

WSR 23-03-013
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed January 6, 2023, 11:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-21-113.

Title of Rule and Other Identifying Information: WAC

388-101D-0065 Background check—General, 388-825-020 Definitions, 388-825-0571 What services am I eligible to receive from DDA if I am under the age of 18, have been determined to meet DDA eligibility requirements, and I am a subject of a state court dependency proceeding pursuant to chapter 13.34 RCW or a similar proceeding in a tribal court?, 388-825-058 What services does DDA authorize?, 388-825-0581 What programs does DDA authorize services under?, 388-825-059 How will I know which paid services I will receive?, 388-825-067 What are medicaid state plan services?, 388-825-068 What medicaid state plan services can DDA authorize?, 388-825-072 Where do I find information on DDA's home and community-based services (HCBS), eligibility rules, and definitions?, 388-825-073 What is a "state-only funded" service?, 388-825-074 Am I eligible for state-only funded services?, 388-825-079 If I am not on a DDD HCBS waiver, can I receive services that are available through the DDD HCBS waivers with state-only funding?, 388-825-081 Can I receive state-only funded services that are not available in a DDD HCBS waiver?, 388-825-082 What state-only funded services may DDA authorize?, 388-825-120 When may I appeal a decision made by the developmental disabilities administration?, 388-825-150 When may the department proceed to take action during my appeal?, 388-825-300 What is the purpose of WAC 388-825-300 through 388-825-400?, 388-825-305 Who is governed by WAC 388-825-305 through 388-825-400?, 388-825-310 What are the provider qualifications, responsibilities, and training requirements for a home care agency provider?, 388-825-315 What is your responsibility when you hire an individual provider?, 388-825-325 What are the required skills and abilities for individuals and agencies contracted to provide community first choice services, medicaid personal care, respite care, or attendant care services?, 388-825-330 What is required for agencies to provide community first choice services, medicaid personal care, or respite services?, 388-825-340 Can a provider deliver respite services in the provider's home?, 388-825-375 When will the department deny payment for services?, 388-825-385 When may the department terminate an individual respite care, attendant care, or personal care provider's contract?, 388-825-395 What are the client's rights if the department denies, terminates, or summarily suspends an individual's contract to provide respite care, attendant care, or personal care?, 388-825-396 When does a home care agency have a right to an administrative hearing?, 388-825-600 What definitions apply to WAC 388-825-600 through 388-825-690 of this chapter?, 388-825-605 What background check requirements apply to providers?, 388-825-610 Who must have a background check and a background check renewal?, 388-825-615 What type of background check is required?, 388-825-620 How often must a background check be renewed?, 388-825-621 May a DDA-contracted agency applicant or employee have access to clients before the completion of the Washington state name and date of birth background checks?, 388-825-625 What happens if an individual receives a

disqualifying background check result?, 388-825-630 What does the background check cover?, 388-825-635 Who pays for the background check?, 388-825-650 What does a character, competence, and suitability review include?, 388-825-655 How will someone know if they have been disqualified by the background check?, 388-825-660 May a provider appeal DDA's decision to deny a contract or payment based on the results of the background check?, 388-825-670 May a person receive a copy of their criminal background check results?, and 388-845-1615 Who may be qualified providers of respite care?

Hearing Location(s): On March 7, 2023, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than March 8, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6085, by 5:00 p.m. on March 7, 2023.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6036, TTY 711 relay service, email tenczsa@dshs.wa.gov, by 5:00 p.m. on February 21, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments to WAC 388-101D-0065 replace details about background checks in WAC 388-101D-0065 with cross-references to chapter 388-113 and 388-825 WAC for consistency. Amendments to chapter 388-825 WAC: Replace inaccurate cross-references; add, remove, and amend definitions; clarify service eligibility for state-only funded services, medicaid state plan services, and developmental disabilities administration (DDA) services provided to children in foster care; update rules about home care agencies and individual providers to align with chapters 388-71, 388-113, and 388-115 WAC; amend appeal related rules; add exemptions allowable under statute for enrolled members of federally recognized Indian tribes; amend background check rules, particularly those for residential habilitation center (RHC) employees; and create comprehensive lists of DDA-authorized services.

Reasons Supporting Proposal: Amendments to these rules are necessary to: Align with the creation of the consumer-directed employer; require new background check processes for RHC employees; align with amendments to chapters 388-71, 388-113, and 388-115 WAC; and clarify processes for hearings, authorize state-only funded services, and correct outdated language and broken cross-references.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 43.43.837, 71A.12.015, 71A.12.020, 71A.12.040, 71A.12.050, 71A.12.110, 71A.12.161, 43.20A.710.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DSHS, DDA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1500; Implementation and Enforcement: Jaime Bond, P.O. Box 45310, Olympia, WA 98504-5310, 360-688-6204.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1500, fax 360-407-0955, TTY 1-800-833-6388, email chantelle.diaz@dshs.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(5).

Explanation of exemptions: The proposed amendments impose no costs on small businesses; a small business economic impact statement is not required.

Scope of exemption for rule proposal:

Is fully exempt.

January 4, 2023
Katherine I. Vasquez
Rules Coordinator

SHS-4911.8

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

WAC 388-101D-0065 Background check—General. (1) (~~The department is authorized to conduct~~) A provider must follow background (~~checks~~) check requirements under (~~the background check requirements of~~) this chapter and (~~of chapter~~) chapters 388-113 and 388-825 WAC. (~~Background checks include but are not limited to an inquiry into any of the following:~~

- ~~(a) Department and department of health findings;~~
- ~~(b) Administrative actions taken by the department or by other agencies;~~
- ~~(c) Washington state criminal background check information from the Washington state patrol;~~
- ~~(d) National fingerprint-based background check information from the Federal Bureau of Investigation, when required; and~~
- ~~(e) Information from Washington state courts.)~~

(2) Nothing in this chapter (~~should be interpreted as requiring~~) requires the employment of a person against the better judgment of the (~~service~~) provider. (~~In addition to chapter 71A.12 RCW, these rules are authorized by RCW 43.20A.710, RCW 43.43.830 through 43.43.842 and RCW 74.39A.056.~~)

[WSR 16-14-058, recodified as § 388-101D-0065, filed 6/30/16, effective 8/1/16. Statutory Authority: Chapter 71A.12 RCW. WSR 14-14-030, § 388-101-3245, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 71A.12.030 and [71A.12].080. WSR 12-02-048, § 388-101-3245, filed 12/30/11, effective 1/30/12. Statutory Authority: RCW 71A.12.080, chapter 74.39A RCW. WSR 10-16-084, § 388-101-3245, filed 7/30/10, effective 1/1/11.]

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

WAC 388-825-020 Definitions. "Adult day care" is a service administered by DDA-contracted counties that provides a structured social program for adults.

"Authorization" means DDA approval of funding for a service as identified in the ((individual support)) person-centered service plan or evidence of payment for a service.

"Assistant secretary" means the assistant secretary of the developmental disabilities administration.

"Background check system" or "BCS" means an online system for processing background checks.

"Consumer-directed employer" is a private entity that contracts with the department to be the legal employer of individual providers for purposes of performing administrative functions.

"Client" ((or "person")) means a person who has a developmental disability as defined in RCW 71A.10.020(3) who also has been determined eligible to receive services by the administration under chapter 71A.16 RCW. "Client" may also refer to a child with a functional need for personal care services who does not have a developmental disability.

"Community first choice" or "CFC" is a medicaid state plan program defined in chapter 388-106 WAC.

"Department" means the department of social and health services of the state of Washington.

"DDA" means the developmental disabilities administration((, an administration)) within the department of social and health services.

"Enhanced respite services" means respite care for DDA enrolled children and youth, who meet specific criteria, in a DDA contracted and licensed staffed residential setting.

"Family" means one or more of the following relatives ((who live in the same home with the eligible client. Relatives include)): Spouse or registered domestic partner; natural, adoptive, or step((-))parent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"Individual provider" means an employee of a consumer-directed employer who provides personal care or respite care services.

((("ICF/IID" means a facility certified as an i)) "Intermediate care facility for individuals with intellectual disabilities" or "ICF/IID" means a facility certified ((by)) under ((title XIX to provide diagnosis, treatment and rehabilitation services to the individuals with intellectual disabilities or individuals with related conditions)) federal law to provide active treatment and rehabilitation services.

((("ICF/IID eligible" for admission to an ICF/IID means a person is determined by DDA as needing active treatment as defined in C.F.R. 483.440. Active treatment requires:

- (1) Twenty-four hour supervision; and
- (2) Continuous training and physical assistance in order to function on a daily basis due to deficits in the following areas: Toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing, grooming, and communication.

"Individual support plan" or "ISP" is a document that authorizes and identifies the DDA paid services to meet a client's assessed needs.

~~"Medicaid personal care" or "MPC" is a medicaid state plan program defined in chapter 388-106 WAC.~~

~~"Overnight planned respite services" means services intended to provide short-term intermittent relief for persons who live with the DDA client as the primary care provider and are either a family member who is paid or unpaid or a nonfamily member who is not paid. These services provide person-centered support, care and planned activities for the client in the community.)~~

"Medicaid" means the federal medical aid program under title XIX of the Social Security Act that provides health care to eligible people.

"Person-centered service plan" or "PCSP" is a document that identifies a client's goals and assessed health and welfare needs. The PCSP also indicates the paid services and natural supports that will help a client achieve their goals and address their assessed needs.

"Residential habilitation center" or "RHC" means a state-operated facility under RCW 71A.20.020 ((certified to provide ICF/IID and/or nursing facility level of care for persons with developmental disabilities)).

~~("Residential programs" means provision of support for persons in community living situations. Residential programs include DDA certified community residential services and support, both facility-based such as licensed group homes, and nonfacility based, such as supported living and state-operated living alternatives (SOLA). Other residential programs include alternative living (as described in chapter 388-829A WAC, companion homes (as described in chapter 388-829C WAC), adult family homes, adult residential care services, children's foster homes, group care and staffed residential homes.)~~

~~"Respite care" means short-term intermittent care for DDA clients ((in order)) to provide relief for ((persons)) people who normally provide that care.~~

~~("Secretary" means the secretary of the department of social and health services or the secretary's designee.)~~

"State-only funded services" means those services paid entirely with state funds.

"State supplementary payment" or "SSP" is the state paid cash assistance program for certain DDA-eligible ((SSI)) clients.

"You" or "your" means the client.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-825-020, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030, 44.04.280, 2011 1st sp.s. c 30 and further amended state law, and chapter 71A.20 RCW. WSR 12-22-037, § 388-825-020, filed 11/1/12, effective 12/2/12. Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 10-02-101, § 388-825-020, filed 1/6/10, effective 2/6/10. Statutory Authority: RCW 71A.10.015, 71A.12.020, 71A.12.030, and Title 71A RCW. WSR 08-11-072, § 388-825-020, filed 5/19/08, effective 6/19/08. Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. WSR 04-02-014, § 388-825-020, filed 12/29/03, effective 1/29/04. Statutory Authority: RCW 71A.16.010, 71A.16.030, 71A.12.030, chapter 71A.20 RCW, RCW 72.01.090, and 72.33.125. WSR 02-16-014, § 388-825-020, filed 7/25/02, effective 8/25/02. Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 99-23-021, amended and recodified as § 388-825-020, filed 11/9/99, effective 12/10/99. Statutory Authority: RCW 71A.12.030. WSR 99-04-071, § 275-27-020, filed 2/1/99, effective 3/4/99. Statutory Authority: RCW 74.12A.030 and 71A.16.030. WSR

98-20-044, § 275-27-020, filed 9/30/98, effective 10/7/98. Statutory Authority: RCW 71A.14.030 and 71A.16.020. WSR 92-09-115 (Order 3373), § 275-27-020, filed 4/21/92, effective 5/22/92. Statutory Authority: RCW 71A.16.020. WSR 91-17-005 (Order 3230), § 275-27-020, filed 8/9/91, effective 9/9/91. Statutory Authority: RCW 71.20.070. WSR 89-06-049 (Order 2767), § 275-27-020, filed 2/28/89; WSR 84-15-058 (Order 2124), § 275-27-020, filed 7/18/84. Statutory Authority: RCW 72.01.090, 72.33.040, 72.33.125 and 72.33.165. WSR 78-04-033 (Order 1280), § 275-27-020, filed 3/16/78; Order 1143, § 275-27-020, filed 8/11/76.]

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

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

WAC 388-825-0571 What services am I eligible to receive from DDA if I am under the age of ((eighteen)) 18, have been determined to meet DDA eligibility requirements, and I am ((in a dependency guardianship or foster care with children's administration)) a subject of a state court dependency proceeding pursuant to chapter 13.34 RCW or a similar proceeding in a tribal court? Your services from DDA are limited to

CFC or medicaid personal care services and related case management if you meet the programmatic eligibility for CFC or medicaid personal care services as defined in chapters 388-106 and 388-71 WAC, and:

- (1) You are under the age of eighteen;
- (2) You have been determined to meet DDA eligibility requirements; and

~~(3) You are in a dependency guardianship or foster care with children's administration.)~~

(3) You are the subject of a state court dependency proceeding pursuant to chapter 13.34 RCW or a similar proceeding in a tribal court.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-825-0571, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.10.015, 71A.12.020, 71A.12.030, and Title 71A RCW. WSR 08-11-072, § 388-825-0571, filed 5/19/08, effective 6/19/08.]

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

AMENDATORY SECTION (Amending WSR 15-17-094, filed 8/18/15, effective 9/18/15)

WAC 388-825-058 What services does DDA authorize? ((The department)) (1) DDA authorizes the following paid services: ((through programs that are designed to help you remain in the community. DDA may authorize the following services if you meet programmatic eligibility and funding is available:

- ~~(1) Medicaid state plan services;~~
- ~~(2) Home and community based services (HCBS) waiver services;~~
- ~~(3) Roads to community living services; and~~

~~(4) State-only funded services.~~

~~Participation in all DDA paid services is voluntary. Clients or their legal representatives have the right to decline or terminate services at any time.)~~

- ~~(a) Adult day care.~~
- ~~(b) Assistive technology.~~
- ~~(c) Attendant care.~~
- ~~(d) Bed bug extermination.~~
- ~~(e) Behavior support treatment team.~~
- ~~(f) Caregiver management.~~
- ~~(g) Child development services.~~
- ~~(h) Child placing agency.~~
- ~~(i) Community engagement.~~
- ~~(j) Community inclusion.~~
- ~~(k) Community transition or sustainability services.~~
- ~~(l) Community/recreational activities.~~
- ~~(m) Copays for medical and therapeutic services.~~
- ~~(n) County services.~~
- ~~(o) Crisis stabilization.~~
- ~~(p) Durable medical equipment.~~
- ~~(q) Employment technical assistance add-on.~~
- ~~(r) Environmental adaptations.~~
- ~~(s) Equine therapy.~~
- ~~(t) Excess medical costs not covered by another source.~~
- ~~(u) Family and provider support.~~
- ~~(v) Group supported employment.~~
- ~~(w) Individual employment.~~
- ~~(x) Music therapy.~~
- ~~(y) Nonmedical equipment.~~
- ~~(z) Nurse consultation.~~
- ~~(a) (a) Nurse delegation.~~
- ~~(b) (b) Occupational therapy.~~
- ~~(c) (c) Overnight planned respite for adults.~~
- ~~(d) (d) Parent and sibling education.~~
- ~~(e) (e) Peer mentoring.~~
- ~~(f) (f) Personal emergency response system.~~
- ~~(g) (g) Personal care.~~
- ~~(h) (h) Person-centered plan facilitation.~~
- ~~(i) (i) Physical therapy.~~
- ~~(j) (j) Plethysmograph.~~
- ~~(k) (k) Polygraph.~~
- ~~(l) (l) Positive behavior support.~~
- ~~(m) (m) Private duty nursing.~~
- ~~(n) (n) Recreational opportunities.~~
- ~~(o) (o) Reentry community safety program.~~
- ~~(p) (p) Relief care.~~
- ~~(q) (q) Residential habilitation.~~
- ~~(r) (r) Respite.~~
- ~~(s) (s) Risk assessment.~~
- ~~(t) (t) Service animal services.~~
- ~~(u) (u) Skilled nursing.~~
- ~~(v) (v) Skills acquisition.~~
- ~~(w) (w) Specialized clothing.~~
- ~~(x) (x) Specialized evaluation and consultation.~~
- ~~(y) (y) Specialized habilitation.~~
- ~~(z) (z) Specialized habilitation-stabilization.~~
- ~~(a) (a) (a) Specialized equipment and supplies.~~

- (b) (b) (b) Specialized nutrition.
- (c) (c) (c) Speech therapy.
- (d) (d) (d) Stabilization diversion bed.
- (e) (e) (e) Staff and family consultation.
- (f) (f) (f) Staff and family consultation-stabilization.
- (g) (g) (g) State supplementary payments.
- (h) (h) (h) Supported parenting.
- (i) (i) (i) Therapeutic adaptations.
- (j) (j) (j) Training and counseling.
- (k) (k) (k) Transition services.
- (l) (l) (l) Transportation.
- (m) (m) (m) Vehicle modifications.
- (n) (n) (n) Wellness education.

(2) This section does not include services directly provided by the department.

[Statutory Authority: RCW 71A.10.015, 71A.18.020, 71A.12.030, and Title 71A RCW. WSR 15-17-094, § 388-825-058, filed 8/18/15, effective 9/18/15. Statutory Authority: RCW 71A.10.015, 71A.12.020, 71A.12.030, and Title 71A RCW. WSR 08-11-072, § 388-825-058, filed 5/19/08, effective 6/19/08.]

NEW SECTION

WAC 388-825-0581 What programs does DDA authorize services under? DDA may authorize services under the following programs:

- (1) Medicaid state plan;
- (2) Home and community-based services (HCBS) waiver;
- (3) Roads to community living; and
- (4) State-only funded services.

(5) Participation in all DDA paid services is voluntary. Clients or their legal representatives have the right to decline or terminate services at any time.

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

WAC 388-825-059 How will I know which paid services I will receive? Your person-centered service plan (~~(/individual support plan (ISP))~~) identifies the services and the amount of service you can receive.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-825-059, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.10.015, 71A.12.020, 71A.12.030, and Title 71A RCW. WSR 08-11-072, § 388-825-059, filed 5/19/08, effective 6/19/08.]

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

WAC 388-825-067 What are medicaid state plan services? (1) Medicaid state plan services are those services available to ~~((all persons))~~ people eligible for ~~((medicaid under the categorically needy program. See WAC 388-475-0100 for the categorically needy program requirements))~~ one of the following medicaid programs:

(a) The alternative benefits plan (ABP) medicaid;
(b) Categorically needy (CN) medicaid;
(c) Medically needy (MN) medicaid; or
(d) Medical care services (MCS) programs (includes capacity-based and aged, blind, and disabled medical care services), as described in WAC 182-508-0005.

(2) To receive the service, you must be assessed by ~~((DSHS))~~ DDA to have an unmet need for the service and meet the eligibility criteria for the program. ~~((See WAC 388-825-068 for services authorized by DDD.))~~

[Statutory Authority: RCW 71A.10.015, 71A.12.020, 71A.12.030, and Title 71A RCW. WSR 08-11-072, § 388-825-067, filed 5/19/08, effective 6/19/08.]

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

WAC 388-825-068 What medicaid state plan services can DDA authorize? If eligible, DDA may authorize one or more of the following medicaid state plan services:

- (1) Community first choice ~~((per))~~ under chapter 388-106 WAC;
- (2) Medicaid personal care ~~((per))~~ under chapter 388-106 WAC;
- (3) Private duty nursing for adults age ~~((eighteen))~~ 18 and older ~~((per))~~ under chapter 388-106 WAC;
- (4) Private duty nursing for children under the age of ~~((eighteen, per))~~ 18 under WAC 182-551-3000;
- (5) ICF/IID services ~~((per))~~ under chapters 388-835 and 388-837 WAC;
- (6) Nursing facility services at residential habilitation centers (RHC) ~~((per))~~ under chapter 388-97 WAC; or
- (7) Preadmission screening and resident review (PASRR).

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-825-068, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030, 44.04.280, 2011 1st sp.s. c 30 and further amended state law, and chapter 71A.20 RCW. WSR 12-22-037, § 388-825-068, filed 11/1/12, effective 12/2/12. Statutory Authority: RCW 71A.12.030, 71A.12.040, 71A.14.030, 2009 c 564, section 205 (1)(j), and section 1915(i) of the Social Security Act. WSR 10-04-002, § 388-825-068, filed 1/21/10, effective 2/21/10. Statutory Authority: RCW 71A.10.015, 71A.12.020, 71A.12.030, and Title 71A RCW. WSR 08-11-072, § 388-825-068, filed 5/19/08, effective 6/19/08.]

AMENDATORY SECTION (Amending WSR 15-17-094, filed 8/18/15, effective 9/18/15)

WAC 388-825-072 Where do I find information on DDA's home and community-based services (HCBS) (~~waiver services~~), eligibility rules, and definitions? (1) Home and community-based services (HCBS) waiver eligibility, the scope of services provided by each waiver, the service definitions, (~~of the services, the limitations of the~~) service limits, and qualified providers for (~~the~~) each service are contained in chapter 388-845 WAC.

(2) Services available under the basic plus waiver are found in WAC 388-845-0210.

(3) Services available under the core waiver are found in WAC 388-845-0215.

(4) Services available under the community protection waiver are found in WAC 388-845-0220.

(5) Services available under the children's intensive in-home behavior support waiver are found in WAC 388-845-0225.

(6) Services available under the individual and family services waiver are found in WAC 388-845-0230.

[Statutory Authority: RCW 71A.10.015, 71A.18.020, 71A.12.030, and Title 71A RCW. WSR 15-17-094, § 388-825-072, filed 8/18/15, effective 9/18/15. Statutory Authority: RCW 71A.10.015, 71A.12.020, 71A.12.030, and Title 71A RCW. WSR 08-11-072, § 388-825-072, filed 5/19/08, effective 6/19/08.]

AMENDATORY SECTION (Amending WSR 15-17-094, filed 8/18/15, effective 9/18/15)

WAC 388-825-074 Am I eligible for state-only funded services?

(1) You are eligible to receive available state-only funded services if (~~you have been approved for funding for that service, and~~) all of the following conditions apply:

(~~(1)~~) (a) You have a current DDA assessment that identifies (~~the~~) your need for the service(~~+~~) and the amount of service you will receive.

(~~(2)~~) (b) You meet (~~the programmatic and financial~~) all eligibility requirements for the specific service (~~or program~~).

(~~(3)~~) Your need cannot be met through medicaid state plan services~~+~~

(~~(4)~~) (c) You are not enrolled in a DDA home and community-based services (HCBS) waiver(~~+~~).

(~~(5)~~) (d) You do not receive SSP as a replacement for the requested service(~~+~~).

(~~(6)~~) (e) The program or service is funded by the legislature.

(f) You are enrolled in medicaid or you have applied and been found ineligible for medicaid in Washington state in the past year.

(g) You have been approved for funding for a state-only funded service in WAC 388-825-082.

(2) Eligibility for state-only funded services under this section does not affect your eligibility for medicaid.

[Statutory Authority: RCW 71A.10.015, 71A.18.020, 71A.12.030, and Title 71A RCW. WSR 15-17-094, § 388-825-074, filed 8/18/15, effective

9/18/15. Statutory Authority: RCW 71A.10.015, 71A.12.020, 71A.12.030, and Title 71A RCW. WSR 08-11-072, § 388-825-074, filed 5/19/08, effective 6/19/08.]

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

WAC 388-825-082 What state-only funded services (~~(are authorized in DDD rules)~~) may DDA authorize? (~~The following~~) DDA may authorize state-only funded services (~~(defined below are authorized only by DDD and are not contained in other rules governing DDD.)~~) as follows:

(1) (~~(")~~) Adult day care (~~(" not covered by medicaid is a DDD county service providing a structured social program for adults and is limited to persons receiving the service prior to June 2005).~~

(2) (~~(")~~) Attendant care (~~(")~~), which provides respite care or personal care and is limited to persons who:

(a) Are not eligible for other (~~(DDD)~~) DDA services (~~(to)~~) that meet their (~~(need)~~) needs; and

(b) Were receiving attendant care in March 2004.

(3) (~~("Individual and family assistance" is a time limited county service available to individuals and families.~~

(a) ~~Supports are provided to additional families and persons with developmental disabilities in need of services within existing resources;~~

(b) ~~Individuals and families receiving services have more control and flexibility with the use of the resources; and~~

(c) ~~The individual and family are assisted in connecting to and using natural and informal community supports)~~ Child development services.

(4) (~~("Information and education" is a county service that provides a variety of activities and strategies to assure that individuals with developmental disabilities and families have full access to current information about services and support that will assist them in becoming full participants in their communities)~~) Crisis stabilization.

(5) (~~(")~~) Individual and family services under chapter 388-832

WAC.

(6) Medical and dental services (~~(" means those services which are)~~) necessary for the health of the client (~~(and)~~) that are not covered by medicaid or private insurance.

(~~(6)~~) (7) Medical insurance copays and costs exceeding other coverage.

(8) Offender re-entry community safety program services.

(9) Overnight planned respite services under chapter 388-829R

WAC.

(10) Parent training and counseling.

(11) PASRR services under chapter 388-834 WAC if you reside in a medicaid-certified home nursing facility but you do not qualify for medicaid.

(12) Psychological counseling (~~(" may provide)~~) which provides specialized cognitive counseling (~~(7)~~) and strategies for effectively relating to people or coping with situations and problems.

(~~(7)~~) (13) State supplementary payments under chapter 388-827

WAC.

(14) Transportation reimbursement for an escort((u)), which is ((the)) a payment for someone other than the driver to provide one-on-one attention to the client being transported.

(15) Waiver services under chapter 388-845 WAC if prior approval is received by the assistant secretary or designee.

[Statutory Authority: RCW 71A.10.015, 71A.12.020, 71A.12.030, and Title 71A RCW. WSR 08-11-072, § 388-825-082, filed 5/19/08, effective 6/19/08.]

AMENDATORY SECTION (Amending WSR 15-17-094, filed 8/18/15, effective 9/18/15)

WAC 388-825-120 When ((can)) may I appeal ((department decisions through an administrative hearing process)) a decision made by the developmental disabilities administration? (1) ((Administrative hearings are governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 71A.10.050, the rules in this chapter and by chapters 388-02 and 182-526 WAC. If any provision in this chapter conflicts with chapters 388-02 or 182-526 WAC or WAC 388-440-0001(3), the provision in this chapter shall prevail)) You or your authorized representative may appeal a decision made by DDA if you are an applicant, a client, or a former client.

~~(2) ((A client, former client, or applicant acting on the applicant's own behalf or through an authorized representative has the right to an administrative hearing.~~

~~(3)) You have the right to an administrative hearing to dispute the following ((department)) DDA actions:~~

~~(a) ((Authorization)) Approval, denial, reduction, or termination of services;~~

~~(b) ((Reduction or termination of a service that was initially approved through an exception to rule;~~

~~(c)) ((Authorization)) Approval, denial, or termination of eligibility;~~

~~((d)) (c) ((Authorization)) Approval, denial, reduction, or termination of payment of SSP authorized by DDA set forth in chapter 388-827 WAC;~~

~~((e)) (d) Admission or readmission to, or discharge from, a residential habilitation center set forth in WAC 388-825-155;~~

~~((f)) (e) Refusal to abide by your request that we not send notices to any other person;~~

~~((g)) (f) Refusal to comply with your request to consult only with you;~~

~~((h) A decision to move you to a different type of residential service;~~

~~(i) Denial or termination of the provider of your choice or the denial of payment for any reason listed in WAC 388-825-375 through 388-825-395;))~~

(g) Denial of payment to your provider for any reason under WAC 388-825-375;

(h) Termination of your provider's contract for any reason under WAC 388-825-385 or 388-825-390;

~~((j)) (i) An unreasonable delay to act on an application for eligibility or service;~~

~~((k))~~ (j) A claim ~~((the client, former client, or applicant owes))~~ that you owe an overpayment debt;

(k) Action related to the community protection program under WAC 388-831-0300;

(1) An exception to rule decision if:

(i) The total number of service hours you are currently receiving includes hours approved as an exception to rule in addition to the number of hours available to you under program rule or DDA assessment; and

(ii) The total number of service hours you are currently receiving is reduced because of a reduction or termination in the number of hours approved as an exception to rule.

(3) Except as allowed under subsection (2)(m) of this section, you do not have a right to appeal the department's denial of an exception to rule request.

(4) If you appeal a decision made by the developmental disabilities administration, your appeal is governed by this chapter and:

(a) Chapter 34.05 RCW;

(b) Chapter 71A.10 RCW; and

(c) Chapters 388-02 or 182-526 WAC, as applicable.

(5) If any provision in this chapter conflicts with chapters 388-02 or 182-526 WAC or WAC 388-440-0001(3), the provision in this chapter prevails.

(6) If you receive personal care services under chapter 388-106 WAC that are authorized by DDA, the appeal provision in WAC 388-106-1315 applies.

~~((4))~~ (7) If you are not enrolled in a waiver and your request to be enrolled in a waiver is denied, your appeal rights are limited ~~((to those identified in))~~ under WAC 388-845-4005.

~~((5))~~ (8) If you are enrolled in a waiver and your request to be enrolled in a different waiver is denied, your appeal rights are limited ~~((to those identified in))~~ under WAC 388-845-4005.

[Statutory Authority: RCW 71A.10.015, 71A.18.020, 71A.12.030, and Title 71A RCW. WSR 15-17-094, § 388-825-120, filed 8/18/15, effective 9/18/15. Statutory Authority: RCW 71A.12.030, 44.04.280, 2011 1st sp.s. c 30 and further amended state law, and chapter 71A.20 RCW. WSR 12-22-037, § 388-825-120, filed 11/1/12, effective 12/2/12. Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 10-02-101, § 388-825-120, filed 1/6/10, effective 2/6/10. Statutory Authority: RCW 71A.12.030. WSR 06-19-037, § 388-825-120, filed 9/13/06, effective 10/14/06. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-120, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. WSR 04-02-014, § 388-825-120, filed 12/29/03, effective 1/29/04. Statutory Authority: RCW 71A.16.010, 71A.16.030, 71A.12.030, chapter 71A.20 RCW, RCW 72.01.090, and 72.33.125. WSR 02-16-014, § 388-825-120, filed 7/25/02, effective 8/25/02; WSR 99-19-104, recodified as § 388-825-120, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.16.020. WSR 91-17-005 (Order 3230), § 275-27-500, filed 8/9/91, effective 9/9/91. Statutory Authority: RCW 34.05.220 (1)(a) and 71.12.030 [71A.12.030]. WSR 90-04-074 (Order 2997), § 275-27-500, filed 2/5/90, effective 3/1/90. Statutory Authority: RCW 71.20.070. WSR 86-18-049 (Order 2418), § 275-27-500, filed 8/29/86. Statutory Authority: RCW 72.33.161. WSR 84-15-038 (Order 2122), § 275-27-500, filed 7/13/84. Statutory Authority: RCW 72.01.090, 72.33.040, 72.33.125 and

72.33.165. WSR 78-04-033 (Order 1280), § 275-27-500, filed 3/16/78; Order 1143, § 275-27-500, filed 8/11/76.]

AMENDATORY SECTION (Amending WSR 15-17-094, filed 8/18/15, effective 9/18/15)

WAC 388-825-150 When ((ean)) may the department proceed to take action during my appeal? The department will proceed to take action during your appeal if:

(1) It is an eligibility denial and you are not currently an eligible client.

(2) Your DDA eligibility under chapter 388-823 WAC has expired (~~(per WAC 388-823-0010 and 388-823-1040)~~).

(3) There is no longer funding for the state-only funded service you have been receiving.

(4) Your current services are terminated or transferred (~~(in order)~~) to comply with state law.

(5) The state-only funded service no longer exists, or the medic-aid state plan, ~~((has been amended, or))~~ the HCBS waiver, or any other agreement with the federal Centers for Medicare and Medicaid Services has been amended or terminated.

(6) The administrative law judge or review judge rules that you have caused unreasonable delay in the proceedings.

(7) ~~((You are))~~ Your health, safety, or wellbeing is in imminent jeopardy.

(8) Your provider is no longer qualified to provide services due to:

(a) A lack of a contract;

(b) Decertification;

(c) Failure to complete training or certification requirements;

(d) Revocation or suspension of a license; or

(e) Lack of required registration, certification, or licensure.

(9) If you are under the age of ~~((eighteen))~~ 18 and your parent or legal representative approves the department's decision.

(10) You did not file your request for an administrative hearing within the ~~((ten-day))~~ applicable notice period (~~(as described in chapter 388-458 WAC)~~).

(11) You or your legal representative (~~(~~

~~(a))~~ tell us in writing that you do not want continued benefits. (~~(~~

~~(b) Withdraw your administrative hearing request in writing; or~~

~~((c) Do not follow through with the administrative hearing process.))~~

[Statutory Authority: RCW 71A.10.015, 71A.18.020, 71A.12.030, and Title 71A RCW. WSR 15-17-094, § 388-825-150, filed 8/18/15, effective 9/18/15. Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-06-055, § 388-825-150, filed 3/5/07, effective 4/5/07. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-150, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION (Amending WSR 15-17-094, filed 8/18/15, effective 9/18/15)

WAC 388-825-300 What is the purpose of WAC 388-825-300 through 388-825-400? A ~~((client/legal))~~ client or client's legal representative may choose a qualified individual, agency, or licensed provider. The intent of WAC 388-825-300 through 388-825-400 is to describe:

(1) Qualifications for ~~((individuals))~~ individual providers and home care agencies ~~((providing DDA services in the client's residence or the provider's residence or other setting));~~ and

(2) Conditions under which ~~((the department))~~ DDA will pay for the services of an individual provider or a home care agency provider, ~~((or other provider.))~~

[Statutory Authority: RCW 71A.10.015, 71A.18.020, 71A.12.030, and Title 71A RCW. WSR 15-17-094, § 388-825-300, filed 8/18/15, effective 9/18/15. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-300, filed 8/19/05, effective 9/19/05.]

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

WAC 388-825-305 ~~((What service providers are))~~ Who is governed by ~~((the qualifications in these rules))~~ WAC 388-825-305 through 388-825-400? ~~((These rules govern individuals and agencies contracted with to))~~ WAC 388-825-305 through 388-825-400 govern individual providers and home care agencies who provide one or more of the following:

(1) ~~((Respite care services;~~

~~(2) Personal care services through the basic plus waiver;~~

~~(3)) Community first choice services;~~

~~((4))~~ (2) Medicaid personal care; or

~~((5) Attendant))~~ (3) Respite care services.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-825-305, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.30 [71A.12.030] and Title 71A RCW. WSR 07-23-062, § 388-825-305, filed 11/16/07, effective 12/17/07. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-305, filed 8/19/05, effective 9/19/05.]

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

WAC 388-825-310 What are the provider qualifications ~~((for respite care, community first choice, medicaid personal care, and attendant care service providers))~~, responsibilities, and training requirements for a home care agency provider? (1) ~~((The providers of services in WAC 388-825-305))~~ A home care agency provider must meet the provider qualifications, responsibilities, and training requirements ~~((in))~~ under chapter 388-71 WAC.

(2) ~~((Individuals and agencies providing state only individual and family services must meet the provider qualifications in chapter 388-832 WAC for the specific service.~~

~~(3) Individuals and agencies providing HCBS waiver services must meet the provider qualifications in chapter 388-845 WAC for the specific service. In addition to meeting the provider qualifications in chapter 388-845 WAC, respite care providers must meet requirements in subsection (1) of this section)) Individual providers must meet the provider qualifications, responsibilities, and training requirements under chapter 388-115 WAC.~~

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-825-310, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-310, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-315 What is your responsibility when you hire an individual ((respite care, attendant care or personal care) provider?
 ((You or your legal representative:

~~(1) Have the primary responsibility for locating, screening, hiring, supervising, and terminating an individual respite care, attendant care or personal care provider)) If you hire an individual provider, you or your legal representative must manage the individual provider according to chapter 388-115 WAC((+~~

~~(2) Establish an employer/employee relationship with the individual provider; and~~

~~(3) May receive assistance from the social worker/case manager or other resources in this process)).~~

[Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-315, filed 8/19/05, effective 9/19/05.]

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

WAC 388-825-330 What is required for agencies to provide ((care in the home of a person with developmental disabilities)) community first choice services, medicaid personal care, or respite services?

(1) ~~((Agencies providing)) To provide community first choice services, medicaid personal care, or respite services a home care agency must be: ((licensed as a home care agency or a home health agency through the department of health per chapter 246-335 WAC))~~

~~(a) Contracted with DSHS to provide the service; and~~

~~(b) Licensed as a home care agency or home health agency through the department of health under chapter 246-335 WAC.~~

(2) If a residential agency certified ~~((per))~~ under chapter 388-101 WAC wants to provide medicaid personal care services, personal care services under the community first choice program, or respite

care ((in the client's home)), the agency must ((have a home care agency or home health license)) be:

(a) Contracted with DSHS to provide the service; and

(b) Licensed as a home care agency or home health agency through the department of health under chapter 246-335 WAC.

(3) If a residential agency certified ((per)) under chapter 388-101 WAC only wants to provide skills acquisition under the community first choice program, the agency must be contracted with ((the department)) DSHS to provide the service.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-825-330, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 10-02-101, § 388-825-330, filed 1/6/10, effective 2/6/10. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-330, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION (Amending WSR 07-23-062, filed 11/16/07, effective 12/17/07)

WAC 388-825-340 ((What is required for)) Can a provider ((to provide)) deliver respite ((or residential service)) services in ((their)) the provider's home? ((Unless you are related to the client, respite or residential services must take place)) (1) A provider may deliver respite services in the provider's home if the provider is related to the client.

(2) If the provider is not related to the client, respite services must be delivered in an appropriately ((home)) licensed ((by DSHS)) home. ((Services are limited to those age-specific services contained in your license.))

[Statutory Authority: RCW 71A.12.30 [71A.12.030] and Title 71A RCW. WSR 07-23-062, § 388-825-340, filed 11/16/07, effective 12/17/07. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-340, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION (Amending WSR 14-14-029, filed 6/24/14, effective 7/25/14)

WAC 388-825-375 When will the department deny payment for services ((of an individual or home care agency providing respite care, attendant care, or personal care services))? (1) The department

((will deny payment for the services of an individual or home care agency providing respite care, attendant care, or personal care who:

(a) ~~Is the client's spouse, per 42 C.F.R. 441.360(g), except in the case of an individual provider for a chore services client. Note: For chore spousal providers, the department pays a rate not to exceed the amount of a one-person standard for a continuing general assistance grant;~~

(b) ~~Is providing services under this chapter to his or her natural/step/adoptive minor client aged seventeen or younger;~~

(c) ~~Has been convicted of, or has a pending charge that is a disqualifying crime, under chapter 388-113 WAC;~~

~~(d) Has been subject to a negative action described in WAC 388-825-0640;~~

~~(e) Does not successfully complete the training requirements within the time limits required in chapter 388-71 WAC; or~~

~~(f) Is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of an agency provider)) will deny payment to the consumer-directed employer under WAC 388-115-05415.~~

(2) ~~((In addition,)) The department ((may)) will deny payment to ((or terminate the contract of an individual)) a home care agency provider ((as provided)) under WAC ((388-825-380 and)) 388-((825-385)) 71-05415.~~

(3) Under RCW 74.39A.326, the department will deny payment for the services of a home care agency providing respite or personal care if the provider is your family member unless:

(a) You are an enrolled member of a federally recognized Indian tribe; or

(b) You reside in the household of an enrolled member of a federally recognized Indian tribe.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-375, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 10-02-101, § 388-825-375, filed 1/6/10, effective 2/6/10. Statutory Authority: RCW 71A.12.30 [71A.12.030] and Title 71A RCW. WSR 07-23-062, § 388-825-375, filed 11/16/07, effective 12/17/07. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-375, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION (Amending WSR 14-14-029, filed 6/24/14, effective 7/25/14)

WAC 388-825-385 When may the department terminate an individual respite care, attendant care, or personal care provider's contract?

The department may take action to terminate an individual respite care, attendant care, or personal care provider's contract if the provider's inadequate performance or inability to deliver quality care is jeopardizing the client's health, safety, or well-being. Examples of circumstances indicating jeopardy to the client ~~((eould)) include((, without limitation)):~~

(1) Evidence of a conviction, pending charges, or negative actions described in WAC 388-825-~~((θ))~~640;

(2) Using or being under the influence of alcohol or illegal drugs during working hours;

(3) Other behavior directed toward the client or other persons involved in the client's life that places the client at risk of harm;

(4) A report from the client's health care provider that the client's health is negatively affected by inadequate care;

(5) A complaint from the client or client's representative that the client is not receiving adequate care;

(6) The absence of essential interventions identified in the service plan, such as medications or medical supplies; and~~((/or))~~

(7) Failure to respond appropriately to emergencies.

(8) The department, AAA, or department designee may also terminate an individual provider's contract for reasons described under WAC (~~(388-71-0551)~~) 388-113-0050.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-385, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 71A.12.30 [71A.12.030] and Title 71A RCW. WSR 07-23-062, § 388-825-385, filed 11/16/07, effective 12/17/07. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-385, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION (Amending WSR 07-23-062, filed 11/16/07, effective 12/17/07)

WAC 388-825-396 ((D)) When does ((the provider of respite care, attendant care, or personal)) a home care agency have a right to ((a fair)) an administrative hearing? (~~((1) The hearing rights afforded under WAC 388-825-395(1) are those of the client.~~

~~((2) The provider of respite care, attendant care, or personal care services does not have)) A home care agency has a right to ((a fair)) an administrative hearing under WAC 388-71-0562.~~

[Statutory Authority: RCW 71A.12.30 [71A.12.030] and Title 71A RCW. WSR 07-23-062, § 388-825-396, filed 11/16/07, effective 12/17/07. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-396, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-600 What definitions apply to WAC 388-825-600 through 388-825-690 of this chapter? The following definitions apply to WAC 388-825-600 through 388-825-690 of this chapter:

"Agency" means any agency of the state or any private agency providing services to individuals with developmental disabilities.

~~((**"Authorized"** or **"authorization"** means not disqualified by the department to have unsupervised access to children and individuals with a developmental disability. This term applies to persons who are certified or contracted by the department, allowed to receive payments from department funded programs, or who volunteer with department funded programs.))~~

"Background check central unit (BCCU)" means ~~((the DSHS program responsible for conducting))~~ a division within the department that processes background checks for ((DSHS administrations)) department-authorized providers and department programs.

"Certification" means a process used by the department ((approval of an entity that does not legally need to be licensed indicating that the entity nevertheless meets minimum licensing requirements)) to determine if an applicant or service provider complies with chapter 388-101 WAC and is eligible to provide certified community residential services and supports to clients.

~~((**"Civil adjudication proceeding"** is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds an~~

agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44 or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.)

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(6) and has been determined eligible to receive services by DDA under chapter 388-823 WAC.

"Community residential service businesses" ((include all developmental disabilities administration supported living providers with the exception of supported living providers who are also licensed as an assisted living facility or adult family home. Community residential service providers also include DDA companion homes, DDA alternative living and licensed residential homes for children)) has the same meaning as under RCW 74.39A.009.

"DDA" means the developmental disabilities administration within the department of social and health services (DSHS).

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

"Disqualified" means that the results of ((an individual's)) a person's background check ((disqualifies him or her)) exclude the person from a position ((which)) that will or may involve unsupervised access to ((individuals with developmental disabilities)) DDA clients.

(("Entity" means, but is not limited to, a licensed facility, a corporation, a partnership, a sole proprietorship, or a contracted or certified service provider.

"Hire" means engagement by an agency, entity or a hiring individual to perform specific agreed duties as a paid employee, a contract employee, a volunteer, or a student intern.))

"Individual provider" has the same meaning as defined in RCW 74.39A.240.

(("Individuals with a developmental disability" means individuals who meet eligibility requirements in Title 71A RCW as further defined in chapter 388-823 WAC.))

"Job class" means a level of work.

"Long-term care worker" has the same meaning as defined in RCW 74.39A.009.

(("Permanent restraining order" means a restraining order/order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (e.g. 1 year), after which it expires.))

"Personal information" means any individually identifiable information that could be used to identify or contact a person and includes protected health information and financial information.

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

"Qualified" means ((an individual)) a person can be hired into a position that includes unsupervised access to ((individuals with developmental disabilities)) DDA clients because the results of ((his or her)) the person's background check are not disqualifying.

"Temporary restraining order" means a restraining order or order of protection that expired without a hearing, was dismissed following

an initial hearing, or was dismissed by stipulation of the parties in lieu of an initial hearing.

"Unsupervised," under RCW 43.43.830, means not in the presence of:

(1) ~~((The licensee,))~~ Another employee or volunteer from the same business or organization as the applicant who has not been disqualified by the background check.

(2) Any relative or guardian of ~~((the individual with a developmental disability))~~ a DDA client to whom the applicant has access during the course of his or her employment or involvement with the business or organization ~~((RCW 43.43.080(9)))~~.

~~((("WSP" refers to the Washington state patrol.))~~)

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, amended and recodified as § 388-825-600, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0600, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-605 ((Why are)) What background ((checks done)) check requirements apply to providers? ~~((The department requires background checks to be run to help safeguard the health, safety and well-being of individuals with a developmental disability and to comply with the law))~~ (1) All DDA-contracted providers must follow background check requirements under chapter 388-113 and 388-825 WAC and applicable, program-specific rules.

(2) Alternative living providers must follow background check requirements under chapters 388-113, 388-825, and 388-829A WAC.

(3) Companion home providers must follow background check requirements under chapters 388-113, 388-825, and 388-829C WAC.

(4) Group home providers licensed as adult family homes must follow background check requirements under chapters 388-76, 388-113, and 388-825 WAC.

(5) Group home providers licensed as assisted living facilities must follow background check requirements under chapters 388-78A, 388-113, and 388-825 WAC.

(6) Individual providers must follow background check requirements under chapter 388-115 WAC.

(7) Home care agency providers must follow background check requirements under chapter 388-71 WAC.

(8) Licensed staffed residential service providers must follow background check requirements under chapters 110-04, 388-113, and 388-825 WAC.

(9) Overnight planned respite service providers must follow background check requirements under chapters 388-113, 388-825, and 388-829R WAC.

(10) Supported living and group training home providers must follow background check requirements under chapters 388-101D, 388-113, and 388-825 WAC.

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, recodified as § 388-825-605, filed 4/15/15, effective 5/16/15. Statutory

Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0605, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-610 Who must have a ~~((Washington state and/or federal)) background check and a background check renewal?~~ (1) ~~DDA requires background checks ((on all contracted providers, individual providers, employees of contracted providers, and any other individual who needs to be qualified by DDA to have unsupervised access to individuals with developmental disabilities)) under WAC 388-825-615 and background check renewals under WAC 388-825-320 for all contracted providers, agency employees, owner-operators, administrators, subcontractors, and volunteers who may have:~~

~~(a) Unsupervised access to a DDA client; or~~

~~(b) Access to a DDA client's personal information.~~

~~(2) ((Long-term care workers as defined in chapter 74.39A RCW hired after January 7, 2012 are subject to national fingerprint-based background checks)) For community residential service businesses, any person who provides instruction and support services (ISS), including volunteers, must have a background check and background check renewal and follow background check requirements under this chapter.~~

~~(3) All residential habilitation center employees and volunteers must have a background check. If a residential habilitation center employee changes job class, the employee must have a background check renewal.~~

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, redefined as § 388-825-610, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0610, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-615 What ~~((is the process for obtaining a)) type of background check is required?~~ (1) ~~((H)) Beginning January 7, 2012, long-term care workers, including parents and individual providers, undergoing a background check for initial hire or initial contract, ((after January 7, 2012, will)) must be screened through a Washington state name and date of birth check and a national fingerprint-based background check,; except that long-term care workers in community residential service businesses are subject to background checks as described in subsection (1)(a) and (b) in (2) of this section. Parents are not exempt from the long-term care background check requirements.~~

~~((a) Prior to January 1, 2016, community residential service businesses as defined above will be screened as follows:~~

~~(i) Individuals who have continuously resided in Washington state for the past three consecutive years will be screened through a state name and date of birth background check.~~

~~(ii) Individuals who have resided outside of Washington state within the past three years will be screened through a state name and date of birth and a national fingerprint-based background check.~~

~~(b)) (2) Beginning January 1, 2016, a newly hired long-term care worker employed by a community residential service business (as defined above will) must be screened (as described in subsection (1) of this section.) through a Washington state name and date of birth check and a national fingerprint-based background check.~~

~~(a) For a renewal, a person who has continuously resided in Washington state for the past three consecutive years must be screened through a Washington state name and date of birth check.~~

~~(b) For a renewal, a person who has resided outside of Washington state in the past three years must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.~~

~~((2)) (3) For adult family homes, refer to chapter 388-76 WAC (adult family home minimum licensing requirements). For assisted living facilities, refer to chapter 388-78A WAC (assisted living licensing rules).~~

~~(4) Beginning July 1, 2023, a residential habilitation center applicant undergoing a background check for initial hire must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.~~

~~(5) All background checks must be completed through the background check system.~~

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, amended and recodified as § 388-825-615, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0615, filed 6/24/14, effective 7/25/14.]

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

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-620 ((Who must have)) How often must a background check ((renewals)) be renewed? (1) DDA requires ((rechecks for all DDA contracted providers and their employees)) a background check at least every three years, or more frequently if required by program rule. ((Rechecks))

(2) A background check renewal will be conducted as follows:

~~((1)) (a) Individuals who have continuously resided in Washington state for the past three consecutive years will be screened through a state name and date of birth background check.~~

~~((2)) (b) Individuals who have lived outside of Washington state within the past three years will be screened through a state name and date of birth check and a national fingerprint-based background check.~~

(c) Individuals who live outside of Washington state and provide services in Washington state will be screened through a Washington

state name and date of birth check and a national fingerprint-based background check.

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, redefined as § 388-825-620, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0620, filed 6/24/14, effective 7/25/14.]

NEW SECTION

WAC 388-825-621 May a DDA-contracted agency applicant or employee have access to clients before the completion of the Washington state name and date of birth background checks? (1) A DDA-contracted agency may allow an employee to have access to clients before completion of the Washington state name and date of birth background check if:

- (a) The background check application has been submitted;
 - (b) The employee is directly supervised while around clients and their personal information; and
 - (c) The agency has a supervision plan in place for the employee.
- (2) A supervision plan must:
- (a) State who will supervise the employee; and
 - (b) Describe how the employee's breaks will be managed until the employee's background check has cleared.

[]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-625 What happens if ~~((I do not comply with the))~~ an individual receives a disqualifying background check ~~((requirement))~~ result? ~~((The department will deny, suspend or revoke your license, contract, certification, or authorization to care for individuals with a developmental disability, if you or someone working within your program who has unsupervised access does not comply with the department's requirement for a background check))~~ (1) If an individual has a disqualifying background check result:

(a) The individual must not have access to clients or their personal information; and

(b) The department must not pay for services provided by the individual.

(2) If a provider or anyone the provider employs is required to complete a background check under WAC 388-825-610 and receives a disqualifying background check result, the department may deny, suspend, or revoke the provider's license, contract, or certification.

(3) If a provider or anyone the provider employs is required to complete a background check under WAC 388-825-610 and receives a disqualifying background check result, the provider must immediately notify DDA of the result.

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, recodified as § 388-825-625, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0625, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-630 What does the background check cover? (1) The department must review criminal convictions and pending charges based on identifying information provided by you. The background check may include but is not limited to the following information sources:

- (a) Washington state patrol.
- (b) Washington courts.
- (c) Department of corrections.
- (d) Department of health.
- (e) Civil adjudication proceedings.
- (f) Applicant's self-disclosure.
- (g) Out-of-state law enforcement and court records.

(2) DDA requires fingerprint-based background checks as described in WAC 388-825-615. These background checks include a review of conviction records through the Washington state patrol, the Federal Bureau of Investigation, and the ((national)) Washington state sex offender registry.

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, amended and recodified as § 388-825-630, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0630, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-635 Who pays for the background check? (1) DDA pays for background checks ((, including fingerprint-based background checks,)) for individuals seeking ((authorization)) to provide services to clients of DDA, if processed through the DSHS background check central unit (BCCU).

(2) DDA pays for fingerprint services if the fingerprinting entity is contracted with BCCU.

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, recodified as § 388-825-635, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0635, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-650 What does a character, competence, and suitability review include? The contractor, entity, or hiring authority must review an individual's background to determine character, competence, and suitability to have unsupervised access to individuals with a developmental disability. In this review, the contractor, entity, or hiring authority must consider the following factors:

- (1) The amount of time that has passed since (~~you were~~) a person was convicted or (~~were~~) subject to a negative action;
- (2) The seriousness of the crime or action that led to the conviction or finding;
- (3) The number and types of other convictions in (~~your~~) the person's background;
- (4) (~~Your~~) The person's age at the time of conviction;
- (5) Documentation indicating (~~you have~~) the person has successfully completed all court-ordered programs and restitution;
- (6) (~~Your~~) The person's behavior since the conviction; and
- (7) The vulnerability of those that would be under (~~your~~) the person's care.

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, recodified as § 388-825-650, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0650, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-655 How will (~~I~~) someone know if (~~I~~) they have been disqualified by the background check? (1) The department will notify (~~you~~) the person, and the care provider, the employer, or the licenser if (~~you have~~) the person has been disqualified by the background check. The notice will be in writing and will include any laws and rules that require disqualification.

(2) If the department sends (~~you~~) the person a notice of disqualification, (~~you~~) the person will not receive a license, contract, certification, or be authorized to have unsupervised access to individuals with a developmental disability.

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, recodified as § 388-825-655, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0655, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-660 May (~~I appeal the department's~~) a provider appeal DDA's decision to deny (~~me~~) a contract or (~~authorization~~)

payment based on the results of the background check? (~~((1) No,~~) A provider or prospective (~~(volunteers, interns, contractors, or those seeking certification do)~~) provider does not have the right to appeal (~~(the department's)~~) DDA's decision to deny (~~(authorization for unsupervised access to individuals with a developmental disability.~~

~~(2) The employer or prospective employer cannot contest the department's decision on your behalf)~~ a contract or payment based on the results of a background check.

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, redefined as § 388-825-660, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0660, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-670 May ((F)) a person receive a copy of ((my)) their criminal background check results? (1) The department will provide (~~(you)~~) a person a copy of (~~(your)~~) their criminal background check results if (~~(you)~~) the person:

(a) (~~(Make the)~~) Submits a written request (~~(in writing)~~) to the department; and

(b) (~~(Offer)~~) Offers proof of identity, such as picture identification.

(2) A copy of (~~(your)~~) a WSP criminal background check (~~(re-~~ sults)) result may also be obtained from the Washington state patrol (~~(+)~~) according to the Washington State Criminal Records Privacy Act under chapter 10.97 RCW(~~(+)~~).

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, redefined as § 388-825-670, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0670, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 19-04-090, filed 2/5/19, effective 3/8/19)

WAC 388-845-1615 Who may be qualified providers of respite care?

Providers of respite care may be any of the following individuals or agencies contracted with the developmental disabilities administration (DDA) for respite care:

(1) Individuals who meet the provider qualifications under chapter 388-825 WAC;

(2) The consumer-directed employer under chapter 388-115 WAC;

(3) Home health agencies licensed under chapter 246-335 WAC, Part 1;

~~((3))~~ (4) Homecare agencies licensed under chapter 246-335 WAC, Part 1 and contracted with the area agencies on aging (AAA);

~~((4))~~ (5) Licensed and contracted group homes, foster homes, child placing agencies, staffed residential homes, and foster group care homes;

~~((5))~~ (6) Licensed and contracted adult family homes;

~~((6))~~ (7) Licensed and contracted adult residential care facilities;

~~((7))~~ (8) Licensed and contracted adult residential treatment facilities under chapter 246-337 WAC;

~~((8))~~ (9) Licensed child care centers under chapter 110-300 ~~((A))~~ WAC;

~~((9))~~ (10) Licensed child day care centers under chapter 110-300 ~~((A))~~ WAC;

~~((10))~~ (11) Adult day care providers under chapter 388-71 WAC contracted with DDA;

~~((11))~~ (12) Certified providers under chapter 388-101 WAC when respite is provided within the DDA contract for certified residential services;

~~((12))~~ (13) A licensed practical nurse (LPN) or registered nurse (RN) acting within the scope of the standards of nursing conduct or practice under ~~((chapter))~~ title 246 ~~((700))~~ WAC and contracted with DDA to provide this service; or

~~((13))~~ (14) Other DDA contracted providers such as a community center, senior center, parks and recreation, and summer programs.

[Statutory Authority: RCW 71A.12.030, 71A.12.120 and 42 C.F.R. 302 (a)(2). WSR 19-04-090, § 388-845-1615, filed 2/5/19, effective 3/8/19. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-1615, filed 6/20/18, effective 7/21/18. Statutory Authority: RCW 71A.12.030. WSR 17-12-011, § 388-845-1615, filed 5/26/17, effective 6/26/17. Statutory Authority: RCW 71A.12.030, 71A.12.120, and 2015 3rd sp.s. c 4. WSR 16-17-003, § 388-845-1615, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1615, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-1615, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-1615, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-1615, filed 12/13/05, effective 1/13/06.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-825-073	What is a "state-only funded" service?
WAC 388-825-079	If I am not on a DDD HCBS waiver, can I receive services that are available through the DDD HCBS waivers with state-only funding?
WAC 388-825-081	Can I receive state-only funded services that are not available in a DDA HCBS waiver?

- WAC 388-825-325 What are the required skills and abilities for individuals and agencies contracted to provide community first choice services, medicaid personal care, respite care, or attendant care services?
- WAC 388-825-395 What are the client's rights if the department denies, terminates, or summarily suspends an individual's contract to provide respite care, attendant care, or personal care?

WSR 23-04-015

PROPOSED RULES

WASHINGTON STATE LOTTERY

[Filed January 20, 2023, 10:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-17-146.

Title of Rule and Other Identifying Information: Washington's lottery is proposing to add a new chapter to Title 315 WAC to create rules for a new draw game known as Cash Pop.

Hearing Location(s): On April 20, 2023, at 8:30 a.m., at 814 4th Avenue East, Olympia, WA 98506-3922. A remote option will be available for this hearing using Microsoft Teams. See walottery.com or call or email Kristi Weeks for details on how to participate remotely.

Date of Intended Adoption: April 19, 2023.

Submit Written Comments to: Kristi Weeks, P.O. Box 4300, Olympia, WA 98504-3000, phone 360-810-2881, email KWeeks@walottery.com, fax 360-515-0416, by April 19, 2023.

Assistance for Persons with Disabilities: Contact Debbie Robinson, phone 360-791-3045, fax 360-742-3902, TTY 360-586-0933, email DRobinson@walottery.com, by April 12, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed new rules will describe a new draw game known as Cash Pop.

Reasons Supporting Proposal: This game has proven to be successful in other states and could help lottery achieve its statutory mandate to "produce the maximum amount of net revenues for the state ..." Rules are necessary to inform the public how the game is played, odds, ticket price, prize structure, etc.

Statutory Authority for Adoption: RCW 67.70.040(1).

Statute Being Implemented: RCW 67.70.040.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington's lottery, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Kristi Weeks, 814 4th Avenue East, Olympia, WA, 360-810-2881; and Enforcement: Marcus Glasper, 814 4th Avenue East, Olympia, WA, 360-810-2866.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Lottery is not an agency listed in RCW 34.05.328 (5)(a)(i). Further, lottery does not voluntarily make that section applicable to the adoption of this rule pursuant to subsection (5)(a)(ii) and to date the joint rules review committee has not made the section applicable to the adoption of this rule.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Scope of exemption for rule proposal:

Is fully exempt.

January 19, 2023
Kristi Weeks
Director of Legal Services

OTS-4318.1

**Chapter 315-42 WAC
CASH POP GAME RULES**

NEW SECTION

WAC 315-42-010 Definitions for Cash Pop. (1) "Cash Pop ticket" means a computer-generated receipt from a licensed lottery retailer evidencing payment for one or more Cash Pop plays.

(2) "Game grids" means a field of 15 numbers found on the play slip.

(3) "Lottery drawing official" means lottery personnel designated by the director to conduct drawings.

(4) "Number" means any play integer from one through 15 inclusive.

(5) "Play" means one selection of one number.

(6) "Play slip" means a mark-sensitive game card used by Cash Pop players to select a play(s).

[]

NEW SECTION

WAC 315-42-020 Play for Cash Pop. (1) A Cash Pop player shall select one number in each play.

(2) (a) A player may use a play slip to make number selection(s). The lottery terminal will read the play slip and issue ticket(s) with corresponding play(s). If a play slip is not available, the lottery retailer may enter the selected number via the keyboard; or

(b) A player may choose to have the number selections made by the lottery terminal using a random number generator, commonly referred to as a "quick pick."

(3) A player wins the prize printed on the Cash Pop ticket by matching the number on the ticket to the lottery's certified winning number for the drawing date.

[]

NEW SECTION

WAC 315-42-030 Price of Cash Pop play. The price of each Cash Pop play is \$5. Each Cash Pop ticket must contain at least one Cash Pop play. A single ticket may contain up to five Cash Pop plays, for a maximum wager of \$25.

[]

NEW SECTION

WAC 315-42-040 Cash Pop ticket purchases. (1) Cash Pop tickets may be purchased daily in accordance with a schedule to be determined by the director. Cash Pop tickets may be purchased only from a licensed lottery retailer. Licensed lottery retailers shall sell and redeem tickets only during their normal business hours.

(2) Cash Pop tickets shall contain the selected number(s), wager amount, drawing date, ticket serial number and reference numbers, overall odds of winning any Cash Pop prize, player instructions, player information, signature area, governing statutes and rules, and the ticket stock number.

(3) Cash Pop tickets cannot be canceled.

[]

NEW SECTION

WAC 315-42-050 Drawings. (1) Cash Pop drawings shall be held pursuant to WAC 315-30-040.

(2) The drawings will be conducted by lottery drawing officials.

(3) Each drawing will randomly select one winning number. The drawing method will be tested before and after each drawing. A drawn number is not a declared winner until the drawing is certified by the lottery. The certified winning number shall be used in determining all Cash Pop winners for that drawing. If a drawing is not certified, another drawing will be conducted to determine the winning number.

(4) The drawing shall not be invalidated based on the liability of the lottery.

(5) The Cash Pop drawings shall be held on a daily basis, Sunday through Saturday, except that the director may exclude certain holidays from the drawing schedule.

[]

NEW SECTION

WAC 315-42-060 Prizes for Cash Pop. (1) Prizes range from \$25 to \$500 per \$5 wagered.

(2) A randomly selected prize will appear beneath the Cash Pop play number printed on each ticket that will be won if that number is drawn by the lottery. The same number may win a different prize on a different ticket.

(3) The prize amounts to be paid to each Cash Pop player who selects a winning number are as follows:

Prize	Overall odds of winning a prize on ticket	Odds of prize appearing under each number
\$500	1 in 7,500	1 in 500.00
\$250	1 in 4,500	1 in 300.00
\$200	1 in 2,625	1 in 175.00

Prize	Overall odds of winning a prize on ticket	Odds of prize appearing under each number
\$125	1 in 675	1 in 45.00
\$100	1 in 150	1 in 10.00
\$70	1 in 120	1 in 8.00
\$50	1 in 90.0	1 in 6.00
\$35	1 in 75.0	1 in 5.00
\$25	1 in 40.0	1 in 2.67

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WSR 23-04-045
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed January 26, 2023, 11:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-20-084.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-412-0015 General information about your food assistance allotments, 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?, 388-450-0190 How does the department figure my shelter cost income deduction for basic food?, 388-450-0195 Does the department use my utility costs when calculating my basic food or WASHCAP benefits?, 388-470-0005 How do resources affect my eligibility for cash assistance and basic food?, and 388-478-0060 What are the income limits and maximum benefit amounts for basic food?

Hearing Location(s): On March 7, 2023, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/drivingdirections-office-bldg-2> [<https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>]; or virtually. Due to the COVID[-19] pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: No earlier than March 8, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by March 7, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tenczsa@dshs.wa.gov, by February 21, 2023, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments provide annual update in basic food standards relating to income, deductions, and benefits.

Reasons Supporting Proposal: Income limits and minimum and maximum benefit amounts, deductions, and resource limits are updated annually by the United States Department of Agriculture, Food and Nutrition Services, effective October 1.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and 74.08A.250.

Statute Being Implemented: RCW 43.20A.550.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Alexis Miller, P.O. Box 45470, Olympia, WA 98504-5470, 253-579-3144.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are exempt as allowed under RCW 34.05.328 (5) (b) (vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["]

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 34.05.328 (5) (b) (vii).

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS customers.

Scope of exemption for rule proposal:

Is fully exempt.

January 24, 2023
Katherine I. Vasquez
Rules Coordinator

SHS-4947.1

AMENDATORY SECTION (Amending WSR 22-09-040, filed 4/13/22, effective 5/14/22)

WAC 388-412-0015 General information about your food assistance allotments. (1) Your monthly allotment under the Washington basic food program, food assistance program for legal immigrants (FAP), Washington combined application project (WASHCAP), or the transitional food assistance (TFA) program is the total dollar value of benefits your assistance unit (AU) receives for a calendar month.

(2) **How we determine monthly allotments:**

(a) We calculate your monthly allotment for federally funded basic food as described under WAC 388-450-0162.

(b) We calculate your monthly allotment for state-funded food assistance as described under WAC 388-400-0050.

(3) **Maximum allotment:**

(a) The maximum allotment for the number of people in your AU eligible for federally funded basic food benefits is described under WAC 388-478-0060.

(b) The maximum allotment for the number of people in your AU eligible for state-funded FAP benefits is set by the legislature in the biennial operating budget as described in WAC 388-400-0050.

(4) **Prorated benefits in the first month.** If we determine you are eligible for food assistance, your first month's benefits are calculated from the date you applied through the end of the month of your application. This is called proration and is based on a (~~thirty~~) 30-day month:

(a) If your prorated benefits for the first month are under (~~ten~~) 10 dollars, you will not receive an allotment for the first month.

(b) If there was a delay in processing your application, we determine when your benefits start under WAC 388-406-0055.

(5) **Combined allotment for first and second month's benefits.** If you apply for benefits on or after the (~~sixteenth~~) 16th of the month

and we determine you are eligible for food assistance for both the first and second month, we will issue both months' benefits in one allotment.

(6) **Minimum allotment.** Unless it is the first month of your certification period and your benefits are prorated as described in subsection (4) of this section, your monthly allotment will be at least:

(a) (~~Twenty dollars~~) \$23 if your AU has one or two members and at least one person is eligible for federally funded basic food; or

(b) (~~Twenty~~) \$23 dollars if your AU has one or two members and all members of your AU are eligible for state-funded FAP.

(7) **Use of food assistance benefits.** Your food assistance benefits may only be used to buy eligible food items as described under WAC 388-412-0046. If you use your benefits in any other way, it is an intentional program violation under WAC 388-446-0015 and could result in fines, imprisonment, disqualification from receiving food assistance benefits, or any combination of these penalties.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and 74.08A.250. WSR 22-09-040, § 388-412-0015, filed 4/13/22, effective 5/14/22. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and P.L. 115-334 § 4004. WSR 20-04-021, § 388-412-0015, filed 1/27/20, effective 2/27/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d)(iii)(B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-412-0015, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 16-20-087, § 388-412-0015, filed 10/4/16, effective 2/1/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120. WSR 15-02-041, § 388-412-0015, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and USDA, FNS, per SNAP Administrative Notice 13-26, SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA. WSR 14-04-050, § 388-412-0015, filed 1/27/14, effective 2/27/14. Statutory Authority: RCW 74.04.005, 74.04.500, 74.04.510, 74.04.515, 74.08.090, and 74.08A.120. WSR 12-18-024, § 388-412-0015, filed 8/27/12, effective 9/27/12. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, 74.04.770, 74.12.260, 74.08.580, 9.91.142, 7 C.F.R. 273.16, the Food and Nutrition Act of 2008 as amended and 42 U.S.C. 601a; and 2011 c 42. WSR 11-19-047, § 388-412-0015, filed 9/13/11, effective 10/14/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.04.500, 74.08A.120, and American Recovery and Reinvestment Act of 2009. WSR 09-14-018, § 388-412-0015, filed 6/22/09, effective 7/23/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 08-24-051, § 388-412-0015, filed 11/25/08, effective 12/26/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 05-02-016, § 388-412-0015, filed 12/27/04, effective 1/27/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 03-22-038, § 388-412-0015, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.04.510 and 74.08.090. WSR 01-18-054, § 388-412-0015, filed 8/30/01, effective 9/30/01; WSR 99-16-024, § 388-412-0015, filed 7/26/99, effective

9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-412-0015, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 22-09-040, filed 4/13/22, effective 5/14/22)

WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits? (1) We determine if your assistance unit (AU) is eligible for basic food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

(2) Under these federal laws, we subtract the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

(a) A standard deduction based on the number of eligible people in your AU under WAC 388-408-0035:

Eligible AU members	Standard deduction
((3)) 4 or fewer	\$(177)) 193
((4)) 5	\$(184)) 225
((5))	\$(215))
6 or more	\$258

(b) ~~((Twenty percent))~~ 20% of your AU's gross earned income (earned income deduction);

(c) Your AU's expected monthly dependent care expense needed for an AU member to:

(i) Keep work, look for work, or accept work;

(ii) Attend training or education to prepare for employment; or

(iii) Meet employment and training requirements under chapter 388-444 WAC;

(d) Medical expenses over \$35 ~~((dollars))~~ a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200; and

(e) A portion of your shelter costs as described in WAC 388-450-0190.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and 74.08A.250. WSR 22-09-040, § 388-450-0185, filed 4/13/22, effective 5/14/22. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. § 273.9 (a) (3), "USDA, Food and Nutrition Service, SNAP—Fiscal Year 2021 Cost-of-Living Adjustments (July 29, 2020)," and "USDA, Food and Nutrition Service, Standard utility allowance approval letter (August 4, 2020)" and H.R.133 Consolidated Appropriations Act 2021. WSR 21-13-122, § 388-450-0185, filed 6/21/21, effective 7/22/21. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and P.L. 115-334 § 4004. WSR 20-04-021, § 388-450-0185, filed 1/27/20, effective 2/27/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. §§ 273.1, 273.9

(d)(iii)(B); SNAP - FY 2019 COLAS dated July 27, 2018; and SNAP UA 2019 dated August 23, 2018. WSR 19-01-031, § 388-450-0185, filed 12/12/18, effective 1/12/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d)(iii)(B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-450-0185, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and SNAP Administrative Notice 16-38, dated August 12, 2016, 7 C.F.R. § 273.9 (d)(iii)(B), SNAP 10-6-WA-SUA, dated August 15, 2016. WSR 16-24-051, § 388-450-0185, filed 12/1/16, effective 1/1/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, FNS per SNAP Administrative Notice 15-28: SNAP - FY 2016, FNS 7 C.F.R. § 273.9 (d)(iii)(B)), and SNAP 10-6-WA-SUA dated August 18, 2015. WSR 15-24-075, § 388-450-0185, filed 11/25/15, effective 12/26/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120. WSR 15-02-041, § 388-450-0185, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and USDA, FNS, per SNAP Administrative Notice 13-26, SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA. WSR 14-04-050, § 388-450-0185, filed 1/27/14, effective 2/27/14. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and Supplemental Nutrition Assistance Program Administrative Notice 12-28 - Fiscal Year 2013 cost-of-living adjustments dated August 6, 2012. WSR 12-24-018, § 388-450-0185, filed 11/27/12, effective 12/28/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, "Supplemental Nutrition Assistance Program Fiscal Year 2012 Cost of Living Adjustments" memo dated August 2, 2011, and "SNAP Standard Utility (SUA) Annual Review and Adjustment Waiver for Certain States—Modification and Extension" memo dated December 2, 2010. WSR 11-24-027, § 388-450-0185, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 10-23-114, § 388-450-0185, filed 11/17/10, effective 12/18/10. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 U.S.C. 2014 (a) and (e)(1); 7 C.F.R. §§ 273.1 and 273.9 (d)(1). 10-16-104, § 388-450-0185, filed 8/2/10, effective 9/2/10. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and P.L. 107 - 171 § 4101. WSR 09-23-004, § 388-450-0185, filed 11/5/09, effective 11/15/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.120, and Food and Nutrition Act of 2008, Title 7 Part 273 of the C.F.R. WSR 09-07-054, § 388-450-0185, filed 3/11/09, effective 4/11/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 08-24-051, § 388-450-0185, filed 11/25/08, effective 12/26/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 7 C.F.R. § 273.9. WSR 07-22-035, § 388-450-0185, filed 10/30/07, effective 11/30/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. § 273.9. WSR 06-21-012, § 388-450-0185, filed 10/6/06, effective 11/6/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057,

74.04.510, and 74.08.090. WSR 05-21-101, § 388-450-0185, filed 10/18/05, effective 11/18/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-23-025, § 388-450-0185, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 03-21-030, § 388-450-0185, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and H.R. 2646 Farm Security and Rural Investment Act of 2002. WSR 02-22-044, § 388-450-0185, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 99-16-024, § 388-450-0185, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-450-0185, filed 7/31/98, effective 9/1/98.]

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

AMENDATORY SECTION (Amending WSR 22-09-040, filed 4/13/22, effective 5/14/22)

WAC 388-450-0190 How does the department figure my shelter cost income deduction for basic food? The department calculates your shelter cost income deduction for basic food as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties, or mortgage payments you make ahead of time as allowable shelter costs. We count the following expenses as an allowable shelter cost in the month the expense is due:

- (a) Monthly rent, lease, and mortgage payments;
- (b) Property taxes;
- (c) Homeowner's association or condo fees;
- (d) Homeowner's insurance for the building only;
- (e) Utility allowance your AU is eligible for under WAC

388-450-0195;

(f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;

(g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:

- (i) AU intends to return to the home;
- (ii) AU has current occupants who are not claiming the shelter costs for basic food purposes; and
- (iii) AU's home is not being leased or rented during your AU's absence.

(h) A homeless AU with shelter costs is eligible for a homeless shelter expense deduction of (~~(159 dollars)~~) \$166. If the homeless AU has shelter costs in excess of this amount, the AU has the option to claim either:

- (i) The homeless shelter deduction; or
- (ii) Actual shelter costs.

(2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (2)(a) through (2)(d) from your AU's gross income. The result is your AU's countable income.

(3) Finally, we subtract one-half of your AU's countable income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:

(a) Up to a maximum of (~~597-dollars~~) \$624 if no one in your AU is elderly or disabled; or

(b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over (~~597-dollars~~) \$624.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and 74.08A.250. WSR 22-09-040, § 388-450-0190, filed 4/13/22, effective 5/14/22. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. § 273.9 (a) (3), "USDA, Food and Nutrition Service, SNAP—Fiscal Year 2021 Cost-of-Living Adjustments (July 29, 2020)," and "USDA, Food and Nutrition Service, Standard utility allowance approval letter (August 4, 2020)" and H.R.133 Consolidated Appropriations Act 2021. WSR 21-13-122, § 388-450-0190, filed 6/21/21, effective 7/22/21. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and P.L. 115-334 § 4004. WSR 20-04-021, § 388-450-0190, filed 1/27/20, effective 2/27/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. §§ 273.1, 273.9 (d) (iii) (B); SNAP - FY 2019 COLAS dated July 27, 2018; and SNAP UA 2019 dated August 23, 2018. WSR 19-01-031, § 388-450-0190, filed 12/12/18, effective 1/12/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d) (iii) (B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-450-0190, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and SNAP Administrative Notice 16-38, dated August 12, 2016, 7 C.F.R. § 273.9 (d) (iii) (B), SNAP 10-6-WA-SUA, dated August 15, 2016. WSR 16-24-051, § 388-450-0190, filed 12/1/16, effective 1/1/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, FNS per SNAP Administrative Notice 15-28: SNAP - FY 2016, FNS 7 C.F.R. § 273.9 (d) (iii) (B)), and SNAP 10-6-WA-SUA dated August 18, 2015. WSR 15-24-075, § 388-450-0190, filed 11/25/15, effective 12/26/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120. WSR 15-02-041, § 388-450-0190, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and USDA, FNS, per SNAP Administrative Notice 13-26, SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA. WSR 14-04-050, § 388-450-0190, filed 1/27/14, effective 2/27/14. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. § 273.10. WSR 13-11-103, § 388-450-0190, filed 5/20/13, effective 6/20/13. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and Supplemental Nutrition Assistance Program Administrative Notice 12-28 - Fiscal Year 2013 cost-of-living adjustments dated August 6, 2012. WSR 12-24-018, § 388-450-0190, filed 11/27/12, effective 12/28/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510,

74.08.090, 74.08A.120, "Supplemental Nutrition Assistance Program Fiscal Year 2012 Cost of Living Adjustments" memo dated August 2, 2011, and "SNAP Standard Utility (SUA) Annual Review and Adjustment Waiver for Certain States—Modification and Extension" memo dated December 2, 2010. WSR 11-24-027, § 388-450-0190, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 10-23-114, § 388-450-0190, filed 11/17/10, effective 12/18/10; WSR 09-24-001, § 388-450-0190, filed 11/18/09, effective 12/19/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 08-24-050, § 388-450-0190, filed 11/25/08, effective 12/26/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 7 C.F.R. § 273.9. WSR 07-22-035, § 388-450-0190, filed 10/30/07, effective 11/30/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. § 273.9. WSR 06-21-012, § 388-450-0190, filed 10/6/06, effective 11/6/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 05-21-101, § 388-450-0190, filed 10/18/05, effective 11/18/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-23-025, § 388-450-0190, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 04-07-138, § 388-450-0190, filed 3/22/04, effective 5/1/04; WSR 03-21-030, § 388-450-0190, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 02-22-045, § 388-450-0190, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. WSR 01-21-059, § 388-450-0190, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 01-06-030, § 388-450-0190, filed 3/2/01, effective 4/2/01; WSR 99-16-024, § 388-450-0190, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-450-0190, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 22-09-040, filed 4/13/22, effective 5/14/22)

WAC 388-450-0195 Does the department use my utility costs when calculating my basic food or WASHCAP benefits? (1) The department uses utility allowances instead of the actual utility costs your assistance unit (AU) pays when we determine your:

(a) Monthly benefits under WAC 388-492-0070 if you receive Washington state combined application project (WASHCAP); or

(b) Shelter cost income deduction under WAC 388-450-0190 for basic food.

(2) We use the following amounts if you have utility costs separate from your rent or mortgage payment:

(a) If your AU has heating or cooling costs or receives more than (~~20 dollars~~) \$20 in low income home energy assistance program (LIHEAP) benefits each year, you get a standard utility allowance (SUA) of (~~459 dollars~~) \$462.

(b) If your household does not receive a LIHEAP payment and the reason is solely because of your immigration status, you get a SUA of (~~459 dollars~~) \$462.

(c) If your AU does not qualify for the SUA and you have any two utility costs listed in subsection (3) of this section, you get a limited utility allowance (LUA) of (~~(\$361-dollars)~~) \$365.

(d) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of (~~(\$59-dollars)~~) \$59.

(3) "Utility costs" include the following:

- (a) Heating or cooling fuel;
- (b) Electricity or gas;
- (c) Water;
- (d) Sewer;
- (e) Well installation/maintenance;
- (f) Septic tank installation/maintenance;
- (g) Garbage/trash collection; and
- (h) Telephone service.

(4) If you do not have a utility cost separate from your rent or mortgage payment and do not receive low income energy assistance program (LIHEAP), you do not receive a utility allowance.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and 74.08A.250. WSR 22-09-040, § 388-450-0195, filed 4/13/22, effective 5/14/22. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. § 273.9 (a) (3), "USDA, Food and Nutrition Service, SNAP—Fiscal Year 2021 Cost-of-Living Adjustments (July 29, 2020)," and "USDA, Food and Nutrition Service, Standard utility allowance approval letter (August 4, 2020)" and H.R.133 Consolidated Appropriations Act 2021. WSR 21-13-122, § 388-450-0195, filed 6/21/21, effective 7/22/21. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and P.L. 115-334 § 4004. WSR 20-04-021, § 388-450-0195, filed 1/27/20, effective 2/27/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. §§ 273.1, 273.9 (d) (iii) (B); SNAP - FY 2019 COLAS dated July 27, 2018; and SNAP UA 2019 dated August 23, 2018. WSR 19-01-031, § 388-450-0195, filed 12/12/18, effective 1/12/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d) (iii) (B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-450-0195, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, 7 C.F.R. 273.9 (d) (6) (iii) (B). WSR 17-10-069, § 388-450-0195, filed 5/3/17, effective 6/3/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and SNAP Administrative Notice 16-38, dated August 12, 2016, 7 C.F.R. § 273.9 (d) (iii) (B), SNAP 10-6-WA-SUA, dated August 15, 2016. WSR 16-24-051, § 388-450-0195, filed 12/1/16, effective 1/1/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, FNS per SNAP Administrative Notice 15-28: SNAP - FY 2016, FNS 7 C.F.R. § 273.9 (d) (iii) (B)), and SNAP 10-6-WA-SUA dated August 18, 2015. WSR 15-24-075, § 388-450-0195, filed 11/25/15, effective 12/26/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120. WSR 15-02-041, § 388-450-0195, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW

74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090 and Agricultural Act of 2014. WSR 14-12-085, § 388-450-0195, filed 6/3/14, effective 7/4/14. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and USDA, FNS, per SNAP Administrative Notice 13-26, SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA. WSR 14-04-050, § 388-450-0195, filed 1/27/14, effective 2/27/14. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, "Supplemental Nutrition Assistance Program Fiscal Year 2012 Cost of Living Adjustments" memo dated August 2, 2011, and "SNAP Standard Utility (SUA) Annual Review and Adjustment Waiver for Certain States—Modification and Extension" memo dated December 2, 2010. WSR 11-24-027, § 388-450-0195, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. § 273.9 (d) (6) (3). WSR 10-18-050, § 388-450-0195, filed 8/26/10, effective 10/1/10. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 09-24-001, § 388-450-0195, filed 11/18/09, effective 12/19/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 08-21-106, § 388-450-0195, filed 10/16/08, effective 11/16/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 7 C.F.R. § 273.9. WSR 07-22-036, § 388-450-0195, filed 10/30/07, effective 11/30/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. 273.9 (d) (6) (iii) (b). WSR 06-21-011, § 388-450-0195, filed 10/6/06, effective 11/6/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 06-10-056, § 388-450-0195, filed 5/1/06, effective 6/1/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. § 273.9. WSR 05-19-062, § 388-450-0195, filed 9/16/05, effective 10/17/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. WSR 05-09-087, § 388-450-0195, filed 4/19/05, effective 6/1/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-23-025, § 388-450-0195, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 03-21-030, § 388-450-0195, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 02-22-045, § 388-450-0195, filed 10/30/02, effective 12/1/02. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. WSR 01-21-059, § 388-450-0195, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.04.510. WSR 00-22-065, § 388-450-0195, filed 10/27/00, effective 11/1/00. Statutory Authority: RCW 74.04.050, 74.04.510 [74.04.510]. WSR 99-24-052, § 388-450-0195, filed 11/29/99, effective 12/1/99. Statutory Authority: RCW 74.04.510. WSR 99-09-055, § 388-450-0195, filed 4/19/99, effective 5/20/99. Statutory Authority: RCW 74.04.510 and 7 C.F.R. 273.9 (d) (6). WSR 99-01-069, § 388-450-0195, filed 12/14/98, effective 1/14/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-450-0195, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 22-09-040, filed 4/13/22, effective 5/14/22)

WAC 388-470-0005 How do resources affect my eligibility for cash assistance and basic food? (1) The following definitions apply to this chapter:

- (a) **"We"** means the department of social and health services.
- (b) **"You"** means a person applying for or getting benefits from the department.
- (c) **"Fair market value"** or **"FMV"** means the price at which you could reasonably sell the resource.
- (d) **"Equity value"** means the FMV minus any amount you owe on the resource.
- (e) **"Community property"** means a resource in the name of the husband, wife, or both.
- (f) **"Separate property"** means a resource of a married person that one of the spouses:
 - (i) Had possession of and paid for before they were married;
 - (ii) Acquired and paid for entirely out of income from separate property; or
 - (iii) Received as a gift or inheritance.

(2) We count a resource to decide if your assistance unit (AU) is eligible for cash assistance or basic food when:

- (a) It is a resource we must count under WAC 388-470-0045 for cash assistance or WAC 388-470-0055 for basic food;
- (b) You own the resource and we consider you to own a resource if:

- (i) Your name is on the title to the property; or
- (ii) You have property that does not have a title;
- (c) You have control over the resource, which means the resource is actually available to you; and
- (d) You could legally sell the resource or convert it into cash within 20 days.

(3) For cash assistance, you must try to make your resources available even if it will take you more than 20 days to do so, unless:

- (a) There is a legal barrier; or
- (b) You must petition the court to release part or all of a resource.

(4) When you apply for assistance, we count your resources as of:

- (a) The date of your interview, if you are required to have an interview; or
- (b) The date of your application, if you are not required to have an interview.

(5) If your total countable resources are over the resource limit in subsection (6) through (13) of this section, you are not eligible for benefits.

(6) For cash assistance, there is an equity value resource limit of (~~(\$6,000 dollars)~~) \$6,000.

(7) If your AU is categorically eligible (CE) as described in WAC 388-414-0001, you do not have a resource limit for basic food.

(8) If your AU is not CE under WAC 388-414-0001, your AU may have countable resources up to the following amount and be eligible for basic food:

- (a) (~~(Three thousand seven hundred fifty dollars)~~) \$4,250 if your AU has either an elderly or disabled individual; or
- (b) (~~(Two thousand five hundred dollars)~~) \$2,750 for all other AUs.

(9) If you own a countable resource with someone who is not in your AU, we count the portion of the resource that you own. If we cannot determine how much of the resource is yours:

(a) For cash assistance, we count an equal portion of the resource that belongs to each person who owns it.

(b) For basic food, we count the entire amount unless you can prove that the entire amount is not available to you.

(10) We assume that you have control of community property and you can legally sell the property or convert it to cash unless you can show that you do not.

(11) We may not consider an item to be separate property if you used both separate and community funds to buy or improve it.

(12) We do not count the resources of victims of family violence when:

(a) The resource is owned jointly with members of the former household;

(b) Availability of the resource depends on an agreement of the joint owner; or

(c) Making the resource available would place the client at risk of harm.

(13) You may give us proof about a resource anytime, including when we ask for it or if you disagree with a decision we made, about:

(a) Who owns a resource;

(b) Who has legal control of a resource;

(c) The value of a resource;

(d) The availability of a resource; or

(e) The portion of a property you or another person owns.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and 74.08A.250. WSR 22-09-040, § 388-470-0005, filed 4/13/22, effective 5/14/22; WSR 19-01-105, § 388-470-0005, filed 12/18/18, effective 2/1/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d) (iii) (B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-470-0005, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120. WSR 15-02-041, § 388-470-0005, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, and 2011 1st sp.s. c 15. WSR 13-18-005, § 388-470-0005, filed 8/22/13, effective 10/1/13. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and Supplemental Nutrition Assistance Program Administrative Notice 11-37, "Supplemental Nutrition Assistance Program FY 2012 Asset Limit Increase for Households with and [an] Elderly or Disabled Member." WSR 11-24-028, § 388-470-0005, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 03-05-015, § 388-470-0005, filed 2/7/03, effective 3/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-470-0005, filed 7/31/98, effective 9/1/98.]

AMENDATORY SECTION (Amending WSR 22-09-040, filed 4/13/22, effective 5/14/22)

WAC 388-478-0060 What are the income limits and maximum benefit amounts for basic food? (1) If your assistance unit (AU) meets all other eligibility requirements for basic food, your AU must have income at or below the limits in columns B and C of this subsection to get basic food, unless you meet one of the exceptions listed below in subsection (2) of this section.

The maximum monthly food assistance benefit your AU could receive is listed in column D of this subsection.

EFFECTIVE 10/1/2021

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net (Countable) Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	\$((1,396)) <u>1,473</u>	\$((1,074)) <u>1,133</u>	\$((250)) <u>281</u>	\$((1,777)) <u>1,869</u>
2	((1,888)) <u>1,984</u>	((1,452)) <u>1,526</u>	((459)) <u>516</u>	((2,396)) <u>2,518</u>
3	((2,379)) <u>2,495</u>	((1,830)) <u>1,920</u>	((658)) <u>740</u>	((3,020)) <u>3,167</u>
4	((2,871)) <u>3,007</u>	((2,209)) <u>2,313</u>	((835)) <u>939</u>	((3,644)) <u>3,816</u>
5	((3,363)) <u>3,518</u>	((2,587)) <u>2,706</u>	((992)) <u>1,116</u>	((4,268)) <u>4,465</u>
6	((3,855)) <u>4,029</u>	((2,965)) <u>3,100</u>	((1,190)) <u>1,339</u>	((4,893)) <u>5,114</u>
7	((4,347)) <u>4,541</u>	((3,344)) <u>3,493</u>	((1,316)) <u>1,480</u>	((5,517)) <u>5,763</u>
8	((4,839)) <u>5,052</u>	((3,722)) <u>3,886</u>	((1,504)) <u>1,691</u>	((6,141)) <u>6,412</u>
9	((5,331)) <u>5,564</u>	((4,101)) <u>4,280</u>	((1,692)) <u>1,902</u>	((6,766)) <u>7,061</u>
10	((5,823)) <u>6,076</u>	((4,480)) <u>4,674</u>	((1,880)) <u>2,113</u>	((7,391)) <u>7,710</u>
Each Additional Member	+((492)) <u>512</u>	+((379)) <u>394</u>	+((153)) <u>211</u>	+((625)) <u>649</u>

(2) Exceptions:

(a) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C of subsection (1) of this section. We budget your AU's income to decide the amount of basic food your AU will receive.

(b) If your AU includes a member who is 60 years of age or older or has a disability, your AU's income must be at or below the limit in column C of subsection (1) of this section.

(c) If you are 60 years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E of subsection (1) of this section to decide if you can be a separate AU.

(d) If your AU has zero income, your benefits are the maximum allotment in column D of subsection (1) of this section, based on the number of eligible members in your AU.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.010, 74.08A.120, and 74.08A.250. WSR 22-09-040, § 388-478-0060, filed 4/13/22, effective 5/14/22. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. § 273.9 (a) (3), "USDA, Food and Nutrition Service, SNAP—Fiscal Year 2021 Cost-of-Living Adjustments (July 29, 2020)," and "USDA, Food and Nutrition Service, Standard utility allowance approval letter (August 4, 2020)" and H.R.133 Consolidated Appropriations Act 2021. WSR

21-13-122, § 388-478-0060, filed 6/21/21, effective 7/22/21. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and P.L. 115-334 § 4004. WSR 20-04-021, § 388-478-0060, filed 1/27/20, effective 2/27/20. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and 7 C.F.R. §§ 273.1, 273.9 (d)(iii)(B); SNAP - FY 2019 COLAS dated July 27, 2018; and SNAP UA 2019 dated August 23, 2018. WSR 19-01-031, § 388-478-0060, filed 12/12/18, effective 1/12/19. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120, 7 C.F.R. §§ 273.1 and 273.9 (d)(iii)(B), SNAP Administrative Notice 17-30, and SNAP memo dated August 28, 2017. WSR 18-02-043, § 388-478-0060, filed 12/26/17, effective 1/26/18. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and SNAP Administrative Notice 16-38, dated August 12, 2016, 7 C.F.R. § 273.9 (d)(iii)(B), SNAP 10-6-WA-SUA, dated August 15, 2016. WSR 16-24-051, § 388-478-0060, filed 12/1/16, effective 1/1/17. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, FNS per SNAP Administrative Notice 15-28: SNAP - FY 2016, FNS 7 C.F.R. § 273.9 (d)(iii)(B)), and SNAP 10-6-WA-SUA dated August 18, 2015. WSR 15-24-075, § 388-478-0060, filed 11/25/15, effective 12/26/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120. WSR 15-02-041, § 388-478-0060, filed 1/2/15, effective 2/2/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120 and USDA, FNS, per SNAP Administrative Notice 13-26, SNAP - FY 2014 COLAS and ARRA Sunset Impact on Allotments dated August 2, 2013, and USDA SNAP 10-6-WA-SUA dated August 8, 2013, approving the proposed SUA. WSR 14-04-050, § 388-478-0060, filed 1/27/14, effective 2/27/14. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and Supplemental Nutrition Assistance Program Administrative Notice 12-28 - Fiscal Year 2013 cost-of-living adjustments dated August 6, 2012. WSR 12-24-018, § 388-478-0060, filed 11/27/12, effective 12/28/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, "Supplemental Nutrition Assistance Program Fiscal Year 2012 Cost of Living Adjustments" memo dated August 2, 2011, and "SNAP Standard Utility (SUA) Annual Review and Adjustment Waiver for Certain States—Modification and Extension" memo dated December 2, 2010. WSR 11-24-027, § 388-478-0060, filed 12/1/11, effective 1/1/12. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 7 C.F.R. 273.9. WSR 09-24-001, § 388-478-0060, filed 11/18/09, effective 12/19/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.04.500, 74.08A.120, and American Recovery and Reinvestment Act of 2009. WSR 09-14-018, § 388-478-0060, filed 6/22/09, effective 7/23/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 08-24-050, § 388-478-0060, filed 11/25/08, effective 12/26/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510 and 7 C.F.R. § 273.9. WSR 07-22-035, § 388-478-0060, filed 10/30/07, effective 11/30/07. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. § 273.9. WSR 06-21-012, § 388-478-0060, filed 10/6/06, effective 11/6/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and

74.08.090. WSR 05-21-101, § 388-478-0060, filed 10/18/05, effective 11/18/05. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 04-23-025, § 388-478-0060, filed 11/8/04, effective 12/9/04. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510. WSR 03-21-030, § 388-478-0060, filed 10/7/03, effective 12/1/03. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090. WSR 02-21-050, § 388-478-0060, filed 10/14/02, effective 12/1/02. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. WSR 01-21-059, § 388-478-0060, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.04.510, 74.08.090. WSR 00-23-013, § 388-478-0060, filed 11/3/00, effective 12/4/00. Statutory Authority: RCW 74.04.510. WSR 99-24-053, § 388-478-0060, filed 11/29/99, effective 12/30/99. Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 99-16-024, § 388-478-0060, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.500, 74.04.510, 74.08.090. WSR 99-05-074, § 388-478-0060, filed 2/17/99, effective 3/20/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-478-0060, filed 7/31/98, effective 9/1/98.]

WSR 23-04-046

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed January 26, 2023, 11:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-08-110.

Title of Rule and Other Identifying Information: This proposal would update chapter 388-76 WAC, Adult family home minimum licensing requirements; amending WAC 388-76-10000 Definitions, 388-76-10030 Adult family home capacity, 388-76-10055 Application—Generally, 388-76-10175 Background checks—Employment—Conditional hire—Pending results of Washington state name and date of birth background check, 388-76-10191 Liability insurance required, 388-76-10192 Liability insurance required—Coverage requirements, 388-76-10780 Toilets and bathing facilities, 388-76-11050 Management agreements—General and 388-76-11055 Management agreements—Adult family home; new WAC 388-76-10004 Exemptions, 388-76-10031 License requirements—Seven or eight bed adult family homes—Licensure, and 388-76-10032 License requirements—Seven or eight bed adult family homes—Change of ownership; and repealing WAC 388-76-10193 Liability insurance required—Professional liability insurance coverage.

Hearing Location(s): On March 21, 2023, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID[-19] pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than March 22, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by March 21, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Shelley.Tencza@dshs.wa.gov, by March 7, 2023, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is necessary to incorporate ESHB 1023, 2020 regular session, into the rules. This passed legislation allows certain adult family home providers to increase their capacity from six residents to eight. This rule making is also intended to address challenges that the adult family home industry is facing with complying with the liability insurance requirements in the current rules, and to clarify use, implementation, and enforcement of management agreements. New rules were developed to create a process for adult family home providers to request an exemption to rule. This was requested during the stakeholder meetings.

Reasons Supporting Proposal: This rule making is necessary to incorporate ESHB 1023, 2020 regular session, into the rules. The other sections of rule: (1) Obtaining liability insurance has become increasingly difficult. The proposed language is intended to remove a barrier to the process; (2) the term "management agreement" has been confused with "temporary manager." Clarifying the rule will reduce confusion about these terms and will simplify the requirements by re-

moving the need for department review of management agreements; and (3) developing requirements for exemptions to the adult family home rules will enable some providers to meet the minimum standards in another way. This could help increase the number of adult family home beds.

Statutory Authority for Adoption: RCW 70.128.040.

Statute Being Implemented: RCW 70.128.066.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Colleen Jensen, P.O. Box 45600, Olympia, WA 98504, 564-999-3182.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Colleen Jensen, P.O. Box 45600, Olympia, WA 98504, phone 564-999-3182, TTY 711, email colleen.jensen1@dshs.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions: The proposed rule requires adult family homes wishing to increase capacity to seven or eight beds complete a capacity increase request application to DSHS. Other parts of the rules correct or clarify language or incorporate by reference.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: WAC 388-76-10055 Application—Generally—Adoption of statute without material change; RCW 34.05.310 (4) (c) and (g). WAC 388-76-10175 Background checks—Employment—Conditional hire—Pending results of Washington state name and date of birth background check; language change made for clarity only; RCW 34.05.310 (4) (d). New WAC 388-76-10032 Seven or eight bed adult family homes—Change of ownership, adoption of statute without material change; RCW 34.05.310 (4) (c).

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement

SUMMARY OF PROPOSED RULES: The DSHS, aging and long-term support administration is proposing amendments to chapter 388-76 WAC, Adult family home (AFH or home) minimum licensing requirements.

This chapter implements chapter 70.128 RCW to promote the safety and well-being of AFH residents, to specify standards for AFH providers, and to further establish requirements for operating an AFH. Specifically, the proposed rules:

- Establish requirements for AFHs to increase capacity for up to eight residents.
- Clarify the definition of "capacity" and address individuals who are not residents but may receive care in the home.
- Include a definition of "household member."
- Correct disparity in liability insurance requirements.
- Address the need for two toilets in homes licensed for five or more residents.
- Distinguish "management agreements" from "temporary manager" and eliminate the need for department approval to enter into management agreements.
- Provide criteria for exemption to the rules of the chapter.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT—DETERMINATION OF NEED: Chapter 19.85 RCW, The Regulatory Fairness Act (RFA), requires that the economic impact of proposed regulations be analyzed in relation to small businesses. The statute defines small businesses as those business entities that employ 50 or fewer people and are independently owned and operated.

The department has analyzed the proposed rule amendments and has determined that small businesses will be impacted by these changes, with some costs considered "more than minor" and disproportionate to small businesses.

INDUSTRY ANALYSIS: The department acknowledges that the majority of AFHs are operated as small businesses.

The department has determined that there are approximately 3,943 AFHs that meet the criteria for small businesses under RCW 19.85.020. These proposed rules impact all of these AFHs.

INVOLVEMENT OF SMALL BUSINESSES: The department held more than 10 stakeholder meetings to ensure appropriate input and feedback were allowed for consideration during the rule-making process. Stakeholders included leadership and representation from the AFH council, provider representation, long-term care ombuds, and the insurance industry. These meetings focused on the requirements of ESHB 1023 passed during the 2020 legislative session and how best to translate those requirements into the least burdensome rules. Homes and their advocacy groups were also given the opportunity to provide input on how the rules may impact costs for their businesses. For cost estimates, the department worked with insurance agents and the AFH council.

COST OF COMPLIANCE: Under RFA, the department has considered annual costs to small businesses that are \$50 or more per client served, per affected AFH.

The proposed rules have been evaluated and the department concludes the probable qualitative and quantitative benefits of the proposed rule amendments exceed the probable qualitative and quantitative cost. For liability insurance, homes will be required to add the state as an additional insured, requiring a cost of \$150-\$200 annually¹. In addition, as many as 11 percent of homes² may incur additional insurance expenses of \$2000-\$2500 annually³ should they need to acquire the

additional insurance required in these rules. Newly licensed homes licensed for five or more residents will incur costs for the second bathroom needed. The cost could be zero dollars for homes with an existing bathroom and up to more than \$10,000 for homes that must add a bathroom. These costs are offset by the anticipated improved resident quality of life, the opportunity for AFH providers to expand license capacity, and the higher level of protection provided by having more comprehensive liability insurance coverage.

GENERAL COSTS:

WAC 388-76-10004 Exemptions.

This proposed rule creates the opportunity for AFH providers to apply for exemptions to requirements under the chapter if they meet the proposed standards and pursuant to departmental approval.

Benefits: The proposed rules add flexibility for AFH providers to meet resident needs based on their abilities and their own circumstances, given requested exemptions do not violate the criteria attached to the proposed rule. The department assumes this will create opportunities to lower costs without decreasing health and safety outcomes for residents and create innovative ideas to meet resident needs in the AFH community.

Costs: The department assumes the costs associated with submitting an exemption request are negligible and related to staff time spent applying for exemptions. However, because exemptions typically reduce cost of compliance for the applicant, the department also assumes there is likely an overall savings associated with this proposed rule.

WAC 388-76-10030 AFH capacity. This rule sets clear parameters around the number of adults who can be cared for under an AFH license with or without special permission.

Benefits: The department assumes the proposed rule helps ensure quality of care for licensed residents by clarifying how the rule should be interpreted, helping prevent citations due to misunderstanding of unclear rule language.

Costs: The department assumes this proposed rule change may result in AFH providers choosing to decrease licensed capacity without discharging current residents. There is a potential for staff time to be used making licensing adjustments for AFH providers who serve non-resident individuals, based on the expected time needed to complete a simple form with readily available information. Printing and postage costs may apply. The department assumes these costs would be less than \$50.

WAC 388-76-10031 License requirements—Seven or eight bed adult family homes—Licensure.

This proposed rule allows for an AFH to apply for an increase in licensed capacity under the described conditions and adds a requirement for AFH providers to notify current residents and resident representatives of an application for an increase in licensed capacity.

Benefits: The proposed rule provides existing residents and their representatives ample time to consider the potential effects of a capacity increase and register their concerns with the AFH provider and the department. The department assumes the rule effectively supports residents in expressing concerns with or support of the capacity change and upholds safety standards in the AFH.

The proposed rule will increase the number of AFH beds, which will allow more options for potential residents and will help address the increasing demand for community options. AFHs eligible for expansion

sion are experienced and have demonstrated, over time, the ability to manage an AFH safely and effectively. This provides a level of confidence in the AFHs who are approved to provide care to seven or eight residents.

Costs: This rule will require a minimal amount of staff time to notify residents and resident representatives. The department assumes these costs would be less than \$50.

Additional costs for AFH providers who have not received department approval at a higher capacity in the past may be associated with staff time taken to escort an inspector and respond to interview questions. Costs for additional provider staff time to provide care during the inspection or interview questions may apply. The hourly costs⁴ are found in the table below, with costs broken out for metropolitan services areas (MSA)⁵, nonmetropolitan services areas (NMSA)⁶, and King County. The total AFH staff time spent in this process is typically less than one hour, resulting in a range of cost⁷ from \$14.68 to \$16.22 without benefits.

	Without Benefits	With 20% Benefits
King	\$16.22	\$19.47
MSA	\$15.45	\$18.54
NMSA	\$14.68	\$17.61

AFHs with newly constructed or modified bedrooms will need to be inspected by the local building jurisdiction if this has not yet occurred. Costs associated with this inspection vary by jurisdiction. The cost of an inspection for an AFH is not expected to exceed the cost of an inspection for a single-family home not used as an AFH.

WAC 388-76-10191 Liability insurance required. The existing rule allowed certain AFHs to obtain and maintain only general business liability insurance. Under the proposed rules, all AFHs must obtain and maintain general business liability insurance and professional liability insurance. The proposed rule would also set new parameters for the timing of insurance coverage and add a requirement for AFH providers to notify the department should coverage lapse.

Benefits: The proposed rule offers a greater level of protection for both residents and AFH providers should an event occur that would over-tax the resources of the AFH. Potential outcomes could include closure of the AFH due to financial hardship and transfer of residents. The avoided cost of potential closure and resident transfer are significant. The additional protection allows a resident to recoup cost of an injury sustained in the AFH.

The proposed rule removes a barrier to newly licensed AFHs by allowing flexibility to obtain liability insurance prior to admitting their first resident, or within a short time frame when they do not have a resident in their care.

Costs: This proposed rule requires an additional type of insurance for AFHs who were previously not required to have it. This will raise insurance costs for AFHs that were previously not required to have and did not have a medicaid contract requiring professional liability insurance. As many as 89 percent⁸ of AFHs should be unaffected by this change based on the number of medicaid-contracted facilities. Insurance costs are highly varied and individualized based on the circumstances of a given AFH. The average range for combined business liability and professional liability coverage starts at \$2,000-\$2,500 annually⁹ on the lower end of the scale based on the level of risk at-

tributed to the individual AFH. Insurance companies assess the risk differently, but could include compliance history and services provided.

WAC 388-76-10192 Liability insurance required—Coverage requirements. The proposed rule adds the state as an additional insured.

Benefits: The department assumes the additional oversight created by adding the state as an additional insured entity and provides an accountability mechanism for AFHs to maintain the appropriate coverage. The proposed rules will increase protections for residents and AFH providers by ensuring that AFHs are not at considerable financial risk due to missing insurance coverage.

Costs: The requirement to add the state as an additional insured will incur a cost. This cost is typically \$100-\$150¹⁰ plus tax, annually.

WAC 388-76-10780 Toilets and bathing facilities. This proposed rule requires newly licensed AFHs to have at least two toilets available for residents if the AFH is licensed at a capacity of five or more.

Benefits: The department assumes the provision of an additional toilet in AFHs that are licensed for five or more residents will have significant positive impacts on resident hygiene and morale. Meeting the basic needs of residents is essential to their well-being and by adding a toilet, the affected AFHs can reduce waits that could lead to unsanitary situations among residents.

Costs: AFHs seeking a new license for five or more residents may need to add a bathroom, make an existing bathroom accessible, or adjust their licensing application. This requirement affects newly licensed AFHs, excluding existing facilities from the cost of this rule change. For AFHs that already have two bathrooms available to residents, there is no additional cost. For AFHs that need to make amendments to a bathroom to make it available for residents and in compliance with chapter 388-76 WAC and the building code, this may range from small repairs under \$50 to repairs costing thousands of dollars. For AFHs that need to add a bathroom to comply with the rule requirement, the department assumes the cost would be \$10,000 or more, depending on size, design, labor, and materials.

WAC 388-76-11050 Management agreements—General. This proposed rule changes the timing of when an AFH must notify the department of a new or changed management agreement after initial licensure by submitting an attestation form. In addition, this proposed rule removes the requirement for AFHs to receive departmental approval before entering into a management agreement.

Benefits: The department assumes replacing the required department approval with an attestation form simplifies the management agreement process and saves staff time overall. Staff time taken to seek and receive departmental approval before entering a management agreement will be saved. The department assumes this cost savings would be approximately \$50. The proposed rule also creates an avoided cost associated with not being required to wait to enter into a management agreement until after the department has approved the change. This wait period is eliminated by allowing AFH providers to submit an attestation rather than waiting for department approval.

Costs: The department assumes there will be unquantified cost savings as a result of the proposed rules. The cost of completing and submitting the attestation form is offset by the cost savings of re-

moving the requirement for department approval before entering into a management agreement.

Disproportionate Economic Impact Analysis: When proposed rule changes cause more-than-minor costs to small businesses, RFA requires an analysis that compares these costs between small businesses and 10 percent of the largest businesses.

We can assume that the amount of costs does not vary depending on the size of the business. However, because larger businesses are generally able to absorb costs more easily, the impact may be felt more disproportionately by small businesses. Costs associated with acquiring and maintaining liability insurance may impact smaller businesses more than their larger counterparts. The cost of adding a bathroom could be disproportionate for smaller businesses. For example, a \$10,000 bathroom expense would be more burdensome to a smaller business than a larger business.

Mitigating Costs: The stakeholder workgroup discussed alternatives to address the challenges of obtaining professional liability insurance. The department considered creating an exemption for currently licensed providers. The risk to providers and residents is high if they do not have professional liability insurance, so the department instead decided to apply the rule change to all providers to limit the number of exemptions.

The workgroup discussed adding a grace period for newly licensed homes to obtain insurance to allow time for the insurance company to process the application after the home has received their license number. Ultimately, the workgroup agreed to the proposal that the home have insurance before admitting their first new resident or within 10 business days, whichever is shorter.

Concerning the need for additional accessible toilets in homes with five or more people using a toilet, the department made this applicable to homes licensed after the effective date of the rule. This will mitigate costs for current licensed AFHs.

While the department cannot directly mitigate disproportionate costs for the smaller businesses, the potential added revenue from increasing license capacity will be proportionally larger for the smaller businesses in the industry. The department assumes this potential added revenue will likely offset the disproportionate costs.

JOBS CREATED OR LOST: The proposed rules do not create or eliminate jobs.

CONCLUSION: The department has given careful consideration to the impact of proposed rules in chapter 388-76 WAC on small businesses. To comply with RFA, the department analyzed impacts on small businesses, proposed ways to mitigate costs considered more than minor and disproportionate, and concluded that the probable benefits of the proposed rules exceed the probable costs.

1 Dana Jeffers - Fortiphi Insurance.

2 DSHS management services division (MSD) AFH locator.

3 Fortiphi Insurance.

4 DSHS MSD, rates/bargained between AFH council and state of Washington as of July 1, 2022.

5 Metropolitan areas include Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, and Yakima counties.

6 Nonmetropolitan areas include Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla, and Whitman counties.

7 DSHS MSD rates/bargained July 2022.

8 DSHS MSD AFH locator.

9 Fortiphi Insurance.

10 Fortiphi Insurance.

A copy of the statement may be obtained by contacting Colleen Jensen, P.O. Box 45600, Olympia, WA 98504, phone 564-999-3182, email colleen.jensen1@dshs.wa.gov.

January 24, 2023
Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the [23-05](#) issue of the Register.

WSR 23-04-094
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 22-19—Filed January 31, 2023, 2:57 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-24-112.

Title of Rule and Other Identifying Information: Commercial fixed gear rockfish landings condition. The department is considering amending WAC 220-353-050 to add certain bottomfish (also known as groundfish) to the list of commercially taken species that are permitted to be possessed, transported through the waters of the state, and landed in dressed condition.

Hearing Location(s): On March 14, 2023, at 9:00 a.m., Zoom webinar <https://us02web.zoom.us/j/84461212693>. Register in advance for this meeting <https://us02web.zoom.us/j/84461212693>. After registering, you will receive a confirmation email containing information about joining the meeting.

Date of Intended Adoption: No sooner than March 14, 2023.

Submit Written Comments to: Whitney Roberts, 1111 Washington Street S.E., Olympia, WA 98501, email commercial-rockfish@PublicInput.com, voicemail comments 855-925-2801, project code 2303, website <https://publicinput.com/commercial-rockfish>, by March 10, 2023.

Assistance for Persons with Disabilities: Contact Title VI/ADA compliance coordinator, phone 360-902-2349, TTY 1-800-833-6388 or 711, email Title6@dfw.wa.gov, by March 10, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule change is to allow commercial landings of dressed rockfish for vessels that obtain a director's permit to do so. To ensure accurate data collection for stock assessments, fish are currently required to be landed into Washington ports in the whole (also known as round) condition, unless specifically exempted in regulation. This rule would expand the list of exempted species/species groups to include rockfishes, again as authorized by permit of the director.

Reasons Supporting Proposal: Some commercial fishers in the fixed gear sablefish fishery, as well as the salmon troll fishery, have requested that additional species, such as rockfishes, be exempted from the existing rule because dressing them at sea would preserve their marketability and reduce discarding early in the trip due to spoilage. The average trip in the largest portion of the fixed gear sablefish fishery lasts seven to eight days. Therefore, some first receivers (or buyers) are refusing rockfish deliveries unless the rockfish was caught within the last few days of the trip, and some fishers are therefore discarding or are unable to market a portion of their incidentally caught rockfish. Even for the rockfish that vessels are able to sell, a dressed/gutted fish may get a higher price. Additionally, the department has received support letters about growing interest in selling dressed rockfish at direct-to-consumer markets, and allowing dressing of rockfish at sea may better serve this type of market. Rockfish are an important contribution to overall revenue, and this rule change would allow more fishers to sell a larger percentage of their catch. Buyers have also commented that, with this rule change,

they expect to be able to resell more of the rockfish they receive from fishers. Overall, this rule change would be expected to reduce waste by reducing discards. The permits, which will be issued at the discretion of the director, will include terms and conditions designed to ensure that the department maintains the ability to adequately sample rockfish for stock assessments.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, 77.12.045, 77.04.055, and 77.12.047.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Whitney Roberts, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2675; Implementation: Kelly Cunningham, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2325; and Enforcement: Chief Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2938.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not require a cost-benefit analysis under RCW 34.05.328.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The fishing businesses that would be affected by this proposed rule all qualify as small businesses under the Regulatory Fairness Act. The proposed change would reduce existing substantive regulatory requirements through a voluntary, permit-based program. Businesses would be expected to participate only if the opportunity to earn additional revenues from the improved quality of dressing fish at sea outweigh the costs of participating.

The department expects any additional costs of participation to be minor. Permits will be provided at no cost to applicants. New costs would arise only from the time needed to apply for the permit and to comply with permit terms and conditions, including training. Permit terms and conditions will not add reporting or recordkeeping requirements beyond those already required. Likewise, the time needed to interact with the department would be minimal compared to the time businesses already spend applying for fishery licenses and interacting with department port biologists. Neither the application process nor compliance would be expected to reduce time available for fishing.

The department collects information on revenues earned by fishing businesses delivering fish into the state (exvessel revenues) and has access to the equivalent information collected by our counterparts in Oregon and California. The set of businesses that would participate is unknown. Revenues vary widely among fishery sectors and individual businesses. The request to land dressed rockfish originated from participants in the primary fixed gear sablefish fishery. Businesses that participated in that fishery in 2021 earned, on average, exvessel revenues of \$309,042. The 0.3 percent minor cost threshold corresponding to this amount is \$927. As a measure of business earning lower than the 2021 west coast average, the minor cost threshold associated with the 20th percentile revenue value was \$259. Considering only west coast revenues leads to an understatement of revenues, as many businesses also fish in the Alaska sablefish and halibut fishery. The de-

partment does not have the same access to Alaska landings information. However, publicly available data show that the average per exvessel revenue earnings from that fishery were \$289,570 in 2021 (source: Pacific States Marine Fisheries Commission Alaska Fisheries Information Network).

Individuals from the salmon troll fishery sector have also expressed interest in participating in the proposed program. Many trollers choose to not land groundfish because of the added cost of federal vessel monitoring regulations. Only 14 landed groundfish in 2021. The minor cost threshold for those vessels, based on the average west coast exvessel revenues, was \$341. The 20th percentile value was \$109.

Finally, although the department has concluded that the costs of participating in the voluntary program will be minor, we will nonetheless work with participants to ensure that permit terms and conditions are kept to the minimum needed to ensure accurate data collection for stock assessment and catch accounting.

January 31, 2023

Chris Fredley

Acting Agency Rules Coordinator

OTS-4308.1

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-353-050 Possession of food fish and shellfish—Identification—Commercial. (1) It is unlawful to possess any food fish or shellfish in a condition where the species, length, weight, or sex cannot be determined if a species, species group or category, length, weight, or sex limit is prescribed for that species on a vessel engaging in commercial fishing or that has commercially caught fish aboard, except:

(a) It is permissible to possess fish or shellfish legally taken for commercial purposes, landed, and properly accounted for on a completed fish receiving ticket;

(b) It is permissible to possess, transport through the waters of the state, or land dressed sablefish;

(c) It is permissible to possess, transport through the waters of the Pacific Ocean, or land dressed salmon caught during a legal commercial salmon troll fishery, provided that frozen dressed Chinook salmon are 21 1/2 inches or more in length and frozen dressed coho salmon are 12 inches or more in length, measured from the midpoint of the clavicle arch to the fork of the tail;

(d) It is permissible to possess, transport through the waters of the Pacific Ocean, or land dressed halibut if allowed by International Pacific Halibut Commission (IPHC) rules and such fish meet any IPHC size requirements so long as halibut is landed with the heads still attached; ~~(and)~~

(e) It is permissible to possess, transport through the waters of the Pacific Ocean, or land dressed lingcod when taken during a lawful commercial fishery; and

(f) It is permissible to possess, transport through the waters of the Pacific Ocean, or land dressed rockfish if authorized by a permit issued by the director and in accordance with the permit's terms and conditions.

(2) Violation of this section is a gross misdemeanor under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

(3) "Dressed fish" is defined as provided in WAC 220-350-050.

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), amended and recodified as § 220-353-050, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047. WSR 13-03-153 (Order 13-16), § 220-20-121, filed 1/23/13, effective 2/23/13.]

WSR 23-04-098

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed January 31, 2023, 3:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-18-088.

Title of Rule and Other Identifying Information: WAC 458-20-10005

Written determinations as precedents—Criteria for publication.

Hearing Location(s): On March 15, 2023, at 10:00 a.m. This meeting will be conducted over the internet/telephone. In-person option also available. Please contact Atif Aziz at Atifa@dor.wa.gov for login/dial-in information. If you would like to attend in person, please RSVP by emailing Atifa@dor.wa.gov by February 22, 2023.

Date of Intended Adoption: March 31, 2023.

Submit Written Comments to: Adam Becker, P.O. Box 47453, Olympia, WA 98504-7453, email adamb@dor.wa.gov, fax 360-534-1606, 360-534-1574, by March 17, 2023.

Assistance for Persons with Disabilities: Contact Julie King, phone 360-704-5733, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 82.32.410 (1)(a) provides that the director shall adopt a rule identifying the criteria to be used to decide whether a determination is precedential.

Reasons Supporting Proposal: RCW 82.32.410 authorizes the director to designate certain written determinations as precedents.

Statutory Authority for Adoption: RCW 82.32.410, 84.32.300.

Statute Being Implemented: RCW 82.32.410.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Adam Becker, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1574; Implementation and Enforcement: Heidi Geathers, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1615.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not a significant legislative rule as defined by RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose more-than-minor costs on businesses, as it does not propose any new requirements not already provided for in statute. The proposed rule does not impose fees, filing requirements, or recordkeeping guidelines that are not already established in statute.

January 31, 2023

Atif Aziz

Rules Coordinator

OTS-4076.2

NEW SECTION

WAC 458-20-10005 Written determinations as precedents—Criteria for publication. (1) **Introduction.** A determination, which is authorized by RCW 82.32.170 and issued pursuant to WAC 458-20-100, is a written response by the department to a taxpayer's petition to correct an assessment of tax, penalties, or interest. This rule provides criteria the department uses to decide whether a determination is precedential, as required by RCW 82.32.410.

(2) **Criteria.** The department may publish a determination, and therefore designate the determination as precedential, when all of the following criteria are met:

(a) The determination is a well-reasoned application of the law to a specific set of facts.

(b) The determination addresses only the law and facts necessary to resolve the case.

(c) The determination is needed to:

(i) Provide guidance on a previously unaddressed area of the law and articulate the department's current policy;

(ii) Apply the law to a significantly different set of facts;

(iii) Overrule a published determination; or

(iv) Provide a better or more current articulation on how the law should be interpreted.

(d) The determination can be effectively sanitized, or the taxpayer has granted a waiver of the secrecy clause. For purposes of this subsection, "effectively sanitized" means that information that could identify the taxpayer is removed without affecting the analysis or precedential value of the determination.

[]

WSR 23-04-100

PROPOSED RULES

STATE BOARD OF HEALTH

[Filed January 31, 2023, 3:32 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 246-500-055 Human remains reduced through natural organic reduction. The state board of health (board) is proposing administrative edits through exception rule making to correct typographical errors in the rule and clarify rule language without changing its intended effect.

Hearing Location(s): On March 8, 2023, at 1:30 p.m. This will be a hybrid meeting. Attend in person at Washington State Department of Labor and Industries, 7273 Linderson Way S.W., Tumwater, WA 98501. Zoom webinar information for those attending virtually https://us02web.zoom.us/webinar/register/WN_VJVUA9FgQdym6TzrmsmD2g.

Date of Intended Adoption: March 8, 2023.

Submit Written Comments to: Molly Dinardo, P.O. Box 47990, Olympia, WA 98504-7990, email molly.dinardo@sboh.wa.gov, by February 27, 2023.

Assistance for Persons with Disabilities: Contact Melanie Hisaw, phone 360-236-4104, email melanie.hisaw@sboh.wa.gov, by March 1, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to clarify rule language in WAC 246-500-055 and correct a typographical error. This rule establishes the requirements that natural organic reduction (NOR) facilities must meet for this specific reduction method. Under this section, NOR facility operators must collect material samples for analysis and conduct testing for certain contaminants. Interested parties have requested clarity and guidance with respect to Table 500-A. The table requires testing for fecal coliform or salmonella and arsenic, cadmium, lead, mercury, and selenium but does not expressly include the word "and" between salmonella and arsenic. In addition, subsection (2)(b) refers to "dental filings" when it should refer to "dental fillings" with respect to the weight of physical contaminants that may be present in reduced remains.

Exception rule making is needed for the board to expeditiously make administrative edits to the rule for purposes of clarity. Testing of natural organic reduction final product is essential to ensure the process eliminates pathogens and elements harmful to human health and the environment.

Reasons Supporting Proposal: NOR was approved by the legislature in ESSB 5001 (chapter 432, Laws of 2019) as an authorized method for the disposition of human remains. Washington was the first state in the county, and first place in the world to authorize this disposition method for human remains. This rule addresses specific health and safety concerns related to NOR and is intended to prevent and control health hazards that could be linked to NOR.

WAC 246-500-055 went into effect in January 2021. Since then, there have been four facilities licensed to conduct NOR in Washington. To date, each facility has successfully collected material samples, analyzed them for physical contaminants, and sent samples to be analyzed by third-party testing facilities.

This proposal is necessary to allow facilities to continue with their processes and ensure the initial testing requirements described in the rule are clear and accurate.

Statutory Authority for Adoption: RCW 43.20.050 (2)(f).

Statute Being Implemented: RCW 43.20.050 (2)(f); ESSB 5001 (chapter 432, Laws of 2019) as codified in chapter 68.05 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state board of health, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Molly Dinardo, 101 Israel Road S.E., Tumwater, WA 98504, 564-669-3455; Enforcement: Funeral and Cemetery Board, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-1555.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is exempt under RCW 34.05.328 (5)(b)(iv), rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect. This proposal corrects typographical errors and clarifies language without changing intended effect in WAC 246-500-055.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: The proposal corrects typographical errors and clarifies language without changing the intended effect in WAC 246-500-055.

Scope of exemption for rule proposal:

Is fully exempt.

January 31, 2023
Michelle A. Davis
Executive Director

OTS-4319.1

AMENDATORY SECTION (Amending WSR 21-01-039, filed 12/7/20, effective 1/7/21)

WAC 246-500-055 Human remains reduced through natural organic reduction. (1) Other than the provisions of this section and WAC 246-500-010, this chapter does not apply to human remains after natural organic reduction.

(2) A natural organic reduction facility operator shall:

(a) Collect material samples for analysis that are representative of each instance of natural organic reduction using a sampling method such as described in the U.S. Composting Council 2002 Test Methods for the Examination of Composting and Compost, Method 02.01-A through E;

(b) Analyze each instance of reduced human remains for physical contaminants. Reduced remains must have less than 0.01 mg/kg dry weight of physical contaminants which include, but are not limited to, intact bone, dental (~~fillings~~) fillings, and medical implants;

(c) Analyze, using a third-party laboratory, the reduction facility's reduced human remains according to the following schedule:

(i) The reduction facility's initial (~~(twenty)~~) 20 instances of reduced human remains for the parameters identified in Table 500-A, and any additional instances of human remains necessary to achieve (~~(twenty)~~) 20 reductions meeting the limits identified in Table 500-A;

(ii) Following (~~(twenty)~~) 20 reductions meeting limits outlined in Table 500-A, analyze, at minimum, (~~(twenty-five)~~) 25 percent of a facility's monthly instances of reduced human remains for the parameters identified in Table 500-A until (~~(eighty)~~) 80 total instances have met the requirements in Table 500-A;

(iii) The local health jurisdiction may require tests for additional parameters under (b) and (c) of this subsection(~~(-)~~);

(d) Not release any human remains that exceed the limits identified in Table 500-A; (~~and~~)

(e) Prepare, maintain, and provide upon request by the local health jurisdiction, an annual report each calendar year. The annual report must detail the facility's activities during the previous calendar year and must include the following information:

(i) Name and address of the facility;

(ii) Calendar year covered by the report;

(iii) Annual quantity of reduced human remains;

(iv) Results of any laboratory analyses of reduced human remains;

and

(v) Any additional information required by the local health jurisdiction(~~(-)~~); and

(f) Test for arsenic, cadmium, lead, mercury, and selenium, and either fecal coliform or salmonella in reduced human remains to meet the testing parameters and limits identified in Table 500-A.

**Table 500-A
Testing Parameters**

Metals and other testing parameters	Limit (mg/kg dry weight), unless otherwise specified
Fecal coliform	< 1,000 Most probable number per gram of total solids (dry weight)
or	
Salmonella	< 3 Most probable number per 4 grams of total solids (dry weight)
<u>and</u>	
Arsenic	≤ 20 ppm
Cadmium	≤ 10 ppm
Lead	≤ 150 ppm
Mercury	≤ 8 ppm
Selenium	≤ 18 ppm

(3) A local registrar, in cooperation with the Washington state funeral and cemetery board, may issue a burial-transit permit for disposition of human remains reduced through natural organic reduction. The permit for the disposition of remains reduced through natural organic reduction may be used in connection with the transportation of remains reduced through natural organic reduction by common carrier or other means.

(4) The local registrar or the department of health may issue a burial-transit permit for the disposition of human remains reduced

through natural organic reduction which have been in the lawful possession of any person, firm, corporation, or association for a period of (~~ninety~~) 90 days or more. This permit will specify that the disposition of remains reduced through natural organic reduction must be consistent with Washington state laws and rules.

[Statutory Authority: RCW 43.20.050 (2)(f). WSR 21-01-039, § 246-500-055, filed 12/7/20, effective 1/7/21.]