physician responsible for his or her care; and

(b) Provide a way for each resident to contact his or her physician.

(9) The skilled nursing facility and nursing facility must prominently display in the facility written information, and provide to residents and individuals applying for admission oral and written information, about how to apply for and use medicare and medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(10) The written information provided by the nursing home pursuant to this section, and the terms of any admission contract executed between the nursing home and an individual seeking admission to the nursing home, must be consistent with the requirements of chapters 74.42 and 18.51 RCW and, in addition, for facilities certified under medicare or medicaid, with the applicable federal requirements.

[Statutory Authority: Chapters 18.51 and 74.42 RCW. WSR 14-12-040, § 388-97-0300, filed 5/29/14, effective 6/29/14. Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-0300, filed 9/24/08, effective 11/1/08.]

WSR 22-08-073
EMERGENCY RULES
SECRETARY OF STATE

[Filed April 5, 2022, 10:33 a.m., effective April 5, 2022, 10:33 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule is to prevent access to vote tabulation systems, preserve vote counting system security, and preventing tampering or disclosure of information that may increase risk to the integrity of election operations.

Citation of Rules Affected by this Order: Amending WAC 434-335-260.

Statutory Authority for Adoption: RCW 29A.04.230, 29A.04.611, 29A.12.190, 29A.12.200, 42.56.420.

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 transparency and integrity of elections are at the heart of self-governance and the general welfare. Chapter 29A.12 RCW speaks to the requirements, criteria, testing, certification, and decertification for voting systems. Unauthorized access to a voting system certified for use in the state of Washington constitutes a security breach that could affect the integrity of the election process. Immediate adoption of this rule is necessary to preserve the transparency and integrity of elections.

Date Adopted: April 5, 2022.

Randy Bolerjack
Deputy Secretary of State

OTS-3705.1

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-260 Decertification of voting systems and vote tabulating systems. (1) The secretary of state may decertify a voting system or vote tabulating system or any component thereof and withdraw authority for its future use or sale in Washington if, at any time after certification the secretary of state determines that:

(a) The system or component fails to meet the standards set forth in applicable federal guidelines or state statutes or rules;

(b) The system or component was materially misrepresented in the certification application; (~~(c)~~)

(c) The applicant has installed unauthorized modifications to the certified software or hardware; or

(d) The system or component was operated or accessed in Washington state at any time by anyone other than an authorized staff member of the office of the secretary of state, an authorized individual employed by the county that has been delegated any task under RCW 29A.60.140(2), for the purposes of preparation, maintenance, and oper-

ation under RCW 29A.12.060, an independent testing authority designated by the United States election assistance commission, or an independent testing authority and the test plan has received approval by both the county auditor and secretary of state.

(i) County auditors shall not provide physical, electronic, or internal access to third parties seeking to copy and/or conduct an examination of state-certified voting systems, or any components of such systems including, but not limited to: Voting software and systems, tabulators, scanners, counters, automatic tabulating equipment, voting devices, servers, ballot marking devices, paper ballot printers, portable memory media devices, and any other hardware, software, or devices being used as part of the voting system.

(ii) If access described in (d)(i) of this subsection occurs, those pieces of voting equipment will be considered no longer secure or reliable to use in subsequent elections. As a result, the incidents will be treated as a security breach under RCW 29A.12.180 and the office of the secretary of state may decertify the use of the system or component.

(2) The secretary of state must provide written notice of intent to decertify to the original applicant or its successor, if known, to all county auditors, and to the public. The notice must specify the reasons why the certification of the system may be rescinded. The applicant or successor or any county auditor may, within thirty days after the issuance of the notice, file with the secretary of state a written explanation as to why the system or component should not be decertified. The secretary of state may extend or shorten the time for filing of a written explanation for good cause. After reviewing the explanation, the secretary of state may either discontinue the decertification process, in which case the system or component remains certified, or schedule a public hearing pursuant to subsection (3) of this section. If no explanation is timely filed, the secretary of state may either discontinue the decertification process or issue a final order pursuant to subsection (4) of this section.

(3) A decertification proceeding shall constitute an adjudicative proceeding pursuant to chapter 34.05 RCW.

(a) The secretary of state adopts the model rules of procedure as set forth in chapter 10-08 WAC, except as they may be inconsistent with this chapter. The proceeding may be conducted as an emergency adjudicative proceeding pursuant to RCW 34.05.479 if the secretary of state finds that immediate action is required to preserve the integrity of the electoral process.

(b) The secretary of state shall designate the presiding officer.

(c) The certification remains valid pending resolution of the administrative proceeding, unless the secretary of state finds, following notice and opportunity for written or oral input, which may be expedited, that the public interest requires that the decertification should take effect on a temporary basis pending hearing.

(d) The argument in favor of decertification may be presented by an employee of the secretary of state or by an assistant attorney general. Other parties may be represented by a certified election administrator or by any person permitted to appear by ~~((WAC 434-180-560))~~ the county auditor.

(4) The presiding officer or secretary shall enter an order specifying the system or component at issue, whether or not it is decertified, the effective date of any decertification, and explain the basis for the decision. The effective date of decertification shall not be less than five days after the entry of the order, but may be delayed

to any reasonable date. An order issued by the secretary pursuant to subsection (2) of this section is a final order. An order issued by the presiding officer is regarded as an initial order unless the secretary of state, assistant secretary of state, deputy secretary of state, or director of elections presides, in which case the decision of the presiding officer shall be final and no further review is available within the agency.

[Statutory Authority: RCW 29A.04.611. WSR 05-18-022, § 434-335-260, filed 8/29/05, effective 9/29/05.]

WSR 22-08-093
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-51—Filed April 5, 2022, 2:54 p.m., effective April 9, 2022]

Effective Date of Rule: April 9, 2022.

Purpose: Amends recreational Puget Sound salmon rules for Marine Area 5.

Citation of Rules Affected by this Order: 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: This emergency rule is needed to close salmon retention in waters of Marine Area 5. Current catch totals in Marine Area 5 have likely exceeded preseason fishery regulation assessment model projected catch. High effort and high catch per angler have led to higher than predicted harvest in the month of March. Due to ongoing concerns for numerous stocks in the Puget Sound, Washington department of fish and wildlife needs to take a conservation-minded approach to managing this fishery. 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: April 5, 2022.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000U Puget Sound salmon—Saltwater seasons and daily limits. Effective April 9, 2022, until further notice, the following provisions of WAC 220-313-060 regarding salmon seasons for Catch Record Card Area 5 shall be as described below. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Catch Record Card Area 5: Salmon - Closed.

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WSR 22-08-110
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed April 6, 2022, 11:32 a.m., effective April 6, 2022, 11:32 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is requiring long-term care workers (LTCW) to complete training requirements by certain dates that would potentially be before the suspension of the training requirements ends. The department is dividing the group of LTCWs, who are working now and started within 120 days of when the suspension went into place in early 2020, into cohorts based on length of time working. The rule would then require each cohort to complete the requirements by deadlines in rule with the "oldest" LTCWs having the first deadline and then working through the groups chronologically. This emergency filing cancels and supersedes the emergency filed as WSR 22-04-008 on January 21, 2022.

Citation of Rules Affected by this Order: New WAC 388-71-0876, 388-71-0992, 388-112A-0081, and 388-112A-0613.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: ESHB 1120.

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: LTCWs are required to complete certain training requirements within specific deadlines. The passage of ESHB 1120 during the 2021 legislative session, the suspension of training requirements deadlines will end when the public health emergency ends or if the governor or the legislature acts. The department anticipates that the end of the suspension of LTCW training requirements would create a sudden surge in demand for training that would likely exceed capacity of training entities and result in LTCWs failing to complete the requirements in time.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 0.

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

Date Adopted: April 6, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4888.10

NEW SECTION

WAC 388-71-0876 When must long-term care workers who were working or hired during the COVID-19 public health emergency complete training, including required specialty training? (1) Unless exempt from training as described in WAC 388-71-0839 or WAC 388-112A-0090, a long-term care worker affected by the COVID-19 public health emergency must complete training, including required specialty training, as follows:

Worker hired or rehired during the time frame of:	Must complete basic training no later than:
8/17/2019 to 9/30/2020	10/31/2022
10/1/2020 to 4/30/2021	1/31/2023
5/1/2021 to 3/31/2022	4/30/2023
4/1/2022 to 9/30/2022	8/31/2023
10/1/2022 - 12/31/2022 or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later	9/30/2023 or within 120 days after the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later
After the end of the COVID-19 training waivers established by gubernatorial proclamation or beginning 1/1/2023, whichever is later	Standard training

(2) Unless exempt from certification as described in WAC 246-980-025, a worker affected by the COVID-19 public health emergency who is required to be certified as a home care aide must obtain certification as follows:

Worker hired or rehired during the time frame of:	Must be certified as a home care aide no later than:
8/17/2019 to 9/30/2020	1/19/2023
10/1/2020 to 4/30/2021	4/21/2023
5/1/2021 to 3/31/2022	7/19/2023
4/1/2022 to 9/30/2022	11/19/2023
10/1/2022 - 12/31/2022 or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later	12/19/2023 or within 200 days after the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later
After the end of the COVID-19 training waivers established by gubernatorial proclamation or beginning 1/1/2023, whichever is later	Standard training

(3) "Hired" and "rehired" as used in this section mean the date of hire as defined in chapter 246-980 WAC. A long-term care worker is considered rehired if they held previous employment as a long-term care worker and did not have an active home care aide credential when hired during the time frames outlined in section (1) of this section.

(4) If a long-term care worker is limited-English proficient, the worker may request an additional 60 days to obtain certification.

(5) Nothing in this section prevents a long-term care worker hired between 8/17/2019 and 9/30/2022 from completing training or obtaining certification in advance of the deadlines stipulated in subsections (1) or (2) of this section.

[]

NEW SECTION

WAC 388-71-0992 When must continuing education be completed when public health emergency waivers are lifted, and what continuing education credit is granted to long-term care workers employed during the pandemic? (1) The department finds that long-term care workers employed during the COVID-19 pandemic between March 1, 2020, and February 28, 2021, required emergent and intensive on-the-job training. Long-term care workers received critical, ongoing training in such topics as:

- (a) Donning and doffing personal protective equipment (PPE);
- (b) Hand hygiene;
- (c) Disinfection of high-touch surfaces;
- (d) Managing visitations and physical distancing;
- (e) Responding to newly infected residents;
- (f) Promotion of vaccination;
- (g) Protocols for quarantine;
- (h) Use of cloth face coverings;
- (i) Personal protection outside of the work environment; and
- (j) How to reduce exposure and spread.

(2) This on-the-job training was required of all workers in all long-term care environments in Washington state. Instruction was provided in assisted living facilities, adult family homes, homecare agencies, enhanced services facilities, certified community residential services, and to individual providers by the SEIU775 benefits group and DSHS to discuss infection control and the availability and distribution of personal protective equipment. Recognition of this training as a valid learning experience, in its various forms, was agreed upon with input from consumer and worker representatives, as the content was based on guidelines established by the Centers for Disease Control (CDC) and other federal, state, and local health care authorities.

(3) During this time, long-term care workers required ongoing critical training because guidance from the CDC, department of labor and industries, and other health authorities changed as more was learned about the SARS-CoV-2 virus. The department finds that this unprecedented on-the-job training constituted at least 12 hours of continuing education between March 1, 2020, and February 28, 2021, and that this training is not considered to be repeated training as described in WAC 388-112A-0600(2).

(4) All long-term care workers employed during the dates in section (3) of this section are granted 12 hours of DSHS-approved continuing education credit for the training entitled "COVID-19 On-The-Job Training Protocols," bearing the DSHS approval code CE2135218. No physical certificate for this training will be issued or required. The COVID-19 continuing education hours may be applied to renewal periods ending no earlier than March 1, 2020, and no later than December 31, 2021.

(5) The department recognizes that long-term care workers may not have completed training hours in excess of the 12 hours of CE granted in section (4) of this section due to the COVID-19 public health emergency. All long-term care workers shall have until December 31, 2022, or 120 days from the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later, to complete any additional CE that may have become due while training waivers were in place in excess of the 12 hours of CE granted in subsection (4) of this section. If a worker's next birthday allows fewer than 120 days after the waivers are lifted to complete required CE for their current renewal cycle, the worker will have 120 days from the end of training waivers to complete the required CE.

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NEW SECTION

WAC 388-112A-0081 When must long-term care workers who were working or hired during the COVID-19 public health emergency complete training, including required specialty training? (1) Unless exempt from training as described in WAC 388-71-0839 or WAC 388-112A-0090, a long-term care worker affected by the COVID-19 public health emergency must complete training, including required specialty training, as follows:

Worker hired or rehired during the time frame of:	Must complete basic training no later than:
8/17/2019 to 9/30/2020	10/31/2022
10/1/2020 to 4/30/2021	1/31/2023
5/1/2021 to 3/31/2022	4/30/2023
4/1/2022 to 9/30/2022	8/31/2023
10/1/2022 - 12/31/2022 or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later	9/30/2023 or within 120 days after the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later
After the end of the COVID-19 training waivers established by gubernatorial proclamation or beginning 1/1/2023, whichever is later	Standard training

(2) Unless exempt from certification as described in WAC 246-980-025, a worker affected by the COVID-19 public health emergency

who is required to be certified as a home care aide must obtain certification as follows:

Worker hired or rehired during the time frame of:	Must be certified as a home care aide no later than:
8/17/2019 to 9/30/2020	1/19/2023
10/1/2020 to 4/30/2021	4/21/2023
5/1/2021 to 3/31/2022	7/19/2023
4/1/2022 to 9/30/2022	11/19/2023
10/1/2022 - 12/31/2022 or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later	12/19/2023 or within 200 days after the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later
After the end of the COVID-19 training waivers established by gubernatorial proclamation or beginning 1/1/2023, whichever is later	Standard training

(3) "Hired" and "rehired" as used in this section mean the date of hire as defined in chapter 246-980 WAC. A long-term care worker is considered rehired if they held previous employment as a long-term care worker and did not have an active home care aide credential when hired during the time frames outlined in section (1) of this section.

(4) If a long-term care worker is limited-English proficient, the worker may request an additional 60 days to obtain certification.

(5) Nothing in this section prevents a long-term care worker hired between 8/17/2019 and 9/30/2022 from completing training or obtaining certification in advance of the deadlines stipulated in subsections (1) or (2) of this section.

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NEW SECTION

WAC 388-112A-0613 When must continuing education be completed when public health emergency waivers are lifted, and what continuing education credit is granted to long-term care workers employed during the pandemic?

(1) The department finds that long-term care workers employed during the COVID-19 pandemic between March 1, 2020, and February 28, 2021, required emergent and intensive on-the-job training. Long-term care workers received critical, ongoing training in such topics as:

- (a) Donning and doffing personal protective equipment (PPE);
- (b) Hand hygiene;
- (c) Disinfection of high-touch surfaces;
- (d) Managing visitations and physical distancing;
- (e) Responding to newly infected residents;
- (f) Promotion of vaccination;
- (g) Protocols for quarantine;
- (h) Use of cloth face coverings;

(i) Personal protection outside of the work environment; and

(j) How to reduce exposure and spread.

(2) This on-the-job training was required of all workers in all long-term care environments in Washington state. Instruction was provided in assisted living facilities, adult family homes, homecare agencies, enhanced services facilities, certified community residential services, and to individual providers by the SEIU775 benefits group and DSHS to discuss infection control and the availability and distribution of personal protective equipment. Recognition of this training as a valid learning experience, in its various forms, was agreed upon with input from consumer and worker representatives, as the content was based on guidelines established by the Centers for Disease Control (CDC) and other federal, state, and local health care authorities.

(3) During this time, long-term care workers required ongoing critical training because guidance from the CDC, department of labor and industries, and other health authorities changed as more was learned about the SARS-CoV-2 virus. The department finds that this unprecedented on-the-job training constituted at least 12 hours of continuing education between March 1, 2020, and February 28, 2021, and that this training is not considered to be repeated training as described in WAC 388-112A-0600(2).

(4) All long-term care workers employed during the dates in section (3) of this section are granted 12 hours of DSHS-approved continuing education credit for the training entitled "COVID-19 On-The-Job Training Protocols," bearing the DSHS approval code CE2135218. No physical certificate for this training will be issued or required. The COVID-19 continuing education hours may be applied to renewal periods ending no earlier than March 1, 2020, and no later than December 31, 2021.

(5) The department recognizes that long-term care workers may not have completed training hours in excess of the 12 hours of CE granted in section (4) of this section due to the COVID-19 public health emergency. All long-term care workers shall have until December 31, 2022, or 120 days from the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later, to complete any additional CE that may have become due while training waivers were in place in excess of the 12 hours of CE granted in subsection (4) of this section. If a worker's next birthday allows fewer than 120 days after the waivers are lifted to complete required CE for their current renewal cycle, the worker will have 120 days from the end of training waivers to complete the required CE.

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