

WSR 23-06-057
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed February 27, 2023, 3:01 p.m., effective March 1, 2023]

Effective Date of Rule: March 1, 2023.

Purpose: These changes to chapter 388-845 WAC are necessary to implement amendments to the developmental disabilities administration's (DDA) home and community-based services (HCBS) waivers as approved by the federal Centers for Medicare and Medicaid Services (CMS). Major changes to the chapter: Adjust the yearly limits applicable to certain waivers; add assistive technology to multiple waivers; remove the positive behavior support and consultation service from all waivers except the community protection waiver; amend the definition of the specialized evaluation and consultation service; amend the definition of community engagement; add teleservice as a service delivery method; add remote supports to multiple waivers; and make other changes necessary to implement amendments to DDA's HCBS waivers as approved by CMS.

Citation of Rules Affected by this Order: New WAC 388-845-0113, 388-845-0945, 388-845-0950, 388-845-0955, 388-845-2141, 388-845-2142 and 388-845-2143; repealing WAC 388-845-0501 and 388-845-0506; and amending WAC 388-845-0001, 388-845-0005, 388-845-0010, 388-845-0030, 388-845-0041, 388-845-0045, 388-845-0050, 388-845-0070, 388-845-0100, 388-845-0105, 388-845-0110, 388-845-0111, 388-845-0210, 388-845-0215, 388-845-0220, 388-845-0225, 388-845-0230, 388-845-0415, 388-845-0425, 388-845-0500, 388-845-0505, 388-845-0510, 388-845-0515, 388-845-0525, 388-845-0650, 388-845-0660, 388-845-0800, 388-845-0805, 388-845-0810, 388-845-0820, 388-845-0900, 388-845-0910, 388-845-0940, 388-845-1030, 388-845-1040, 388-845-1163, 388-845-1190, 388-845-1192, 388-845-1195, 388-845-1197, 388-845-1600, 388-845-1607, 388-845-1620, 388-845-1660, 388-845-1800, 388-845-1805, 388-845-1810, 388-845-1865, 388-845-1870, 388-845-1880, 388-845-1890, 388-845-2000, 388-845-2005, 388-845-2010, 388-845-2130, 388-845-2150, 388-845-2155, 388-845-2200, 388-845-2205, 388-845-2210, 388-845-2260, 388-845-2270, 388-845-2283, 388-845-2285, 388-845-2290, 388-845-3055, 388-845-3056, 388-845-3065, 388-845-3075, 388-845-3080, 388-845-4000, and 388-845-4005.

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

Other Authority: 42 C.F.R. 441.301, Section 1915(c) of the Social Security Act.

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

Reasons for this Finding: Filing these amendments on an emergency basis is necessary to ensure federal compliance and maintain federal funding for the state. This is the third emergency filing on these sections and is necessary to keep the rules effective until DDA completes the permanent rule-making process. This subsequent filing incorporates additional changes recently approved by CMS; the rule text now contains CMS-approved changes effective September 1, 2022, and March 1, 2023. This filing supersedes WSR 23-02-022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 7, Amended 72, Repealed 2; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 7, Amended 72, Repealed 2.

Date Adopted: February 27, 2023.

Katherine I. Vasquez
Rules Coordinator

SHS-4942.8

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

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

"Allocation" means the amount of individual and family services (IFS) waiver funding available to a client for a maximum of ((twelve)) 12 months.

"Behavior support plan" means a plan written by a professionally trained behavioral health or similar provider to address behavioral health intervention needs.

"CARE" means comprehensive assessment and reporting evaluation.

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

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

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

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

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

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

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

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

"General utility" describes something used by people in the absence of illness, injury, or disability.

"HCBS waiver" is a home and community based services waiver program under section 1915(c) of the Social Security Act.

"Home" means present place of long-term residence.

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

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

"Integrated setting((s))" means a typical community setting((s)) in compliance with 42 C.F.R. 441.301 (c)(4), not designed specifically for ((individuals)) people with disabilities, in which the majority of ((persons)) people employed and participating are ((individuals)) people without disabilities.

"Legal representative" means a parent of a person who is under ((eighteen)) 18 years of age, a person's legal guardian, a person's limited guardian when the subject matter is within the scope of limited guardianship, a person's attorney-at-law, a person's attorney-in-fact, or any other person who is authorized by law to act for another person.

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

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

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

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

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

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

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

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

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

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

"You" means the client or participant.

"Waiver year" means the ~~((twelve))~~ 12-month period starting from the initial or annual plan effective date in the client's person-centered service plan.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0001, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0001, filed 6/20/18, effective 7/21/18. 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, § 388-845-0001, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0001, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 74.08.090, 74.09.520, and 2012 c 49. WSR 12-16-095, § 388-845-0001, filed 8/1/12, effective 9/1/12. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0001, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 08-20-033, § 388-845-0001, filed 9/22/08, effective 10/23/08; WSR 07-20-050, § 388-845-0001, 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, § 388-845-0001, filed 12/13/05, effective 1/13/06.]

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

WAC 388-845-0005 What are home and community based services (HCBS) waivers? (1) Home and community based services (HCBS) waivers are services approved by the Centers for Medicare and Medicaid Services (CMS) under section 1915(c) of the Social Security Act as an alternative to intermediate care facility for (~~the~~) individuals with intellectual disabilities (ICF/IID).

(2) Certain federal regulations are "waived" enabling the provision of services in the home and community to individuals who would otherwise require the services provided in an ICF/IID as defined in chapters 388-835 and 388-837 WAC.

[Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-0005, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0005, filed 12/13/05, effective 1/13/06.]

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

WAC 388-845-0010 What is the purpose of HCBS waivers? The purpose of HCBS waivers is to provide services in the community to individuals with ICF/IID level of need to prevent their placement in an ICF/IID.

[Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-0010, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0010, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0030 Do I meet criteria for HCBS waiver-funded services? (1) You meet criteria for DDA HCBS waiver-funded services if you meet all of the following:

(a) You have been determined eligible for DDA services per RCW 71A.10.020.

(b) You have been determined to meet ICF/IID level of care per WAC 388-845-0070, 388-828-3060, and 388-828-3080.

(c) You meet disability criteria established in the Social Security Act.

(d) You meet financial eligibility requirements as defined in WAC 182-515-1510.

(e) You choose to receive services in the community rather than in an ICF/IID facility.

(f) You have a need for monthly waiver services or monthly monitoring as identified in your person-centered service plan.

(g) You are not residing in hospital, jail, prison, nursing facility, ICF/IID, or other institution.

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

((h)) (3) ((Additionally,)) For the children's intensive in-home behavioral supports (CIIBS) waiver((-funded services)), in addition to meeting criteria in subsection (1) of this section:

(a) You must:

(i) ((You are)) Be age eight or older and under the age of ((eighteen)) 18 for initial enrollment and under age ((twenty-one)) 21 for continued enrollment;

(ii) ((You have been)) Be determined to meet CIIBS program eligibility per chapter 388-828 WAC prior to initial enrollment only; and

(iii) ((You)) Live with your family((; and)).

((iv)) (b) Your parent((/)) or guardian((s)), and primary caregiver((s),) if other than your parent((/)) or guardian((s)), ((have)) must sign((ed)) the participation agreement.

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

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0030, filed 9/20/21, effective 10/21/21; WSR 20-05-080, § 388-845-0030, filed 2/18/20, effective 3/20/20. 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, § 388-845-0030, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0030, 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, § 388-845-0030, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0030, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0030, 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, § 388-845-0030, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0041 What is DDA's responsibility to provide your services under the DDA HCBS waivers administered by DDA? If you are enrolled in an HCBS waiver administered by DDA((-)):

(1) DDA will provide an annual comprehensive assessment to evaluate your health and welfare needs. Your person-centered service plan, as specified in WAC 388-845-3055, will document:

(a) Your identified health and welfare needs; and

(b) Your HCBS waiver services and nonwaiver services authorized to meet your assessed need.

(2) You have access to DDA paid services that are provided within the scope of your waiver, subject to the limitations in WAC 388-845-0110 and 388-845-0115.

(3) DDA will provide waiver services you need and qualify for within your waiver.

(4) DDA will not deny or limit, based on lack of funding, the number of waiver services for which you are eligible.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0041, filed 9/20/21, effective 10/21/21. 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, § 388-845-0041, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0041, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 74.08.090, 74.09.520, and 2012 c 49. WSR 12-16-095, § 388-845-0041, filed 8/1/12, effective 9/1/12. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1) (i), and Title 71A RCW. WSR 10-22-088, § 388-845-0041, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0041, 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, § 388-845-0041, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0045 When there is capacity to add people to a waiver, how does DDA determine who will be enrolled? When there is capacity on a waiver(~~(and available funding for new waiver participants)~~), DDA may enroll people from the statewide database in a waiver based on the following priority considerations:

(1) First priority will be given to current waiver participants assessed to require a different waiver because their identified health and welfare needs have increased and these needs cannot be met within the scope of their current waiver.

(2) DDA may also consider any of the following populations in any order:

(a) Priority populations as identified and funded by the legislature.

(b) Persons DDA has determined to be in immediate risk of ICF/IID admission due to unmet health and welfare needs.

(c) Persons identified as a risk to the safety of the community.

(d) Persons currently receiving services through state-only funds.

(e) Persons on an HCBS waiver that provides services in excess of what is needed to meet their identified health and welfare needs.

(f) Persons who were previously on an HCBS waiver since April 2004 and lost waiver eligibility per WAC 388-845-0060 (1)(k).

(3) DDA may consider persons who need the waiver services available in the basic plus or IFS waivers to maintain them in their family's home or in their own home.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0045, filed 9/20/21, effective 10/21/21. 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, § 388-845-0045, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0045, 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, § 388-845-0045, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0045, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 08-20-033, § 388-845-0045, filed 9/22/08, effective 10/23/08; WSR 07-20-050, § 388-845-0045, 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, § 388-845-0045, filed 12/13/05, effective 1/13/06.]

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

WAC 388-845-0050 How do I request to be enrolled in a waiver?

(1) You can contact DDA and request to be enrolled in a waiver or to enroll in a different waiver at any time.

(2) If you are assessed as meeting ICF/IID level of care as defined in WAC 388-845-0070 and chapter 388-828 WAC, your request for waiver enrollment will be documented by DDA in a statewide database.

(3) For the children's intensive in-home behavioral support (CIIBS) waiver only, if you are assessed as meeting both ICF/IID level of care and CIIBS eligibility as defined in WAC 388-845-0030 and chapter 388-828 WAC, your request for waiver enrollment will be documented by DDA in a statewide database.

[Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0050, 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, § 388-845-0050, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0050, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0050, 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, § 388-845-0050, filed 12/13/05, effective 1/13/06.]

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

WAC 388-845-0070 What determines if I need ICF/IID level of care? DDA determines if you need ICF/IID level of care based on your need for waiver services. To reach this decision, DDA uses the DDA assessment as specified in chapter 388-828 WAC.

[Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0070, 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, § 388-845-0070, 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, § 388-845-0070, 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, § 388-845-0070, filed 12/13/05, effective 1/13/06.]

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

WAC 388-845-0100 What determines which waiver I am assigned to? DDA will assign you to the waiver with the minimum service package necessary to meet your health and welfare needs, based on its evaluation of your DDA assessment as described in chapter 388-828 WAC and the following criteria:

- (1) For the individual and family services waiver, you:
 - (a) Live in your family home; and
 - (b) Are assessed to need a waiver service to remain in the family home.
- (2) For the basic plus waiver your health and welfare needs require a waiver service to remain in the community.
- (3) For the core waiver:
 - (a) You are at immediate risk of out-of-home placement; or
 - (b) You have an identified health and welfare need for residential services that cannot be met by the basic plus waiver.
- (4) For the community protection waiver, refer to WAC 388-845-0105 and chapter 388-831 WAC.
- (5) For the children's intensive in-home behavioral support waiver, you:
 - (a) Are age eight or older but under age (~~eighteen~~) 18;
 - (b) Live with your family;
 - (c) Are assessed at high or severe risk of out-of-home placement due to challenging behavior per chapter 388-828 WAC; and
 - (d) Have a signed family participation agreement from your parent or guardian and primary caregiver, if other than parent or guardian.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-0100, filed 2/18/20, effective 3/20/20. 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, § 388-845-0100, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0100, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0100, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030,

71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0100, 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, § 388-845-0100, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0105 What criteria determine assignment to the community protection waiver? DDA may assign you to the community protection waiver only if you are at least (~~eighteen~~) 18 years of age, not currently residing in a hospital, jail or other institution, and (~~meet the following criteria~~):

(1) You have been identified by DDA as a person who meets one or more of the following:

(a) You have been (~~convicted of or charged~~) charged or convicted with a crime of sexual violence as defined in chapter 71.09 RCW;

(b) You have been (~~convicted of or charged~~) charged or convicted with acts directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or persons of casual acquaintance with whom no substantial personal relationship exists;

(c) You have been (~~convicted of or charged~~) charged or convicted with a sexually violent offense, ~~(and/)~~ or a predatory act, or both, and may constitute a future danger as determined by a qualified professional;

(d) You have not been (~~convicted and/or charged~~) charged or convicted, but you have a history of stalking, violent, sexually violent, predatory, ~~(and/)~~ or opportunistic behavior which demonstrates a likelihood to commit a sexually violent (~~and/~~) or predatory act based on current behaviors that may escalate to violence, as determined by a qualified professional; or

(e) You have committed one or more violent offense, as defined in RCW 9.94A.030;

(2) You receive or agree to receive residential services from certified residential community protection provider-intensive supported living services (CP-ISLS); and

(3) You comply with the specialized supports and restrictions in one or more of the following:

(a) Your person-centered service plan (PCSP);

(b) Your individual instruction and support plan (IISP); or

(c) Your treatment plan provided by DDA approved certified individuals and agencies.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0105, filed 9/20/21, effective 10/21/21. 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, § 388-845-0105, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0105, 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, § 388-845-0105, 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, § 388-845-0105, 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, § 388-845-0105, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

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

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

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

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

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

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

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

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

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

(9) Services, with the exception of respite care, must be provided in integrated settings.

~~((9))~~ (10) Services provided out-of-state, other than in recognized bordering cities, are limited to respite care ~~((and personal care))~~ during vacations of not more than ~~((thirty))~~ 30 consecutive days.

~~((10))~~ (11) You may receive services in a recognized out-of-state bordering city under WAC 182-501-0175.

~~((11))~~ (12) Other out-of-state waiver services require an approved exception to rule before DDA will authorize payment.

~~((12))~~ (13) Waiver services do not cover:

- (a) Copays;
- (b) Deductibles;
- (c) Dues;
- (d) Membership fees; or
- (e) Subscriptions.

~~((13))~~ (14) Waiver services do not cover a product unless the product is:

(a) The most basic model of the product available that can meet your health and safety need related to your intellectual or developmental disability;

- (b) The least restrictive means for meeting that need; and
 (c) Requested by you.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0110, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0110, filed 6/20/18, effective 7/21/18. 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, § 388-845-0110, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0110, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0110, 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, § 388-845-0110, filed 12/13/05, effective 1/13/06.]

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

WAC 388-845-0111 Are there limitations regarding who can provide services? The following limitations apply to providers for waiver services:

- (1) Your spouse must not be your paid provider for any waiver service.
- (2) If you are under age (~~(eighteen)~~) 18, your natural, step, or adoptive parent must not be your paid provider for any waiver service.
- (3) If you are age (~~(eighteen)~~) 18 or older, your natural, step, or adoptive parent must not be your paid provider for any waiver service with the exception of:
 - ~~((a) Personal care;))~~
 - ~~((b))~~ (a) Transportation to and from a waiver service per WAC 388-845-2200 through 388-845-2210;
 - ~~((e))~~ (b) Residential habilitation services per WAC 388-845-1510 if your parent is certified as a residential agency per chapter 388-101 WAC; or
 - ~~((d))~~ (c) Respite care if you and the parent who provides the respite care live in separate homes.
- (4) If you receive CIIBS waiver services, your legal representative or family member per WAC 388-845-0001 must not be your paid provider for any waiver service with the exception of:
 - (a) Transportation to and from a waiver service per WAC 388-845-2200 through 388-845-2210; and
 - (b) Respite per WAC 388-845-1605 through 388-845-1620.

[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, § 388-845-0111, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0111, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0111, filed 9/26/07, effective 10/27/07.]

NEW SECTION

WAC 388-845-0113 When may I receive waiver services through tele-service? (1) Teleservice is a remote service delivery method that uses a HIPAA-compliant technology system approved by DDA.

- (2) The following services may be delivered through teleservice:
- (a) Assistive technology;
 - (b) Community engagement;
 - (c) Individual supported employment;
 - (d) Individualized technical assistance;
 - (e) Music therapy;
 - (f) Occupational therapy;
 - (g) Peer mentoring;
 - (h) Person-centered plan facilitation;
 - (i) Physical therapy;
 - (j) Positive behavior support and consultation until August 31, 2023;
 - (k) Specialized evaluation and consultation;
 - (l) Specialized habilitation;
 - (m) Speech, hearing, and language services;
 - (n) Supported parenting; and
 - (o) Staff and family consultation.

- (3) A waiver service may be delivered through teleservice if:
- (a) The waiver participant chooses that service delivery method and completes the teleservice agreement form;
 - (b) DDA determines through the person-centered planning process that the waiver service can be adequately provided remotely based on the reason for the service request;
 - (c) There is no risk to the waiver participant's health or safety as a result of the waiver service being provided remotely; and
 - (d) The waiver participant's person-centered service plan indicates each waiver service that will be provided through teleservice.
- (4) For each waiver service that occurs regularly over the course of the plan year and is being delivered remotely, the service must be delivered in-person at least one time per plan year.

[]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

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

SERVICE	YEARLY LIMIT
AGGREGATE SERVICES: <u>Assistive technology</u> Extermination of cimex lectularius (bedbugs) Community engagement Environmental adaptations Occupational therapy	Total costs must not exceed ((six thousand one hundred ninety-two dollars)) <u>\$6,192</u> per year per participant

SERVICE	YEARLY LIMIT
Physical therapy ((Positive behavior support and consultation)) <u>Remote support</u> Skilled nursing Specialized equipment and supplies Specialized habilitation Speech, hearing, and language services Staff and family consultation Transportation Wellness education	
Therapeutic adaptations	Limited to a single one-time authorization every five years and limited to funds available in the client's aggregate and emergency funding
EMPLOYMENT SERVICES: Individual technical assistance Supported employment Community inclusion	Limits determined by DDA assessment and employment status Limits determined by the person-centered service plan
STABILIZATION SERVICES: Crisis diversion bed Specialized habilitation Staff and family consultation	Limits determined by ((a)) the person-centered service plan
Respite care	Limits determined by DDA assessment
Risk assessment	Limits determined by DDA
Community engagement Environmental adaptations Occupational therapy Physical therapy ((Positive behavior support)) Specialized equipment and supplies Speech, hearing, and language services Skilled nursing Staff and family consultation Transportation	((Six thousand dollars)) <u>\$6,000</u> per year for emergency assistance funding

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0210, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0210, filed 6/20/18, effective 7/21/18. 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, § 388-845-0210, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0210, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 08-20-033, § 388-845-0210, filed 9/22/08, effective 10/23/08; WSR 07-20-050, § 388-845-0210, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 07-05-014, § 388-845-0210, filed 2/9/07, effective 3/12/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0210, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

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

SERVICE	YEARLY LIMIT
Assistive technology Extermination of cimex lectularius (bedbugs) Community engagement Community transition Environmental adaptations Occupational therapy Physical therapy ((Positive behavior support and consultation)) <u>Remote support</u> Residential habilitation Risk assessment Skilled nursing Specialized equipment and supplies <u>Specialized habilitation</u> Speech, hearing, and language services Staff and family consultation <u>Supported parenting</u> Transportation Wellness education	Determined by the person-centered service plan
((Specialized habilitation	Limited to four thousand dollars per waiver year))

SERVICE	YEARLY LIMIT
EMPLOYMENT SERVICES: Individualized technical assistance Supported employment	Limits determined by DDA assessment and employment status
Community inclusion	Limits determined by the person-centered service plan
STABILIZATION SERVICES: Crisis diversion bed Specialized habilitation Staff and family consultation	Limits determined by the person-centered service plan
Respite care	Limits determined by DDA assessment

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

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

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0215, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0215, filed 6/20/18, effective 7/21/18. 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, § 388-845-0215, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0215, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0215, 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, § 388-845-0215, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

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

SERVICE	YEARLY LIMIT
<u>Assistive technology</u> Extermination of cimex lectularius (bedbugs) Community transition Environmental adaptations Occupational therapy Physical therapy	Determined by the person-centered service plan

SERVICE	YEARLY LIMIT
Positive behavior support and consultation <u>Remote support</u> Residential habilitation Risk assessment Skilled nursing Specialized equipment and supplies <u>Specialized evaluation and consultation</u> Speech, hearing, and language services Staff and family consultation Transportation	
EMPLOYMENT SERVICES: Individual technical assistance Supported employment	Limits determined by DDA assessment and employment status
STABILIZATION SERVICES: Crisis diversion bed Specialized habilitation Staff and family consultation	Limits determined by the person-centered service plan

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

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

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0220, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0220, filed 6/20/18, effective 7/21/18. 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, § 388-845-0220, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0220, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0220, 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, § 388-845-0220, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

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

following services are available under the children's intensive in-home behavioral support (CIIBS) waiver:

SERVICE	YEARLY LIMIT
Assistive technology Environmental adaptations Nurse delegation Specialized clothing Specialized equipment and supplies Specialized habilitation Staff and family consultation Transportation Vehicle modifications	((Fifteen thousand dollars)) <u>\$15,000</u> per year for any combination of services
Respite care	Limits determined by the DDA assessment.
STABILIZATION SERVICES: Crisis diversion bed Specialized habilitation Staff and family consultation	Limits determined by the person-centered service plan
Risk assessment ((Positive behavior support))	Limits determined by DDA
Environmental adaptations (Accessibility and repairs) Specialized habilitation Staff and family consultation Vehicle modifications	((Six thousand dollars)) <u>\$6,000</u> per year for emergency assistance funding
Equine therapy Music therapy ((Equine therapy)) Peer mentoring Person-centered plan facilitation	((Five thousand dollars)) <u>\$5,000</u> per year for <u>any</u> combination of services
Therapeutic adaptations	Limited to a single, one-time authorization not to exceed ((fifteen thousand dollars)) <u>\$15,000</u> every five waiver years

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

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0225, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0225, filed 6/20/18, effective 7/21/18. 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, § 388-845-0225, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0225, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 §

205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0225, filed 11/1/10, effective 12/2/10.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

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

SERVICE	YEARLY LIMIT
Assistive technology Community engagement Environmental adaptations <u>Nurse delegation</u> Occupational therapy Peer mentoring Person-centered plan facilitation Physical therapy ((Positive behavior support and consultation)) <u>Remote support</u> Respite care Skilled nursing Specialized clothing Specialized equipment and supplies Specialized habilitation Speech, hearing, and language services Staff and family consultation Supported parenting services Transportation Vehicle modifications Wellness education	Total cost of waiver services must not exceed annual allocation determined by the person-centered service plan
Therapeutic adaptations	Limited to a one-time authorization every five years and limited to funds available in the client's ((aggregate and emergency services)) <u>annual allocation</u>
Risk assessment	Limits determined by the person-centered service plan. <u>Costs are excluded from the annual allocation.</u>

SERVICE	YEARLY LIMIT
STABILIZATION SERVICES: Crisis diversion bed Specialized habilitation Staff and family consultation	Limits determined by the person-centered service plan. Costs are excluded from the annual allocation.

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

- (a) Level 1 = (~~one thousand two hundred dollars~~) \$1,560;
- (b) Level 2 = (~~one thousand eight hundred dollars~~) \$2,340;
- (c) Level 3 = (~~two thousand four hundred dollars~~) \$3,120; or
- (d) Level 4 = (~~three thousand six hundred dollars~~) \$4,680.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0230, filed 9/20/21, effective 10/21/21; WSR 20-05-080, § 388-845-0230, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0230, filed 6/20/18, effective 7/21/18. 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, § 388-845-0230, filed 8/4/16, effective 9/4/16.]

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

WAC 388-845-0415 What is assistive technology? (1) Assistive technology consists of items, equipment, or product systems, not related to a client's physical health, that are used to directly support the client to:

- ~~((i))~~ (a) Increase, maintain, or improve functional capabilities (~~(of waiver participants,);~~);
- (b) Improve client safety; or
- (c) Increase social engagement in the community. (~~(as well as supports to directly assist the participant to select, acquire, and use the technology.)~~)

(2) Assistive technology also includes supports to directly assist the client to select, acquire, and use the technology.

(3) Assistive technology is available (~~(in the CIIBS and IFS)~~) on all DDA HCBS waivers, and includes the following:

- ~~((1))~~ (a) The evaluation of the client's needs (~~(of the waiver participant),~~ including a functional evaluation of the (~~(participant)~~) client in the (~~(participant's)~~) client's customary environment;
- ~~((2))~~ (b) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices;
- ~~((3))~~ (c) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;
- ~~((4))~~ (d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

~~((5))~~ (e) Training or technical assistance for the ~~((partici-~~
~~pant))~~ client and ~~((/or))~~ if appropriate, the ~~((participant's))~~ cli-
ent's family; and

~~((6))~~ (f) Training or technical assistance for professionals,
including ~~((individuals))~~ people providing education and rehabilita-
tion services, employers, or other ~~((individuals))~~ people who provide
services to, employ, or are otherwise involved in the assistive tech-
nology related life functions of ~~((individuals))~~ people with disabili-
ties.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, §
388-845-0415, filed 2/18/20, effective 3/20/20. 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, § 388-845-0415, filed 8/4/16, effective
9/4/16. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194,
and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, §
388-845-0415, filed 11/1/10, effective 12/2/10.]

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 21-19-108, filed 9/20/21, effective
10/21/21)

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

(1) Assistive technology is limited to additional services not
otherwise covered under the medicaid state plan, including EPSDT, but
consistent with waiver objectives of avoiding institutionalization.

(2) Clinical and support needs for assistive technology must be
identified in your DDA assessment and documented in the person-
centered service plan.

(3) DDA requires a ~~((treating))~~ professional's written recommen-
dation regarding your need for the technology. This recommendation
must take into account that:

(a) The ~~((treating))~~ professional has personal knowledge of and
experience with the requested assistive technology; and

(b) The ~~((treating))~~ professional has recently ~~((examined))~~ eval-
uated you, reviewed your medical records, and conducted ~~((a function-~~
~~al))~~ an evaluation of ~~((your use of))~~ the equipment and determined its
effectiveness in meeting your identified need.

(4) If the technology is related to expressive or receptive com-
munication or other complex support needs, the recommendation under
subsection (3) of this section must be from a credentialed professio-
nal evaluating your needs within their scope of practice.

~~((4))~~ (5) Assistive technology exceeding \$550 requires prior
approval by the DDA regional administrator or designee.

~~((5))~~ (6) DDA may require a written second opinion from a DDA-
selected professional.

~~((6))~~ (7) The dollar amounts for your individual and family
services (IFS) waiver annual allocation limit the amount of assistive
technology you are authorized to receive.

~~((7))~~ (8) Assistive technology excludes any item that is for recreational, leisure, or diversion purposes such as a television, cable, electric bicycle, or DVD player.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0425, filed 9/20/21, effective 10/21/21; WSR 20-05-080, § 388-845-0425, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0425, filed 6/20/18, effective 7/21/18. 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, § 388-845-0425, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0425, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0425, filed 11/1/10, effective 12/2/10.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

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

~~(a) Under age 21 and currently authorized to receive positive behavior support and consultation for the support of behavioral health or autism treatment when unable to access through the medicaid state plan; or~~

~~(b) On the community protection waiver and requires behavior support to address sexual aggression, arson, or assaultive behaviors which make the client eligible for the community protection waiver)) a service available only on the community protection waiver. Effective September 1, 2022, this service is no longer available on any other waiver.~~

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

(a) Individualized strategies for effectively relating to caregivers and other people in the waiver participant's life; and

(b) Direct interventions with the person to decrease aggressive, destructive, and sexually inappropriate or other behaviors that compromise their ability to remain in the community (i.e., training, specialized cognitive counseling, conducting a functional assessment, and development and implementation of a positive behavior support plan).

(3) Effective September 1, 2022, positive behavior support and consultation is available to a community protection waiver participant if the participant:

(a) Is currently authorized to receive positive behavior support and consultation; and

(b) Is receiving positive behavior support and consultation for the sexual aggression, arson, or assaultive behaviors that make the participant eligible for the community protection waiver.

(4) Effective September 1, 2022, a community protection participant currently receiving positive behavior support and consultation

shall only be eligible for that service until the end of their waiver year.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0500, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0500, filed 6/20/18, effective 7/21/18. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0500, 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, § 388-845-0500, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0500, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0500, filed 12/13/05, effective 1/13/06.]

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

WAC 388-845-0505 Who is a qualified provider of positive behavior support and consultation? Under the ((basic plus, core,)) community protection (CP) waiver, ((and individual and family services (IFS) waivers,)) the provider of positive behavior support and consultation must be one of the following professionals contracted with DDA and duly licensed, registered, or certified as a:

- (1) Marriage and family therapist;
- (2) Mental health counselor;
- (3) Psychologist;
- (4) Sex offender treatment provider;
- (5) Social worker;
- (6) Registered nurse (RN) or licensed practical nurse (LPN);
- (7) Psychiatrist;
- (8) Psychiatric advanced registered nurse practitioner (ARNP);
- (9) Physician assistant working under the supervision of a psychiatrist;
- (10) Counselor registered or certified under chapter 18.19 RCW; ((11) Polygrapher;) or ((12)) (11) State-operated positive behavior support agency qualified to provide behavioral health stabilization services.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0505, filed 6/20/18, effective 7/21/18. 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, § 388-845-0505, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0505, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0505, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0505, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

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

(2) DDA determines the amount of positive behavior support and consultation you may receive based on your needs and information from your treating professional.

(3) ~~((The dollar amounts for aggregate services in your basic plus waiver or the dollar amounts in the annual allocation for the individual and family services (IFS) waiver limit the amount of service unless provided as a stabilization service.))~~ Positive behavior support and consultation is closed to new enrollment effective September 1, 2022.

(4) DDA must not authorize positive behavior support and consultation for service dates on or after September 1, 2023.

(5) Effective September 1, 2022, a community protection participant currently receiving positive behavior support and consultation shall only be eligible for that service until the end of their waiver year.

~~((4))~~ (6) DDA may require a second opinion from a DDA-selected provider.

~~((5) Positive behavior support and consultation requires prior approval by the DDA regional administrator or designee for the following waivers:~~

~~(a) Basic plus;~~

~~(b) Core;~~

~~(c) Children's intensive in-home behavior support (CIIBS); and~~

~~(d) IFS.))~~

~~((6) Positive behavior support and consultation services are limited to services:~~

~~(a) Consistent with waiver objectives of avoiding institutionalization; and~~

~~(b) That are not a covered benefit under the medicaid state plan.))~~

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0510, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0510, filed 6/20/18, effective 7/21/18. 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, § 388-845-0510, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0510, 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, § 388-845-0510, 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, § 388-845-0510, 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, § 388-845-0510, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

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

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

(a) ~~((Receive residential habilitation services))~~ Live with a non-relative primary caregiver; or

(b) Live in a private house or apartment for which you are financially responsible.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0515, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0515, filed 6/20/18, effective 7/21/18.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0525 Are there limits to the extermination of bedbugs services I may receive? (1) Extermination of bedbugs is available on the following waivers:

(a) Core;

(b) Basic plus; and

(c) Community protection.

~~((1))~~ (2) Extermination of bedbugs services covers only:

(a) The assessment or inspection by the qualified provider;

(b) The application of chemical-based pesticide or heat treatment; and

(c) One follow-up visit.

~~((2))~~ (3) Extermination of bedbugs is limited to two treatment ~~((s))~~ cycles per plan year.

~~((3))~~ (4) Extermination of bedbugs excludes:

(a) Lodging during the extermination process; and

(b) Preparatory housework associated with the extermination process.

~~((4))~~ (5) DDA does not cover extermination of bedbugs for a participant who lives:

(a) With their family; or

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

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0525, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0525, filed 6/20/18, effective 7/21/18.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0650 What is community engagement? (1) Community engagement (~~is designed to increase a waiver participant's connection to and engagement in formal and informal community supports by connecting the participant to community resources~~) connects a waiver participant to activities, resources, events, and services in the community that the participant is interested in exploring. It is intended to assist the participant with fully accessing their community and reducing isolation.

~~((2) Community engagement is designed to develop creative, flexible, and supportive community resources and relationships for individuals with developmental disabilities.~~

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

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

~~(5))~~ (2) This service is available on the:

(a) IFS waiver;

(b) Basic plus waiver; and

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

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0650, filed 9/20/21, effective 10/21/21. 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, § 388-845-0650, filed 8/4/16, effective 9/4/16.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0660 Are there limits to the community engagement you may receive? (1) Community engagement is limited to the support needs identified in your DDA assessment and documented in your person-centered service plan.

(2) The dollar amounts in the annual allocation for the individual and family services waiver limit the amount of community engagement you may receive.

~~((3) Community engagement is limited to the community where you live.~~

~~(4))~~ (3) Community engagement does not cover:

(a) Membership fees or dues;

(b) Equipment related to activities; or

(c) The cost of any activities.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0660, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0660, filed 6/20/18, effective 7/21/18. 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, § 388-845-0660, filed 8/4/16, effective 9/4/16.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0800 What is emergency assistance funding? Emergency assistance funding is a temporary increase of (~~ninety~~) 90 days or less to the yearly basic plus or CIIBS waiver aggregate dollar limit when additional waiver aggregate services under WAC 388-845-0820 are required to avoid placement in an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0800, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0800, filed 6/20/18, effective 7/21/18. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0800, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0800, 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, § 388-845-0800, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0805 Who is a qualified provider of emergency assistance funding? The provider of the service you need to meet your emergency must meet the provider qualifications for that service.

[Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0805, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

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

- (1) You involuntarily lose your present residence for any reason either temporary or permanent;
- (2) You lose your present caregiver for any reason, including death;
- (3) There are changes in your caregiver's mental or physical status resulting in the caregiver's inability to perform effectively for the individual; or
- (4) There are significant changes in your emotional or physical condition that requires a temporary increase in the amount of a waiver service.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0810, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0810, filed

11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0810, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

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

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

(2) Payment authorizations are reviewed every (~~(thirty)~~) 30 days and must not exceed (~~(six thousand dollars)~~) \$6,000 per (~~(twelve)~~) 12 months based on the effective date of your current person-centered service plan.

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

(a) Community engagement;

(b) Environmental adaptations;

(c) Occupational therapy;

(d) Physical therapy;

~~((e) Positive behavior support and consultation;)~~

~~((f))~~ (e) Skilled nursing;

~~((g))~~ (f) Specialized equipment and supplies;

~~((h))~~ (g) Speech, hearing, and language services;

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

~~((j))~~ (i) Transportation; and

~~((k))~~ (j) Therapeutic adaptations.

(4) Emergency assistance funding is limited to the following services when on the CIIBS waiver:

(a) Environmental adaptations;

(b) Specialized habilitation;

(c) Staff and family consultation; and

(d) Vehicle modifications.

(5) Emergency assistance funding may be used for interim services until:

(a) The emergency situation has been resolved;

(b) You are transferred to alternative supports that meet your assessed needs; or

(c) You are transferred to an alternate waiver that provides the service you need.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0820, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0820, filed 6/20/18, effective 7/21/18. 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, § 388-845-0820, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0820, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0820, filed 9/26/07, effective 10/27/07. Statuto-

ry Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0820, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

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

(a) Ensure the health, welfare, and safety of the individual;
 (b) Enable the individual who would otherwise require institutionalization to function with greater independence in the home; and
 (c) Increase the individual's independence inside or outside the home to allow the individual to physically enter and move within the home.

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

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

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

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0900, filed 9/20/21, effective 10/21/21; WSR 20-05-080, § 388-845-0900, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0900, filed 6/20/18, effective 7/21/18. 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, § 388-845-0900, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0900, 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, § 388-845-0900, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0900, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0900, 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, § 388-845-0900, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0910 What limits apply to environmental adaptations?

The following service limits apply to environmental adaptations:

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

(2) Environmental adaptations require prior approval by the DDA regional administrator or designee.

(3) Environmental adaptations (~~and~~) must be supported by itemized and written bids from licensed contractors. For an adaptation that costs:

(a) (~~One thousand five hundred dollars~~) \$1,500 or less, one bid is required;

(b) More than (~~one thousand five hundred dollars~~) \$1,500 and equal to or less than (~~five thousand dollars~~) \$5,000, two bids are required; or

(c) More than (~~five thousand dollars~~) \$5,000, three bids are required.

(~~3~~) (4) All bids must include:

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

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

(~~4~~) (5) DDA may require an occupational therapist, physical therapist, or other professional to review and recommend an appropriate environmental adaptation statement of work prior to the waiver participant soliciting bids or purchasing adaptive equipment.

(~~5~~) (6) Environmental adaptations to the home are excluded if they are of general utility without direct benefit to the individual as related to the individual's developmental disability, such as cosmetic improvements to the home, or general home improvements, such as carpeting, roof repair, or central air conditioning.

(~~6~~) (7) Environmental adaptations must meet all local and state building codes. Evidence of any required completed inspections must be submitted to DDA prior to final payment for work.

(~~7~~) (8) Environmental adaptations must not be performed while other adaptations or remodeling projects are in process.

(~~8~~) (9) Environmental adaptations must not be approved if the existing residence condition is impacted by hazardous mold, asbestos, or home dilapidation.

(~~9~~) (10) Location of the home in a flood plain, landslide zone, or other hazardous area may limit or prevent any environmental adaptations at the discretion of DDA.

(~~10~~) (11) Written consent from the home's landlord is required prior to starting any environmental adaptations for a rental property. The landlord must not require removal of the environmental adaptations at the end of the waiver participant's tenancy as a condition of the landlord approving the environmental adaptation to the waiver participant's home.

(~~11~~) (12) Environmental adaptations must not add to the total square footage of the home, convert nonliving space to living space, or create a new room.

(~~12~~) (13) The amount of service you may receive is limited to the dollar amounts for aggregate services in your basic plus waiver, CIIBS waiver, or the dollar amount of your annual IFS waiver allocation.

~~((13))~~ (14) For core and community protection waivers, annual environmental adaptation costs must not exceed ~~((twelve thousand one hundred ninety two dollars))~~ \$12,192.

~~((14))~~ (15) Damage prevention and repairs under the CIIBS, ~~((and))~~ IFS, core, and CP waivers are subject to the following restrictions:

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

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

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

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

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

~~((15))~~ (16) Noncovered environmental adaptations include:

(a) Building fences and fence repairs;

(b) Carpet or carpet replacement;

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

(d) Roof repair or siding;

(e) Deck construction or repair; and

(f) Jetted tubs or saunas.

~~((16))~~ (17) Environmental adaptations are limited to additional services not otherwise covered under the medicaid state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0910, filed 9/20/21, effective 10/21/21; WSR 20-05-080, § 388-845-0910, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0910, filed 6/20/18, effective 7/21/18. 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, § 388-845-0910, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0910, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-0910, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-0910, 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, § 388-845-0910, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

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

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

(2) The department requires ~~((you*))~~ a written recommendation from a behavioral health or related provider. The recommendation must

include a description of (~~(specialist's written recommendation regarding)~~) your need for the service (~~(. This recommendation must)~~) and take into account that the service is expected to complement the existing behavioral health support plan (~~(to address behavior support needs)~~).

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

~~((4))~~ (3) DDA may require a second opinion by the department-selected provider.

~~((5))~~ (4) Equine therapy services must not exceed the CIIBS combined specialized-hourly services allocation of (~~(five thousand dollars)~~) \$5,000 per (~~(plan)~~) waiver year.

~~((6))~~ (5) Equine therapy services must not be used to provide hippotherapy, which is an occupational therapy service.

~~((7))~~ (6) The department reserves the right to terminate the authorization for equine therapy services if there is not a demonstrable improvement in behavior as documented by the contracted equine therapist or other treatment provider.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-0940, filed 9/20/21, effective 10/21/21.]

NEW SECTION

WAC 388-845-0945 What is remote support? (1) Remote support is supervision, coaching, and consultation from a contracted remote support provider to a waiver participant from a distant location.

(2) The provider uses HIPAA-compliant technology and secure data storage to support the waiver participant to increase their independence and safety in their home and community when not engaged in other DDA-paid services or informal supports.

(3) Remote support includes equipment as needed to deliver the supervision, coaching, and consultation. Equipment may include one or more of the following components:

- (a) Motion-sensing system;
- (b) Radio frequency identification;
- (c) Video calling via assistive technology;
- (d) Live audio feed; and
- (e) Web-based monitoring systems.

[]

NEW SECTION

WAC 388-845-0950 Who are qualified providers of remote support?

(1) The provider of remote support must be an entity contracted with DDA to provide remote support.

(2) A guardian, legal representative, parent, or other family member cannot provide remote support to a waiver participant.

[]

NEW SECTION

WAC 388-845-0955 Are there limits to the remote support I may receive? The following limits apply to your receipt of remote support:

- (1) Remote support must never be used to restrict a person from their home, community, or body autonomy.
- (2) Before DDA authorizes remote support, a backup plan must be established and documented in the waiver participant's person-centered service plan.
- (3) The need for remote support must be identified in the waiver participant's person-centered service plan.
- (4) Remote support cannot pay for internet, data plans, or wi-fi access.
- (5) Remote support requires prior approval by the regional administrator or designee.
- (6) For basic plus, remote support is limited to the aggregate budget.
- (7) For IFS, remote support is limited to the annual allocation.
- (8) Remote support must not replace, duplicate, or be the delivery method for other available paid or unpaid supports or services.
- (9) Remote support must not be authorized to waiver participants receiving residential habilitation.

[]

AMENDATORY SECTION (Amending WSR 18-03-174, filed 1/23/18, effective 2/23/18)

WAC 388-845-1030 What are individualized technical assistance services? Individualized technical assistance services:

- (1) Provide short-term, professional expertise to identify and address barriers to employment services or community inclusion; and
- (2) Are available in addition to supports received through supported employment services and community inclusion for an individual who has not yet achieved his or her goal.

[Statutory Authority: RCW 71A.12.030, 71A.12.040, 2015 3rd sp.s. c 4, and 42 C.F.R. § 441.301 (c)(4)-(5). WSR 18-03-174, § 388-845-1030, filed 1/23/18, effective 2/23/18. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1030, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 74.08.090, 74.09.520, and 2012 c 49. WSR 12-16-095, § 388-845-1030, filed 8/1/12, effective 9/1/12.]

AMENDATORY SECTION (Amending WSR 18-03-174, filed 1/23/18, effective 2/23/18)

WAC 388-845-1040 Are there limits to the individualized technical assistance services you may receive? (1) The developmental disabilities administration (DDA) may authorize a maximum of (~~three~~) six months of individualized technical assistance services at a time, not to exceed six months in the (~~plan~~) waiver year.

(2) Individualized technical assistance services are available on the basic plus, core, and community protection waivers.

(3) Individualized technical assistance services are available only to ~~((individuals))~~ clients who are receiving supported employment or community inclusion services, unless approved by the regional administrator or his or her designee.

(4) Individualized technical assistance services are limited to additional hours under WAC 388-828-9355 and 388-828-9360.

[Statutory Authority: RCW 71A.12.030, 71A.12.040, 2015 3rd sp.s. c 4, and 42 C.F.R. § 441.301 (c) (4)-(5). WSR 18-03-174, § 388-845-1040, filed 1/23/18, effective 2/23/18. 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, § 388-845-1040, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1040, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 74.08.090, 74.09.520, and 2012 c 49. WSR 12-16-095, § 388-845-1040, filed 8/1/12, effective 9/1/12.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

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

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

(2) The department requires ~~((your behavior specialist's))~~ a written recommendation ((regarding your need for the service)) from a behavioral health or related provider. ~~((This))~~ The recommendation must include a description of your need for the services and take into account that music therapy is expected to complement the existing behavioral health ((support)) plan ((to address behavior support needs)).

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

~~((4))~~ (3) DDA may require a second opinion by a department-selected provider.

~~((5))~~ (4) Music therapy must not exceed the CIIBS combined specialized-hourly services allocation of ((five thousand dollars)) \$5,000 per year.

~~((6))~~ (5) The department reserves the right to terminate the service authorization for music therapy if there is not a demonstrable improvement in behavior as documented by the certified music therapist or other treatment provider.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-1163, filed 9/20/21, effective 10/21/21.]

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

WAC 388-845-1190 What is peer mentoring? (1) Peer mentoring is a form of mentorship that takes place between a person who has lived through an experience (peer mentor) and a person who is new to that experience (mentee). Peer mentors use their experience to inform, support, and train mentees to successfully navigate new experiences related to or impacted by their disability.

(2) A peer mentor may provide support and guidance to a (~~waiver participant and~~) client, the (~~participant's~~) client's family, or both.

(3) A peer mentor may connect a waiver participant to local community services, programs, and resources and answer participant questions or suggest other sources of support.

(4) Peer mentoring is available in the IFS and CIIBS waivers.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-1190, filed 2/18/20, effective 3/20/20. 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, § 388-845-1190, filed 8/4/16, effective 9/4/16.]

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

WAC 388-845-1192 What limits apply to peer mentoring? (1) Support needs for peer mentoring are limited to those identified in the waiver participant's DDA assessment and documented in the person-centered service plan.

(2) DDA does not contract with a peer mentor to mentor a member of the mentor's own family.

(3) An IFS waiver participant's peer mentoring services are limited to the participant's annual IFS waiver allocation.

(4) A CIIBS waiver participant's peer mentoring services are limited to the funding available in their CIIBS funding allocation under WAC 388-845-0225.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-1192, filed 2/18/20, effective 3/20/20. 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, § 388-845-1192, filed 8/4/16, effective 9/4/16.]

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

WAC 388-845-1195 What is person-centered plan facilitation? (1) Person-centered plan facilitation is an approach to forming life plans that is centered on the individual. It is used as a life planning process to enable individuals with disabilities to increase personal self-determination. Person-centered plan facilitation is available in the IFS and CIIBS waivers.

- (2) Person-centered plan facilitation typically includes:
- (a) Identifying and developing a potential circle of people who know and care about the individual;
 - (b) Exploring what matters to the waiver participant by listening to and learning from the person;
 - (c) Developing a vision for a meaningful life, as defined by the waiver participant, which may include goals for education, employment, housing, relationships, and recreation;
 - (d) Discovering capacities and assets of the waiver participant, and his or her family, neighborhood, and support network;
 - (e) Generating an action plan; and
 - (f) Facilitating follow-up meetings to track progress toward goals.

[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, § 388-845-1195, filed 8/4/16, effective 9/4/16.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

- WAC 388-845-1197 What ((limitations are there)) are the limits for person-centered plan facilitation?** (1) Support needs for person-centered planning facilitation are limited to those identified in the waiver participant's DDA assessment and documented in the person-centered service plan.
- (2) Person-centered plan facilitation may include follow up contacts with the waiver participant and his or her family to consult on plan implementation.
- (3) ~~((The dollar amounts for the waiver participants' annual allocation in the IFS waiver limit the amount of person-centered plan facilitation service the individual is authorized to receive.))~~ An IFS waiver participant's person-centered plan facilitation is limited to the participant's annual allocation.
- (4) A CIIBS waiver participant's person-centered plan facilitation is limited to the funding available in their CIIBS funding allocation under WAC 388-845-0225.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-1197, filed 9/20/21, effective 10/21/21. 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, § 388-845-1197, filed 8/4/16, effective 9/4/16.]

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

- WAC 388-845-1600 What is respite care?** (1) Respite care is short-term intermittent care to provide relief for a person who lives with you, is your primary care provider, and is:
- (a) Your family member and your paid or unpaid care provider;
 - (b) A nonfamily member who is not paid to provide care for you;

(c) A contracted companion home provider paid by DDA to provide support to you; or

(d) A licensed children's foster home provider paid by DDA to provide support to you.

(2) Respite care is available in the:

(a) Basic plus waiver;

(b) Children's intensive in-home behavioral support (CIIBS) waiver;

(c) Core waiver; and

(d) Individual and family services (IFS) waiver.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-1600, filed 6/20/18, effective 7/21/18. 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, § 388-845-1600, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1600, 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, § 388-845-1600, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-1600, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 08-20-033, § 388-845-1600, filed 9/22/08, effective 10/23/08. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-1600, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-1607 Can someone who lives with you be your respite provider? A person who lives with you (~~(must not)~~) may be your respite care provider if the person is not:

(1) Your primary care provider;

(2) Providing any other DSHS paid service to you in the month that person provides respite care to you; or

(3) (~~(Unqualified to provide waiver)~~) Excluded from providing services based on the limits ((listed in)) under WAC 388-845-0111.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-1607, filed 9/20/21, effective 10/21/21. 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, § 388-845-1607, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1607, 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, § 388-845-1607, filed 1/24/13, effective 2/24/13.]

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

WAC 388-845-1620 Are there limits to the respite care you may receive? The following limits apply to the respite care you may receive:

(1) For basic plus, core, and the children's intensive in-home behavioral support (CIIBS) waivers, the developmental disabilities administration (DDA) assessment will determine how much respite you may receive under chapter 388-828 WAC.

(2) For the individual and family services (IFS) waiver, the dollar amount for your annual allocation in your IFS waiver limits the amount of respite care you may receive.

(3) Respite must not replace:

(a) Day care while your parent or guardian is at work; or

(b) Personal care hours available to you.

(4) If you receive respite in a private home, the home must be licensed to provide respite care unless the home is:

(a) Your private home; or

(b) The home of a relative under WAC 388-825-345.

(5) If you receive respite from a provider who requires licensure, the respite services are limited to activities and age-specific criteria contained in the provider's license.

(6) Your individual respite provider must not provide:

(a) Other DDA services for you during your respite care hours; or

(b) DDA paid services to other persons during your respite care hours.

(7) Your primary caregivers must not provide other DDA services for you during your respite care hours.

(8) If your personal care provider is your parent and you live in your parent's adult family home you must not receive respite.

(9) DDA must not pay for fees - such as a membership or insurance fee - associated with your respite care.

(10) If you require respite care from a licensed practical nurse (LPN) or a registered nurse (RN), respite services may be authorized using an LPN or RN. Respite services are limited to the assessed respite care hours identified in your person-centered service plan. Respite provided by an LPN or RN requires a prior approval by the regional administrator or designee.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-1620, filed 6/20/18, effective 7/21/18. 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, § 388-845-1620, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1620, 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, § 388-845-1620, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1) (i), and Title 71A RCW. WSR 10-22-088, § 388-845-1620, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 08-20-033, § 388-845-1620, filed 9/22/08, effective 10/23/08; WSR 07-20-050, § 388-845-1620, 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, § 388-845-1620, filed 12/13/05, effective 1/13/06.]

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

WAC 388-845-1660 Are there limits to the risk assessment you may receive? (1) Clinical and support needs for a risk assessment are limited to those identified in your DDA assessment and documented in your person-centered service plan.

(2) A risk assessment must meet requirements under WAC ((246-930-320)) 388-831-0060.

(3) A risk assessment requires prior approval by the DDA regional administrator or designee.

(4) The cost of a risk assessment does not count toward the:

(a) Dollar limit for aggregate services in the basic plus waiver;
 (b) Annual allocation in the individual and family services waiver; or

(c) ((Monthly average cost limit)) Aggregate budget amounts available in the children's intensive in-home behavior support waiver.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-1660, filed 6/20/18, effective 7/21/18. 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, § 388-845-1660, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1660, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 08-20-033, § 388-845-1660, filed 9/22/08, effective 10/23/08; WSR 07-20-050, § 388-845-1660, 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, § 388-845-1660, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-1800 What are specialized equipment and supplies?

(1) Specialized equipment and supplies are ((durable and nondurable medical equipment, or nonmedical equipment)) specialized items necessary to prevent institutionalization((,)) that are not ((available)) covered, or are in excess of what is covered, through the medicaid state plan. ((or are in excess of what is available through the medicaid state plan benefit, which enables individuals:)) Types of specialized equipment and supplies include:

(a) Durable medical equipment;

(b) Nondurable medical equipment designed to directly improve an activity of daily living or instrumental activity of daily living need; and

(c) Nonmedical, specialized equipment designed to directly assist an individual in tasks affected by a functionally limiting disability.

(2) An item purchased under specialized equipment and supplies must directly enable a client to:

(a) ((☐)) Increase their abilities to perform their activities of daily living;

(b) ((☐)) Perceive, control, or communicate with the environment in which they live; or

(c) ~~((1e))~~ Improve daily functioning through sensory integration identified in a written therapeutic plan by the current treating professional.

~~((2))~~ (3) Specialized equipment and supplies are available in all DDA HCBS waivers.

~~((3))~~ (4) Durable medical equipment and medical supplies are defined in WAC 182-543-1000 and 182-543-5500, respectively.

~~((4))~~ (5) Also included in specialized equipment and supplies are items necessary for life support and ancillary supplies and equipment necessary to the proper functioning of the equipment and supplies described in subsection (1) of this section.

~~((5))~~ (6) Specialized equipment and supplies include the maintenance and repair of specialized equipment not covered through the medicaid state plan.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-1800, filed 9/20/21, effective 10/21/21; WSR 20-05-080, § 388-845-1800, filed 2/18/20, effective 3/20/20. 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, § 388-845-1800, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1800, 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, § 388-845-1800, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-1800, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-1800, 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, § 388-845-1800, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-1805 Who are the qualified providers of specialized equipment and supplies? (1) To be a qualified provider of specialized durable or nondurable medical equipment, the provider must be a medical equipment supplier currently contracted:

- (a) With DDA as a specialized equipment and supplies vendor; and
- (b) As a Title XIX vendor.

(2) The provider of specialized nonmedical equipment ~~((may))~~ must be a provider contracted with DDA as:

- (a) ~~((a))~~ A purchasing goods and services ~~((shopper))~~ vendor; or
- (b) ~~((a-provider))~~ A vendor who satisfies the requirements of

~~((WAC 388-845-1805(1)))~~ subsection (1) of this section.

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

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-1805, filed 9/20/21, effective 10/21/21; WSR 20-05-080, § 388-845-1805, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1805, filed

11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-1805, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

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

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

(2) Specialized equipment and supplies over \$550 require prior approval by the DDA regional administrator or designee (~~for each authorization~~).

(3) When your medical professional recommends specialized equipment and supplies for you, DDA may require a second opinion by a DDA-selected provider.

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

(5) Items requested to address a sensory integration need must have an accompanying therapeutic plan written by a current treating professional.

~~((5))~~ (6) Medications, first aid supplies, antiseptic supplies, personal hygiene products, supplements, and vitamins are excluded.

~~((6))~~ (7) The dollar amounts for aggregate services in your basic plus or CIIBS waiver limit the amount of service you may receive.

~~((7))~~ (8) The dollar amounts for your annual allocation in your individual and family services (IFS) waiver limit the amount of service you may receive.

~~((8))~~ (9) Items excluded from specialized equipment and supplies include:

(a) Items of general utility;

(b) Items that do not directly support the client as described in WAC 388-845-1800; and

~~((b))~~ (c) Nonspecialized recreational or exercise equipment, including but not limited to trampolines, treadmills, swing sets, and hot tubs.

~~((9))~~ (10) Specialized equipment and supplies are limited to additional services not otherwise covered under the medicaid state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-1810, filed 9/20/21, effective 10/21/21; WSR 20-05-080, § 388-845-1810, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-1810, filed 6/20/18, effective 7/21/18. 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, § 388-845-1810, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1810, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR

07-20-050, § 388-845-1810, 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, § 388-845-1810, filed 12/13/05, effective 1/13/06.]

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

WAC 388-845-1865 Are there limits to your receipt of specialized clothing? (1) The following limits apply to specialized clothing you may receive:

(a) Clinical and support needs for specialized clothing are limited to those identified in your DDA assessment and documented in your person-centered service plan.

(b) DDA requires written documentation from an appropriate health professional regarding your need for the service. This recommendation must take into account that the health professional has recently examined you, reviewed your medical records, and conducted an assessment.

(c) DDA may require a second opinion from a DDA-selected provider.

(2) For the IFS waiver, the dollar amount for your annual allocation limits the amount of service you may receive.

(3) For the CIIBS waiver, the dollar amount for your aggregate services limits the amount of service you may receive.

~~((3))~~ (4) You must receive prior approval from the DDA regional administrator or designee to receive specialized clothing.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-1865, filed 6/20/18, effective 7/21/18. 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, § 388-845-1865, filed 8/4/16, effective 9/4/16.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-1870 What are specialized habilitation services?

(1) Specialized habilitation services provide community-based and individualized support with the intent of reaching an identified habilitative goal in the person-centered service plan.

(2) Service must assist a client to learn or maintain skills in the category of:

(a) Self-empowerment((τ));

(b) Safety awareness((τ)) and self-advocacy((τ));

(c) Interpersonal effectiveness((τ)) and effective social communication((τ));

(d) ((appropriate)) Effective coping strategies for everyday life changes((τ)); and

(e) Managing daily tasks((τ-φ)) and acquiring adaptive skills.

(3) Specialized habilitation must promote inclusion in the community.

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

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

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-1870, filed 9/20/21, effective 10/21/21.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

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

- (1) A certified life skills coach;
- (2) An individual with a bachelor's, master's, or doctoral degree in social work, sociology, psychology, education, child development, gerontology, nursing, or other related field; or
- (3) An individual enrolled and supervised in a university internship program for social work, sociology, psychology, education, child development, gerontology, sociology, or nursing.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-1880, filed 9/20/21, effective 10/21/21.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

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

- (1) Specialized habilitation is limited to address a maximum of three goals at a time.
- (2) Specialized habilitation support needs must be identified in your DDA assessment and specialized habilitation must be documented in your person-centered service plan.
- (3) Specialized habilitation must not exceed:
 - ~~((a) Four thousand dollars of your basic plus aggregate funding;))~~
 - ~~((b))~~ (a) Your IFS annual allocation in combination with other waiver services; or
 - ~~((c) Fifteen thousand dollars))~~ (b) \$15,000 within your total CIIBS aggregate budget and ~~((six thousand dollars))~~ \$6,000 emergency assistance funding when eligible per WAC 388-845-0800 and 388-845-0820.
- (4) Specialized habilitation does not cover education, vocational, skills acquisition training through community first choice, behavioral health, ABA, skilled nursing, occupational therapy, physical therapy, or speech, language, and hearing services that are covered benefits through the medicaid state plan, including early and periodic screening, diagnosis, and treatment, and part B special education services.

(5) Specialized habilitation must not be authorized ~~((to))~~ for a ~~((clients enrolled in))~~ client receiving residential habilitation, unless the client is receiving the service from a companion home provider.

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

(7) Specialized habilitation, not provided as a stabilization service, requires prior approval by the DDA regional administrator or designee.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-1890, filed 9/20/21, effective 10/21/21.]

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 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-2000 What is staff and family consultation? (1)

Staff and family consultation is assistance, not covered by the medic-aid state plan, to families or direct service providers to help them meet the individualized and specific needs of a participant as outlined in the participant's person-centered service plan and necessary to improve the participant's independence and inclusion in their community.

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

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

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

(b) Positioning and transfer;

(c) Basic and advanced instructional techniques;

(d) Consultation with potential referral resources;

(e) Augmentative communication systems;

(f) Diet and nutritional guidance;

(g) Disability information and education;

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

(i) Environmental consultation;

(j) Assistive technology safety;

(k) Parenting skills; and

~~((k) An existing plan of care; and))~~

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

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-2000, filed 9/20/21, effective 10/21/21; WSR 20-05-080, § 388-845-2000, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-2000, filed 6/20/18, effective 7/21/18. 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, § 388-845-2000, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-2000, 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, § 388-845-2000, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-2000, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-2000, 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, § 388-845-2000, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

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

- (1) Audiologist;
- (2) Licensed practical nurse;
- (3) Marriage and family therapist;
- (4) Mental health counselor;
- (5) Occupational therapist;
- (6) Physical therapist;
- (7) Registered nurse;
- (8) Sex offender treatment provider;
- (9) Speech-language pathologist;
- (10) Social worker;
- (11) Psychologist;
- (12) Certified American Sign Language instructor;
- (13) Nutritionist;
- (14) Counselors registered or certified in accordance with chapter 18.19 RCW;
- (15) Certified dietician;
- (16) Recreation therapist registered in Washington and certified by the national council for therapeutic recreation;
- ~~((17) Providers listed in WAC 388-845-0506 and contracted with DDA to provide CIIBS intensive services;))~~
- ~~((18))~~ (17) Certified music therapist (for CIIBS only);
- ~~((19))~~ (18) Psychiatrist;
- ~~((20))~~ (19) Professional advocacy organization;
- (20) DDA-contracted specialized habilitation provider; or
- (21) Teacher certified under chapter 181-79A WAC.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-2005, filed 9/20/21, effective 10/21/21; WSR 20-05-080, § 388-845-2005, filed 2/18/20, effective 3/20/20. 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, § 388-845-2005, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-2005, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 74.08.090, 74.09.520, and 2012 c 49. WSR 12-16-095, § 388-845-2005, filed 8/1/12, effective 9/1/12. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-2005, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A

RCW. WSR 07-20-050, § 388-845-2005, 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, § 388-845-2005, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

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

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

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

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

(a) Live with the participant; and

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

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

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

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

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-2010, filed 9/20/21, effective 10/21/21; WSR 20-05-080, § 388-845-2010, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-2010, filed 6/20/18, effective 7/21/18. 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, § 388-845-2010, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-2010, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-2010, 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, § 388-845-2010, filed 12/13/05, effective 1/13/06.]

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

WAC 388-845-2130 What are supported parenting services? (1)

Supported parenting services are professional services offered to ((participants)) DDA clients who are parents or expectant parents.

(2) Services may include teaching, parent coaching, and other supportive strategies in areas critical to parenting, including child development, nutrition and health, safety, child care, money management, time and household management, and housing.

(3) Supported parenting services are designed to build parental skills and understanding around ((the)) a child's developmental domains of cognition, language, motor, social-emotional, and self-help.

(4) Supported parenting services are offered in the Core and IFS waivers.

[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, § 388-845-2130, filed 8/4/16, effective 9/4/16.]

NEW SECTION

WAC 388-845-2141 What is specialized evaluation and consultation? (1) Specialized evaluation and consultation is direct, individualized, habilitative skill building support in the areas of sex education, fire safety, social skills training, and understandings of laws, rights, and responsibilities.

(2) Supports are provided in order to support a client to reduce the likelihood of:

(a) Fire setting; or

(b) Sexual or physical assault in the home and community.

(3) Supports must be used to promote safe engagement and participation in the community.

(4) Supports may be provided in an individual or group setting and includes a special needs evaluation to identify client goals and the specific support needs in order to reach those goals.

(5) Services must assist a client to learn to maintain skills using individual or group supports, treatment team participation, and plan writing.

(6) Specialized evaluation and consultation is available on the community protection waiver.

[]

NEW SECTION

WAC 388-845-2142 Who are qualified providers of specialized evaluation and consultation services? All specialized evaluation and consultation providers must be contracted with DDA and:

(1) Be licensed, registered, or certified in Washington state according to the standards of their approved profession in Title 18 RCW and Title 246 WAC; or

(2) Have a bachelor's degree or higher in social services and at least three years of prior experience working with individuals with developmental disabilities who engage in challenging behaviors.

[]

NEW SECTION

WAC 388-845-2143 What are the limits to specialized evaluation and consultation services? The following limits apply to your receipt of specialized evaluation and consultation:

- (1) You must be enrolled on the community protection waiver.
- (2) Specialized evaluation and consultation support needs must be identified in your DDA assessment and must be documented in your person-centered service plan.
- (3) Specialized evaluation and consultation is limited to services that are:
 - (a) Consistent with waiver objectives of avoiding institutionalization; and
 - (b) Not a covered benefit under the medicaid state plan.
- (4) This service must not replace one-on-one, group, or other treatments to address a mental health condition which are covered by the medicaid state plan.

[]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-2150 Who is a qualified provider of therapeutic adaptations? (1) A qualified provider of therapeutic adaptations installation is ~~((a person))~~ an entity who is contracted with DDA ~~((and:))~~ as an environmental adaptations vendor.

~~((a) A registered contractor per chapter 18.27 RCW and licensed and bonded to perform the specific type of work they are providing; or~~

~~(b) A medical equipment supplier with a state contract as a Title XIX vendor.~~

~~(2) A qualified provider of therapeutic adaptations may also be someone who is contracted with DDA as:~~

~~(a) A purchasing goods and services contractor; or~~

~~(b) A CIIBS goods and services contractor.)~~

(2) A qualified provider of therapeutic adaptation items and supplies is an entity contracted with DDA as:

(a) A specialized equipment and supplies vendor;

(b) A purchasing goods and services vendor;

(c) A specialized goods and services vendor; or

(d) An environmental adaptations vendor.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-2150, filed 9/20/21, effective 10/21/21.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

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

(1) Therapeutic adaptations are limited to one adaptation request every five waiver years.

(2) Funding is limited to the aggregate budget in the basic plus and IFS waiver or (~~fifteen thousand dollars~~) \$15,000 on the CIIBS waiver.

(3) Modifications may not add square footage to the home or convert nonliving space into living space.

(4) The department requires a written recommendation by a behavioral health provider, occupational therapist, or physical therapist within the waiver participant's current therapeutic plan.

(5) Therapeutic adaptations are limited to items not otherwise covered under the state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

(6) Therapeutic adaptations require prior approval by the DDA regional administrator or designee.

(7) Therapeutic adaptations are limited to those identified in the client's person-centered service plan.

(8) Written consent from the home's landlord is required before starting any therapeutic adaptation for a rental property. The landlord must not require removal of the therapeutic adaptation at the end of the waiver participant's tenancy as a condition of the landlord approving the therapeutic adaptation to the waiver participant's home.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-2155, filed 9/20/21, effective 10/21/21.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-2200 What are transportation services? Transportation services provide reimbursement to a provider when the transportation is required and specified in the (~~waiver~~) person-centered service plan. This service is available in all DDA HCBS waivers if the cost and responsibility for transportation is not already included in your provider's contract and payment.

(1) Transportation provides you access to waiver services, specified by your person-centered service plan.

(2) Whenever possible, you must use family, neighbors, friends, or community agencies that can provide this service without charge.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-2200, filed 9/20/21, effective 10/21/21. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-2200, 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, § 388-845-2200, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-2200, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR

07-20-050, § 388-845-2200, 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, § 388-845-2200, filed 12/13/05, effective 1/13/06.]

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

WAC 388-845-2205 Who is qualified to provide transportation services? (~~(1)~~) The provider of transportation services can be an individual or agency contracted with DDA whose contract includes transportation in the statement of work.

[Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-2205, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-2205, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-2210 Are there limitations to the transportation services you can receive? The following limitations apply to transportation services:

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

(2) Transportation is limited to travel to and from a waiver service. When the waiver service is supported employment, transportation is limited to days when you receive employment support services.

(3) Transportation does not include the purchase of a bus pass.

(4) Reimbursement for provider mileage requires prior authorization by DDA and is paid according to contract.

(5) This service does not cover the purchase or lease of vehicles.

(6) Reimbursement for provider travel time is not included in this service.

(7) Reimbursement to the provider is limited to transportation that occurs when you are with the provider.

(8) You are not eligible for transportation services if the cost and responsibility for transportation is already included in your provider's contract and payment.

(9) The dollar limitations for aggregate services in your basic plus waiver or the dollar amount of your annual allocation in the IFS waiver limit the amount of service you may receive.

~~((10) If your individual waiver personal care provider uses his or her own vehicle to provide transportation to you for essential shopping and medical appointments as a part of your personal care service, your provider may receive up to one hundred miles per month in mileage reimbursement. If you work with more than one individual personal care provider, your limit is still a total of one hundred miles per month. This cost is not counted toward the dollar limitation for aggregate services in the basic plus waiver.))~~

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-2210, filed 9/20/21, effective 10/21/21. 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, § 388-845-2210, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-2210, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 08-20-033, § 388-845-2210, filed 9/22/08, effective 10/23/08; WSR 07-20-050, § 388-845-2210, 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, § 388-845-2210, filed 12/13/05, effective 1/13/06.]

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

WAC 388-845-2260 What are vehicle modifications? (1) Vehicle modifications are adaptations or alterations to a vehicle required in order to accommodate the unique needs of the participant, enable full integration into the community, and ensure the health, welfare, and safety of the participant or the safety of a caregiver.

(2) Vehicle modifications over \$550 require prior approval from the DDA regional administrator or designee.

(3) Examples of vehicle modifications include:

- (a) Manual hitch-mounted carrier and hitch for all wheelchair types;
- (b) Wheelchair cover;
- (c) Wheelchair strap-downs;
- (d) Portable wheelchair ramp;
- (e) Accessible running boards and steps;
- (f) Assist poles and grab handles((-));
- (g) Power activated carrier for all wheelchair types;
- (h) Permanently installed wheelchair ramps;
- (i) Repairs and maintenance to vehicular modifications as needed for client safety; and
- (j) Other access modifications.

[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, § 388-845-2260, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-2260, filed 11/1/10, effective 12/2/10.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-2270 Are there ((limitations)) limits to your receipt of vehicle modification services? Vehicle modification services are only available on the CIIBS or IFS waiver. The following ((limitations)) limits apply:

(1) Vehicle modifications require prior approval from the DDA regional administrator or designee, except for repairs to existing vehicle modifications.

~~((1))~~ (2) Clinical and support needs for vehicle modification services are limited to those identified in your DDA assessment and documented in the person-centered service plan.

~~((2))~~ (3) Vehicle modifications are excluded if they are of general utility without direct medical or remedial benefit to you.

~~((3))~~ (4) If you are eligible for or enrolled with division of vocational rehabilitation (DVR) you must pursue this benefit through DVR first.

~~((4))~~ (5) Vehicle modifications must be the most cost-effective modification based upon a comparison of contractor bids as determined by DDA.

~~((5))~~ (6) Modifications will only be approved for a vehicle that serves as your primary means of transportation and is owned by you, your family, or both.

~~((6))~~ (7) DDA requires your treating professional's written recommendation regarding your need for the service. This recommendation must take into account that the treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.

~~((7))~~ (8) The department may require a second opinion from a department selected provider that meets the same criteria as subsection ~~((6))~~ (7) of this section.

~~((8))~~ (9) The dollar amount for your annual allocation in your IFS waiver limits the amount of vehicle modification service you are authorized to receive.

(10) The amount of vehicle modification service you are authorized to receive is limited to the dollar amount for your CIIBS waiver aggregate budget under WAC 388-845-0225.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-2270, filed 9/20/21, effective 10/21/21. 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, § 388-845-2270, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-2270, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-2270, filed 11/1/10, effective 12/2/10.]

AMENDATORY SECTION (Amending WSR 16-05-053, filed 2/11/16, effective 3/13/16)

WAC 388-845-2283 How are my wellness educational materials selected? Individualized educational materials are selected for you by the wellness education provider's algorithm and are based on your DDA assessment. Goals, diagnoses, treatments, conditions, and other factors identified in your DDA assessment provide the basis for the algorithm to select educational materials for you. These goals, diagnoses, treatments, conditions, and other factors may include, but are not limited to the following:

- (1) Diabetes - IDDM;
- (2) Diabetes - NIDDM;

- (3) COPD;
- (4) Cardiovascular disease;
- (5) Rheumatoid arthritis;
- (6) Traumatic brain injury;
- (7) Cerebral palsy;
- (8) Alzheimer's disease;
- (9) Anxiety disorder;
- (10) Asthma;
- (11) Autism;
- (12) Stroke;
- (13) Congestive heart failure;
- (14) Decubitus ulcer;
- (15) Depression;
- (16) Emphysema;
- (17) GERD;
- (18) Hypertension;
- (19) Hypotension;
- (20) Down's syndrome;
- (21) Fragile X syndrome;
- (22) Prader-Willi;
- (23) ADD;
- (24) ADHD;
- (25) Post-traumatic stress disorder;
- (26) Asperger's syndrome;
- (27) Hepatitis;
- (28) Paraplegia;
- (29) Quadriplegia;
- (30) Fetal alcohol syndrome/fetal alcohol effect;
- (31) Epilepsy;
- (32) Seizure disorder;
- (33) Sleep apnea;
- (34) Urinary tract infection;
- (35) Multiple sclerosis;
- (36) Falls;
- (37) Smoking;
- (38) Alcohol abuse;
- (39) Substance abuse;
- (40) Bowel incontinence;
- (41) Bladder incontinence;
- (42) Diabetic foot care;
- (43) Pain daily;
- (44) Sleep issues;
- (45) BMI = or greater than 25;
- (46) BMI less than 18.5;
- (47) Skin care (pressure ulcers, abrasions, burns, rashes);
- (48) Seasonal allergies;
- (49) Edema;
- (50) Poor balance;
- (51) Recent loss/grieving;
- (52) Conflict management;
- (53) Importance of regular dental visits;
- (54) ADA diet;
- (55) Cardiac diet;
- (56) Celiac diet;
- (57) Low sodium diet;
- (58) Goals; and
- (59) Parkinson's disease.

[Statutory Authority: RCW 71A.12.030. WSR 16-05-053, § 388-845-2283, filed 2/11/16, effective 3/13/16.]

AMENDATORY SECTION (Amending WSR 16-19-031, filed 9/13/16, effective 10/14/16)

WAC 388-845-2285 Are there limits to wellness education? (1)

Wellness education is a once-a-month service.

(2) In the basic plus waiver, you are limited to the aggregate service expenditure limits defined in WAC 388-845-0210.

(3) The dollar amount for your individual and family services (IFS) waiver annual allocation defined in WAC 388-845-0230 limits the amount of service you may receive.

[Statutory Authority: RCW 71A.12.030 and CMS. WSR 16-19-031, § 388-845-2285, filed 9/13/16, effective 10/14/16. Statutory Authority: RCW 71A.12.030. WSR 16-05-053, § 388-845-2285, filed 2/11/16, effective 3/13/16.]

AMENDATORY SECTION (Amending WSR 16-05-053, filed 2/11/16, effective 3/13/16)

WAC 388-845-2290 Who are qualified providers of wellness education? The wellness education provider must have the ability and resources to:

(1) Receive and manage client data in compliance with all applicable federal ((HIPPA)) HIPAA regulations, state law and rules, and ensure client confidentiality and privacy;

(2) Translate materials into the preferred language of the participant;

(3) Ensure that materials are targeted to the participant's assessment and person-centered service plan;

(4) Manage content sent to participants to prevent duplication of materials;

(5) Deliver newsletters and identify any undeliverable client/representative addresses prior to each monthly mailing and manage any returned mail in a manner that ensures participants receive the monthly information; and

(6) Contract with ALISA or DDA to provide this service.

[Statutory Authority: RCW 71A.12.030. WSR 16-05-053, § 388-845-2290, filed 2/11/16, effective 3/13/16.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-3055 What is a ((waiver)) person-centered service plan? (1) The person-centered service plan is the primary tool DDA uses to determine and document your needs and to identify the services to meet those needs.

- (2) Your person-centered service plan must include:
- (a) Your identified health and welfare needs;
 - (b) Both paid and unpaid services and supports approved to meet your identified health and welfare needs as identified in WAC 388-828-8040 and 388-828-8060; and
 - (c) How often you will receive each waiver service, how long you will need it, and who will provide it.
- (3) For any person-centered service plan, you or your legal representative must sign the plan indicating your agreement to the receipt of services.
- (4) You may choose any qualified provider for the service, who meets all of the following:
- (a) Is able to meet your needs within the scope of their contract, licensure, and certification;
 - (b) Is reasonably available;
 - (c) Meets provider qualifications in chapters 388-845 and 388-825 WAC for contracting; and
 - (d) Agrees to provide the service at department rates.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-3055, filed 9/20/21, effective 10/21/21. 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, § 388-845-3055, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-3055, 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, § 388-845-3055, 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, § 388-845-3055, 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, § 388-845-3055, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-3056 What if you need assistance to understand your person-centered service plan? If you are unable to understand your person-centered service plan and the individual who has agreed to provide assistance to you as your necessary supplemental accommodation representative is unable to assist you with understanding your person-centered service plan, DDA will take the following steps:

- (1) Consult with the office of the attorney general to determine if you require a legal representative or guardian to assist you with your person-centered service plan;
- (2) Continue your current waiver services; and
- (3) If the office of the attorney general or a court determines that you do not need a legal representative, DDA will continue to try to provide necessary supplemental accommodations in order to help you understand your person-centered service plan.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-3056, filed 9/20/21, effective 10/21/21. 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, § 388-845-3056, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR

13-24-045, § 388-845-3056, 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, § 388-845-3056, 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, § 388-845-3056, filed 9/26/07, effective 10/27/07.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-3065 How long is your plan effective? Your person-centered service plan is effective through the last day of the (~~twelfth~~) 12th month following the effective date or until another person-centered service plan is completed, whichever occurs sooner.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-3065, filed 9/20/21, effective 10/21/21. 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, § 388-845-3065, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-3065, 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, § 388-845-3065, 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, § 388-845-3065, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-3075 What if your needs change? (1) You may request a review of your person-centered service plan at any time by calling your case manager.

(2) If there is a significant change in your condition or circumstances, DDA must reassess your person-centered service plan with you and amend the plan to reflect any significant changes.

(3) This reassessment does not affect the end date of your annual person-centered service plan.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 21-19-108, § 388-845-3075, filed 9/20/21, effective 10/21/21. 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, § 388-845-3075, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-3075, 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, § 388-845-3075, 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, § 388-845-3075, 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, § 388-845-3075, filed 12/13/05, effective 1/13/06.]

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

WAC 388-845-3080 What if my needs exceed the maximum yearly funding limit or the scope of services under the basic plus waiver?

(1) If you are on the basic plus waiver and your assessed need for services exceeds the maximum permitted, DDA will make the following efforts to meet your health and welfare needs:

- (a) Identify more available natural supports;
- (b) Initiate an exception to rule to access available nonwaiver services not included in the basic plus waiver other than natural supports;
- (c) Authorize emergency assistance funding up to ((~~six thousand dollars~~)) \$6,000 per year if your needs meet the definition of emergency assistance funding in WAC 388-845-0800.

(2) If emergency assistance funding and other efforts are not sufficient to meet your needs, you will be offered:

- (a) An opportunity to apply for an alternate waiver that has the services you need;
- (b) Priority for placement on the alternative waiver when there is capacity to add people to that waiver;
- (c) Placement in an ICF/IID.

(3) If none of the options in subsections (1) and (2) ((~~above~~)) in this section is successful in meeting your health and welfare needs, DDA may terminate your waiver eligibility.

(4) If you are terminated from a waiver, you will remain eligible for nonwaiver DDA services but access to state-only funded DDA services is limited by availability of funding.

[Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-3080, 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, § 388-845-3080, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-3080, filed 12/13/05, effective 1/13/06.]

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

WAC 388-845-4000 What are my appeal rights under the waiver? In addition to your appeal rights under WAC 388-825-120, you have the right to appeal the following decisions:

- (1) Disenrollment from a waiver under WAC 388-845-0060, including a disenrollment from a waiver and enrollment in a different waiver.
- (2) A denial of your request to receive ICF/IID services instead of waiver services; or
- (3) A denial of your request to be enrolled in a waiver, subject to the limitations described in WAC 388-845-4005.

[Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-4000, 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, § 388-845-4000, 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, § 388-845-4000, filed 12/13/05, effective 1/13/06.]

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

WAC 388-845-4005 Can I appeal a denial of my request to be enrolled in a waiver? (1) 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 the decision that you are not eligible to have your request documented in a statewide database due to the following:

(a) You do not need ICF/IID level of care per WAC 388-845-0070, 388-828-8040, and 388-828-8060; or

(b) You requested enrollment in the CIIBS waiver and do not meet CIIBS eligibility per WAC 388-828-8500 through 388-828-8520.

(2) 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 the following:

(a) DDA's decision that the services contained in a different waiver are not necessary to meet your health and welfare needs and that the services available on your current waiver can meet your health and welfare needs; or

(b) DDA's decision that you are not eligible to have your request documented in a statewide database because you requested enrollment in the CIIBS waiver and do not meet CIIBS eligibility per WAC 388-828-8500 through 388-828-8520.

(3) If DDA determines that the services offered in a different waiver are necessary to meet your health and welfare needs, but there is not capacity on the different waiver, you do not have the right to appeal any denial of enrollment on a different waiver when DDA determines there is not capacity to enroll you on a different waiver.

[Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-4005, 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, § 388-845-4005, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-4005, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-4005, 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, § 388-845-4005, filed 12/13/05, effective 1/13/06.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-845-0501 What is included in positive behavior support and consultation for the children's intensive in-home behavioral support (CIIBS) waiver?

WAC 388-845-0506

Who is a qualified provider of positive behavior support and consultation for the children's intensive in-home behavioral support (CIIBS) waiver?

**WSR 23-08-004
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 23-45—Filed March 22, 2023, 3:04 p.m., effective March 23, 2023]

Effective Date of Rule: March 23, 2023.

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

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

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

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

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 3, 4, and 5 for recreational harvest. Washington department of health has certified clams from these razor clam areas to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 22, 2023.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

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

(1) Effective 12:01 a.m. March 23 through 11:59 a.m. March 26, 2022, razor clam digging is permissible in Razor Clam Areas defined in WAC 220-330-160 during morning tides on dates and times listed below:

Razor Clam Area	Date	Time
Area 1	March 23 through March 26	From 12:01 a.m. to 11:59 a.m.

Razor Clam Area	Date	Time
Area 2	Closed	Closed
Area 3	March 23 through March 26	From 12:01 a.m. to 11:59 a.m.
Area 4	March 23 and 25	From 12:01 a.m. to 11:59 a.m.
Area 5	March 24 and 26	From 12:01 a.m. to 11:59 a.m.
Area 6	Closed	Closed
Area 7	Closed	Closed

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

[]

REPEALER

The following section of the Washington Administrative Code is repealed effective March 23, 2023:

WAC 220-330-16000X Razor clams—Areas and seasons (43-41)

The following section of the Washington Administrative Code is repealed effective March 27, 2022:

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

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

WSR 23-08-005
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-36—Filed March 22, 2023, 3:07 p.m., effective March 25, 2023]

Effective Date of Rule: March 25, 2023.

Purpose: The purpose of this emergency rule is to open catch and release steelhead fisheries in portions of the Skagit and Sauk rivers.

Citation of Rules Affected by this Order: Amending WAC 220-312-040.

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

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

Reasons for this Finding: The Skagit River Steelhead preseason forecast is 5,211 steelhead. In accordance with the Skagit steelhead resource management plan, when the preseason forecast is 4,001 to 6,000 Skagit steelhead, there are enough steelhead impacts available to safely provide some catch and release opportunity. The fishery will be [open] five days per week, Saturdays through Wednesdays. The two day per week closure is a conservation measure to provide steelhead some daylight hours without fishing effort for movement and migration to, though [through], and around spawning areas.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 22, 2023.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-04000D Freshwater exceptions to statewide rules—Puget Sound. Effective March 25, through April 30, 2023, the following provisions of WAC 220-312-040 regarding steelhead seasons for the Skagit River from the Dalles Bridge in the town of Concrete to the Cascade River Road Bridge and the Sauk River from the mouth to the Dar-

rington Bridge, shall be as described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

(1) Skagit River (Skagit Co.): From the Dalles Bridge in the town of Concrete to the Cascade River Road Bridge in Marblemount: Steelhead open Saturdays through Wednesdays only. Closed to all fishing Thursdays and Fridays:

- (a) Catch and release, except daily limit 2 hatchery steelhead.
- (b) Selective Gear Rules in effect.
- (c) Night closure in effect.
- (d) Fishing from a vessel under power is prohibited.

(2) Sauk River (Skagit/Snohomish Co.): From the mouth the Darlington Bridge: Steelhead open Saturdays through Wednesdays only. Closed to all fishing Thursdays and Fridays:

- (a) Catch and release, except daily limit 2 hatchery steelhead.
- (b) Selective Gear Rules in effect.
- (c) Night closure in effect.
- (d) Fishing from a vessel equipped with a motor is prohibited.

[]

WSR 23-08-010

EMERGENCY RULES

DEPARTMENT OF REVENUE

[Filed March 23, 2023, 1:31 p.m., effective March 23, 2023, 1:31 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 458-20-193 (Rule 193) and 458-20-221 (Rule 221) provide guidance regarding the need for a seller to establish the required nexus for the state to impose a sales or use tax collection obligation on retail sales into Washington. WAC 458-20-19401 (Rule 19401) provides guidance regarding the minimum nexus thresholds for apportionable activities and selling activities in Washington in order to establish a nexus for purposes of the business and occupation (B&O) tax in Washington.

The United States Supreme Court's decision in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), allowed Washington to impose a sales or use tax collection obligation on sellers who do not have a physical presence in this state. Effective October 1, 2018, the department of revenue (department) required remote sellers meeting certain thresholds to collect retail sales or use tax on all taxable sales sourced to Washington. SHB [SSB] 5581 (2019) further clarified the sales tax collection obligation for remote sellers and when a person is deemed to have established substantial nexus. Until the final rules reflecting these changes are adopted through the standard rule-making process, the department wants the public to be aware that current Rules 193, 221, and 19401 may contain outdated or incomplete information regarding who is required to collect sales or use tax on taxable retail sales and the minimum nexus thresholds for apportionable activities and selling activities into Washington.

Citation of Rules Affected by this Order: Amending WAC 458-20-193, 458-20-221, and 458-20-19401.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060, and 82.32.733.

Other Authority: RCW 34.05.350.

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

Reasons for this Finding: Taxpayers rely on Rules 193 and 221 to determine whether they are required to collect sales or use tax on taxable retail sales sourced to Washington. Effective October 1, 2018, the department imposed a sales or use tax collection obligation on remote sellers meeting certain thresholds. Taxpayers rely on Rule 19401 to determine whether they meet the minimum nexus thresholds for apportionable activities and selling activities. SSB 5581 (2019) clarified the sales tax collection obligation for remote sellers and when a person is deemed to have established substantial nexus for B&O tax purposes. Because of these changes in the law, Rules 193, 221, and 19401 require substantive updates using the standard rule-making process. Until these rules are amended, the department wants to ensure the public does not use current Rules 193, 221, and 19401 to determine their sales or use tax collection obligations or to determine substantial nexus for apportionable activities and selling activities for periods beginning on or after October 1, 2018.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

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

Date Adopted: March 23, 2023.

Atif Aziz
Rules Coordinator

OTS-4455.2

AMENDATORY SECTION (Amending WSR 18-06-078, filed 3/6/18, effective 4/6/18)

WAC 458-20-193 Interstate sales of tangible personal property.

(1) **Introduction.** The U.S. Supreme Court's decision in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), clarified that Washington may impose a sales and use tax collection obligation on sellers who do not have a physical presence in this state. Effective October 1, 2018, Washington required remote sellers meeting certain thresholds to collect retail sales or use tax on all taxable sales sourced to Washington. Substitute Senate Bill No. 5581 (2019) further clarified the sales tax collection obligation for remote sellers. In accordance with RCW 82.08.052, a seller with a substantial nexus with this state under RCW 82.04.067 is obligated to collect and remit retail sales tax. As a result, this rule may include outdated or incomplete guidance regarding who is required to collect Washington's retail sales or use tax. Please see our website for the most recent information on those requirements.

This rule explains the application of the business and occupation (B&O) and retail sales taxes to interstate sales of tangible personal property.

(a) The following rules may also be helpful:

(i) WAC 458-20-178 Use tax and the use of tangible personal property.

(ii) WAC 458-20-193C Imports and exports—Sales of goods from or to persons in foreign countries.

(iii) WAC 458-20-193D Transportation, communication, public utility activities, or other services in interstate or foreign commerce.

(iv) WAC 458-20-19401 Minimum nexus threshold for apportionable receipts.

(b) This rule contains examples that identify a number of facts and then state a conclusion. These examples should be used only as a

general guide. The tax results of all situations must be determined after a review of all the facts and circumstances.

(c) **Tangible personal property.** For purposes of this rule, the term "tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses, but does not include steam, electricity, or electrical energy. It includes prewritten computer software (as such term is defined in RCW 82.04.215) in tangible form. However, this rule does not address electronically delivered prewritten computer software or remote access software.

(2) **Scope of rule.** In general, Washington imposes its B&O and retail sales taxes on sales of tangible personal property if the seller has nexus with Washington and the sale occurs in Washington. This rule explains the applicable nexus and place of sale requirements with respect to sales of tangible personal property. This rule does not cover sales of intangibles or services and does not address the use tax obligation of a purchaser of goods in Washington. For information on payment responsibilities for use tax see WAC 458-20-178.

(3) **Organization of rule.** This rule is divided into three parts:

(a) Part I - Nexus standards for sales of tangible personal property;

(b) Part II - Sourcing sales of tangible personal property; and

(c) Part III - Drop shipment sales.

Part I - Nexus Standards for Sales of Tangible Personal Property

(101) **Introduction.** A seller is subject to the state's B&O tax and retail sales tax with respect to sales of tangible personal property, if that seller has nexus. Washington applies specific nexus standards and thresholds that are used to determine whether a seller of tangible personal property has nexus. The nexus standards and thresholds described in this rule pertain only to sellers of tangible personal property. The remainder of Part 1 of this rule describes these nexus standards and thresholds and how they apply in the context of Washington's wholesaling and retailing B&O classifications and the retail sales tax.

(102) **Physical presence nexus standard.** A person who sells tangible personal property in a retail sale is deemed to have nexus with Washington if the person has a physical presence in this state, which need only be demonstrably more than the slightest presence. RCW 82.04.067(6). This standard applies to retail sales both in the retail sales tax and retailing B&O tax context.

(a) **Physical presence.** A person is physically present in this state if:

(i) The person has property in this state;

(ii) The person has one or more employees in this state;

(iii) The person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products in Washington; or

(iv) The person is a remote seller as defined in RCW 82.08.052 and is unable to rebut the substantial nexus presumption for remote sellers set out in RCW 82.04.067 (6) (c) (ii).

(b) **Property.** A person has property in this state if the person owns, leases, or otherwise has a legal or beneficial interest in real or personal property in Washington.

(c) **Employees.** A person has employees in this state if the person is required to report its employees for Washington unemployment insur-

ance tax purposes, or the facts and circumstances otherwise indicate that the person has employees in the state.

(d) **In-state activities.** Even if a person does not have property or employees in Washington, the person is physically present in Washington when the person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products in Washington. It is immaterial that the activities that establish nexus are not significantly associated with a particular sale into this state.

For purposes of this rule, the term "agent or other representative" includes an employee, independent contractor, commissioned sales representative, or other person acting either at the direction of or on behalf of another.

A person performing the following nonexclusive list of activities, directly or through an agent or other representative, generally is performing activities that are significantly associated with establishing or maintaining a market for a person's products in this state:

- (i) Soliciting sales of goods in Washington;
- (ii) Installing, assembling, or repairing goods in Washington;
- (iii) Constructing, installing, repairing, or maintaining real property or tangible personal property in Washington;
- (iv) Delivering products into Washington other than by mail or common carrier;
- (v) Having an exhibit at a trade show to maintain or establish a market for one's products in the state, except as described in subsection (102)(f) of this rule;
- (vi) An online seller having a brick-and-mortar store in this state accepting returns on its behalf;
- (vii) Performing activities designed to establish or maintain customer relationships including, but not limited to:
 - (A) Meeting with customers in Washington to gather or provide product or marketing information, evaluate customer needs, or generate goodwill; or
 - (B) Being available to provide services associated with the product sold (such as warranty repairs, installation assistance or guidance, and training on the use of the product), if the availability of such services is referenced by the seller in its marketing materials, communications, or other information accessible to customers.

(e) **Remote sellers - Click-through nexus.** Effective September 1, 2015, a remote seller as defined in RCW 82.08.052 is presumed to meet the physical presence nexus standard described in this subsection for purposes of the retail sales tax if the remote seller enters into an agreement with a resident of this state under which the resident, for a commission or other consideration, refers potential customers to the remote seller, whether by link on an internet website or otherwise, but only if the cumulative gross receipts from sales by the remote seller to customers in this state who are referred to the remote seller through such agreements exceeds ten thousand dollars during the preceding calendar year. For more information related to the presumption and how to rebut the presumption, see RCW 82.08.052 and 82.04.067 (6)(c)(ii).

(f) **Trade convention exception.** For the physical presence nexus standard described in this subsection, the department may not make a determination of nexus based solely on the attendance or participation of one or more representatives of a person at a single trade convention per calendar year in Washington state in determining if such per-

son is physically present in this state for the purposes of establishing substantial nexus with this state. This does not apply to persons making retail sales at a trade convention in this state, including persons taking orders for products or services where receipt will occur at a later time in Washington state. RCW 82.32.531.

Definitions. The following definitions apply only to (f) of this subsection:

(i) "Not marketed to the general public" means that the sponsor of a trade convention limits its marketing efforts for the trade convention to its members and specific invited guests of the sponsoring organization.

(ii) "Physically present in this state" and "substantial nexus with this state" have the same meaning as provided in RCW 82.04.067.

(iii) "Trade convention" means an exhibition for a specific industry or profession, which is not marketed to the general public, for the purposes of:

(A) Exhibiting, demonstrating, and explaining services, products, or equipment to potential customers; or

(B) The exchange of information, ideas, and attitudes in regards to that industry or profession.

(103) **Economic nexus thresholds.** RCW 82.04.067 establishes substantial nexus thresholds that apply to persons who sell tangible personal property. For more information on the economic nexus thresholds, see WAC 458-20-19401.

Application to retail sales. Effective July 1, 2017, for B&O tax purposes, a person making retail sales taxable under RCW 82.04.250(1) or 82.04.257(1) is deemed to have substantial nexus with Washington if the person's receipts meet the economic nexus thresholds under RCW 82.04.067 (1)(c)(iii) and (iv). The receipts threshold is met if the person has more than two hundred sixty-seven thousand dollars of receipts (as adjusted by RCW 82.04.067(5)) from this state or at least twenty-five percent of the person's total receipts are in this state. For more information, see WAC 458-20-19401.

(104) **Application of standards and thresholds to wholesale sales.** The physical presence nexus standard described in subsection (102) of this rule, applies to wholesale sales for periods prior to September 1, 2015. Effective September 1, 2015, wholesale sales taxable under RCW 82.04.257(1) and 82.04.270 are subject to the RCW 82.04.067 (1) through (5) economic nexus thresholds. Wholesaling activities not taxable under RCW 82.04.257(1) and 82.04.270 remain subject to the physical presence nexus standard. For more information, see WAC 458-20-19401.

(105) **Effect of having nexus.**

(a) **Retail sales.** A person that makes retail sales of tangible personal property and meets either the physical presence nexus standard or whose receipts meet the economic nexus thresholds described in RCW 82.04.067 (1)(c)(iii) or (iv) is subject to B&O tax on that person's retail sales received in the state. In addition, a person that makes retail sales of tangible personal property and meets the physical presence nexus standard, including as described in subsection (102)(e) of this rule, is also responsible for collecting and remitting retail sales tax on that person's sales of tangible personal property sourced to Washington, unless a specific exemption applies.

(b) **Wholesale sales.** A person that makes wholesale sales of tangible personal property and has nexus with Washington (as described in subsection (104) of this rule) is subject to B&O tax on that person's wholesale sales sourced to Washington.

(106) **Trailing nexus.** Effective July 1, 2017, for B&O tax purposes, a person is deemed to have substantial nexus with Washington for the current year if that person meets any of the requirements in RCW 82.04.067 in either the current or immediately preceding calendar year. Thus, a person who stops the business activity that created nexus in Washington continues to have nexus in the calendar year following any calendar year in which the person met any of the requirements in RCW 82.04.067 (also known as "trailing nexus").

Prior to July 1, 2017, RCW 82.04.220 provided that for B&O tax purposes a person who stopped the business activity that created nexus in Washington continued to have nexus for the remainder of that calendar year, plus one additional calendar year.

The department of revenue applies the same trailing nexus period for retail sales tax and other taxes reported on the excise tax return.

(107) **Public Law 86-272.** Public Law 86-272 (15 U.S.C. Sec. 381 et. seq.) applies only to taxes on or measured by net income. Washington's B&O tax is measured by gross receipts. Consequently, Public Law 86-272 does not apply.

Part II - Sourcing Sales of Tangible Personal Property

(201) **Introduction.** RCW 82.32.730 explains how to determine where a sale of tangible personal property occurs based on "sourcing rules" established under the streamlined sales and use tax agreement. Sourcing rules for the lease or rental of tangible personal property are beyond the scope of this rule, as are the sourcing rules for "direct mail," "advertising and promotional direct mail," or "other direct mail" as such terms are defined in RCW 82.32.730. See RCW 82.32.730 for further explanation of the sourcing rules for those particular transactions.

(202) Receive and receipt.

(a) **Definition.** "Receive" and "receipt" mean the purchaser first either taking physical possession of, or having dominion and control over, tangible personal property.

(b) Receipt by a shipping company.

(i) "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser, regardless of whether the shipping company has the authority to accept and inspect the goods on behalf of the purchaser.

(ii) A "shipping company" for purposes of this rule means a separate legal entity that ships, transports, or delivers tangible personal property on behalf of another, such as a common carrier, contract carrier, or private carrier either affiliated (e.g., an entity wholly owned by the seller or purchaser) or unaffiliated (e.g., third-party carrier) with the seller or purchaser. A shipping company is not a division or branch of a seller or purchaser that carries out shipping duties for the seller or purchaser, respectively. Whether an entity is a "shipping company" for purposes of this rule applies only to sourcing sales of tangible personal property and does not apply to whether a "shipping company" can create nexus for a seller.

(203) Sourcing sales of tangible personal property - In general.

The following provisions in this subsection apply to sourcing sales of most items of tangible personal property.

(a) **Business location.** When tangible personal property is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

Example 1. Jane is an Idaho resident who purchases tangible personal property at a retailer's physical store location in Washington. Even though Jane takes the property back to Idaho for her use, the sale is sourced to Washington because Jane received the property at the seller's business location in Washington.

Example 2. Department Store has retail stores located in Washington, Oregon, and in several other states. John, a Washington resident, goes to Department Store's store in Portland, Oregon to purchase luggage. John takes possession of the luggage at the store. Although Department Store has nexus with Washington through its Washington store locations, Department Store is not liable for B&O tax and does not have any responsibility to collect Washington retail sales tax on this transaction because the purchaser, John, took possession of the luggage at the seller's business location outside of Washington.

Example 3. An out-of-state purchaser sends its own trucks to Washington to receive goods at a Washington-based seller and to immediately transport the goods to the purchaser's out-of-state location. The sale occurs in Washington because the purchaser receives the goods in Washington. The sale is subject to B&O and retail sales tax.

Example 4. The same purchaser in Example 3 uses a wholly owned affiliated shipping company (a legal entity separate from the purchaser) to pick up the goods in Washington and deliver them to the purchaser's out-of-state location. Because "receive" and "receipt" do not include possession by the shipping company, the purchaser receives the goods when the goods arrive at the purchaser's out-of-state location and not when the shipping company takes possession of the goods in Washington. The sale is not subject to B&O tax or retail sales tax.

(b) **Place of receipt.** If the sourcing rule explained in (a) of this subsection does not apply, the sale is sourced to the location where receipt by the purchaser or purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or purchaser's donee, as known to the seller.

(i) The term "purchaser" includes the purchaser's agent or designee.

(ii) The term "purchaser's donee" means a person to whom the purchaser directs shipment of goods in a gratuitous transfer (e.g., a gift recipient).

(iii) Commercial law delivery terms, and the Uniform Commercial Code's provisions defining sale or where risk of loss passes, do not determine where the place of receipt occurs.

(iv) The seller must retain in its records documents used in the ordinary course of the seller's business to show how the seller knows the location of where the purchaser or purchaser's donee received the goods. Acceptable proof includes, but is not limited to, the following documents:

(A) Instructions for delivery to the seller indicating where the purchaser wants the goods delivered, provided on a sales contract, sales invoice, or any other document used in the seller's ordinary course of business showing the instructions for delivery;

(B) If shipped by a shipping company, a waybill, bill of lading or other contract of carriage indicating where delivery occurs; or

(C) If shipped by the seller using the seller's own transportation equipment, a trip-sheet signed by the person making delivery for the seller and showing:

- The seller's name and address;
- The purchaser's name and address;

- The place of delivery, if different from the purchaser's address; and
- The time of delivery to the purchaser together with the signature of the purchaser or its agent acknowledging receipt of the goods at the place designated by the purchaser.

Example 5. John buys luggage from a Department Store that has nexus with Washington (as in Example 2), but has the store ship the luggage to John in Washington. Department Store has nexus with Washington, and receipt of the luggage by John occurred in Washington. Department Store owes Washington retailing B&O tax and must collect Washington retail sales tax on this sale.

Example 6. Parts Store is located in Washington. It sells machine parts at retail and wholesale. Parts Collector is located in California and buys machine parts from Parts Store. Parts Store ships the parts directly to Parts Collector in California, and Parts Collector takes possession of the machine parts in California. The sale is not subject to B&O or retail sales taxes in this state because Parts Collector did not receive the parts in Washington.

Example 7. An out-of-state seller with nexus in Washington uses a third-party shipping company to ship goods to a customer located in Washington. The seller first delivers the goods to the shipping company outside Washington using its own transportation equipment. Even though the shipping company took possession of the goods outside of Washington, possession by the shipping company is not receipt by the purchaser for Washington tax purposes. The sale is subject to B&O and retail sales tax in this state because the purchaser has taken possession of the goods in Washington.

Example 8. A Washington purchaser's affiliated shipping company arranges to pick up goods from an out-of-state seller at its out-of-state location, and deliver those goods to the Washington purchaser's Yakima facility. The affiliated shipping company has the authority to accept and inspect the goods prior to transport on behalf of the buyer. When the affiliated shipping company takes possession of the goods out-of-state, the Washington purchaser has not received the goods out-of-state. Possession by a shipping company on behalf of a purchaser is not receipt for purposes of this rule, regardless of whether the shipping company has the authority to accept and inspect the goods on behalf of the buyer. Receipt occurs when the buyer takes possession of the goods in Washington. The sale is subject to B&O and retail sales tax in this state.

Example 9. An instate seller arranges for shipping its goods to an out-of-state purchaser by first delivering its goods to a Washington-based shipping company at its Washington location for further transport to the out-of-state customer's location. Possession of the goods by the shipping company in Washington is not receipt by the purchaser for Washington tax purposes, and the sale is not subject to B&O and retail sales tax in Washington.

Example 10. An out-of-state manufacturer/seller of a bulk good with nexus in Washington sells the good to a Washington-based purchaser in the business of selling small quantities of the good under its own label in its own packaging. The purchaser directs the seller to deliver the goods to a third-party packaging plant located out-of-state for repackaging of the goods in the purchaser's own packaging. The purchaser then has a third-party shipping company pick up the goods at the packaging plant. The Washington purchaser takes constructive possession of the goods outside of Washington because it has exercised dominion and control over the goods by having them repackaged

at an out-of-state packaging facility before shipment to Washington. The sale is not subject to B&O and retail sales tax in this state because the purchaser received the goods outside of Washington.

Example 11. Company ABC is located in Washington and purchases goods from Company XYZ located in Ohio. Company ABC directs Company XYZ to ship the goods by a for-hire carrier to a commercial storage warehouse in Washington. The goods will be considered as having been received by Company ABC when the goods are delivered at the commercial storage warehouse. Assuming Company XYZ has nexus, Company XYZ is subject to B&O tax and must collect retail sales tax on the sale.

(c) **Other sourcing rules.** There may be unique situations where the sourcing rules provided in (a) and (b) of this subsection do not apply. In those cases, please refer to the provisions of RCW 82.32.730 (1)(c) through (e).

(204) **Sourcing sales of certain types of property.**

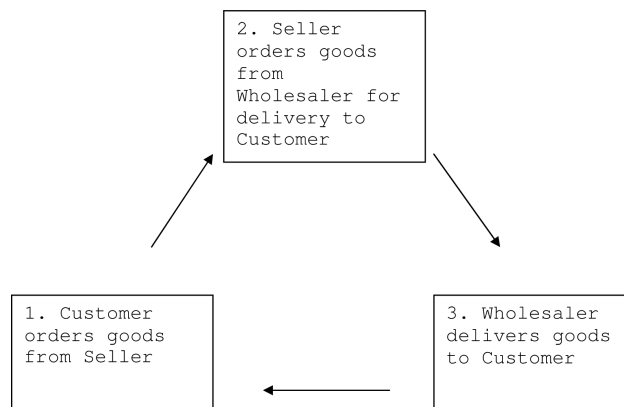
(a) **Sales of commercial aircraft parts.** As more particularly provided in RCW 82.04.627, the sale of certain parts to the manufacturer of a commercial airplane in Washington is deemed to take place at the site of the final testing or inspection.

(b) **Sales of motor vehicles, watercraft, airplanes, manufactured homes, etc.** Sales of the following types of property are sourced to the location at or from which the property is delivered in accordance with RCW 82.32.730 (7)(a) through (c): Watercraft; modular, manufactured, or mobile homes; and motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as "transportation equipment" as defined in RCW 82.32.730. See WAC 458-20-145 (2)(b) for further information regarding the sourcing of these sales.

(c) **Sales of flowers and related goods by florists.** Sales by a "florist" are subject to a special origin sourcing rule. For specific information concerning "florist sales," who qualifies as a "florist," and the related sourcing rules, see RCW 82.32.730 (7)(d) and (9)(e) and WAC 458-20-158.

Part III - Drop Shipments

(301) **Introduction.** A drop shipment generally involves two separate sales. A person (the seller) contracts to sell tangible personal property to a customer. The seller then contracts to purchase that property from a wholesaler and instructs that wholesaler to deliver the property directly to the seller's customer. The place of receipt in a drop shipment transaction is where the property is delivered (i.e., the seller's customer's location). Below is a diagram of a basic drop shipment transaction:



The following subsections discuss the taxability of drop shipments in Washington when:

- (a) The seller and wholesaler do not have nexus;
- (b) The seller has nexus and the wholesaler does not;
- (c) The wholesaler has nexus and the seller does not; and
- (d) The seller and wholesaler both have nexus. In each of the

following scenarios, the customer receives the property in Washington and the sale is sourced to Washington. Further, in each of the following scenarios, a reseller permit or other approved exemption certificate has been acquired to document any wholesale sales in Washington. For information about reseller permits issued by the department, see WAC 458-20-102.

(302) **Seller and wholesaler do not have nexus.** Where the seller and the wholesaler do not have nexus with Washington, sales of tangible personal property by the seller to the customer and the wholesaler to the seller are not subject to B&O tax. In addition, neither the seller nor the wholesaler is required to collect retail sales tax on the sale.

(303) **Seller has nexus but wholesaler does not.** Where the seller has nexus with Washington but the wholesaler does not have nexus with Washington, the wholesaler's sale of tangible personal property to the seller is not subject to B&O tax and the wholesaler is not required to collect retail sales tax on the sale. The sale by the seller to the customer is subject to wholesaling or retailing B&O tax, as the case may be. The seller must collect retail sales tax from the customer unless specifically exempt by law.

(304) **Wholesaler has nexus but seller does not.** Where the wholesaler has nexus with Washington but the seller does not have nexus with Washington, wholesaling B&O tax applies to the sale of tangible personal property by the wholesaler to the seller for shipment to the seller's customer. The sale from the seller to its Washington customer is not subject to B&O tax, and the seller is not required to collect retail sales tax on the sale.

Example 12. Seller is located in Ohio and does not have nexus with Washington. Seller receives an order from Customer, located in Washington, for parts that are to be shipped to Customer in Washington for its own use as a consumer. Seller buys the parts from Wholesaler, which has nexus with Washington, and requests that the parts be shipped directly to Customer. Seller is not subject to B&O tax and is not required to collect retail sales tax on its sale to Customer because Seller does not have nexus with Washington. The sale by Wholesaler to Seller is subject to wholesaling B&O tax because Wholesaler has nexus with Washington and Customer receives the parts (i.e., the parts are delivered to Customer) in Washington.

(305) **Seller and wholesaler have nexus with Washington.** Where the seller and wholesaler have nexus with Washington, wholesaling B&O tax applies to the wholesaler's sale of tangible personal property to the seller. The sale from the seller to the customer is subject to wholesaling or retailing B&O tax as the case may be. The seller must collect retail sales tax from the customer unless the sale is specifically exempt by law.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 18-06-078, § 458-20-193, filed 3/6/18, effective 4/6/18; WSR 17-09-087, § 458-20-193, filed 4/19/17, effective 5/20/17; WSR 16-12-083, § 458-20-193, filed 5/31/16, effective 7/1/16. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.24.550(2), and 82.26.220(2). WSR

15-15-025, § 458-20-193, filed 7/7/15, effective 8/7/15. Statutory Authority: RCW 82.32.300, 82.01.060(2), chapters 82.04, 82.08, 82.12 and 82.32 RCW. WSR 10-06-070, § 458-20-193, filed 2/25/10, effective 3/28/10. Statutory Authority: RCW 82.32.300. WSR 91-24-020, § 458-20-193, filed 11/22/91, effective 1/1/92. Formerly WAC 458-20-193A and 458-20-193B.]

AMENDATORY SECTION (Amending WSR 18-06-078, filed 3/6/18, effective 4/6/18)

WAC 458-20-19401 Minimum nexus thresholds for apportionable activities and selling activities. (1) **Introduction.** Substitute Senate Bill No. 5581 (2019) clarified the sales tax collection obligation for remote sellers and when a person is deemed to have substantial nexus for business and occupation (B&O) tax purposes. See RCW 82.04.067 and 82.08.052. As a result, this rule may include outdated or incomplete guidance regarding minimum nexus thresholds to determine who has established substantial nexus with Washington. Please see our website for the most recent information on those requirements.

(a) The state of Washington imposes business and occupation (B&O) tax on persons that have "substantial nexus" with this state. For apportionable activities and for selling activities taxable under RCW 82.04.250(1), 82.04.257(1) or 82.04.270, substantial nexus does not require a physical presence in this state, as that phrase is described in RCW 82.04.067(6).

(b) This rule only applies to periods after May 31, 2010, and applies as follows:

(i) In 2015, Washington changed the thresholds for substantial nexus described in subsection (3)(a)(iii) of this rule.

(ii) Prior to September 1, 2015, these thresholds only applied to apportionable activities, and did not apply to wholesaling or retailing activity.

(iii) Effective September 1, 2015, Washington expanded the scope of these tests to apply to wholesaling activity.

(iv) Effective July 1, 2017, Washington expanded the scope of some of these tests to apply to retailing activity taxable under RCW 82.04.250(1) or 82.04.257(1).

(c) Effective July 1, 2017, the thresholds are measured based on a person's payroll, property, and receipts in the current or immediately preceding calendar year. For the period from September 1, 2015, to June 30, 2017, the thresholds were measured based on a person's payroll, property, and receipts in the immediately preceding calendar year. See subsection (9) of this rule for additional information. For periods from June 1, 2010, to August 31, 2015, the thresholds were based on the person's payroll, property, and receipts in the current calendar year. See subsection (10) of this rule for additional information.

(d) **Other rules that may apply.** Readers may also want to refer to other rules for additional information, including those in the following list:

(i) WAC 458-20-193 Interstate sales of tangible personal property. This rule describes the taxation of interstate sales of tangible personal property.

(ii) WAC 458-20-194 Doing business inside and outside the state. This rule describes separate accounting and cost apportionment and ap-

plies only to tax liability incurred from January 1, 2006, through May 31, 2010.

(iii) WAC 458-20-19402 Single factor receipts apportionment—Generally. This rule describes the general application of single factor receipts apportionment and applies only to tax liability incurred after May 31, 2010.

(iv) WAC 458-20-19403 Apportionable royalty receipts attribution. This rule describes the application of single factor receipts apportionment to gross income from royalties and applies only to tax liability incurred after May 31, 2010.

(v) WAC 458-20-19404 Financial institutions—Income apportionment. This rule describes the application of single factor receipts apportionment to certain income of financial institutions and applies only to tax liability incurred after December 31, 2015.

(vi) WAC 458-20-19404A Financial institutions—Income apportionment. This rule describes the application of single factor receipts apportionment to certain income of financial institutions and applies only to tax liability incurred between June 1, 2010, and December 31, 2015.

(e) Examples included in this rule identify a number of facts and then state a conclusion; they should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances. For the examples in this rule, gross income received by the taxpayer is from engaging in apportionable activities or from making wholesale or retail sales. Also, unless otherwise stated, the years in the examples are time periods that occur after June 30, 2017.

The minimum nexus thresholds described in this rule and used in examples are unadjusted for consumer price index changes applicable for years after 2017.

(2) **Definitions.** Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this rule.

(a) **"Apportionable activities"** includes only those activities subject to B&O tax under the following classifications:

- (i) Service and other activities;
- (ii) Royalties;
- (iii) Travel agents and tour operators;
- (iv) International steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent;
- (v) Stevedoring and associated activities;
- (vi) Disposing of low-level waste;
- (vii) Insurance producers, title insurance agents, or surplus line brokers;
- (viii) Public or nonprofit hospitals;
- (ix) Real estate brokers;
- (x) Research and development performed by nonprofit corporations or associations;
- (xi) Inspecting, testing, labeling, and storing canned salmon owned by another person;
- (xii) Representing and performing services for fire or casualty insurance companies as an independent resident managing general agent licensed under the provisions of chapter 48.17 RCW;
- (xiii) Contests of chance;
- (xiv) Horse races;
- (xv) International investment management services;

(xvi) Room and domiciliary care to residents of a boarding home;
(xvii) Aerospace product development;
(xviii) Printing or publishing a newspaper (but only with respect to advertising income);

(xix) Printing materials other than newspapers and publishing periodicals or magazines (but only with respect to advertising income);
and

(xx) Cleaning up radioactive waste and other by-products of weapons production and nuclear research and development, but only with respect to activities that would be taxable as an "apportionable activity" under any of the tax classifications listed in (a)(i) through (xix) of this subsection if this special tax classification did not exist.

(b) "**Credit card**" means a card or device existing for the purpose of obtaining money, property, labor, or services on credit.

(c) "**Gross income of the business**" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses. The term gross receipts means gross income from apportionable activities.

(d) "**Loan**" means any extension of credit resulting from direct negotiations between the taxpayer and its customer, and/or the purchase, in whole or in part, of such extension of credit from another. Loan includes participations, syndications, and leases treated as loans for federal income tax purposes. Loan does not include: Futures or forward contracts; options; notional principal contracts such as swaps; credit card receivables, including purchased credit card relationships; noninterest bearing balances due from depository institutions; cash items in the process of collection; federal funds sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests in a real estate mortgage investment conduit (REMIC) or other mortgage-backed or asset-backed security; and other similar items.

(e) "**Net annual rental rate**" means the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(f) The terms "**nexus**" and "**substantial nexus**" are used interchangeably in this rule.

(g) "**Property**" means tangible, intangible, and real property owned or rented and used in this state during the calendar year, except property does not include ownership of or rights in computer software, including computer software used in providing a digital automated service; master copies of software; and digital goods or digital codes residing on servers located in this state. Refer to RCW 82.04.192 and 82.04.215 for definitions of the terms computer software, digital automated services, digital goods, digital codes, and master copies.

(h) "**Securities**" includes any intangible property defined as a security under section 2 (a)(1) of the Securities Act of 1933 including, but not limited to, negotiable certificates of deposit and municipal bonds.

(i) **"State"** means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country or political subdivision of a foreign country.

(j) **"Wholesale sales"** means wholesale sales taxable under RCW 82.04.257(1) or 82.04.270 and **"wholesaling"** means the activity of making such sales. For substantial nexus standards applicable to wholesale sales taxable under another classification, see WAC 458-20-193.

(3) **Substantial nexus.**

(a) With respect to taxes on persons engaged in apportionable activities as defined in RCW 82.04.460 or making wholesale sales taxable under RCW 82.04.257(1) or 82.04.270, substantial nexus exists where, in the current or immediately preceding calendar year, a person is:

(i) An individual and is a resident or domiciliary of this state;

(ii) A business entity and is organized or commercially domiciled in this state; or

(iii) A nonresident individual or a business entity that is organized and commercially domiciled outside this state, and the person had:

(A) More than fifty-three thousand dollars of property in this state;

(B) More than fifty-three thousand dollars of payroll in this state;

(C) More than two hundred sixty-seven thousand dollars of receipts from this state from apportionable activities, from selling activities, or from a combination of both; or

(D) At least twenty-five percent of the person's total property, total payroll, or total receipts in this state.

(b) With respect to taxes on a person making sales at retail taxable under RCW 82.04.250(1) or 82.04.257(1), substantial nexus exists if, in the current or immediately preceding calendar year:

(i) The person has a physical presence in this state as that phrase is described in RCW 82.04.067(6); or

(ii) The person's receipts exceed the receipts threshold described in (a)(iii)(C) or (D) of this subsection.

(c) A person who has a substantial nexus with this state in the current calendar year based solely on exceeding property, payroll, or receipts thresholds during the current calendar year, but did not exceed the thresholds in the immediately preceding year, is subject to B&O tax on business activity occurring on and after the date that the person established a substantial nexus with this state in the current calendar year. RCW 82.04.220(2). If the person exceeded any of the thresholds in the immediately preceding year, the person is subject to B&O tax on its business activity occurring throughout the current year.

Example 1. Company C is commercially domiciled in Washington and has one employee in Washington who earns \$30,000 per year. Company C has substantial nexus with Washington because it is commercially domiciled in Washington. The minimum nexus thresholds for property, payroll, and receipts do not apply to a business entity commercially domiciled in this state.

(d) The department will adjust the amounts listed in (a) of this subsection based on changes in the consumer price index as required by RCW 82.04.067. (These adjustments are published in ETA 3195 "Economic Nexus Minimum Thresholds.")

(e) The minimum nexus thresholds are applied on a calendar year basis.

Example 2. Assume Corporation N, which is not commercially domiciled or organized in Washington, earns receipts attributable to Washington in 2017 that exceed the minimum nexus receipts threshold for determining substantial nexus. If Corporation N's 2018 and later payroll, property, and receipts do not exceed any of the minimum nexus thresholds for determining substantial nexus, its B&O tax reporting obligation for any gross receipts attributable to Washington continues through the calendar year 2018.

Example 3. Company Q is organized and domiciled outside of Washington. Company Q maintains an office in Washington which housed a single employee in the immediately preceding calendar year. In 2016, Company Q had \$40,000 in property located in Washington, paid \$45,000 in compensation to the Washington employee, and had \$200,000 in apportionable receipts attributed to Washington and \$0 wholesaling or retailing receipts sourced to Washington. In 2016, Company Q's total property everywhere was valued at \$200,000, total payroll was \$400,000, and total apportionable and wholesaling or retailing receipts were \$5,000,000. In 2017, Company Q had \$45,000 in property located in Washington, paid \$48,000 in compensation to the Washington employee, and had \$200,000 in apportionable receipts attributed to Washington and \$0 wholesaling or retailing receipts sourced to Washington. In 2017, Company Q's total property everywhere was valued at \$225,000, total payroll was \$420,000, and total apportionable and wholesaling or retailing receipts were \$6,000,000. Although Company Q has physical presence in Washington, as described in RCW 82.04.067(6), it is not treated as having substantial nexus with Washington with respect to its apportionable and wholesaling activities because (a) it is not organized or domiciled in Washington and (b) it did not have sufficient property, payroll, or receipts in the current or immediately preceding calendar year to exceed the minimum nexus thresholds identified in subsection (3)(a)(iii) of this rule.

(4) **Property threshold.**

(a) **Location of property.**

(i) Real property - Real property owned or rented is in this state if the real property is located in this state.

(ii) Tangible personal property - Tangible personal property is in this state if it is physically located in this state.

(iii) Intangible property - Intangible property is in this state based on the following:

A loan is located in this state if:

(A) More than fifty percent of the fair market value of the real and/or personal property securing the loan is in this state. An automobile loan is in this state if the vehicle is properly registered in this state. Other than for property that is subject to registered ownership, the determination of whether the real or personal property securing a loan is in this state must be made as of the time the original agreement was made, and any and all subsequent substitutions of collateral must be disregarded; or

(B) If (a)(iii)(A) of this subsection does not apply and the borrower is located in this state.

(iv) A borrower is located in this state if:

(A) The borrower is engaged in business and the borrower's commercial domicile is located in this state; or

(B) The borrower is not engaged in business and the borrower's billing address is located in this state.

(v) A credit card receivable is in this state if the billing address of the card holder is located in this state.

(vi) A nonnegotiable certificate of deposit is property in this state if the issuing bank is in this state.

(vii) Securities:

(A) A negotiable certificate of deposit is property in this state if the owner is located in this state.

(B) A municipal bond is property in this state if the owner is located in this state.

(b) **Value of property.**

(i) Property the taxpayer owns and uses in this state, other than loans and credit card receivables, is valued at its original cost basis.

Examples 4 and 5 assume the businesses depicted are not engaged in retailing activity. Therefore, the businesses' mere physical presence in Washington is not used as the basis for determining whether they have nexus with Washington.

Example 4. In January 2013, ABC Corp. bought Machinery for \$65,000 for use in State X. On March 1, 2018, ABC Corp. brought that Machinery into Washington for the remainder of the year. ABC Corp. has nexus with Washington beginning on March 1, 2018, based on Machinery's original cost basis value of \$65,000. The value is \$65,000 even though the property has depreciated prior to entering the state.

(ii) Property the taxpayer rents and uses in this state is valued at eight times the net annual rental rate.

Example 5. In 2018, out-of-state Business X rented office space in Washington for \$6,000 and had \$7,000 of office furniture and equipment in Washington. Business X has nexus with Washington in 2018 because the value of the rented office space (\$6,000 multiplied by eight, which is \$48,000) plus the value of office furniture and equipment exceeds the \$53,000 property threshold.

(iii) Loans and credit card receivables owned by the taxpayer are valued at their outstanding principal balance, without regard to any reserve for bad debts. However, if a loan or credit card receivable is actually charged off as a bad debt in whole or in part for federal income tax purposes (see 26 U.S.C. 166), the portion of the loan or credit card receivable charged off is deducted from the outstanding principal balance.

(c) **Calculating property value.** To determine whether the \$53,000 property threshold has been exceeded, average the value of property in this state on the first and last day of the calendar year. The department may require the averaging of monthly values during the calendar year if reasonably required to properly reflect the average value of the taxpayer's property in this state throughout the taxable period. Examples 6 through 9 assume the businesses depicted are not engaged in retailing activity. Therefore, the businesses' mere physical presence in Washington is not used as the basis for determining whether they have nexus with Washington.

Example 6. Company Y has property in Washington valued at \$90,000 on January 1st and \$20,000 on December 31st. The value of property in Washington is \$55,000 $((90,000 + 20,000)/2)$. Company Y exceeds the property threshold in this calendar year because it exceeds the \$53,000 property threshold.

Example 7. Company A had no property located in Washington on January 1st or on December 31st. However, it brought \$100,000 in property into Washington on January 15th and removed it from Washington on November 15th of that calendar year. In this situation, the department may compute the value of Company A's property over the period of time it was in the state during the calendar year in order to properly re-

flect its average value (\$100,000 multiplied by ten (months) divided by 12 (months), which is \$83,333). Company A exceeds the \$53,000 property threshold in this calendar year.

Example 8. Company B had no property located in Washington on January 1st or on December 31st of 2018. However, it brought \$100,000 in property into Washington on January 15th and removed it from Washington on February 15th of that calendar year. In this situation, the department may compute the value of Company B's property over the period of time it was in the state during the calendar year to properly reflect its average value, \$8,333. (\$100,000 multiplied by one (month) divided by 12 (months).) Company B also had no property located in Washington on January 1st or on December 31st of 2019. However, it brought \$100,000 in property into Washington on January 15th and removed it from Washington on October 15th of that calendar year. For 2019, the average value of Company A's property is \$75,000 (\$100,000 multiplied by nine (months) divided by 12 (months)). Company B exceeds the property threshold in 2019 based on the average value of its property in Washington during 2019, but it did not exceed the property threshold based on the average value of its property in Washington during 2018.

Example 9. IT Co. is commercially domiciled in State X with Employee located in Washington who works from a home office. In 2018, IT Co. provided to Employee \$5,000 of office supplies and \$50,000 of equipment owned by IT Co. In 2019, the employee returned an unneeded portion of the equipment and IT Co. provided no other equipment to the employee. The cost of returned equipment was \$25,000 of the total \$50,000 of equipment. IT Co. is treated as having substantial nexus with Washington in both 2018 and 2019 based on the \$53,000 property threshold because the value of its property in this state in 2018 (\$55,000) exceeded \$53,000. For 2018, IT Co. exceeded the threshold for the current year, and in 2019, IT Co. exceeded the threshold for the immediately preceding calendar year. If IT Co. does not exceed the property threshold in 2020, beginning in 2020 it will no longer have substantial nexus unless it exceeds another threshold.

(5) **Payroll threshold.** "Payroll" is the total compensation defined as gross income under 26 U.S.C. Sec. 61 (section 61 of the Internal Revenue Code of 1986), as of June 1, 2010, paid during the calendar year to employees and to third-party representatives who represent the taxpayer in interactions with the taxpayer's clients and includes sales commissions.

(a) Payroll compensation is received in this state if it is properly reportable in this state for unemployment compensation tax purposes, regardless of whether it was actually reported to this state.

Examples 10 and 11 assume the businesses depicted are not engaged in retailing activity. Therefore, the businesses' physical presence in Washington is not relevant in determining whether they have nexus with Washington.

Example 10. Company D is commercially domiciled in State X and has a single Employee whose pay of \$80,000 2018 and 2019 was properly reportable in Washington for unemployment compensation purposes. Company D has substantial nexus with Washington during 2018 and 2019 because the compensation paid to Employee during the current or immediately preceding calendar year exceeds the \$53,000 payroll threshold in both years. Company D will also have substantial nexus in 2020 because the payroll in the immediately preceding year (2019) exceeded the \$53,000 payroll threshold.

Example 11. Assume the same facts as Example 9 except only 50% of Employee's pay for 2018 and 2019 was properly reportable in Washington for unemployment compensation purposes. Employee's Washington compensation of \$40,000 does not exceed the \$53,000 payroll threshold to establish substantial nexus with Washington during the current or immediately preceding calendar year, unless this amount exceeds 25% of total payroll compensation in the current or immediately preceding calendar year.

(b) Third-party representatives receive payroll compensation in this state if the service(s) performed occurs entirely or primarily within this state.

(6) **Receipts threshold.** The receipts threshold is exceeded if a taxpayer's receipts from apportionable and selling activities attributed and sourced, respectively, to Washington totaled more than \$267,000 in the current or immediately preceding calendar year.

(a) All receipts from all apportionable and selling activities are accumulated to determine if the receipts threshold is satisfied. Receipts from activities other than apportionable and selling activities (e.g., extracting) are not used to determine if the receipts threshold has been satisfied.

(b) Apportionable receipts are attributed to Washington per WAC 458-20-19402 (general attribution), WAC 458-20-19403 (royalties), WAC 458-20-19404 (financial institutions, after 2015), and WAC 458-20-19404A (financial institutions, before 2016). Receipts from wholesale and retail sales are sourced to Washington in accordance with RCW 82.32.730.

Example 12. Company E is organized and commercially domiciled in State X. In a calendar year it had \$50,000 in receipts from wholesale sales sourced to Washington in accordance with RCW 82.32.730, \$50,000 in receipts from retail sales sourced to Washington in accordance with RCW 82.32.730, \$50,000 in royalty receipts attributed to Washington per WAC 458-20-19403, and \$150,000 in gross receipts from other apportionable activities attributed to Washington per WAC 458-20-19402. Company E has substantial nexus with Washington in the calendar year because its total of \$300,000 in receipts from apportionable activities attributed to Washington and retail and wholesale sales sourced to Washington in a calendar year exceeded the \$267,000 receipts threshold. It does not matter that a portion of the receipts were from apportionable activities that are subject to tax under different B&O tax classifications or that the receipts from apportionable activities or wholesaling or retailing activities did not separately exceed the receipts threshold. The receipts threshold is determined by the totality of the taxpayer's apportionable and selling activities in Washington.

(7) **Application of 25% threshold.**

(a) If, in the current or immediately preceding year, at least twenty-five percent of an out-of-state taxpayer's property, payroll, or receipts from apportionable and selling activities consisted of Washington property, Washington payroll, or Washington receipts, then the taxpayer has substantial nexus with Washington with respect to its apportionable and wholesaling activities.

(b) If, in the current or immediately preceding year, at least twenty-five percent of an out-of-state taxpayer's receipts from apportionable and selling activities consisted of Washington receipts, then the taxpayer also has substantial nexus with Washington with respect to its retailing activities.

(c) The twenty-five percent threshold is determined by dividing:

- (i) The value of property located in Washington by the total value of taxpayer's property;
 - (ii) Payroll located in Washington by taxpayer's total payroll;
- or
- (iii) Apportionable, wholesaling and retailing receipts attributed and sourced to Washington by total apportionable, wholesaling and retailing receipts.

Example 13. Company G is organized and commercially domiciled in State X. In 2018 it had \$45,000 in property, \$45,000 in payroll, and \$240,000 in gross receipts attributed to Washington. In 2018, its total property was valued at \$200,000; its worldwide payroll was \$150,000; and its gross receipts, all from apportionable activities, totaled \$2,000,000. Company G had twenty-two and a half percent of its property, thirty percent of its payroll, and twelve percent of its receipts attributed to Washington. With respect to its apportionable activities, Company G has substantial nexus with Washington in 2018 because at least twenty-five percent of its payroll in 2018 was located in Washington. Based on its payroll in 2018, Company G will also have substantial nexus in 2019.

(8) Application to local gross receipts business and occupations taxes. This rule does not apply to the nexus requirements for local gross receipts business and occupation taxes.

(9) Periods from September 1, 2015, through June 30, 2017.

(a) Apportionable and wholesaling activities. From September 1, 2015, through June 30, 2017, substantial nexus with Washington of a nonresident individual or a business entity organized and commercially domiciled outside this state was established with respect to that person's apportionable activities and wholesaling activities taxable under RCW 82.04.257 or 82.04.270 in a particular calendar year by measuring the person's payroll, property, and receipts only in the immediately preceding calendar year. Pursuant to RCW 82.04.220, in effect during this period, once established, substantial nexus continued through the following calendar year. See WAC 458-20-193 regarding the continuing application of the physical presence substantial nexus standard on wholesaling activity not subject to the economic nexus thresholds discussed in this rule.

(b) Retailing activities. Prior to July 1, 2017, a nonresident individual or a business entity organized and commercially domiciled outside of Washington was deemed to have substantial nexus with this state with respect to its retailing activity taxable under RCW 82.04.250(1) in a calendar year only if it had a physical presence in Washington in the calendar year. See WAC 458-20-193 regarding the continuing application of the physical presence substantial nexus standard on retailing activities.

(10) Periods from June 1, 2010, through August 31, 2015.

(a) Apportionable activities. From June 1, 2010, through August 31, 2015, substantial nexus with Washington of a nonresident individual or a business entity organized and commercially domiciled outside this state was established with respect to that person's apportionable activities in a particular calendar year by measuring the person's payroll, property, and receipts in that calendar year rather than by measuring the person's payroll, property, and receipts in the immediately preceding calendar year. Pursuant to RCW 82.04.220, in effect during this period, once established, substantial nexus continued through the following calendar year.

Example 14. Company E was organized and commercially domiciled in State X. In 2013 it had \$275,000 in gross receipts from apportionable

activities attributed to Washington per WAC 458-20-19402. Company E had substantial nexus with Washington in 2013 because its total receipts from apportionable activities attributed to Washington in that calendar year, \$275,000, exceeded the receipts threshold. Therefore, Company E was subject to B&O taxes for the entire 2013 calendar year and its substantial nexus continued through at least the 2014 calendar year.

(b) Wholesaling activity. Prior to September 1, 2015, other than as a result of continuing substantial nexus pursuant to RCW 82.04.220, a nonresident individual or a business entity organized and commercially domiciled outside of Washington was deemed to have substantial nexus with this state with respect to its wholesaling activity in a calendar year only if it had a physical presence in Washington in the calendar year. See WAC 458-20-193 regarding the continuing application of the physical presence substantial nexus standard on wholesaling activity not subject to the economic nexus thresholds discussed in this rule.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 18-06-078, § 458-20-19401, filed 3/6/18, effective 4/6/18; WSR 16-13-040, § 458-20-19401, filed 6/7/16, effective 7/8/16. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.04.067, 82.04.460, and 82.04.462. WSR 15-04-004, § 458-20-19401, filed 1/22/15, effective 2/22/15. Statutory Authority: RCW 82.04.067, 82.32.300, and 82.01.060(2). WSR 13-22-044, § 458-20-19401, filed 10/31/13, effective 12/1/13. Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 11-19-038, § 458-20-19401, filed 9/12/11, effective 10/13/11.]

AMENDATORY SECTION (Amending WSR 89-06-016, filed 2/23/89, effective 4/1/89)

WAC 458-20-221 Collection of use tax by retailers and selling agents. The U.S. Supreme Court's decision in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), clarified that Washington may impose a sales and use tax collection obligation on sellers who do not have a physical presence in this state. Effective October 1, 2018, Washington required remote sellers meeting certain thresholds to collect retail sales or use tax on all taxable sales sourced to Washington. Substitute Senate Bill No. 5581 (2019) further clarified the sales tax collection obligation for remote sellers. In accordance with RCW 82.08.052, a seller with a substantial nexus with this state under RCW 82.04.067 is obligated to collect and remit retail sales tax. As a result, this rule may include outdated or incomplete guidance regarding who is required to collect Washington's retail sales or use tax. Please see our website for the most recent information on those requirements.

(1) **Statutory requirements.** RCW 82.12.040(1) provides that every person who maintains a place of business in this state, maintains a stock of goods in this state, or engages in business activities within this state must obtain a certificate of registration and must collect use tax from purchasers at the time it makes sales of tangible personal property for use in this state. The legislature has directed the department of revenue to specify, by rule, activities which constitute engaging in business activities within this state. These are activi-

ties which are sufficient under the Constitution of the United States to require the collection of use tax.

(2) **Definitions.**

(a) "Maintains a place of business in this state" includes:

(i) Maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business; or

(ii) Soliciting sales or taking orders by sales agents or traveling representatives.

(b) "Engages in business activities within this state" includes:

(i) Purposefully or systematically exploiting the market provided by this state by any media-assisted, media-facilitated, or media-solicited means, including, but not limited to, direct mail advertising, unsolicited distribution of catalogues, computer-assisted shopping, telephone, television, radio or other electronic media, or magazine or newspaper advertisements or other media; or

(ii) Being owned or controlled by the same interests which own or control any seller engaged in business in the same or similar line of business in this state; or

(iii) Maintaining or having a franchisee or licensee operating under the seller's trade name in this state if the franchisee or licensee is required to collect use tax.

(c) "Purposefully or systematically exploiting the market provided by this state" is presumed to take place if the gross proceeds of sales of tangible personal property delivered from outside this state to destinations in this state exceed five hundred thousand dollars during a period of twelve consecutive months.

(3) **Liability of buyers for use tax.** Persons in this state who buy articles of tangible personal property at retail are liable for use tax if they have not paid sales tax. See WAC 458-20-178.

(4) **Obligation of sellers to collect use tax.** Persons who obtain a certificate of registration, maintain a place of business in this state, maintain a stock of goods in this state, or engage in business activities within this state are required to collect use tax from persons in this state to whom they sell tangible personal property at retail and from whom they have not collected sales tax. Use tax collected by sellers shall be deemed to be held in trust until paid to the department. Any seller failing to collect the tax or, if collected, failing to remit the tax is personally liable to the state for the amount of tax. (For exceptions as to sale to certain persons engaged in interstate or foreign commerce see WAC 458-20-175.)

(5) **Local use tax.** Persons who are obligated to collect use tax solely because they are engaged in business activities within this state as defined in subsection (2)(b)(i) of this section may elect to collect local use tax at a uniform statewide rate of .005 without the necessity of reporting taxable sales to the local jurisdiction of delivery. Amounts collected under the uniform rate shall be allocated by the department to counties and cities in accordance with ratios reflected by the distribution of local sales and use taxes collected from all other taxpayers. Persons not electing to collect at the uniform statewide rate or not eligible to collect at the uniform state rate shall collect local use tax in accordance with WAC 458-20-145.

(6) **Reporting frequency.** Persons who are obligated to collect use tax solely because they are engaged in business activities within this state as defined in subsection (2)(b) of this section shall not be re-

quired to file returns and remit use tax more frequently than quarterly.

(7) **Selling agents.** RCW 82.12.040 of the law provides, among other things, as follows:

(a) "Every person who engages in this state in the business of acting as an independent selling agent for persons who do not hold a valid certificate of registration, and who receives compensation by reason of sales of tangible personal property of his principals made for use in this state, shall, at the time such sales are made, collect from the purchasers the tax imposed under this chapter, and for that purpose shall be deemed a retailer as defined in this chapter."

(b) However, in those cases where the agent receives compensation by reason of a sale made pursuant to an order given directly to his principal by the buyer, and of which the agent had no knowledge at the time of sale, the said agent will be relieved of all liability for the collection of or payment of the tax. Furthermore, in other cases where payment is made by the buyer direct to the principal and the agent is unable to collect the tax from the buyer, the agent will be relieved from all liability for the collection of the tax from the buyer and for payment of the tax to the department, provided that within ten days after receipt of commission on any such sale, the agent shall forward to the department a written statement showing the following: Name and address of purchaser, date of sale, type of goods sold, and selling price. (Agents may avoid all liability for collection of this tax, provided their principals obtain a certificate of registration.)

(8) **Time and manner of collection.** The use tax is computed upon the value of the property sold. At the time of making a sale of tangible personal property, the use of which is taxable under the use tax, the seller must collect the tax from the purchaser and upon request give to the purchaser a receipt therefor. This receipt need not be in any particular form, and may be an invoice which identifies the property sold, shows the sale price thereof and the amount of the tax. It is a misdemeanor for a retailer to refund, remit, or rebate to a purchaser or transferee, either directly or indirectly, by whatever means, all or any part of the use tax.

(9) **Effective date.** This rule shall take effect on April 1, 1989.

[Statutory Authority: RCW 82.32.300. WSR 89-06-016 (Order 89-4), § 458-20-221, filed 2/23/89, effective 4/1/89; WSR 83-08-026 (Order ET 83-1), § 458-20-221, filed 3/30/83; Order ET 70-3, § 458-20-221 (Rule 221), filed 5/29/70, effective 7/1/70.]

WSR 23-08-017
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed March 24, 2023, 9:22 a.m., effective April 1, 2023]

Effective Date of Rule: April 1, 2023.

Purpose: The department of social and health services (department) is extending emergency adoption of WAC 388-439-0005 What is the pandemic EBT program?, 388-439-0015 General information about pandemic EBT benefits, 388-439-0020 Eligibility for pandemic EBT benefits for children under age six, and 388-439-0025 Eligibility for pandemic EBT benefits during the 2022 summer period, to support continued implementation of the pandemic EBT (P-EBT) program. States are authorized to implement P-EBT under approved plans as long as there is a federal public health emergency designation (as allowed under Section 1101 of H.R. 6201, Families First Coronavirus Response Act, as amended by Section 1108 of H.R. 1319, American Rescue Plan Act of 2021).

Citation of Rules Affected by this Order: New WAC 388-439-0005, 388-439-0015, 388-439-0020, and 388-439-0025.

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

Other Authority: H.R. 6201, 8337, 133, 1319.

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

Reasons for this Finding: Emergency adoption of these rules is necessary to support continued implementation of the P-EBT program, which protects the health, safety, and general welfare of Washington residents by supporting access to public assistance.

The department filed a CR-102 under WSR 23-03-096. A public hearing was held on February 21, 2023.

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

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

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

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

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

Date Adopted: March 22, 2023.

Katherine I. Vasquez
Rules Coordinator

SHS-4858.9

Chapter 388-439 WAC
PANDEMIC EBT (P-EBT) PROGRAM

NEW SECTION

WAC 388-439-0005 What is the pandemic EBT program? (1) The pandemic electronic benefits transfer (P-EBT) program is a federally funded nutrition program administered by the department of social and health services (department) and provides food benefits to eligible children who do not have access to meals at a covered childcare center or free or reduced-price school meals due to the COVID-19 public health emergency.

(2) The following definitions apply to this program:

(a) "Benefit level" means the P-EBT benefit amount provided to an eligible child;

(b) "Direct certification" means a determination that a child is eligible for free or reduced-priced school meals without further application to the national school lunch program due to:

(i) Receiving a benefit from a federal-means tested assistance program, including the supplemental nutrition assistance program (SNAP), temporary assistance for needy families (TANF), food distribution program on Indian reservations (FDPIR), some medicaid programs; or

(ii) Other source eligible categories, including children in foster care, children experiencing homelessness, students enrolled in the migrant education program, and children enrolled in head start or the early childhood education and assistance program (ECEAP);

(c) "Eligible student" means a child or student, regardless of age, who would have access to free or reduced-price school meals through the national school lunch program (NSLP) and school breakfast program (SBP) during the school year, who is:

(i) Enrolled in a school or registered in a program in Washington state that normally participates in the NSLP;

(ii) Attending a school that has been closed or has reduced attendance or hours for five or more consecutive days during the school year due to the COVID-19 public health emergency designation; and

(iii) Determined by the school to be eligible for free or reduced-priced school meals or attends a school that operates the community eligibility provision or the provision 2 lunch and breakfast program. Students are identified as eligible for free or reduced-price school meals using direct certification or free or reduced-price school meals application;

(d) "Free or reduced-price school meals" means meals provided to students qualified as eligible by the Richard B. Russell National School Lunch Act;

(e) "Meal service" means the typical meals (SBP and NSLP) served when school is in session and consumed onsite as part of the school day. Meal service includes both breakfast and lunch.

(f) "Operating days" are days a school regularly operates, excluding weekends, breaks, and holidays;

(g) "P-EBT card" means the unique electronic benefit transfer (EBT) card that accesses P-EBT food benefits issued to eligible students or children under age six;

(h) "Public health emergency" means a federal declaration of a public health emergency due to the COVID-19 pandemic as issued by the secretary of health and human services;

(i) "School" means any public or nonprofit private schools, charter schools, and tribal compact schools within the state of Washington;

(j) "School closure" means that the school was closed for in-person or remote learning with no meal service available to students enrolled in the school;

(k) "Summer period" means the months between the end of the school year and the start of the next school year during which there was a public health emergency.

[]

NEW SECTION

WAC 388-439-0015 General information about pandemic EBT benefits. (1) Pandemic electronic benefit transfer (P-EBT) benefits will be deposited into an account accessible with a debit card called a P-EBT card. A P-EBT card will be issued to each eligible student or child under age six. Each P-EBT card will be:

- (a) Linked to an EBT account for each eligible student or child under age six for P-EBT benefits; and
- (b) Mailed to either:
 - (i) The address on file with the school for the eligible student; or
 - (ii) The address on file with the department for the basic food case for the child under age six.

(2) To use a P-EBT account:

- (a) The P-EBT card can be used by the eligible student or child under age six or responsible household member, such as a parent or caregiver, on behalf of the eligible student or child under age six, to access the benefits in their EBT account;
- (b) A personal identification number (PIN) has to be created that must be used with the P-EBT card to purchase food items;
- (c) P-EBT benefits must be accessed from the P-EBT card of an eligible student or child under age six. P-EBT benefits cannot be transferred to a bank account or issued as a check;
- (d) P-EBT benefits that are not used within 274 days from the last purchase or deposit activity on the eligible child's account will be removed; and
- (e) P-EBT benefits cannot be replaced once redeemed or removed. Families are responsible for keeping the P-EBT card and PIN of an eligible student or child under age six in a safe and secure place.

(3) The purpose of P-EBT benefits is to help low-income families or individuals have a more nutritious diet by providing food benefits to eligible children during the COVID-19 public health emergency.

- (a) P-EBT benefits are used to buy food items for an eligible child (or youth) from a food retailer authorized to accept supplemental nutrition assistance program (SNAP) benefits by the U.S. department of agriculture food and nutrition service (FNS).
- (b) Use P-EBT benefits the same as other food benefits under WAC 388-412-0046 (2) (c).

(c) It is not legal to use P-EBT benefits as described under WAC 388-412-0046 (2)(d).

(d) If people intentionally misuse P-EBT benefits, they may be:

(i) Subject to fines; or

(ii) Subject to legal action, including criminal prosecution. Department of social and health services (DSHS) will cooperate with state, local, and federal prosecuting authorities to prosecute trafficking P-EBT benefits.

[]

NEW SECTION

WAC 388-439-0020 Eligibility for pandemic EBT benefits for children under age six. (1) To be eligible for federally funded pandemic electronic benefits transfer (P-EBT) benefits for children under age six, a child must be:

(a) A member of a household that received supplemental nutrition assistance program (SNAP) between October 1, 2021, and June 30, 2022;

(b) Under the age of six.

(2) Children who do not qualify for federally funded P-EBT benefits because they are on state-funded food assistance program (FAP) may be eligible for state-funded P-EBT.

(a) State-funded P-EBT follows the same eligibility rules as subsection (1) of this section, except that the child must be a member of a household that received FAP, instead of SNAP, between October 1, 2021, and June 30, 2022.

(b) State-funded P-EBT benefits are contingent on the availability of state funds.

(3) We calculate a standard benefit level for each month of P-EBT eligibility by:

(a) Using the full daily meal reimbursement rate of seven dollars and ten cents for breakfast, lunch, and snack;

(b) Multiplied by the statewide average operating days of 18 days per month;

(c) Multiplied using a percentage of benefit reimbursement based on statewide child and adult care food program (CACFP) reported meal service prior to the COVID-19 public health emergency compared to the current school year, a 34 percent reduction, as follows:

Daily Reimbursement Rate	Average Operating Days	Reduction in CACFP Claims	Average Monthly Benefits
\$7.10	18	34%	\$43

(d) P-EBT benefits are issued for each month that the household receives a SNAP or FAP benefit more than zero dollars.

(4) P-EBT benefits are issued for a child under age six for a retroactive period of time as follows:

(a) An initial one-time P-EBT allotment is issued for the months of September 2021 to June 2022;

(b) P-EBT during the summer period benefits are disbursed under WAC 388-439-0025.

(5) Benefits for a child under age six will be placed on a P-EBT card under WAC 388-439-0015.

(6) Issuance of P-EBT benefits beyond September 30, 2022, is subject to U.S. Department of Agriculture, Food and Nutrition Service (FNS) approval and the availability of state funds.

[]

NEW SECTION

WAC 388-439-0025 Eligibility for pandemic EBT benefits during the 2022 summer period. (1) During the summer period of July and August 2022, schools and covered childcare centers will be deemed as closed.

(2) To be eligible for the pandemic electronic benefits transfer (P-EBT) benefit during the summer period after the 2021-2022 school year, prior to August 31, 2022, a child must be:

(a) An eligible student as defined under WAC 388-439-0005(c) in June 2022; or

(b) A child under age six, as defined under WAC 388-439-0020(1), between June 1, 2022, and August 31, 2022.

(3) A child determined eligible in subsection (2) of this section will receive a one-time, lump sum payment of \$391 for the 2022 summer period.

(4) Summer P-EBT benefits for an eligible student or a child under age six will be placed on a P-EBT card under WAC 388-439-0015.

(5) Issuance of summer period benefits beyond September 30, 2022, is subject to U.S. Department of Agriculture, Food and Nutrition Service (FNS) approval and the availability of state funds.

[]

WSR 23-08-023
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-25—Filed March 24, 2023, 5:33 p.m., effective April 6, 2023]

Effective Date of Rule: April 6, 2023.

Purpose: This emergency rule sets 2023 recreational halibut seasons and allows halibut legally retained in Area 5 to be landed in Area 4 on days Area 4 is closed to halibut fishing.

Citation of Rules Affected by this Order: Amending WAC 220-314-030.

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

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

Reasons for this Finding: This emergency rule revises state rules to conform to proposed federal regulations. Halibut catch will continue to be closely monitored by Washington department of fish and wildlife staff; seasons may close earlier if quotas are achieved. Halibut seasons are open only by emergency rule (see WAC 220-314-040(1)).

Additionally, it is necessary to allow halibut legally retained in Catch Record Card Area 5 to be landed into port within Catch Record Card Area 4 on days when halibut fishing is closed in Area 4. This will support in prosecution of an orderly fishery by avoiding unnecessary enforcement action. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: February 27, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-314-03000M Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-314-040, and 220-314-010, effective April 6, 2023, until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in

this section. All other provisions of WAC 220-314-040, and 220-314-010, including Yelloweye Rockfish Conservation Areas (YRCA), not addressed herein, remain in effect unless otherwise amended by emergency rule:

(1) Catch Record Card Area 1 All Depth Fishery, including Southern Near Shore Fishery area described in section (2):

Open May 4, 7, 11, 14, 18, 21, 25; June 1, 4, 8, 11, 15, 18, 22, 25, and 29, 2023.

(2) Catch Record Card Area 1 Southern Near Shore Fishery; Those waters shoreward of a lined from 46°38.17'N. lat., 124°15.88'W. long., to the WA/OR border at 46°16.00'N. lat., 24°15.88'W. long. (then connecting to the 40-fathom depth contour in Oregon):

Open during dates listed for Catch Record Card Area 1 All Depth Fishery in section (1), and open Mondays, Tuesdays, and Wednesdays, each week, beginning May 8, 2023, until further notice.

(3) Catch Record Card Area 2 All Depth Fishery, including Northern Near Shore Fishery area:

Open May 4, 7, 9, 11, 14, 16, 18, 21, 23, 25, and 30; June 15, 18, 22, and 25, 2023.

(4) Card Record Areas 3 and 4:

Open May 4, 6, 11, 13, 18, 20, 26, and 28; June 1, 3, 8, 10, 15, 17, 22, 24, and 29.

(5) Catch Record Card Areas 5 through 10:

Open April 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, and 30; May 1, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 26, 27, and 28; June 1, through June 30, 2023.

(6) Catch Record Card Areas 11, 12 and 13: Closed.

(7) It is unlawful to fish for, retain, possess, or land halibut into a port located within an area that is closed to halibut fishing, except it is lawful to land halibut into a port with Marine Area 4, that were lawfully retained in Marine Area 5.

(8) Halibut caught in Canadian waters may be landed into a port located within a marine area that is closed to halibut fishing. See WAC 220-310-210 for rules on Canadian-origin halibut possession.

(9) A violation of this section is punishable under RCW 77.15.370 or RCW 77.15.380, depending on the violation.

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

WSR 23-08-024

EMERGENCY RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed March 27, 2023, 8:28 a.m., effective March 29, 2023]

Effective Date of Rule: March 29, 2023.

Purpose: The employment security department (department) is adopting emergency rules concerning blanket overpayment waivers for pandemic unemployment assistance, pandemic emergency unemployment compensation, federal pandemic unemployment compensation, and mixed earner unemployment compensation. The department is also adopting rules concerning waivers for conditional benefits paid for the week beginning February 2, 2020, through the week ending September 4, 2021, and the process for requesting overpayment waivers for overpaid benefits for the week ending February 2, 2020, through the week ending September 4, 2021, for all federal and state unemployment compensation programs.

Citation of Rules Affected by this Order: New WAC 192-220-018; and amending WAC 192-220-017 and 192-220-080.

Statutory Authority for Adoption: RCW 50.20.190, 50.24.020, 50.12.010, and 50.12.040.

Other Authority: Unemployment Insurance Program Letter Number 20-21, Change 1 (February 7, 2022).

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

Reasons for this Finding: Due to the drastic rise in unemployment insurance claims during the COVID-19 pandemic, the department has seen unprecedented overpayments for claimants. Currently, there are more than 137,000 claimants with overpayments accounting for more than \$1.2 billion that accrued from February 2, 2020, through September 4, 2021. These overpayments comprised both federally funded benefit programs and the state's regular unemployment benefits. Of those overpayments, more than 67,000 claimants, accounting for more than \$258 million, were conditionally paid and, under current rules, are not eligible for waivers. The ability to provide immediate relief of overpayments to claimants for overpayments accumulated during this specific time frame requires the use of the emergency rule-making process.

In March 2020, the department signed an agreement with the United States Department of Labor (USDOL) to administer certain federally funded pandemic era benefit programs, including pandemic unemployment assistance, pandemic emergency unemployment compensation, federal pandemic unemployment compensation, and mixed earner unemployment compensation. In Unemployment Insurance Program Letter Number 20-21, Change 1, the USDOL provided scenarios where certain overpayments may be waived on a blanket basis. This emergency rule making authorizes the use of these USDOL blanket waivers.

For overpayments of regular unemployment benefits, the emergency rule allows benefits that were paid conditionally to be potentially eligible for waiver, as the department backlogs during the pandemic period substantially increased the number of benefits that were paid conditionally. Given the volume of benefit overpayments and the increased complexity of state and federal unemployment programs during the pandemic period and as the department expands consideration of

whether the claimant is at fault and whether it would be against equity and good conscience for the claimant to repay the overpayment, the department is providing claimants an expanded opportunity to request and receive overpayment waivers from the pandemic period, even if a previous overpayment waiver request had been denied.

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

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 1, Amended 2, Repealed 0.

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

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

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

Date Adopted: March 27, 2023.

Dan Zeitlin
Employment Security Policy Director

OTS-4233.2

AMENDATORY SECTION (Amending WSR 08-21-056, filed 10/9/08, effective 11/9/08)

WAC 192-220-017 Am I required to repay the overpayment? (1) You must repay the full amount of the overpayment, even if you are not at fault, unless you are granted a waiver. (See also WAC 192-230-110.) A waiver means you do not have to repay the overpayment.

(2) Except as provided in subsection (3), you are potentially eligible for a waiver of an overpayment when it would be against equity and good conscience for the department to require you to repay the full amount.

(3) You are not eligible for a waiver when:

(a) You are at fault for the overpayment;
(b) The overpayment is the result of a discharge for misconduct or gross misconduct (see RCW 50.20.066(5));

(c) The overpayment is the result of a conditional payment of benefits, except for benefits paid for the week beginning February 2, 2020, through the week ending September 4, 2021;

(d) The overpayment decision was issued by a state other than Washington; or

(e) The overpayment is for disaster unemployment assistance benefits paid under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

[Statutory Authority: RCW 50.12.010, 51.12.040, and 50.20.010. WSR 08-21-056, § 192-220-017, filed 10/9/08, effective 11/9/08.]

NEW SECTION

WAC 192-220-018 Blanket overpayment waivers for federally funded pandemic era benefits. The department will waive overpayments for federally funded benefits when:

(1) The individual answered "no" to being able to work and available for work and:

(a) The state paid Pandemic Unemployment Assistance, Federal Pandemic Unemployment Compensation, or Pandemic Emergency Unemployment Compensation without adjudicating the eligibility issue;

(b) Upon requesting additional information from the individual, the individual either did not respond or the individual confirmed that they were not able to work nor available for work for the week in question; and

(c) The paid benefits resulted in an overpayment for that week.

(2) The individual answered "no" to being unemployed, partially unemployed, or unable or unavailable to work because of the approved COVID-19-related reasons provided in 15 U.S.C. § 9021 (a) (3) (A) (ii) (I) and:

(a) The state paid Pandemic Unemployment Assistance anyway;

(b) Following a request from the department for a new self-certification, the individual either did not respond or the individual confirmed that none of the approved COVID-19-related reasons were applicable; and

(c) The state's payment of these benefits resulted in an overpayment for that week.

(3) The individual complied with instructions from the department to submit proof of earnings to be used in calculating the individual's Pandemic Unemployment Assistance weekly benefit amount and:

(a) Through no fault of the individual, the department's instructions were either inadequate or the department incorrectly processed this calculation using self-employment gross income instead of net income or documents from an inapplicable tax year, resulting in an incorrect higher Pandemic Unemployment Assistance weekly benefit amount; and

(b) The department established an overpayment for the difference in the individual's Pandemic Unemployment Assistance weekly benefit amount.

(4) The individual complied with instructions from the department to submit proof of earnings to be used in calculating the individual's Mixed Earner Unemployment Compensation weekly benefit amount and:

(a) Through no fault of the individual, the department's instructions were either inadequate or the department incorrectly processed this calculation using self-employment gross income instead of net income or documents from an inapplicable tax year, resulting in an incorrect higher Mixed Earner Unemployment Compensation weekly benefit amount; and

(b) The department established an overpayment for the difference in the individual's Mixed Earner Unemployment Compensation weekly benefit amount.

[]

AMENDATORY SECTION (Amending WSR 17-04-090, filed 1/31/17, effective 3/3/17)

WAC 192-220-080 How do I obtain a waiver? (1) When a decision is issued that creates an overpayment, the department will send you an application for waiver if you are potentially eligible.

(2) The waiver application asks for information concerning your financial condition and other circumstances which will help the department determine if the overpayment should be waived.

(3) The financial information requested includes documentation for the previous month, current month, and following month of your:

(a) Income and, to the extent available, the income of other household members who contribute financially to the household;

(b) Expenses; and

(c) Readily available liquid assets including, but not limited to, checking and savings account balances, stocks, bonds, and cash on hand.

(4) The completed application and supporting documents must be returned to the department by the response deadline indicated in the notice, which will be no less than five working days plus reasonable mailing time, if any. If you do not provide the information by the deadline, the department will make a decision about your eligibility for waiver based on available information.

(5) A waiver cannot exceed the total amount of benefits available on your claim. The department will not waive the overpayment in such a way as to allow you to receive either a greater weekly benefit amount or a greater total benefit amount than you were originally eligible to receive. Any benefits waived are considered paid to you.

Example: You misplace a benefit check and request a replacement from the department. You subsequently cash both the original check and the replacement. Waiver will not be approved under these circumstances because you have been paid twice for the same week.

(6) If a waiver is approved based on information that is later found to be false or misleading, the amount waived will be restored to your overpayment balance.

(7) For benefits paid for the week beginning February 2, 2020, through the week ending September 4, 2021, the department will allow claimants to apply for a waiver of their overpayment for benefits, even if the individual previously had an overpayment waiver request denied or was previously deemed ineligible for an overpayment waiver.

[Statutory Authority: RCW 50.12.010 and 50.12.040. WSR 17-04-090, § 192-220-080, filed 1/31/17, effective 3/3/17; WSR 16-21-013, § 192-220-080, filed 10/7/16, effective 11/14/16. Statutory Authority: RCW 50.12.010, 51.12.040, and 50.20.010. WSR 08-21-056, § 192-220-080, filed 10/9/08, effective 11/9/08.]

WSR 23-08-026
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-46—Filed March 27, 2023, 10:39 a.m., effective March 27, 2023, 10:39 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to close harvest of red [sea] urchin in Sea Urchin District 4.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000W.

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

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

Reasons for this Finding: This emergency rule closes harvest in Sea Urchin District 4 because the quota will be met by March 27, 2023. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 27, 2023.

Kelly Susewind
Director

REPEALER

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

WAC 220-340-75000W Commercial sea urchin fisheries.
(23-44)

WSR 23-08-030
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed March 28, 2023, 9:37 a.m., effective March 31, 2023]

Effective Date of Rule: March 31, 2023.

Purpose: The purpose of this filing is to create regulations for the services provided at Rainier School.

Citation of Rules Affected by this Order: New WAC 388-829Z-005, 388-829Z-010, 388-829Z-015, 388-829Z-020, 388-829Z-025, 388-829Z-030, 388-829Z-035, 388-829Z-040, 388-829Z-045, 388-829Z-050, 388-829Z-055, 388-829Z-060, 388-829Z-065, 388-829Z-070, 388-829Z-075, 388-829Z-080, 388-829Z-085, and 388-829Z-090.

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

Other Authority: RCW 71A.20.020, 71A.20.050.

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

Reasons for this Finding: Enacting these rules on an emergency basis is necessary for preserving the health, safety, and general welfare of clients receiving emergency transitional support services at Rainier School. Clients currently receiving these services were originally admitted to Rainier School in response to the COVID-19 public health emergency. With the declared state of emergency ending, these rules are intended to inform clients about the service they are receiving and the future of that service.

This is the third emergency filing on these rules. This filing is necessary to keep the rules in effect until the developmental disabilities administration completes the permanent rule-making process. The department filed a CR-101 preproposal under WSR 22-23-032.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 18, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 18, Amended 0, Repealed 0.

Date Adopted: March 28, 2023.

Katherine I. Vasquez
Rules Coordinator

SHS-4977.2

Chapter 388-829Z WAC
EMERGENCY TRANSITIONAL SUPPORT SERVICES

NEW SECTION

WAC 388-829Z-005 What definitions apply to this chapter? The following definitions apply to this chapter.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(5) and who DDA has determined eligible to receive services under chapter 71A.16 RCW. For purposes of notification, informed consent, and decision-making requirements, the term "client" includes the client's legal representative to the extent of the representative's legal authority.

"DDA" means the developmental disabilities administration, an administration of the department of social and health services, its employees, and authorized agents.

"Direct support professional" means a person who interacts directly with a client while the client receives emergency transitional support services.

"DSHS" or "the department" means the state of Washington department of social and health services, its employees, and authorized agents.

"Legal representative" means a person's legal guardian, limited guardian when the subject matter is within the scope of the limited guardianship, attorney-at-law, attorney-in-fact, or any other person who is authorized by law to act for another person.

"Provider" means the state-operated entity on the Rainier School campus providing emergency transitional support services.

"State of emergency" means an emergency proclaimed as such by the governor pursuant to RCW 43.06.010.

[]

NEW SECTION

WAC 388-829Z-010 What is the purpose of this chapter? This chapter establishes rules for emergency transitional support services. These state-funded services, administered by DDA at Rainier School, were created in direct response to a state of emergency declared by the governor.

[]

ELIGIBILITYNEW SECTION

WAC 388-829Z-015 Who may receive emergency transitional support services? (1) To receive emergency transitional support services, a person must:

(a) Have been admitted to Rainier School to receive that service on or before March 31, 2023; or

(b) Meet the following criteria:

(i) The person is eligible for DDA services under chapter 388-823 WAC;

(ii) The person is age 18 or older; and

(iii) The person is:

(A) At risk of being hospitalized without medical need; or

(B) Hospitalized without medical need and there are no safe discharge options immediately available to the person.

(2) Emergency transitional support services are limited to specific legislative appropriations and program capacity.

[]

PROVIDER QUALIFICATIONSNEW SECTION

WAC 388-829Z-020 What are the minimum requirements for direct support professionals providing emergency transitional support services? To provide emergency transitional support services, a direct support professional must:

(1) Have a high school diploma or GED equivalent, unless hired before September 1, 1991;

(2) Be age 18 older; and

(3) Have a current background check as required by WAC 388-829Z-025.

[]

NEW SECTION

WAC 388-829Z-025 Who must have a background check? (1) A direct support professional, volunteer, and any other employee who may have unsupervised access to a DDA client must have a background check.

(2) Any person required to have a background check under this section must have a nondisqualifying background check result as required by DSHS.

[]

NEW SECTION

WAC 388-829Z-030 What will disqualify a direct support professional or a volunteer from working in a capacity that may involve access to DDA clients? (1) Criminal convictions and pending charges that disqualify a direct support professional or a volunteer from working with DDA clients are listed in chapter 388-113 WAC.

(2) A volunteer or person employed by an emergency transitional support services provider who receives a DSHS background check with a disqualifying result is prohibited from any unsupervised access to DDA clients.

[]

SERVICE DELIVERYNEW SECTION

WAC 388-829Z-035 What services and activities must be a part of emergency transitional support services? The provider must provide the following services and activities at no cost to the client:

- (1) A furnished home environment, including a private bedroom;
- (2) Access to a safe outdoor area for recreation;
- (3) Support accessing social and recreational opportunities in the community;
- (4) Access to physical and behavioral health services prescribed by the client's treating professional;
- (5) Three nutritious meals and two snacks per day;
- (6) Bedding and towels;
- (7) Access to laundry facilities; and
- (8) Access to a telephone and a place to make private calls.

[]

NEW SECTION

WAC 388-829Z-040 What policies and procedures must the provider have? (1) The provider must develop and implement policies and procedures that address:

- (a) Client rights, including a client's right to file a complaint or suggestion without interference;
- (b) Reporting requirements for suspected abuse, neglect, financial exploitation, and abandonment;
- (c) Client protections when there have been allegations of abuse, neglect, financial exploitation, or abandonment;
- (d) Emergent situations that may pose a danger or risk to the client or others;
- (e) Response to a missing person and other client emergencies;
- (f) Emergency response plans for natural and other disasters;
- (g) Client access to medical, mental health, and law enforcement resources;
- (h) Notifications to client's primary caregiver, legal representative, or relatives in case of emergency;
- (i) Client grievances, including timelines, possible remedies, and information about how to submit unresolved grievances to the department; and
- (j) Aspects of medication management, including:
 - (i) Supervision of medication; and
 - (ii) Client refusal.

(2) The provider must train employees on its policies and procedures, maintain current written policies and procedures, and make them available upon request to all employees, clients, client legal representatives, and DDA.

[]

NEW SECTION

WAC 388-829Z-045 What requirements must be met before a provider transports a client? Before transporting a client, a provider or direct support professional must have:

- (1) Automobile insurance coverage under chapter 46.30 RCW; and
- (2) A valid driver's license under chapter 46.20 RCW.

[]

NEW SECTION

WAC 388-829Z-050 How must the provider regulate the water temperature at Rainier School? (1) The provider must regulate the water temperature at Rainier School as follows:

- (a) Maintain the water temperature in the household between 105 degrees and 120 degrees Fahrenheit; and
 - (b) Check the water temperature at least once every six months.
- (2) The provider must document compliance with these requirements.

[]

NEW SECTION

WAC 388-829Z-055 What records must the provider keep? (1) For each client, the provider must keep the following information:

- (a) The client's name and address;
 - (b) The name, address, and telephone number of the client's primary guardian or legal representative;
 - (c) A copy of the client's most recent person-centered service plan;
 - (d) Nurse delegation records, if applicable;
 - (e) Progress notes;
 - (f) Incident reports, if applicable;
 - (g) Medication documentation, including a medication intake form and medication administration records, if applicable;
 - (h) A list of the client's personal property upon arrival, acquisition of new property - other than consumables, and property at departure; and
 - (i) A record of money or gift cards managed by the provider on behalf of the client, if applicable.
- (2) An emergency transitional support services provider must also keep the following:
- (a) Water temperature monitoring records;
 - (b) Direct support professional training records; and
 - (c) Direct support professional time sheets specific to locations worked.

[]

NEW SECTION

WAC 388-829Z-060 How must a provider report suspected abuse and neglect? A provider must immediately report suspected abandonment, abuse, financial exploitation, or neglect of vulnerable adults to:

- (1) Adult protective services using the DSHS online reporting tool or by calling 1-877-734-6277 (TTY: 1-800-977-5456); and
- (2) Law enforcement agencies as required under chapter 74.34 RCW, including when there is reason to suspect sexual or physical abuse.

[]

TERMINATION

NEW SECTION

WAC 388-829Z-065 When may DDA terminate a client's emergency transitional support services? DDA may terminate a client's emergency transitional support services if:

- (1) The client chooses not to receive the service;
- (2) The service no longer meets the client's health and safety needs; or
- (3) The service is not funded by the legislature, or the program lacks sufficient capacity.

[]

NEW SECTION

WAC 388-829Z-070 What are a client's notice and appeal rights?

- (1) DDA must provide 30 days' advance notice for termination of emergency transitional support services.
- (2) A client does not have a right to appeal termination of emergency transitional support services if the basis for termination is a lack of funding or lack of capacity.

[]

CERTIFICATIONNEW SECTION

WAC 388-829Z-075 What are the certification requirements for providers of emergency transitional support services? (1) The provider of emergency transitional support services must be certified by DDA no more than 90 days after the first date of service delivery.

- (2) DDA certifies the provider through a certification evaluation.
- (3) DSHS-contracted evaluators conduct the certification evaluations.
- (4) The provider must participate in a certification evaluation at least once every 12 months.

[]

NEW SECTION

WAC 388-829Z-080 What if the emergency transitional support services provider disagrees with a certification evaluation or certifi-

ication decision? If an emergency transitional support services provider disagrees with a certification evaluation or certification decision under this chapter, the provider may request an informal dispute resolution meeting with DDA by:

(1) Submitting a written request to DDA no more than 10 days after receiving the final certification letter and report; and

(2) Including a written statement that identifies the challenged action, describes the provider's concerns, and lists regulations and contract standards cited.

[]

NEW SECTION

WAC 388-829Z-085 What happens if the provider is found to be out of compliance? (1) If DDA finds in its evaluation that the emergency transitional support services provider is out of compliance with any part of this chapter, the provider and DDA must develop a plan of correction.

(2) The plan of correction must:

(a) Outline methods for the provider to comply with the required corrections; and

(b) Provide a time frame for the provider to complete the corrective actions.

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NEW SECTION

WAC 388-829Z-090 When may DDA stop admission authorization for emergency transitional support services? DDA may stop admission authorization for emergency transitional support services if:

(1) The provider demonstrates inadequate performance or inability to deliver quality care that jeopardizes the client's health, safety, or well-being;

(2) The provider does not complete the corrective actions within the agreed upon time frame;

(3) The provider fails to comply with the requirements of this chapter; or

(4) DDA has substantial evidence that a client's health, safety, or well-being is at risk.

[]

WSR 23-08-033
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-47—Filed March 29, 2023, 8:43 a.m., effective April 1, 2023]

Effective Date of Rule: April 1, 2023.

Purpose: The purpose of this emergency rule is to open commercial razor clam seasons in Razor Clam Area 2.

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

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

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

Reasons for this Finding: Based on historical catches and on-site inspection, there are adequate clams to support an 11-week commercial razor clam season. Washington department of health has confirmed biotoxin levels currently fall below the regulatory threshold. This emergency rule is needed to open the commercial razor clam season in Razor Clam Area 2. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 29, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-12000J Commercial razor clams. Notwithstanding the provisions of WAC 220-340-120, effective April 1 through June 14, 2023, a person may dig for and possess razor clams for commercial purposes only in those waters and detached beaches of Razor Clam Area 2 lying south of the Willapa Bay Ship Channel, west of Ellen Sands, and north of the tip of Leadbetter Point. Digging is prohibited on the west side of Leadbetter Point south of 46°40.015'N. Access to Razor Clam Area 2 is by boat only.

[]

REPEALER

The following section of the Washington Administrative Code is repealed effective June 15, 2023:

WAC 220-340-12000J Commercial razor clams.

WSR 23-08-039
EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed March 29, 2023, 10:08 a.m., effective March 29, 2023, 10:08 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 314-55-570 (3) (a), (b), and (c), social equity application process - application window. The Washington state liquor and cannabis board (board) has adopted an emergency rule to amend WAC 314-55-570 (3) (a), (b), and (c) that temporarily extends the current initial application window from 30 days to 58 days.

Citation of Rules Affected by this Order: Amending WAC 314-55-570 (3) (a), (b), and (c).

Statutory Authority for Adoption: RCW 69.50.335, 69.50.342.

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

Reasons for this Finding: On March 1, 2023, the board opened a 30-day window to accept applications for the social equity in cannabis program consistent with WAC 314-55-570 generally, and WAC 314-55-570 (3) (a), (b), and (c) specifically. The 30-day application window was scheduled to close on March 30, 2023.

As part of the social equity in cannabis program application process, some applicants seek to form a new business entity by applying for certification as a limited liability company or similar business structure through the Washington secretary of state's office. On or about March 20, 2023, the board learned that there had been an unforeseeable and unexpected delay at the Washington secretary of state's office, resulting in a new business entity application processing backlog of over 10 days. The board believes that delay in processing is likely to impact the timely completion of all necessary requirements for some social equity program applicants who are seeking to form a new business entity. For this reason, the board finds that an immediate temporary extension of the application window from 30 to 58 days is necessary to provide equitable opportunity for potential participants to complete the social equity application process.

The 58-day period aligns with the operational practices of the Washington state department of revenue's business licensing services (BLS), the entity who accepts and processes Washington state licensing applications. As an operational matter, BLS is required to close the application window on a Thursday, meaning that the application window will close on April 27, 2023, at 5:00 p.m.

Immediate adoption of this temporary rule is necessary to preserve the general welfare including commerce and business as they relate to the social equity in cannabis program, its application process, and program applicants by ensuring a fair and equitable opportunity for Washingtonians to participate in the program, including those who were disproportionately impacted by the war on drugs.

The board has specific authority under RCW 69.50.335 to adopt rule concerning the application process for the social equity in cannabis program. The board also has authority to adopt emergency rules under RCW 34.05.350 for the preservation of public health, safety, or general welfare. This emergency rule:

- Temporarily extends the current 30-day application window for social equity applicants to 58 days.
- As the result of an unexpected and unforeseeable delay in processing new business entity applications, provides an equitable opportunity for social equity program applicants to complete the application process.

This emergency rule does **not** revise or otherwise change any other requirement of the existing social equity program application process, including submission of all required materials as described in rule.

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

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

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

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

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

Date Adopted: March 29, 2023.

David Postman
Board Chair

OTS-4464.1

AMENDATORY SECTION (Amending WSR 22-21-058, filed 10/12/22, effective 11/12/22)

WAC 314-55-570 Social equity in cannabis program. (1) Definitions.

(a) **"Disproportionately impacted area (DIA)"** means a census tract within Washington state where community members were more likely to be impacted by the war on drugs. These areas are determined using a standardized statistical equation to identify areas of high unemployment, low income, and demographic indicators consistent with populations most impacted by the war on drugs, including areas with higher rates of arrest for drug charges. The board will provide maps to identify disproportionately impacted areas. The maps will reflect census tracts from different time periods to account for gentrification.

(b) **"Family member"** means:

(i) A biological, adopted, or foster child, a stepchild, a child's spouse, or a child to whom the applicant stands in loco parentis (in place of the parent), is a legal guardian, or is a de facto parent, regardless of age or dependency status;

(ii) Grandchild, grandparent, parent, or sibling of a child as defined in (b)(i) of this subsection;

(iii) Spouse or domestic partner;

(iv) Any individual who regularly resides in the applicant's home or where the relationship creates an expectation that the applicant care for the person and that individual depends on the applicant for care, or that the individual care for the applicant and that the applicant depends on the individual for care.

(c) "**Median household income**" means the most recent median household income within the state of Washington as calculated by the United States Census Bureau.

(d) "**Person**" means a real human being, distinguished from a corporation, company, or other business entity.

(e) "**Preliminary letter of approval**" means an approval letter issued to a social equity program applicant for purposes of securing a grant from the department of commerce and a location and other necessities to complete the licensing process.

(f) "**Social equity program applicant**" means a person(s) who meets the requirements of the social equity program.

(g) "**Social equity contractor**" means a third party responsible to review and score social equity program applications.

(h) "**Social equity licensee**" means a person or entity that holds a social equity cannabis license or any person or entity who is a true party of interest in a social equity in cannabis license as described in WAC 314-55-035.

(i) "**Social equity plan**" means a plan that addresses the following elements including, but not limited to:

(i) A description of how issuing a cannabis retail license to the social equity applicant will meet social equity goals as described in statute;

(ii) The social equity applicant's personal or family history with the criminal justice system, including any offenses involving cannabis; and

(iii) Business plans involving partnerships or assistance to organizations or residents with connections or contributions to populations with a history of high rates of enforcement of cannabis prohibition.

(j) "**Social equity title certificate holder**" means a cannabis retail license title certificate holder that meets the requirements of a social equity program applicant as determined by the social equity contractor, and is unable to open for business in the city or county where the cannabis retail license is located.

(2) **Social equity applicant requirements.**

(a) To be considered for the social equity program under this chapter and RCW 69.50.335, the following requirements must be met by each applicant:

(b) At least a 51 percent majority, or controlling interest, in the applicant, must be held by a person, or persons, who has or have resided in Washington state for six months prior to the application date, consistent with RCW 69.50.331, and meets at least two of the following qualifications:

(i) **Qualification 1:** The social equity applicant or applicants have lived in a disproportionately impacted area in Washington state for a minimum of five years between 1980 and 2010; or

(ii) **Qualification 2:** The social equity applicant or a family member of the applicant has been arrested or convicted of a cannabis offense; or

(iii) **Qualification 3:** The social equity applicant's household income in the year prior to submitting the application was less than

the median household income within the state of Washington as calculated by the United States Census Bureau.

(3) **Social equity application process.**

(a) **Application window.**

(i) The board will open the application window for an initial period of ((30)) 58 calendar days.

(ii) At its sole discretion, the board may reopen the application window:

(A) After initial evaluation of applications is received and locations are still available; or

(B) If additional allotments become available after the initial application window has closed pursuant to RCW 69.50.335.

(b) **Initial application requirements.**

(i) The social equity application must be submitted electronically through the department of revenue's business licensing online application system.

(ii) The social equity applicant must apply to the department of revenue's business licensing service within the ((30)) 58-day application window. All required information must be completed on the application and payment must be submitted within the ((30)) 58-day application window for the application to be accepted.

(iii) The social equity applicant, whether applying as a person, persons, or entity, may apply for a cannabis license only once during each application window described in subsection (4)(c) of this section.

(iv) An application to reinstate the license of a social equity title certificate holder will not be considered a new social equity license application. The social equity title certificate holder may submit an application for a social equity license and an application to reinstate their existing license through the social equity program.

(v) A location address is not required at the time of application.

(c) **Social equity contractor review.** Once the application window is closed, the social equity contractor will evaluate and prioritize all applications received within the ((30)) 58-day application window.

(i) The social equity applicant must select one county where they wish to operate their business and notify the social equity contractor of their selection in the form and manner required by the social equity contractor.

(ii) The social equity applicant must submit documentation verifying the eligibility requirements described in (c)(D)(viii) of this subsection to the social equity contractor in the form and manner required by the social equity contractor.

(iii) Examples of documentation that may verify eligibility requirements include, but are not limited to:

(A) School records, rental agreements, utility bills, mortgage statements, loan documents, bank records, or tax returns that show the applicant's address(es), or a signed declaration that includes the applicant's address(es) indicating that the applicant resided in a DIA; or

(B) The applicant's arrest or conviction records, or family member's arrest or conviction records and an affirmation of the familial relationship signed by the applicant and the family member; or

(C) The applicant's tax returns demonstrating their income for the prior year; or

(D) Any other documentation that verifies the eligibility requirements described in (c)(D)(viii) of this subsection.

(iv) If additional materials are needed, the social equity applicant will receive a letter electronically from the social equity contractor directing the applicant to submit additional application materials directly to the social equity contractor.

(v) The social equity applicant must submit complete and accurate additional application materials directly to the social equity contractor within 15 business days of the date of the letter. It is the responsibility of the social equity applicant to comply with the application requirements in this section and ensure the application is complete, accurate, and successfully submitted to the social equity contractor.

(vi) If the application is determined to be incomplete by the social equity contractor, the social equity applicant will be provided with 14 days to submit a complete application. The social equity contractor will score the application based on the materials submitted within the time frame.

(vii) The social equity contractor will review the application materials, including the social equity plan provided by the social equity applicant to determine if the applicant meets the requirements of a social equity applicant.

(viii) After the social equity contractor determines that the requirements have been met, the social equity contractor will score social equity applications using the following scoring rubric to prioritize social equity applicants:

Social Equity Application Scoring Rubric		
Category	Eligibility Requirements	Point Scale
	1. Lived in a disproportionately impacted area (DIA)	40
	1a. How long have you lived in a DIA? 5y -10y = 20 points 10 + years = 40 points	40
	2. Convicted of a drug offense? (Self)	10
	2a. Convicted of a cannabis offense? (Self)	40
	3. Convicted of a drug offense? (Family)	5
	3a. Convicted of a cannabis offense? (Family)	5
	4. If you were convicted of a cannabis offense, what type of sentence did you receive: Fine = 10 points Served probation = 20 points Confined to home = 40 points Served time in jail or prison = 80 points	80
	5. Did you or your family member's incarceration keep you from getting employment?	5
	6. Did you lose your home or ability to purchase a home or rent a home as a result of your convictions or arrests?	5
	7. Is your household income less than the median household income within the state of Washington as calculated by the United States Census Bureau?	40
	8. Did you own or operate a medical cannabis dispensary or collective garden, licensed as a business, prior to July 1, 2016 (10 points)? or Did you own and operate a medical cannabis dispensary or collective garden licensed as a business in a DIA (30 points)?	10 30 in a DIA
	9. Have you held or do you currently hold 51 percent majority/controlling interest of a state cannabis (marijuana) retailer license? No = 10 points Yes = 0 points	10
	Total Maximum Points	310 points

(ix) The social equity contractor will provide the board with a list of eligible and scored social equity applicants.

(x) Neither the social equity contractor nor its employees shall benefit from any license or licenses granted as a result of their review.

(d) (i) **Board review.** Social equity applicants that are scored highest by the social equity contractor within the county selected by the social equity applicant will be processed by the board.

(ii) In the event of a tie, the board will use a double blind lottery conducted by an independent third party to identify the application(s) that will be processed.

(e) **Preliminary letter of approval.** Once the social equity applications that will be processed are identified as described in this section, eligible social equity applicants will be issued a preliminary letter of approval.

(4) **Additional provisions.**

(a) **Time restrictions.** There are no time restrictions for a social equity applicant to select and secure a location.

(b) **Ownership changes.** Social equity applicants may not make ownership changes to an application after the application has been reviewed, scored, and prioritized by the social equity contractor.

(c) **Social equity applicants may apply for a social equity license once per application window.** If a social equity applicant ap-

plies more than once, the board will accept only the first application.

(d) **License mobility.** Social equity licenses that are currently designated to specific cities may be located anywhere within the county in which the city is located. However, the license may not be transferred outside of that county.

(e) **Qualifying for the social equity program will not result in or guarantee cannabis business license approval.** Social equity applicants must meet all license qualifications in WAC 314-55-077 and this chapter to receive a license.

(f) **License transfer and assumption.** Licenses awarded under this section may not be transferred or assumed within the first year of the license being issued. Licenses awarded under this section may only be transferred to or assumed by individuals or groups of individuals who meet the definition of a social equity program applicant for a period of five years from the date of the initial license was approved.

(5) **Social equity title certificate holders.** A title certificate holder that meets the requirements of a social equity program applicant as determined by the social equity contractor may reinstate their retail cannabis license anywhere within the county that they hold their title certificate.

(6) **Application withdrawal.** The board will withdraw a social equity application if:

(a) The social equity program application or additional materials are determined to be incomplete or incorrect by the social equity contractor;

(b) The social equity program application materials are not timely received by the social equity contractor;

(c) The social equity applicant is not selected to continue with the licensing application process; or

(d) The social equity applicant(s) requests withdrawal of the social equity program application at any time in the application process. The social equity applicant(s) must request withdrawal in writing. The voluntary withdrawal of a social equity program application does not result in a hearing right.

[Statutory Authority: RCW 69.50.335, 69.50.336, 69.50.342, and 2022 c 16. WSR 22-21-058, § 314-55-570, filed 10/12/22, effective 11/12/22.]

WSR 23-08-050
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-48—Filed March 31, 2023, 9:05 a.m., effective March 31, 2023, 9:05 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to revise the boundary of the Quinault Special Management Area.

Citation of Rules Affected by this Order: Repealing WAC 220-340-45000L; and amending WAC 220-340-450.

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

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

Reasons for this Finding: Tribal special management area descriptions conform with recent state/tribal agreements and recent state/tribal discussions regarding in-season modifications.

There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 31, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-45000M Commercial crab fishery—Seasons and areas—Coastal. Notwithstanding the provisions of WAC 220-340-450, effective immediately until further notice: it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided in this section:

(1) Open area: The area from the WA/OR border (46°15.00) to the US/Canada border, except for Quinault Secondary Special Management Area (SSMA) and Quileute Special Management (SMA) during times and as described below. For the purposes of this section, the waters of Willapa Bay include the marine waters east of a line connecting 46°44.76N, 124°05.76W and 46°38.93N, 124°04.33W.

(2) The Quinault Secondary Special Management Area (SSMA) is closed to fishing for Dungeness crab starting at 8:00 a.m., April 10, 2023, until further notice. The SSMA is defined by the following points:

- (a) Northeast Corner: 47°28.00'N. Lat., 124°20.70'W. Lon.
- (b) Northwest Corner: 47°28.00'N. Lat., 124°36.00'W. Lon.
- (c) Southwest Corner: 47°06.00'N. Lat., 124°27.10'W. Lon.
- (d) Southeast Corner: 47°06.00'N. Lat., 124°11.00'W. Lon.

(3) The Quileute Special Management Area (SMA) is closed to fishing for Dungeness crab until 8:00 a.m. May 1, 2023. The SMA includes the area shoreward the 30-fathom depth curve line at the coordinates below, between Destruction Island and Cape Johnson according to the following points:

- (a) Northeast Corner (Cape Johnson): 47°58.00'N. Lat., 124°40.40'W. Lon.
- (b) Northwest Corner: 47°58.00'N. Lat., 124°49.00'W. Lon.
- (c) Southwest Corner: 47°40.50'N. Lat., 124°40.00'W. Lon.
- (d) Southeast Corner (Destruction Island): 47°40.50'N. Lat., 124°24.43'W. Lon.

(4) Unless otherwise amended all other provisions of the permanent rule remain in effect.

[]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-340-45000L Commercial crab fishery—Seasons and areas—Coastal. (23-32)

WSR 23-08-051

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed March 31, 2023, 12:31 p.m., effective April 1, 2023]

Effective Date of Rule: April 1, 2023.

Purpose: Due to the terms of the Federal Consolidated Appropriations Act of 2023, effective April 1, 2023, the agency is ending continuous enrollment in apple health coverage and must end the enrollment of ineligible beneficiaries on or after April 1, 2023, through June 2024, after the agency conducts a full renewal.

Citation of Rules Affected by this Order: Amending WAC 182-521-0200.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Federal Consolidated Appropriations Act of 2023.

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

Reasons for this Finding: The Federal Consolidated Appropriations Act of 2023 amended Section 6008 of the Families First Coronavirus Response Act to change the end date of medicaid continuous coverage from the end date of the public health emergency to March 31, 2023.

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

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

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

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

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

Date Adopted: March 31, 2023.

Wendy Barcus
Rules Coordinator

OTS-4474.1

AMENDATORY SECTION (Amending WSR 22-12-004, filed 5/19/22, effective 7/1/22)

WAC 182-521-0200 Coverage after the public health emergency (PHE) ends. (1) In response to the coronavirus (COVID-19) public health emergency (PHE) declared by the Secretary of the U.S. Department of Health and Human Services (HHS) and in response to Section 6008 of the Families First Coronavirus Response Act (Public Law 116-127), the medicaid agency:

(a) Continues your Washington apple health coverage (~~until the end of the PHE~~) unless your eligibility determination was made incorrectly, or you:

(i) Are deceased;
(ii) Move out-of-state;
(iii) Request termination of your coverage; or
(iv) No longer meet citizenship or immigration requirements as described in WAC 182-503-0535.

(b) Waives and suspends the collection of premiums through the last day of the calendar quarter in which the PHE ends for:

(i) Apple health for kids with premiums (CHIP), as described in WAC 182-505-0215; and

(ii) Health care for workers with disabilities (HWD) program, as described in WAC 182-511-1250.

(c) Excludes, for the duration of the PHE and a period of 12 months after the PHE ends, resources accumulated from participation that did not increase in response to Section 6008(b) of the Families First Coronavirus Response Act (FFCRA), as described in WAC 182-512-0550(24).

(2) Based on the Consolidated Appropriations Act of 2023, effective April 1, 2023, if you receive continued apple health due to the suspension of certain eligibility rules during the PHE, the agency, will after ((the PHE ends)) April 1, 2023:

(a) Redetermine((s)) your eligibility for ongoing coverage using the process and timelines described in WAC 182-504-0035 and notifies you as required under chapter 182-518 WAC. You may update any information needed to complete a redetermination of eligibility, as described in WAC 182-504-0035.

(i) If you are no longer eligible for apple health, or you do not respond to our renewal request notice, you will receive at least 10 calendar days' advance notice before your coverage is terminated, as described in WAC 182-518-0025.

(ii) If your modified adjusted gross income (MAGI)-based coverage ends because you did not renew it, you have 90 calendar days from the termination date to complete your renewal. If you are still eligible for apple health, your benefits will be restored without a gap in coverage.

(iii) If your coverage is terminated, you have a right to an administrative hearing, as described in chapter 182-526 WAC.

(b) Begin((s)) collecting premiums for CHIP and HWD clients prospectively, beginning with the month following the quarter in which the PHE ends, based upon reported circumstances, and without collecting arrears.

(c) Resume((s)) eligibility verification based on the factors described in WAC 182-503-0050.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-12-004, § 182-521-0200, filed 5/19/22, effective 7/1/22.]

WSR 23-08-070
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-48—Filed April 4, 2023, 10:07 a.m., effective April 6, 2023]

Effective Date of Rule: April 6, 2023.

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

Citation of Rules Affected by this Order: Repealing WAC 220-330-16000Z and 220-330-01000X; and amending WAC 220-330-160 and 220-330-010.

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

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

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 3, 4, and 5 for recreational harvest. An exceptionally large population of harvestable razor clams in Razor Clam Areas 1, 3, 4, and 5 allow for a temporary increase in the daily bag limit. Washington department of health has certified clams from these razor clam areas to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 4, 2023.

Kelly Susewind
Director

NEW SECTION

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

(1) Effective 12:01 a.m. April 6 through 11:59 a.m. April 11, 2023, razor clam digging is permissible in Razor Clam Areas defined in WAC 220-330-160 during morning tides on dates and times listed below:

Razor Clam Area	Date	Time
Area 1	April 6 through April 11	From 12:01 a.m. to 11:59 a.m.
Area 2	Closed	Closed
Area 3	April 6 through April 11	From 12:01 a.m. to 11:59 a.m.
Area 4	April 7, 9, 11	From 12:01 a.m. to 11:59 a.m.
Area 5	April 6, 8, 10	From 12:01 a.m. to 11:59 a.m.
Area 6	Closed	Closed
Area 7	Closed	Closed

(2) Effective 12:01 a.m. April 12 through 12:59 p.m. April 12, 2023, razor clam digging is permissible in Razor Clam Area 1, Razor Clam Area 3, and Razor Clam area 5 defined in WAC 220-330-160. Digging is allowed from 12:01 a.m. to 12:59 p.m. on this day only.

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

[]

NEW SECTION

WAC 220-330-01000X Shellfish—Daily limits, size restrictions, and unlawful acts. Notwithstanding the provisions of WAC 220-330-010 regarding Razor clam daily limits, effective 12:01 a.m. April 6, through 12:59 p.m. April 12, 2023, the daily limit is 20 razor clams for personal use in any one day from Razor Clam Area 1, Razor Clam Area 3, Razor Clam Area 4 and Razor Clam Area 5. All other provisions of WAC 220-330-010 not addressed herein remain in effect unless otherwise amended by emergency rule.

[]

REPEALER

The following sections of the Washington Administrative Code are repealed effective 12:01 a.m. April 13, 2023:

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

WAC 220-330-01000X Shellfish—Daily limits, size restrictions, and unlawful acts.