

**WSR 23-14-037**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Developmental Disabilities Administration)  
[Filed June 26, 2023, 3:28 p.m., effective June 27, 2023]

Effective Date of Rule: June 27, 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. The department of social and health services is proceeding with permanent adoption; we filed a CR-102 proposal under WSR 23-12-078. A public hearing is scheduled for August 8, 2023.

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 fourth emergency filing on these sections and is necessary to keep the rules effective until DDA completes the permanent rule-making process.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 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: June 26, 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;
  - ~~((c))~~ (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 teleservice?** (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 <del>((six thousand one hundred ninety-two dollars))</del> <u>\$6,192</u> per year per participant

SERVICE	YEARLY LIMIT
Physical therapy <del>((Positive behavior support and consultation))</del>	
Remote support	
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 <del>((Positive behavior support))</del> Specialized equipment and supplies Speech, hearing, and language services Skilled nursing Staff and family consultation Transportation	<del>((Six thousand dollars))</del> \$6,000 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 <del>((Positive behavior support and consultation))</del> <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
<del>((Specialized habilitation</del>	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	<del>((Fifteen thousand dollars))</del> <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 <del>((Positive behavior support))</del>	Limits determined by DDA
Environmental adaptations (Accessibility and repairs) Specialized habilitation Staff and family consultation Vehicle modifications	<del>((Six thousand dollars))</del> <u>\$6,000</u> per year for emergency assistance funding
Equine therapy Music therapy <del>((Equine therapy))</del> Peer mentoring Person-centered plan facilitation	<del>((Five thousand dollars))</del> <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 <del>((fifteen thousand dollars))</del> <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 <del>((Positive behavior support and consultation))</del> <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 <del>((aggregate and emergency services))</del> <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.]

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-cen-  
tered 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, ca-  
ble, 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) ~~((1))~~ 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, un-

less 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.]

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, ef-

fective 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, rehabilitative 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 in-stallation 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 AL TSA 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.]

**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 388-845-3065 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 23-16-002  
EMERGENCY RULES  
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed July 19, 2023, 1:36 p.m., effective July 23, 2023]

Effective Date of Rule: July 23, 2023.

Purpose: The department is adopting emergency amendments to WAC 388-447-0120 How does alcohol or drug dependence affect my eligibility for referral to the housing and essential needs (HEN) program?, and 388-449-0220 How does alcohol or drug dependence affect my eligibility for the ABD cash and pregnant women assistance programs?, to expand good cause reasons for not participating in substance use disorder assessment or treatment as a condition of eligibility for the aged, blind, or disabled, housing and essential needs referral, and pregnant women assistance programs. These amendments are necessary to implement ESHB 1260 (chapter 289, Laws of 2023), effective July 23, 2023.

Citation of Rules Affected by this Order: Amending WAC 388-447-0120 and 388-449-0220.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.0052, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.08.025, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.62.030.

Other Authority: ESHB 1260 (chapter 289, Laws 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: These amendments are necessary to implement ESHB 1260 (chapter 289, Laws of 2023), effective July 23, 2023. The department is concurrently proceeding with the permanent rule-making process. Refer to CR-101 filed as WSR 23-13-026 on June 9, 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 2, Repealed 0.

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

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

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

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

Date Adopted: July 18, 2023.

Katherine I. Vasquez  
Rules Coordinator

**SHS-4982.3**

AMENDATORY SECTION (Amending WSR 13-24-044, filed 11/26/13, effective 1/1/14)

**WAC 388-447-0120 How does ~~((alcohol or drug dependence))~~ substance use affect my eligibility for referral to the housing and essential needs (HEN) program?** (1) ~~((When we have information that indicates you may be chemically dependent,))~~ You must complete a ((chemical dependency)) substance use disorder assessment ((unless you have good cause to not do so)) when we have information that indicates you may have a substance use disorder.

(2) You must participate in ~~((drug or alcohol))~~ substance use treatment if a certified ~~((chemical dependency))~~ substance use disorder professional indicates a need for treatment, unless you have good cause ~~((to not do so))~~. Good cause includes, but is not limited to,

~~((3 We consider))~~ the following reasons ((to be good cause for not following through with a chemical dependency assessment or treatment)):

(a) We determine that your physical or mental health impairment prevents you from participating in treatment ~~((+))~~.

(b) The outpatient ~~((chemical dependency))~~ substance use disorder treatment you need isn't available in the county where you live ~~((+ or))~~.

(c) The inpatient ~~((chemical dependency))~~ substance use disorder treatment you need isn't available at a location you can reasonably access.

(d) You are a parent or other relative personally providing care for a minor child or an incapacitated individual living in your household, child care or day care is necessary for you to participate in substance use disorder treatment, and such care is not available.

~~((4))~~ (3) If you refuse or ~~((fail to))~~ do not complete an assessment or treatment without good cause, your HEN referral eligibility will end ((following advance notification rules under WAC 388-458-0030)) until you provide proof you are pursuing an assessment or treatment as required.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.08.025, 74.62.030, and 2013 2nd sp.s. c 10. WSR 13-24-044, § 388-447-0120, filed 11/26/13, effective 1/1/14.]

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

**WAC 388-449-0220 How does ~~((alcohol or drug dependence))~~ substance use affect my eligibility for the aged, blind, or disabled (ABD) cash and pregnant women assistance (PWA) programs?** (1) ~~((You))~~ For purposes of ABD, you must complete a ((chemical dependency)) substance use disorder assessment when we have information that indicates you may ((be chemically dependent)) have a substance use disorder.

(2) For purposes of PWA, you must complete a substance use disorder assessment when we have information that indicates you may have a substance use disorder.

~~((2))~~ (3) You must ~~((accept an assessment referral and))~~ participate in ~~((drug or alcohol))~~ substance use disorder treatment if a certified ~~((chemical dependency counselor))~~ substance use disorder

professional indicates a need for treatment, unless you (~~meet one of~~) have good cause. Good cause includes, but is not limited to, the following (~~good cause~~) reasons:

(a) We determine that your physical or mental health impairment prevents you from participating in treatment.

(b) The outpatient (~~chemical dependency~~) substance use disorder treatment you need isn't available in the county you live in.

(c) You need inpatient (~~chemical dependency~~) substance use disorder treatment at a location that you can't reasonably access.

(d) You are a parent or other relative personally providing care for a minor child or an incapacitated individual living in your household, child care or day care is necessary for you to participate in substance use disorder treatment, and such care is not available.

(3) If you refuse or (~~fail to~~) do not complete an assessment or treatment without good cause, your benefits will end until you provide proof you are pursuing an assessment or treatment as required.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.08.043, 74.08.335, and 2011 1st sp.s. c 36. WSR 12-10-042, § 388-449-0220, filed 4/27/12, effective 6/1/12.]

**WSR 23-16-003**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 23-133—Filed July 19, 2023, 1:46 p.m., effective July 19, 2023, 1:46 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

Citation of Rules Affected by this Order: Repealing WAC 220-359-02000S; and amending WAC 220-359-020.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

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

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

Reasons for this Finding: This rule sets treaty commercial sales for the Columbia River mainstem fall season platform, hook and line, and tributary fisheries. This rule is consistent with actions of the Columbia River Compact on June 7, June 28, July 6, and July 18, 2023. Conforms state rules with tribal rules. The general public welfare is protected with the immediate opening of nontreaty buyers purchasing fish from treaty fisheries. This harvest opportunity allows for the tribal use and public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

Number of Sections Adopted at the Request of a 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: July 19, 2023.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-359-02000T Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

(1) Open Areas: SMCRA 1F, 1G, 1H (Zone 6)

(a) Season: Immediately, until further notice.

(b) Gear: Hoop nets/bag nets, dip nets, and rod and reel with hook and line.

(c) Allowable sale:

(i) Salmon (any species) and steelhead caught after 6:00 PM on July 8 may not be sold, but remains open for subsistence. Shad, yellow perch, bass, walleye, catfish and carp may be sold after the period concludes or retained for subsistence. Sturgeon may not be sold, but sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools and may be kept for subsistence purposes.

(ii) Effective August 1, until further notice: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Fish landed during the open

periods are allowed to be sold after the period concludes. Sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day pools may be kept for subsistence purposes.

(d) Standard river mouth and dam sanctuary closures remain in place for this gear.

(2) Open Areas: SMCRA 1E (area defined in tribal/state MOUs/MOAs)

(a) Season: Immediately, until further notice. Only during days and times opened under tribal rule.

(b) Gear: Hook and line and/or platform gear identified in tribal rules.

(c) Allowable sale:

(i) Effective immediately through July 31: Salmon (any species) and steelhead caught after 6:00 PM on July 8 may not be sold, but remains open for subsistence. Shad, yellow perch, bass, walleye, catfish and carp may be sold after the period concludes or retained for subsistence. Sturgeon may not be retained in fisheries downstream of Bonneville Dam. Sales of fish are not authorized on COE property downstream of Bonneville Dam. Fish must be transported elsewhere for sale. Fish landed during the open periods are allowed to be sold after the period concludes.

(ii) Effective August 1, until further notice: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon may not be retained in fisheries downstream of Bonneville Dam. Sales of fish are not authorized on COE property downstream of Bonneville Dam; fish must be transported elsewhere for sale. Fish landed during the open periods are allowed to be sold after the period concludes.

(3) Open Areas: Wind River, Drano Lake, and Klickitat River.

(a) Season: Immediately, until further notice, and only during those days and hours when the areas are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

(b) Gear: Hoop Nets/Bag Nets, Dip Nets, and Rod and reel with hook and Line. Gillnets may only be used in Drano Lake.

(c) Allowable sales:

(i) Effective immediately through July 31: Salmon (any species) and steelhead caught after 6:00 PM on July 8 may not be sold, but remains open for subsistence. Shad, yellow perch, bass, walleye, catfish and carp may be sold after the period concludes or retained for subsistence. Sturgeon from 38 to 54 inches fork length may be kept for subsistence.

(ii) Effective August 1, until further notice: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Fish landed during the open periods are allowed to be sold after the period concludes. Sturgeon from 38 to 54 inches fork length may be kept for subsistence.

(4) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-352-315, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

(5) Fish caught during the open period may be sold after the period concludes.

[ ]



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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-359-02000S Columbia River salmon seasons above  
Bonneville Dam. (23-117)

**WSR 23-16-007**  
**RESCISSION OF EMERGENCY RULES**  
**DEPARTMENT OF**  
**CHILDREN, YOUTH, AND FAMILIES**  
[Filed July 19, 2023, 2:37 p.m.]

Effective August 18, 2023, the department of children, youth, and families is rescinding WSR 23-11-034, which was filed as emergency rule making on May 10, 2023. The permanent rules for WAC 110-145-1850 What requirements are there for the storage of medications?, are complete and go into effect August 19, 2023.

Please contact Brenda Villarreal at 360-522-3691 if you have any questions or need anything further.

Brenda Villarreal  
Rules Coordinator

**WSR 23-16-012**  
**EMERGENCY RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed July 19, 2023, 5:12 p.m., effective July 23, 2023]

Effective Date of Rule: July 23, 2023.

Purpose: The department is adopting emergency amendments to WAC 388-310-1600 WorkFirst—Sanctions. These amendments expand good cause for not participating in WorkFirst program activities if a recipient is experiencing a hardship as defined in rule. These amendments are necessary to implement 2SHB 1447 (chapter 418, Laws of 2023), effective July 23, 2023.

Citation of Rules Affected by this Order: Amending WAC 388-310-1600.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090, 74.09.035, 74.09.530, 74.62.030; and chapters 74.08A and 74.12 RCW.

Other Authority: 2SHB 1447 (chapter 418, Laws of 2023).

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

Reasons for this Finding: These amendments support public health, safety, and welfare by supporting WorkFirst families who are experiencing hardship. The amendments are also necessary to implement 2SHB 1447 (chapter 418, Laws of 2023), effective July 23, 2023. The department is concurrently proceeding with the permanent rule-making process. Refer to CR-101 filed as WSR 23-13-025 on June 9, 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 1, Repealed 0.

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

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

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

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

Date Adopted: July 18, 2023.

Katherine I. Vasquez  
Rules Coordinator

**SHS-4981.2**

AMENDATORY SECTION (Amending WSR 21-12-030, filed 5/24/21, effective 7/1/21)

**WAC 388-310-1600 WorkFirst—Sanctions. (1) What WorkFirst requirements do I have to meet?**

You must do the following when you are a mandatory WorkFirst participant:

(a) Give the department the information we need to develop your individual responsibility plan (IRP) (see WAC 388-310-0500);

(b) Show that you are participating fully to meet all of the requirements listed on your individual responsibility plan;

(c) Go to scheduled appointments listed in your individual responsibility plan;

(d) Follow the participation and attendance rules of the people who provide your assigned WorkFirst services or activities; and

(e) Accept available paid employment when it meets the criteria in WAC 388-310-1500.

**(2) What happens if I don't meet WorkFirst requirements?**

(a) If you do not meet WorkFirst requirements, we will send you a letter telling you what you did not do, and inviting you to a noncompliance case staffing.

(i) A noncompliance case staffing is a meeting with you, your case manager, and other people who are working with your family, such as representatives from tribes, community or technical colleges, employment security, department of children, youth, and families, family violence advocacy providers or limited-English proficient (LEP) pathway providers to review your situation and compliance with your participation requirements.

(ii) You will be notified when your noncompliance case staffing is scheduled so you can attend.

(iii) You may invite anyone you want to come with you to your noncompliance case staffing.

(b) You will have (~~ten~~) 10 days to contact us so we can talk with you about your situation. You can contact us in writing, by phone, by going to the noncompliance case staffing described in the letter, or by asking for an individual appointment.

(c) If you do not contact us within (~~ten~~) 10 days, we will make sure you have been screened for family violence and other barriers to participation and that we provided necessary supplemental accommodations as required by chapter 388-472 WAC. We will use existing information to decide whether:

(i) You were unable to do what was required; or

(ii) You were able, but refused, to do what was required.

(d) If you had a good reason not to do a required activity we will work with you and may change the requirements in your individual responsibility plan if a different WorkFirst activity would help you move towards independence and employment sooner. If you have been unable to meet your WorkFirst requirements because of family violence, you and your case manager will develop an individual responsibility plan to help you with your situation, including referrals to appropriate services.

**(3) What is considered a good reason for not doing what WorkFirst requires?**

You have a good reason if you were not able to do what WorkFirst requires (or get an excused absence, described in WAC 388-310-0500(5))

due to a significant problem or event outside your control. Some examples of good reasons include, but are not limited to:

(a) You had an emergent or severe physical, mental, or emotional condition, confirmed by a licensed health care professional that interfered with your ability to participate;

(b) You were threatened with or subjected to family violence;

(c) You could not locate child care for your children under (~~thirteen~~) 13 years that was:

(i) Affordable (did not cost you more than your copayment would under the working connections child care program in chapter 110-15 WAC);

(ii) Appropriate (licensed, certified, or approved under federal, state, or tribal law and regulations for the type of care you use and you were able to choose, within locally available options, who would provide it); and

(iii) Within a reasonable distance (within reach without traveling farther than is normally expected in your community).

(d) You could not locate other care services for an incapacitated person who lives with you and your children.

(e) You had an immediate legal problem, such as an eviction notice; or

(f) You are a person who gets necessary supplemental accommodation (NSA) services under chapter 388-472 WAC and your limitation kept you from participating. If you have a good reason because you need NSA services, we will review your accommodation plan.

(g) You have another hardship(s) that would reasonably prevent you from participating.

**(4) What happens in my noncompliance case staffing?**

(a) At your noncompliance case staffing we will ensure you were offered the opportunity to participate and discuss with you:

(i) Whether you had a good reason for not meeting WorkFirst requirements(~~-~~) ;

(ii) What happens if you are sanctioned;

(iii) How you can participate and get out of sanction status;

(iv) How you and your family benefit when you participate in WorkFirst activities;

(v) That your case may be closed after you have been in grant reduction sanction status for (~~ten~~) 10 months in a row;

(vi) How you plan to care for and support your children if your case is closed. We will also discuss the safety of your family, as needed, using the guidelines under RCW 26.44.030; and

(vii) How to reapply if your case is closed.

(b) If you do not come to your noncompliance case staffing, we will make a decision based on the information we have. We will send you a letter letting you know whether we found that you had a good reason for not meeting WorkFirst requirements.

**(5) What if we decide that you did not have a good reason for not meeting WorkFirst requirements?**

(a) Before you are placed in sanction, a supervisory level employee will review your case to make sure:

(i) You knew what was required;

(ii) You were told how you can resume WorkFirst participation to avoid or end your sanction;

(iii) We tried to talk to you and encourage you to participate; and

(iv) You were given a chance to tell us if you were unable to do what we required.

(b) If we decide that you did not have a good reason for not meeting WorkFirst requirements, and a supervisory level employee approves the sanction and sanction penalties, we will send you a letter that tells you:

- (i) What you failed to do;
- (ii) That you are in sanction status;
- (iii) Penalties that will be applied to your grant;
- (iv) When the penalties will be applied;

(v) How to request an administrative hearing if you disagree with this decision; and

- (vi) How to end the penalties and get out of sanction status.

(c) We will also provide you with information about resources you may need if your case is closed. If you are sanctioned, then we will actively attempt to contact you another way so we can talk to you about the benefits of participation and how to end your sanction.

**(6) What is sanction status?**

When you are a mandatory WorkFirst participant, you must follow WorkFirst requirements to qualify for your full grant. If you or someone else on your grant doesn't do what is required and you can't prove that you had a good reason, you are placed in WorkFirst sanction status.

**(7) Are there penalties when you or someone in your household goes into sanction status?**

When you or someone in your household is in sanction status, we impose penalties. The penalties last until you or the household member meet WorkFirst requirements. Your household will only enter sanction status if we determine that you or someone else in your household did not have a good reason for failing to meet the WorkFirst requirements.

(a) You will receive a grant reduction sanction penalty following two months of noncompliance.

(b) Your grant is reduced by one person's share or (~~forty per cent~~) 40%, whichever is more.

(c) The reduction is effective the first of the month following (~~ten~~) a 10-day notice from the department; and

(d) Your case may be closed effective the first of the month after your grant has been reduced for (~~ten~~) 10 months in a row.

**(8) What happens before your case is closed due to sanction?**

(a) Before we close your case due to sanction status, we will send you a letter to tell you:

- (i) What you failed to do;
- (ii) When your case will be closed;

(iii) How you can request an administrative hearing if you disagree with this decision;

(iv) How you can end your penalties and keep your case open (if you are able to participate for four weeks in a row before we close your case); and

(v) How your participation before your case is closed can be used to meet the participation requirement in subsection (12).

(b) Attempt to contact you each month to begin the process of ending penalties and getting out of sanction status.

**(9) What happens to my WorkFirst sanction after July 1, 2021?**

If your case enters sanction status after July 1, 2021, your case may be closed after you have been in grant reduction sanction status for (~~ten~~) 10 months in a row.

**(10) How do I resume participation to avoid or end sanction status?**

(a) You must provide the information we requested to develop your individual responsibility plan; ~~((and/))~~ or

(b) Start and continue to do your required WorkFirst activities for four weeks in a row (that is, ~~((twenty-eight))~~ 28 calendar days). The four weeks starts on the day you complete your comprehensive evaluation and you agree to your individual responsibility plan activities.

**(11) What happens when I get out of sanction status before my case is closed?**

When you get out of sanction status before your case is closed, your grant will be restored to the level you are eligible for beginning the first of the month following your four weeks of participation. For example, if you finished your four weeks of participation on June 15, your grant would be restored on July 1.

**(12) What if I reapply for TANF or SFA and I was in sanction status when my case closed?**

(a) For cases that close on or after July 1, 2021:

(i) If your case closed due to sanction, you will need to follow the sanction reapplication process in subsection (13).

(ii) If your case closed for another reason while you were in sanction status and is reopened, you will reopen in grant reduction sanction status. For example, if you closed while you were in month four of grant reduction sanction status, your grant will be opened in month five of grant reduction sanction status.

(b) For cases that closed prior to July 1, 2021, your case will not open in sanction status, and subsection (13) will not apply.

**(13) What if I reapply for TANF or SFA after my case is closed due to sanction?**

If you reapply for TANF or SFA after your case is closed due to sanction, you must participate for four weeks in a row before you can receive cash. Once you have met your four week participation requirement, your cash benefits will start, going back to the date we had all the other information we needed to make an eligibility decision.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090, 74.09.035, 74.09.530, 74.62.030; chapters 74.08A and 74.12 RCW and 2020 c 338. WSR 21-12-030, § 388-310-1600, filed 5/24/21, effective 7/1/21. Statutory Authority: RCW 41.05.021, 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090, 74.09.035, 74.09.530, 74.62.030, chapters 74.08A, and 74.12 RCW. WSR 20-05-046, § 388-310-1600, filed 2/13/20, effective 3/15/20. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090, 74.08.025, chapters 74.08A and 74.12 RCW, and 2014 c 221. WSR 14-20-104, § 388-310-1600, filed 9/30/14, effective 11/1/14. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.025, 74.08.090, chapters 74.08A and 74.12 RCW, and 2011 c 42. WSR 11-22-042, § 388-310-1600, filed 10/27/11, effective 12/1/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW. WSR 10-24-069, § 388-310-1600, filed 11/30/10, effective 12/31/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 34.05.310, and chapters 74.08A and 74.12 RCW. WSR 10-12-044, § 388-310-1600, filed 5/26/10, effective 7/1/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 34.05.310 (4)(c). WSR 08-15-136, § 388-310-1600, filed 7/22/08, effective 8/22/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.500, 74.04.510, 74.08.090. WSR 07-09-081, § 388-310-1600, filed 4/17/07, effective 6/1/07. Statutory Authority: RCW 74.04.050,

74.04.055, 74.04.057, 74.08.090, 74.08A.260, chapter 74.08A RCW. WSR 06-10-035, § 388-310-1600, filed 4/27/06, effective 6/1/06. Statutory Authority: RCW 74.08.090, 74.04.050, and 74.08A.340. WSR 04-07-025, § 388-310-1600, filed 3/8/04, effective 5/1/04. Statutory Authority: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050. WSR 02-15-067, § 388-310-1600, filed 7/11/02, effective 8/1/02. Statutory Authority: RCW 74.08.090 and 74.04.050. WSR 99-10-027, § 388-310-1600, filed 4/28/99, effective 5/29/99; WSR 98-23-037, § 388-310-1600, filed 11/10/98, effective 12/11/98; WSR 97-20-129, § 388-310-1600, filed 10/1/97, effective 11/1/97.]



**WSR 23-16-013**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 23-136—Filed July 20, 2023, 5:51 a.m., effective July 20, 2023, 5:51 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to reduce the weekly landing and possession limits for Chinook in the coastal commercial troll fishery.

Citation of Rules Affected by this Order: Repealing WAC 220-354-30000W; and amending WAC 220-354-300.

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: A harvestable quota of salmon is available for the troll fleet, but the remaining quota necessitates lower landing and possession limits for Chinook followed by a closure in Areas 1 through 4. This regulation is necessary to both meet conservation limits and to provide fishing opportunity and its corresponding economic benefit. These rules are adopted at the recommendation of the Pacific Fishery Management Council, in accordance with preseason fishing plans, and have been adopted for federal waters by the National Oceanic and Atmospheric Administration. 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: July 19, 2023.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-354-30000X Coastal salmon troll seasons—Commercial.**

Notwithstanding the provisions of WAC 220-354-300, WAC 220-353-050 and WAC 220-354-010, effective July 20, 2023, through August 2, 2023, it is unlawful to fish for salmon with troll gear or to land salmon taken

with troll gear into a Washington port except during the seasons and under conditions provided below:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude open: July 20 through August 2, 2023.

(2) Grays Harbor Control Zone, defined by a line drawn from the Westport Lighthouse (46°53'18"N. lat., 124°07'01"W. long.); thence to Buoy #2 (46°52'42"N. lat., 124°12'42"W. long.); thence to Buoy #3 (46°55'00"N. lat., 124°14'48"W. long.); thence to the Grays Harbor north jetty (46°55'36"N. lat., 124°10'51"W. long.), open: July 20 through August 2, 2023.

(3) Chinook landing and possession limits:

(a) For the period of July 20 through July 26, landing and possession limit of 30 Chinook per vessel per landing week, defined as Thursday through Wednesday.

(b) For the period of July 27 through August 2, landing and possession limit of 20 Chinook per vessel per landing week, defined as Thursday through Wednesday.

(4) Landing and possession limit of 150 marked coho per vessel per landing week, defined as Thursday through Wednesday.

(5) The Cape Flattery and Columbia River Control Zones are closed. The Salmon Troll Yelloweye Rockfish Conservation Area is closed.

(6) All retained coho must be marked with a healed adipose fin clip.

(7) No chum retention north of Cape Alava, WA in August and September.

(8) Minimum size for Chinook salmon is 27 inches in length (20 ½ inches frozen dressed). Minimum size for coho salmon is 16 inches in length (12 inches frozen dressed). No minimum size for pink, sockeye or chum salmon.

(9) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(10) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

(11) During any single trip, only one side of the Leadbetter Point line (46°38'10"N. lat.) may be fished.

(a) Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver all species of fish within the area south of Leadbetter Point.

(b) For delivery to Washington ports south of Leadbetter Point, vessels must notify WDFW at 360-249-1215 or by email at Danielle.Williams@dfw.wa.gov prior to crossing the Leadbetter Point line with area fished, total Chinook, coho, and halibut catch aboard, and destination with approximate time of delivery.

(c) Vessels may not land fish east of Tongue Point, Oregon.

(12) Vessels fishing or in possession of salmon north of Leadbetter Point must land and deliver all species of fish in a Washington port and must possess a Washington troll and/or salmon delivery license.

(a) Vessels in possession of salmon south of the Queets River may not cross the Queets River line (47°31'42"N. lat.) without first notifying WDFW at 360-249-1215 or by email at Danielle.Williams@dfw.wa.gov with area fished, total Chinook, coho, and halibut catch aboard and destination.

(b) Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW at 360-249-1215 or by email at Danielle.Williams@dfw.wa.gov with area fished, total Chinook, coho, and halibut catch aboard and destination.

(c) Vessels may not land fish east of the Sekiu River.

[]

#### REPEALER

The following section of the Washington Administrative Code is repealed, effective July 20, 2023:

WAC 220-354-30000W Coastal salmon troll seasons—  
Commercial. (23-123)

## WSR 23-16-018

## EMERGENCY RULES

## HEALTH CARE AUTHORITY

[Filed July 20, 2023, 11:04 a.m., effective July 20, 2023, 11:04 a.m.]

Effective Date of Rule: Immediately upon filing.

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.

This emergency filing replaces the emergency rules filed under WSR 23-08-051 on March 31, 2023. The agency is refiled to continue the emergency rule until the permanent rules take effect. Since the last emergency filing, the agency filed a CR-102 under WSR 23-13-005 on June 8, 2023, and will hold a public hearing on July 25, 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: July 20, 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 23-16-019**  
**EMERGENCY RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed July 20, 2023, 11:51 a.m., effective July 20, 2023, 11:51 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 388-71-0876 When must long-term care workers who were working or hired during the COVID-19 public health emergency complete training including required specialty training? and 388-112A-0081 When must long-term care workers who were working or hired during the COVID-19 public health emergency complete training including required specialty training? The department of social and health services (department) is requiring that long-term care workers (LTCWs) complete training and certification by certain dates in response to the COVID-19 public health emergency. The department divided the group of LTCWs into cohorts based on the employee's date of hire or rehire. The rule requires each cohort to complete the requirements by deadlines in rule with the "oldest" LTCWs having the first deadline and then working through the groups chronologically. The department is working in concert with the department of health (DOH) and will defer to their emergency rules related to extending certification deadlines. The current long-term certification deadline for the last hire group is March 28, 2024. Permanent rule making is in the process; the department filed a CR-101 under WSR 23-11-075. This emergency rule supersedes the emergency rule filed as WSR 23-09-052.

Citation of Rules Affected by this Order: Amending WAC 388-71-0876 and 388-112A-0081.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, and 74.39A.074.

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

Reasons for this Finding: LTCWs hired or rehired during the COVID-19 public health emergency are required to complete certain training and certification requirements within specific deadlines. Stakeholders have reported that the number of workers in multiple cohorts still needing training and certification far exceeds the number that can be trained and tested by the current deadlines. This will result in LTCWs failing to complete the requirements in time and create risk to clients being able to access a qualified worker for provision of their personal care services. To prevent this, and to avoid duplication and potential conflict of emergency rules, the department is working in concert with DOH and will defer to their emergency rules related to extending certification deadlines.

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

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 2, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: July 20, 2023.

Katherine I. Vasquez  
Rules Coordinator

**SHS-4951.7**

AMENDATORY SECTION (Amending WSR 22-12-081, filed 5/31/22, effective 7/1/22)

**WAC 388-71-0876 When must long-term care workers who were working or hired during or immediately after the COVID-19 public health emergency complete training, including required specialty training?**

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

<b>Worker hired or rehired during the time frame of:</b>	<b>Must complete basic training no later than:</b>
8/17/2019 to 9/30/2020	((10/31/2022)) <u>1/31/2023</u>
10/1/2020 to 4/30/2021	((1/31/2023)) <u>4/30/2023</u>
5/1/2021 to 3/31/2022	((4/30/2023)) <u>7/31/2023</u>
4/1/2022 to 9/30/2022	((8/31/2023)) <u>10/31/2023</u>
10/1/2022 - ((12/31/2022 or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later)) <u>6/30/2023</u>	((9/30/2023 or within 120 days after the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later)) <u>11/30/2023</u>
((After the end of the COVID-19 training waivers established by gubernatorial proclamation or beginning 1/1/2023, whichever is later)) <u>Beginning 7/1/2023</u>	Standard training requirement of 120 days <u>from hire date</u>

(2) Unless exempt from certification as described in WAC 246-980-025, a worker affected by the COVID-19 public health emergency who is required to be certified as a home care aide must obtain certification ((as follows:)) according to WAC 246-980-011.

<b>((Worker hired or rehired during the time frame of:</b>	<b>Must be certified as a home care aide no later than:</b>
8/17/2019 to 9/30/2020	<u>1/19/2023</u>
10/1/2020 to 4/30/2021	<u>4/21/2023</u>

5/1/2021 to 3/31/2022	7/19/2023
4/1/2022 to 9/30/2022	11/19/2023
10/1/2022 – 12/31/2022 or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later	12/19/2023 or within 200 days after the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later
After the end of the COVID-19 training waivers established by gubernatorial proclamation or beginning 1/1/2023, whichever is later	Standard training))

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

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

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

[Statutory Authority: RCW 74.08.090 and 74.09.520. WSR 22-12-081, § 388-71-0876, filed 5/31/22, effective 7/1/22.]

AMENDATORY SECTION (Amending WSR 22-12-081, filed 5/31/22, effective 7/1/22)

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

<b>Worker hired or rehired during the time frame of:</b>	<b>Must complete basic training no later than:</b>
8/17/2019 to 9/30/2020	((10/31/2022)) <u>1/31/2023</u>
10/1/2020 to 4/30/2021	((1/31/2023)) <u>4/30/2023</u>
5/1/2021 to 3/31/2022	((4/30/2023)) <u>7/31/2023</u>
4/1/2022 to 9/30/2022	((8/31/2023)) <u>10/31/2023</u>
10/1/2022 - ((12/31/2022 or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later)) <u>6/30/2023</u>	((9/30/2023 or within 120 days after the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later)) <u>11/30/2023</u>



<p>((After the end of the COVID-19 training waivers established by gubernatorial proclamation or beginning 1/1/2023, whichever is later)) Beginning 7/1/2023</p>	<p>Standard training requirement of 120 days from hire date</p>
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(2) Unless exempt from certification as described in WAC 246-980-025, a worker affected by the COVID-19 public health emergency who is required to be certified as a home care aide must obtain certification ((as follows:)) according to WAC 246-980-011.

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

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

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

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

[Statutory Authority: RCW 74.08.090 and 74.09.520. WSR 22-12-081, § 388-112A-0081, filed 5/31/22, effective 7/1/22.]

WSR 23-16-025  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE

[Order 23-137—Filed July 20, 2023, 3:39 p.m., effective July 21, 2023]

Effective Date of Rule: July 21, 2023.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

Citation of Rules Affected by this Order: Repealing WAC 220-359-02000T; and amending WAC 220-359-020.

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

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

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

Reasons for this Finding: This rule reopens treaty commercial sales for the Columbia River mainstem summer season platform, hook and line, and tributary fisheries. This rule is consistent with actions of the Columbia River Compact on June 7, June 28, July 6, July 18, and July 20, 2023. Conforms state rules with tribal rules. The general public welfare is protected with the immediate opening of nontreaty buyers purchasing fish from treaty fisheries. This harvest opportunity allows for the tribal use and public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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: July 20, 2023.

Kelly Susewind  
Director

#### NEW SECTION

**WAC 220-359-02000U Columbia River salmon seasons above Bonneville Dam.** Notwithstanding the provisions of WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090, effective July 21, 2023, until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

(1) Open Areas: SMCRA 1F, 1G, 1H (Zone 6)

(a) Season: Immediately, until further notice.

(b) Gear: Hoop nets/bag nets, dip nets, and rod and reel with hook and line.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Fish landed during the open periods are allowed to be sold after the period concludes. Sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day pools may be kept for subsistence purposes.

(d) Standard river mouth and dam sanctuary closures remain in place for this gear.

(2) Open Areas: SMCRA 1E (area defined in tribal/state MOUs/MOAs)

(a) Season: Immediately, until further notice. Only during days and times opened under tribal rule.

(b) Gear: Hook and line and/or platform gear identified in tribal rules.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon may not be retained in fisheries downstream of Bonneville Dam. Sales of fish are not authorized on COE property downstream of Bonneville Dam; fish must be transported elsewhere for sale. Fish landed during the open periods are allowed to be sold after the period concludes.

(3) Open Areas: Wind River, Drano Lake, and Klickitat River.

(a) Season: Immediately, until further notice, and only during those days and hours when the areas are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

(b) Gear: Hoop Nets/Bag Nets, Dip Nets, and Rod and reel with hook and Line. Gillnets may only be used in Drano Lake.

(c) Allowable sales: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Fish landed during the open periods are allowed to be sold after the period concludes. Sturgeon from 38 to 54 inches fork length may be kept for subsistence.

(4) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-352-315, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

(5) Fish caught during the open period may be sold after the period concludes.

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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.

#### REPEALER

The following section of the Washington Administrative Code is repealed, effective July 21, 2023:

WAC 220-359-02000T Columbia River salmon seasons above Bonneville Dam. (23-133)

## WSR 23-16-031

## EMERGENCY RULES

## DEPARTMENT OF HEALTH

[Filed July 21, 2023, 9:48 a.m., effective July 21, 2023, 9:48 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amending the definition of mental health professional and creating certified agency affiliated counselor and licensed agency affiliated counselor credentials.

Amending WAC 246-341-0200 and 246-341-0515 in chapter 246-341 WAC, Behavioral health agency licensing and certification requirements; and WAC 246-810-010, 246-810-015, and 246-810-990 in chapter 246-810 WAC, Counselors.

2SHB 1724 (chapter 425, Laws of 2023) made several immediate changes to rules impacting behavioral health agencies, including amending the definition of "mental health professional" (MHP) and creating two new agency affiliated counselor (AAC) credentials. Because 2SHB 1724's amendments to the MHP definition and AAC credentials went into effect immediately and are designated as necessary for the immediate preservation of the public health, safety, or general welfare, the department of health (department) is implementing these changes by emergency rule.

Amendments to chapter 246-341 WAC address language that conflicts with 2SHB 1724, deleting an outdated definition of MHP requirements and updating an incorrect cross-reference.

Amendments to chapter 246-810 WAC expand existing language to establish two new credentials, the certified agency affiliated counselor and the licensed agency affiliated counselor. The amendments align rule language with statute and revise the registered AAC fees to apply to all AAC types.

The emergency rules will be continued while permanent rule making is in progress to implement 2SHB 1724.

Citation of Rules Affected by this Order: Amending WAC 246-341-0200, 246-341-0515, 246-810-010, 246-810-015, and 246-810-990.

Statutory Authority for Adoption: RCW 18.19.050, 71.24.037.

Other Authority: 2SHB 1724.

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 legislature established in 2SHB 1724, section 33, that many sections of the bill are "necessary for the immediate preservation of the public peace, health, or support of the state government and its existing public institutions, and take effect immediately." Sections 13 through 20, which create the new AAC credentials and amend the definition of MHP, are among the sections that are effective immediately.

Under 2SHB 1724, RCW 71.05.020 is amended to define an MHP as an individual practicing within their credential's scope of practice. Qualifying credentials include the certified and licensed AAC credential, but not the current AAC registration. Prior to the passage of 2SHB 1724, many MHPs performed assessments and made diagnoses with only a registration. After 2SHB 1724 is effective, however, they must obtain an AAC certification, AAC license, or other qualifying credential in order to continue providing these services. Establishing the

new AAC credentials immediately by emergency rule allows MHPs to transition into the new credentials and continue providing essential behavioral health services.

If the department waited to make these amendments through standard rule making, MHPs with an AAC registration would be both unable to continue assessing and diagnosing due to the changed MHP definition and unable to obtain a higher AAC credential that would allow them to continue that work. These emergency rules will implement both changes immediately, allowing MHPs who are AACs to continue serving Washington residents with behavioral health needs.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 5, 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 5, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: July 20, 2023.

Kristin Peterson, JD  
Chief of Policy  
for Umair A. Shah, MD, MPH  
Secretary

## OTS-4676.1

AMENDATORY SECTION (Amending WSR 22-24-091, filed 12/6/22, effective 5/1/23)

**WAC 246-341-0200 Behavioral health—Definitions.** The definitions in this section and RCW 71.05.020, 71.24.025, and 71.34.020 apply throughout this chapter unless the context clearly requires otherwise.

(1) "Administrator" means the designated person responsible for the day-to-day operation of either the licensed behavioral health agency, or certified treatment service, or both.

(2) "Adult" means an individual 18 years of age or older. For purposes of the medicaid program, adult means an individual 21 years of age or older.

(3) "ASAM criteria" means admission, continued service, transfer, and discharge criteria for the treatment of substance use disorders as published by the American Society of Addiction Medicine (ASAM).

(4) "Assessment" means the process of obtaining all pertinent bio-psychosocial information, as identified by the individual, and family and collateral sources, for determining a diagnosis and to plan individualized services and supports.

(5) "Behavioral health" means the prevention, treatment of, and recovery from any or all of the following disorders: Substance use disorders, mental health disorders, co-occurring disorders, or problem gambling and gambling disorders.

(6) "Behavioral health agency," "licensed behavioral health agency," or "agency" means an entity licensed by the department to provide behavioral health services under chapter 71.24, 71.05, or 71.34 RCW.

(7) "Behavioral health service" means the specific service(s) that may be provided under an approved certification.

(8) "Branch site" means a physically separate licensed site, governed by the same parent organization as the main site, where qualified staff provides certified treatment services.

(9) "Campus" means an area where all of the agency's buildings are located on contiguous properties undivided by:

(a) Public streets, not including alleyways used primarily for delivery services or parking; or

(b) Other land that is not owned and maintained by the owners of the property on which the agency is located.

(10) "Care coordination" or "coordination of care" means a process-oriented activity to facilitate ongoing communication and collaboration to meet multiple needs of an individual. Care coordination includes facilitating communication between the family, natural supports, community resources, and involved providers and agencies, organizing, facilitating and participating in team meetings, and providing for continuity of care by creating linkages to and managing transitions between levels of care.

(11) "Certified" or "certification" means the status given by the department that authorizes the agency to provide specific types of behavioral health services included under the certification category.

(12) "Child," "minor," and "youth" mean:

(a) An individual under the age of 18 years; or

(b) An individual age 18 to 21 years who is eligible to receive and who elects to receive an early and periodic screening, diagnostic, and treatment (EPSDT) medicaid service. An individual age 18 to 21 years who receives EPSDT services is not considered a "child" for any other purpose.

(13) "Clinical supervision" means regular and periodic activities performed by a mental health professional, co-occurring disorder specialist, or substance use disorder professional licensed, certified, or registered under Title 18 RCW. Clinical supervision may include review of assessment, diagnostic formulation, individual service plan development, progress toward completion of care, identification of barriers to care, continuation of services, authorization of care, and the direct observation of the delivery of clinical care. In the context of this chapter, clinical supervision is separate from clinical supervision required for purposes of obtaining supervised hours toward fulfilling requirements related to professional licensure under Title 18 RCW.

(14) "Complaint" means an alleged violation of licensing or certification requirements under chapters 71.05, 71.12, 71.24, 71.34 RCW, and this chapter, which has been authorized by the department for investigation.

(15) "Consent" means agreement given by an individual after being provided with a description of the nature, character, anticipated results of proposed treatments and the recognized serious possible risks, complications, and anticipated benefits, including alternatives and nontreatment, that must be provided in a terminology that the in-

dividual can reasonably be expected to understand. Consent can be obtained from an individual's parent or legal representative, when applicable.

(16) "Consultation" means the clinical review and development of recommendations by persons with appropriate knowledge and experience regarding activities or decisions of clinical staff, contracted employees, volunteers, or students.

(17) "Co-occurring disorder" means the coexistence of both a mental health and a substance use disorder. Co-occurring treatment is a unified treatment approach intended to treat both disorders within the context of a primary treatment relationship or treatment setting.

(18) "Cultural competence" or "culturally competent" means the ability to recognize and respond to health-related beliefs and cultural values, disease incidence and prevalence, and treatment efficacy. Examples of culturally competent care include striving to overcome cultural, language, and communications barriers, providing an environment in which individuals from diverse cultural backgrounds feel comfortable discussing their cultural health beliefs and practices in the context of negotiating treatment options, encouraging individuals to express their spiritual beliefs and cultural practices, and being familiar with and respectful of various traditional healing systems and beliefs and, where appropriate, integrating these approaches into treatment plans.

(19) "Deemed" means a status that is given to a licensed behavioral health agency as a result of the agency receiving accreditation by a recognized behavioral health accrediting body which has a current agreement with the department.

(20) "Disability" means a physical or mental impairment that substantially limits one or more major life activities of the individual and the individual:

- (a) Has a record of such an impairment; or
- (b) Is regarded as having such impairment.

(21) "Face-to-face" means either in person or by way of synchronous video conferencing.

(22) "Individual service record" means either a paper, or electronic file, or both that is maintained by the behavioral health agency and contains pertinent behavioral health, medical, and clinical information for each individual served.

(23) "Licensed" or "licensure" means the status given to behavioral health agencies by the department under its authority to license and certify mental health and substance use disorder programs under chapters 71.05, 71.12, 71.34, and 71.24 RCW and its authority to certify problem gambling and gambling disorder treatment programs under RCW 43.70.080(5) and 41.05.750.

(24) "Medical practitioner" means a physician licensed under chapter 18.57 or 18.71 RCW, advance registered nurse practitioner (ARNP) licensed under chapter 18.79 RCW, or physician assistant licensed under chapter 18.71A RCW.

(25) "Mental health disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on a person's cognitive or volitional functions.

(26) "Mental health professional" or "MHP" means a person who meets the (~~qualifications in WAC 246-341-0515 (4)~~) definition in RCW 71.05.020.

(27) "Peer counselor" means the same as defined in WAC 182-538D-0200.



(28) "Peer support" means services provided by peer counselors to individuals under the supervision of a mental health professional or individual appropriately credentialed to provide substance use disorder treatment. Peer support provides scheduled activities that promote recovery, self-advocacy, development of natural supports, and maintenance of community living skills.

(29) "Problem gambling and gambling disorder" means one or more of the following disorders:

(a) "Gambling disorder" means a mental disorder characterized by loss of control over gambling, progression in preoccupation with gambling and in obtaining money to gamble, and continuation of gambling despite adverse consequences;

(b) "Problem gambling" is an earlier stage of gambling disorder that compromises, disrupts, or damages family or personal relationships or vocational pursuits.

(30) "Progress notes" means permanent written or electronic record of services and supports provided to an individual documenting the individual's participation in, and response to, treatment or support services, progress in recovery, and progress toward intended outcomes.

(31) "Secretary" means the secretary of the department of health.

(32) "State minimum standards" means minimum requirements established by rules adopted by the secretary and necessary to implement chapters 71.05, 71.24, and 71.34 RCW for delivery of behavioral health services.

(33) "Substance use disorder professional" or "SUDP" means a person credentialed by the department as a substance use disorder professional (SUDP) under chapter 18.205 RCW.

(34) "Substance use disorder professional trainee" or "SUDPT" means a person credentialed by the department as a substance use disorder professional trainee (SUDPT) under chapter 18.205 RCW.

(35) "Summary suspension" means the immediate suspension of either a facility's license or program-specific certification or both by the department pending administrative proceedings for suspension, revocation, or other actions deemed necessary by the department.

(36) "Supervision" means the regular monitoring of the administrative, clinical, or clerical work performance of a staff member, trainee, student, volunteer, or employee on contract by a person with the authority to give direction and require change.

(37) "Suspend" means termination of a behavioral health agency's license or program specific certification to provide behavioral health treatment program service for a specified period or until specific conditions have been met and the department notifies the agency of the program's reinstatement of license or certification.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 43.70.080(5), 41.05.750, 43.70.250, and 74.09.520 and chapters 71.05, 71.12, 71.24 and 71.34 RCW. WSR 22-24-091, § 246-341-0200, filed 12/6/22, effective 5/1/23. Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0200, filed 5/25/21, effective 7/1/21. Statutory Authority: 2019 c 324, RCW 71.24.037, 71.24.648, and 71.24.649. WSR 20-07-091, § 246-341-0200, filed 3/17/20, effective 5/1/20. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0200, filed 4/16/19, effective 5/17/19.]

AMENDATORY SECTION (Amending WSR 22-24-091, filed 12/6/22, effective 5/1/23)

**WAC 246-341-0515 Personnel—Agency staff requirements.** Each behavioral health agency must ensure that all of the following staff requirements are met:

(1) All staff providing clinical services are appropriately credentialed for the services they provide, which may include a co-occurring disorder specialist enhancement.

(2) All staff providing clinical services receive clinical supervision.

(3) An agency providing group counseling or group therapy must have a staff ratio of at least one staff member to every 16 individuals during group counseling or therapy sessions.

(4) ~~((A mental health professional is:~~

~~(a) A psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner (ARNP), psychiatric nurse, or social worker as defined in chapters 71.05 and 71.34 RCW;~~

~~(b) A person who is licensed by the department as a mental health counselor or mental health counselor associate, marriage and family therapist, or marriage and family therapist associate; or~~

~~(c) An agency staff member with a designation given by the department or an attestation by the licensed behavioral health agency that the person meets the following:~~

~~(i) Holds a master's degree or further advanced degree in counseling or one of the social sciences from an accredited college or university who has at least two years of experience in direct treatment of persons with mental illness or emotional disturbance, experience that was gained under the supervision of a mental health professional recognized by the department or attested to by the licensed behavioral health agency;~~

~~(ii) Who meets the waiver criteria of RCW 71.24.260, and the waiver was granted prior to 1986; or~~

~~(iii) Who had an approved waiver to perform the duties of a mental health professional (MHP), that was requested by the behavioral health organization (BHO) and granted by the mental health division prior to July 1, 2001.~~

~~(5))~~ An agency providing problem gambling and gambling disorder treatment services must ensure staffing in accordance with WAC 246-341-1200.

[Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 43.70.080(5), 41.05.750, 43.70.250, and 74.09.520 and chapters 71.05, 71.12, 71.24 and 71.34 RCW. WSR 22-24-091, § 246-341-0515, filed 12/6/22, effective 5/1/23. Statutory Authority: RCW 71.24.037, 71.05.560, 71.34.380, 18.205.160, 71.24.037 and chapters 71.05, 71.24, and 71.34 RCW. WSR 21-12-042, § 246-341-0515, filed 5/25/21, effective 7/1/21. Statutory Authority: 2018 c 201 and 2018 c 291. WSR 19-09-062, § 246-341-0515, filed 4/16/19, effective 5/17/19.]

**OTS-4679.2**

AMENDATORY SECTION (Amending WSR 11-22-087, filed 11/1/11, effective 12/2/11)

**WAC 246-810-010 Definitions.** The definitions in this section apply throughout this chapter unless the content clearly requires otherwise.

(1) "Agency" means:

(a) An agency or facility operated, licensed, or certified by the state of Washington to provide a specific counseling service or services;

(b) A federally recognized Indian tribe located within the state; or

(c) A county as listed in chapter 36.04 RCW.

(2) "Agency affiliated counselor" means a person registered, certified, or licensed under chapter 18.19 RCW, and this chapter, who is engaged in counseling and employed by an agency listed in WAC 246-810-016 or an agency recognized under WAC 246-810-017 to provide a specific counseling service or services.

(3) "Certified adviser" means a person certified under chapter 18.19 RCW, and this chapter, who is engaged in private practice counseling to the extent authorized in WAC 246-810-021.

(4) "Certified counselor" means a person certified under chapter 18.19 RCW, and this chapter, who is engaged in private practice counseling to the extent authorized in WAC 246-810-0201.

(5) "Client" means an individual who receives or participates in counseling or group counseling.

(6) "Consultation" means the professional assistance and practice guidance that a certified counselor receives from a counseling-related professional credentialed under chapter 18.130 RCW. This may include:

(a) Helping the certified counselor focus on counseling practice objectives;

(b) Refining counseling modalities;

(c) Providing support to progress in difficult or sensitive cases;

(d) Expanding the available decision-making resources; and

(e) Assisting in discovering alternative approaches.

(7) "Counseling" means employing any therapeutic techniques including, but not limited to, social work, mental health counseling, marriage and family therapy, and hypnotherapy, for a fee that offer, assist, or attempt to assist, an individual or individuals in the amelioration or adjustment of mental, emotional, or behavioral problems, and includes therapeutic techniques to achieve sensitivity and awareness of self and others and the development of human potential. For the purpose of this chapter, nothing may be construed to imply that the practice of hypnotherapy is necessarily limited to counseling.

(8) "Counselor" means an individual who engages in the practice of counseling to the public for a fee, including for the purposes of this chapter, agency affiliated counselors, certified counselors, certified advisers, hypnotherapists, and until July 1, 2010, registered counselors.

(9) "Department" means the Washington state department of health.

(10) "Fee" as referred to in RCW 18.19.030 means compensation received by the counselor for counseling services provided, regardless of the source.

(11) "Hypnotherapist" means a person registered under chapter 18.19 RCW, and this chapter, who is practicing hypnosis as a modality.

(12) "Licensed health care practitioner" means a licensed practitioner under the following chapters:

- (a) Physician licensed under chapter 18.71 RCW.
- (b) Osteopathic physician licensed under chapter 18.57 RCW.
- (c) Psychiatric registered nurse practitioner licensed under chapter 18.79 RCW.
- (d) Naturopathic physician licensed under chapter 18.36A RCW.
- (e) Psychologist licensed under chapter 18.83 RCW.
- (f) Independent clinical social worker, marriage and family therapist, or advanced social worker licensed under chapter 18.225 RCW.

(13) "Private practice counseling" means the practice of counseling by a certified counselor or certified adviser as specified in WAC 246-810-0201 or 246-810-021.

(14) "Psychotherapy" means the practice of counseling using diagnosis of mental disorders according to the fourth edition of the *Diagnostic and Statistical Manual of Mental Disorders*, and the development of treatment plans for counseling based on diagnosis of mental disorders in accordance with established practice standards.

(15) "Recognized" means acknowledged or formally accepted by the secretary.

(16) "Recognized agency or facility" means an agency or facility that has requested and been recognized under WAC 246-810-017 to employ agency affiliated counselors to perform a specific counseling service, or services for those purposes only.

(17) "Secretary" means the secretary of the department of health or the secretary's designee.

(18) "Supervision" means the oversight that a counseling-related professional credentialed under chapter 18.130 RCW provides.

(19) "Unprofessional conduct" means the conduct described in RCW 18.130.180.

[Statutory Authority: RCW 18.19.050 and 18.19.020. WSR 11-22-087, § 246-810-010, filed 11/1/11, effective 12/2/11; WSR 10-22-111, § 246-810-010, filed 11/2/10, effective 12/3/10. Statutory Authority: RCW 18.19.050 and chapter 18.19 RCW. WSR 09-15-041, § 246-810-010, filed 7/8/09, effective 7/8/09. Statutory Authority: RCW 18.19.050. WSR 06-08-106, § 246-810-010, filed 4/5/06, effective 5/6/06. Statutory Authority: RCW 18.19.050(1). WSR 97-17-113, § 246-810-010, filed 8/20/97, effective 9/20/97. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-810-010, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.19.060. WSR 89-14-070 (Order PM 840), § 308-190-030, filed 6/30/89. Statutory Authority: RCW 18.19.050. WSR 88-11-024 (Order PM 728), § 308-190-030, filed 5/11/88.]

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

**WAC 246-810-015 Agency affiliated counselor: Scope of practice and credentialing requirements.** (1) ~~((A))~~ (a) A registered agency affiliated counselor may only provide counseling services as part of ~~((his or her))~~ their employment ~~((as an agency affiliated counselor))~~ for a recognized agency.

(b) A certified agency affiliated counselor may provide counseling services and may provide provisional mental health assessment and diagnosis services under supervision as required by chapter 18.19 RCW, and as part of their employment for a recognized agency.

(c) A licensed agency affiliated counselor may provide counseling services, independently conduct mental health assessments, and make mental health diagnoses as part of their employment for a recognized agency.

(2) An applicant for ~~((an))~~ any agency affiliated counselor credential must be employed by, or have an offer of employment from, an agency or facility identified in WAC 246-810-016.

(3) (a) An applicant for a certified agency affiliated counselor credential must meet the education and experience requirements of RCW 18.19.090(3).

(b) An applicant for a licensed agency affiliated counselor credential must meet the education and experience requirements of RCW 18.19.090(4).

(4) (a) Applicants must submit an application to the department within the first ~~((thirty))~~ 30 days of employment at an agency in order to continue working while the application is processed.

(b) Applicants must complete any outstanding deficiencies within ~~((ninety))~~ 90 days of the date the department issues a deficiency letter. If the applicant does not satisfy the outstanding licensure requirements within ~~((ninety))~~ 90 days, the applicant must stop working.

[Statutory Authority: 2019 c 444, 2019 c 446, 2019 c 351, and RCW 18.19.050, 18.205.060, 18.225.040, 43.70.110, and 43.70.250. WSR 20-12-074, § 246-810-015, filed 6/1/20, effective 7/2/20. Statutory Authority: RCW 18.19.050 and chapter 18.19 RCW. WSR 09-15-041, § 246-810-015, filed 7/8/09, effective 7/8/09.]

AMENDATORY SECTION (Amending WSR 23-07-057, filed 3/9/23, effective 6/1/23)

**WAC 246-810-990 Counselors fees and renewal cycle.** (1) Under chapter 246-12 WAC, a counselor must renew their credential every year on the practitioner's birthday.

(2) Examination and reexamination fees are the responsibility of the applicant and are paid directly to the testing company.

(3) The following nonrefundable fees will be charged:

Title	Fee
Registered hypnotherapist:	
Application and registration	\$155.00
Renewal	\$80.00
Late renewal penalty	\$75.00
Expired registration reissuance	\$75.00
Duplicate registration	\$10.00
Verification of registration	\$25.00
Certified counselor:	
Application and certification	\$680.00
Examination or reexamination	\$85.00
Renewal	\$800.00

Title	Fee
Late renewal penalty	\$300.00
Expired credential reissuance	\$100.00
Duplicate credential	\$10.00
Verification of credential	\$25.00
Certified adviser:	
Application and certification	\$620.00
Examination or reexamination	\$85.00
Renewal	\$745.00
Late renewal penalty	\$300.00
Expired credential reissuance	\$100.00
Duplicate credential	\$10.00
Verification of credential	\$25.00
((Registered)) Agency affiliated counselor:	
Application and ((registration)) <u>credentialing</u>	\$175.00
Renewal	\$185.00
Late renewal penalty	\$95.00
Expired ((registration)) <u>credential</u> reissuance	\$50.00
Duplicate ((registration)) <u>credential</u>	\$10.00
Verification of ((registration)) <u>credential</u>	\$25.00

[Statutory Authority: RCW 43.70.110, 43.70.250, and 43.70.280. WSR 23-07-057, § 246-810-990, filed 3/9/23, effective 6/1/23. Statutory Authority: RCW 43.70.250 and 43.70.280. WSR 21-16-002, § 246-810-990, filed 7/22/21, effective 11/1/21; WSR 18-01-098, § 246-810-990, filed 12/18/17, effective 4/1/18. Statutory Authority: RCW 43.70.250, 18.19.050, 43.70.110 and 2013 c 4. WSR 14-07-095, § 246-810-990, filed 3/18/14, effective 7/1/14. Statutory Authority: RCW 43.70.110, 43.70.250, and 2011 1st sp.s. c 50. WSR 11-20-092, § 246-810-990, filed 10/4/11, effective 12/1/11. Statutory Authority: RCW 18.19.050 and chapter 18.19 RCW. WSR 09-15-041, § 246-810-990, filed 7/8/09, effective 7/8/09. Statutory Authority: RCW 43.70.110, 43.70.250 and 2008 c 329. WSR 08-16-008, § 246-810-990, filed 7/24/08, effective 7/25/08. Statutory Authority: RCW 18.19.050. WSR 06-08-106, § 246-810-990, filed 4/5/06, effective 5/6/06. Statutory Authority: RCW 43.70.250, [43.70.]280 and 43.70.110. WSR 05-12-012, § 246-810-990, filed 5/20/05, effective 7/1/05. Statutory Authority: RCW 43.70.250. WSR 99-08-101, § 246-810-990, filed 4/6/99, effective 7/1/99. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-810-990, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 18.19.050(1). WSR 97-17-113, § 246-810-990, filed 8/20/97, effective 9/20/97. Statutory Authority: Chapter 18.19 RCW. WSR 96-08-069, § 246-810-990, filed 4/3/96, effective 5/4/96. Statutory Authority: RCW 43.70.250. WSR 93-14-011, § 246-810-990, filed 6/24/93, effective 7/25/93. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-810-990, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 43.70.250. WSR 90-18-039 (Order 084), § 308-190-010, filed 8/29/90, effective 9/29/90; WSR 90-04-094 (Order 029), § 308-190-010, filed 2/7/90, effective 3/10/90. Statutory Authority: RCW 43.24.086. WSR 87-18-033 (Order PM 669), § 308-190-010, filed 8/27/87.]

**WSR 23-16-032**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 23-138—Filed July 21, 2023, 10:29 a.m., effective July 21, 2023, 10:29 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to raise the Chinook daily limit in Catch Record Card Area 5.

Citation of Rules Affected by this Order: Amending WAC 220-313-060.

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

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

Reasons for this Finding: The Marine Area 5 summer Chinook fishery has reached 34 percent of the total legal encounters (2,497 of 7,254) agreed to in this year's list of agreed fisheries. Catch and effort have slowed in Marine Area 5 after high catch during the opening weekend, allowing for increased retention for the remainder of the season. There is insufficient time to file 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: July 21, 2023.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-313-06000A Puget Sound Salmon—Saltwater seasons and daily limits.** Effective immediately, through August 15, 2023, the following provisions of WAC 220-313-060 regarding salmon seasons for Marine Area 5 shall be modified as described below. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

**Catch Record Card Area 5:** Salmon: Daily limit 2. Release wild Chinook, wild coho, and chum.

[ ]

**WSR 23-16-033**  
**EMERGENCY RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed July 21, 2023, 10:47 a.m., effective July 23, 2023]

Effective Date of Rule: July 23, 2023.

Purpose: The department is amending sections of chapters 388-71, 388-112A, and 388-115 WAC in response to, and in compliance with, E2SHB 1694 passed during the 2023 legislative session. Changes included the definition of "date of hire," clarification on when the date of hire may be reset, and additional family relationships related to long-term care worker training and continuing education requirements. Changes related to numerical representation, consistency, and inclusive language are also included.

Citation of Rules Affected by this Order: New WAC 388-71-0838; and amending WAC 388-71-0523, 388-71-0836, 388-71-0837, 388-71-0839, 388-71-0875, 388-71-0880, 388-71-0888, 388-71-0893, 388-71-0975, 388-71-0977, 388-71-0980, 388-71-1001, 388-112A-0010, 388-112A-0110, 388-112A-0115, 388-112A-0130, 388-115-0503, 388-115-0505, 388-115-0520, 388-115-0523, 388-115-0540, and 388-115-05410.

Statutory Authority for Adoption: RCW 18.88B.010, 18.88B.021, 18.88B.041, 74.08.090, 74.39A.076, and 74.39A.341.

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 rules are necessary because there is insufficient time to put permanent rules in place before the changes in law go into effect on July 23, 2023. Permanent rules are also in process.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 16, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, 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 5, 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: July 21, 2023.

Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the [23-17](#) issue of the Register.



**WSR 23-16-036**  
**EMERGENCY RULES**  
**DEPARTMENT OF ECOLOGY**

[Order 23-05—Filed July 24, 2023, 8:07 a.m., effective July 24, 2023, 8:07 a.m.]

Effective Date of Rule: Immediately upon filing.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Issuance of a formal emergency drought declaration, directed by the governor and signed by the department of ecology (ecology) director.

Purpose: Ecology is adopting a new emergency rule chapter 173-167 WAC, Emergency drought funding. This emergency rule provides eligibility criteria for grant funds to alleviate hardship resulting from the drought declared on July 24, 2023.

The emergency rule will be effective through November 20, 2023. If needed, ecology may adopt subsequent emergency rules.

Under the authority of RCW 70A.02.120(2), the director of ecology determined that in the event this emergency rule is considered to be a significant agency action under the Healthy Environment for All (HEAL) Act, this emergency rule is exempted from the requirements of RCW 70A.02.060, including the requirement to complete an environmental justice assessment. It was determined that any delay in adopting this emergency rule would be likely to cause serious harm to the public interest. Nevertheless, ecology has prepared an assessment to the best of its abilities under the circumstances in the spirit of advancing the interests of the HEAL Act.

Please visit our website for information and supporting documents <https://www.ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-167-2023>.

Citation of Rules Affected by this Order: New chapter 173-167 WAC.

Statutory Authority for Adoption: Chapter 43.83B RCW, Drought conditions.

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

Reasons for this Finding: An emergency rule is necessary to protect public health and safety and promote timelines that are in the best interest of the public. Once the rule is in place, ecology may distribute funds to alleviate hardship. Drought can cause immediate impacts to public welfare. To address these impacts, drought funding needs to be administered in a timely manner.

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 13, 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 13, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 13, 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: July 24, 2023.

Heather Bartlett  
for Director Watson  
Director

OTS-4763.3

**Chapter 173-167 WAC  
EMERGENCY DROUGHT FUNDING**

NEW SECTION

**WAC 173-167-180 Purpose and applicability.** (1) Ecology is authorized to provide funding to public entities to implement projects and measures that alleviate undue hardship caused by drought conditions negatively affecting:

- (a) The delivery of safe and reliable drinking water supplies;
- (b) The survival of fish and wildlife; and
- (c) The viability of agricultural activities and livestock operations.

(2) This chapter establishes criteria for grant eligibility, selection, issuance, and performance, and applies to projects under which ecology may disburse funds for addressing undue hardship caused by drought conditions.

(3) Provisions in this chapter supplement provisions of chapter 173-166 WAC. In the event of any conflict between this rule and chapter 173-166 WAC, the provisions of this chapter control.

[]

NEW SECTION

**WAC 173-167-190 Definitions.** Definitions only apply to this chapter:

- (1) "Agreement effective date" means the date on which the grant agreement becomes effective, as specified in the agreement.
- (2) "Agreement signature date" means the date the grant agreement is signed by ecology.
- (3) "Applicant" means an entity that applies for a grant.
- (4) "Budget" means, for the purpose of grant agreements, a breakdown of eligible costs by task.
- (5) "Ecology" means the Washington state department of ecology.
- (6) "Grant agreement" or "agreement" means the formal, written, contractual document that details the terms and conditions, scope of

work, budget, and schedule of the grant, signed by authorized signatories of the recipient and ecology.

(7) "Recipient" means an entity that has a grant agreement.

(8) "Scope of work" means the tasks, deliverables, and timelines of the grant agreement.

[]

#### NEW SECTION

**WAC 173-167-200 Funding limitations.** (1) Ecology will administer grants in accordance with the *Administrative Requirements for Recipients of Ecology Grants and Loans*. (Publication No. 23-01-002.) Revised July 2023.

(2) Applicants must provide cost-share totaling 50 percent of the total eligible cost of the project.

(3) If an applicant is seeking funding for a public water system to address the immediate undue hardship arising from drought conditions and it serves a population of less than 25,000 individuals with a mean household income of 80 percent or less of the state average, these applicants qualify for an exemption from the cost-share requirement.

(4) The department will provide no more than \$750,000 to any single entity or any single project with funding authorized under this chapter.

[]

#### NEW SECTION

**WAC 173-167-210 Application.** (1) All applicants must use the electronic system identified by ecology to apply for grants. Applicants without access to the electronic system must use a process approved by ecology.

(2) The applicant must complete the application process and provide all required information, including:

(a) Applicant information;

(b) Project location and description;

(c) Requested funding amount and budget for the project;

(d) Description of project benefit(s), including:

(i) Problem(s) or need(s) the project would address;

(ii) Timing and the extent to which the project is expected to address the identified needs;

(iii) Quantity of water, acreage, and number of residences affected by the proposed project, as applicable;

(iv) Method(s) used to determine project benefits; and

(v) Metrics for project success, including quantitative metrics if available.

(e) Scope of work for the project;

(f) Any other information required by ecology to evaluate the project.

(3) Ecology may request additional information to assist in the application evaluation process and may remove an application from further consideration if the application is incomplete.

[]

NEW SECTION

**WAC 173-167-220 Eligible public entities for grant funding under this chapter.** (1)(a) County, or city governmental agencies.

(b) Federally recognized tribes.

(c) Public utility districts, formed under chapter 54.04 RCW.

(d) Water and sewer districts, formed under chapter 57.02 RCW.

(e) Conservation districts, formed under chapter 89.08 RCW.

(f) Irrigation districts, formed under chapter 87.03 RCW.

(g) Port districts formed under chapter 53.04 RCW.

(h) Watershed management partnerships formed under RCW 39.34.200.

(2) State agencies are not eligible for grants under RCW 43.83B.415 (1)(c); state agencies may receive funding through inter-agency agreements to address drought hardship under RCW 43.83B.410(6).

[]

NEW SECTION

**WAC 173-167-230 Eligibility for funding.** (1) An activity or project for response to emergency drought conditions must be partially or completely within the area of a drought declaration order by ecology, which can be found at (a map of the drought declaration area can be viewed at <https://ecology.wa.gov/Water-Shorelines/Water-supply/Water-availability/Statewide-conditions/Drought-response>).

(2) One or more of the following must be partially or completely within the area of a drought declaration order by ecology:

(a) The public water system's service area;

(b) The geographic area where irrigated agriculture or livestock are located;

(c) The source of water, or the water body, that supplies water to the entity applying for funding.

(3) The reduction in water supply caused by drought must cause, or is expected to cause, undue hardship, as described under WAC 173-167-260.

(4) Funding may be granted if the following conditions are met:

(a) The proposed project or measure must be for an established beneficial use of water and not used for irrigation of new acreage or another new or expanded use.

(b) Water derived from the project or measure must be put to beneficial use and address the current water shortage during the drought declaration.

(c) The proposed project or measure cannot impair existing water rights, including instream and out-of-stream rights.

(d) The applicant must obtain all required permits and approvals for the proposed project prior to initiating work.

(e) If an applicant is seeking funding for a public water system, the applicant must obtain Washington department of health approval of the proposed project.

(f) If an applicant is on behalf of a public water system, the system must describe water conservation actions or demonstrate that the applicant has already made reasonable efforts to address their water supply shortage through conservation measures.

[]

NEW SECTION

**WAC 173-167-240 Waiver.** To expedite drought relief projects and measures, ecology can approve funding or compensation under this chapter without complying with:

- (1) Notice of publication;
- (2) The State Environmental Policy Act; and
- (3) Competitive bidding requirements.

[]

NEW SECTION

**WAC 173-167-250 Eligible projects or measures.** (1) Eligible projects or measures include, but are not limited to:

- (a) Leasing or acquiring water rights providing an uninterrupted water supply for instream or out-of-stream use;
- (b) Establishing emergency interties or other alternate source(s) of supply;
- (c) Obtaining an emergency supply of potable water from trucks or bottles;
- (d) Addressing fish hatchery or migration barriers caused by drought conditions;
- (e) The cost of providing personnel necessary to implement the activities identified in this section.

(2)(a) Ecology retains the discretion to fund an eligible project for less than the amount requested or deny a grant request for an eligible project. Situations where ecology may reduce or deny a grant request for an eligible project include, but are not limited to, incomplete application submittal, unavailability of sufficient funding for a project, or evidence that information submitted in an application is false or inaccurate.

(b) The department is not obligated to fund projects that do not provide sufficient benefit to alleviating hardship caused by drought or water unavailability. Projects must show substantial benefit from securing water supply, availability, or reliability relative to project costs.

[]

NEW SECTION

**WAC 173-167-260 Undue hardship.** Undue hardship will be evaluated by considering:

(1) The short-term and long-term economic, public health, or environmental effects the water shortage would have in the absence of drought relief on agricultural crops, livestock operations, public water system safety and reliability, or instream fish and wildlife resources.

(2) The degree to which current drought conditions are directly responsible for the effects described as undue hardship.

(3) The amount of water shortage experienced or forecast for each applicant.

[]

NEW SECTION

**WAC 173-167-270 Grant agreement.** (1) Ecology will work with the recipient to prepare the grant agreement.

(2) A grant agreement issued and managed in ecology's electronic system must include, at a minimum:

- (a) Project description;
- (b) Expected outcomes;
- (c) Project budget and funding distribution;
- (d) Agreement effective date and expiration date;
- (e) Description of tasks, deliverables, and timelines;
- (f) Contact information for ecology and the recipient;
- (g) Signatures of authorized signatories;
- (h) General terms and conditions that specify requirements related, but not limited to:
  - (i) Amendments and modifications;
  - (ii) Assignment limits on transfer of rights or claims;
  - (iii) Inadvertent discovery plan for human remains and/or cultural resources;
  - (iv) Compliance with all laws;
  - (v) Conflict of interest;
  - (vi) Disputes;
  - (vii) Environmental data standards;
  - (viii) Governing law;
  - (ix) Indemnification;
  - (x) Independent status of the parties to the agreement;
  - (xi) Order of precedence for laws, rules, and the agreement;
  - (xii) Property rights, copyrights, and patents;
  - (xiii) Records, audits, and inspections;
  - (xiv) Recovery of funds;
  - (xv) Severability;
  - (xvi) Suspension;
  - (xvii) Sustainable practices;
  - (xviii) Termination;
  - (xix) Third-party beneficiary;
  - (xx) Waiver of agreement provisions.
- (i) Special terms and conditions, if any;
- (j) Agreement-specific terms and conditions, if any;

(k) Other items, if any, necessary to meet the goals of the grant program.

(3) All grant agreements under this chapter will include the latest version, as of the original agreement date, of ecology's grant general terms and conditions.

(4) Ecology may choose to extend a grant agreement at its sole discretion.

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#### NEW SECTION

##### **WAC 173-167-280 Performance standards—General provisions.** (1)

Nothing in this chapter influences, affects, or modifies existing ecology programs, rules, or enforcement of applicable laws and rules relating to activities funded by a grant.

(2) Ecology, or an auditor authorized by the state of Washington, may audit or inspect a recipient's grant agreements, records, and activities.

(3) New ecology grant agreements signed after the effective date of this chapter must be managed using ecology's designated electronic system. A recipient who cannot access the electronic system to meet a deadline or agreement requirements must use a process approved by ecology.

(4) Ecology may perform site visits to monitor the project, evaluate performance, and document compliance or any other conditions of the agreement.

(5) Recipients must:

(a) Follow all applicable accounting and auditing laws and rules related to grants;

(b) Use funds according to the agreement;

(c) Use funds according to the recipient's own policies and procedures, and according to all applicable laws and rules;

(d) Comply with all applicable laws, rules, orders, and permits when carrying out activities authorized by the agreement;

(e) Obtain prior approval for equipment purchases over the amount specified in the agreement.

(6) As specified in the grant agreement, the recipient must submit the following to ecology:

(a) Progress reports;

(b) Payment requests;

(c) Equipment and materials purchase reports, including receipts;

(d) Documentation of project implementation;

(e) A final closeout report;

(f) Any other required information.

(7) Ecology will:

(a) Follow all applicable accounting and auditing laws and rules related to grants;

(b) Monitor projects and review progress reports to assure compliance with applicable laws, rules, orders, permits, and terms and conditions of the agreement;

(c) Confirm receipt of required documentation and satisfactory completion of the project before approving final payment.

[]

NEW SECTION

**WAC 173-167-290 Closing out the agreement.** (1) The recipient must follow the closeout requirements in the agreement.

(2) Ecology is not obligated to reimburse the recipient the final payment if the recipient does not meet all closeout requirements within the time frames in the agreement.

(3) Ecology will close out the grant agreement when it determines the recipient has met the requirements or when the agreement has been terminated (see WAC 173-167-300).

[]

NEW SECTION

**WAC 173-167-300 Termination of agreement.** (1) Failure by the recipient to comply with a grant agreement may result in termination of the agreement.

(2) Ecology will attempt to contact the recipient regarding any issues with agreement compliance prior to terminating an agreement.

(3) Ecology's ability to make payments is contingent on availability of funding.

(4) Ecology will document the termination of an agreement.

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**WSR 23-16-039**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 23-135—Filed July 24, 2023, 11:33 a.m., effective August 17, 2023]

Effective Date of Rule: August 17, 2023.

Purpose: The purpose of this emergency rule is to open recreational halibut seasons in Catch Record Card Areas 1 through 10 and to increase the annual limit for halibut to six fish.

Citation of Rules Affected by this Order: Repealing WAC 220-314-03000P; and 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 is necessary to add open dates to the all depth halibut fisheries in Catch Record Card Areas 1 through 10, and to increase the annual limit to six fish. To date, catch rates indicate there is sufficient quota to allow for these additional openings. Additional openings and increased annual limit will help utilize the Washington quota. This rule is also needed to conform with proposed federal rules.

This rule also brings forward seasons and rules set in WSR 23-08-023, filed March 24; WSR 23-11-013, filed May 5; and WSR 23-12-054, filed June 1, 2023.

Halibut catch will continue to be closely monitored by Washington department of fish and wildlife staff and may close earlier if quotas are achieved. Halibut seasons are open only by emergency rule (see WAC 220-314-040(1)).

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: July 24, 2023.

Kelly Susewind  
Director

NEW SECTION**WAC 220-314-03000Q Halibut—Seasons—Daily and possession limits.**

Notwithstanding the provisions of WAC 220-314-030, and 220-314-010, effective August 17, through September 30, 2023, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section. All other provisions of WAC 220-314-030, 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 August 26 and 27, and September 8, 9, and 22, 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):

(a) Open during dates listed for Catch Record Card Area 1 All Depth Fishery in section (1), and open Mondays, Tuesdays, and Wednesdays, each week, through September 27, 2023.

(b) Bottomfish, otherwise legal to retain, may be retained and landed when a vessel has landed or brought halibut into port on days when only the Southern Near Shore Fishery is open for halibut retention, but not on days when the All Depth halibut fishery is open as listed in section (1).

**(3) Catch Record Card Area 2 All Depth Fishery, including Northern Near Shore Fishery area:**

Open August 26 and 27, and September 8, 9, and 22, 2023.

**(4) Card Record Areas 3 and 4:**

Open 7 days per week, from August 17 through September 30.

**(5) Catch Record Card Areas 5 through 10:**

Open 7 days per week, from August 17 through September 30.

**(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) The annual limit is six halibut taken from state or offshore waters.

(9) 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.

(10) A violation of this section is punishable under RCW 77.15.370 or RCW 77.15.380, depending on the violation.

[ ]

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

REPEALER

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

WAC 220-314-03000P Halibut—Seasons—Daily and possession  
limits. (23-87)

**WSR 23-16-049**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 23-139—Filed July 25, 2023, 4:17 p.m., effective July 25, 2023, 4:17 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 220-340-52000J:

(1) Clarifies the pot limit for shrimp pot fisheries is specific to each gear type and allows a separate maximum 100 pot limit for spot shrimp pots and nonspot shrimp pots respectively.

(2) Defines the first spot shrimp catch accounting period as being from May 8 to August 1, 2023, and allows 5,000 pounds of spot shrimp to be harvested per license for the first catch accounting period.

(3) Defines the second spot shrimp catch accounting period as being from August 2 to 22, 2023, and allows 5,400 pounds of spot shrimp to be harvested per license for the first and second catch accounting periods combined.

(4) Closes Marine Fish-Shellfish (MFSF) Catch Area 23AW to commercial spot shrimp harvest on July 27, 2023, and Areas 23AC and 23B on July 26, 2023 due to quota attainment.

(5) Defines the nonspot species complex.

(6) Opens nonspot shrimp quota areas, defines the nonspot shrimp catch accounting periods; sets per license catch limit of 1,500 pounds for catch period number 1 and 1,200 pounds for each subsequent catch period; in Subregions 1A, 1B, and 1C and Region 2E; clarifies there is no weekly harvest limit in Regions 3 or 2W; and sets a 175-foot depth limit in Subregion 1A and MFSF Catch Area 23A.

WAC 220-320-14000B: Defines beam trawl areas for the purpose of designating fishing seasons.

WAC 220-340-54000H:

(1) Opens Region 3 shrimp trawl fisheries effective immediately.

(2) Opens Region 1 trawl fisheries as required by permanent rule.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000I, 220-340-54000G and 220-320-14000A; and amending WAC 220-340-520, 220-340-540, and 220-320-140.

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: Permanent rules regulating state commercial shrimp harvest in Puget Sound and the Strait of Juan de Fuca require adoption of harvest seasons contained in this emergency rule. This emergency rule is necessary to prosecute state commercial shrimp pot and trawl fisheries in Puget Sound. This rule allows harvesters to both respond to dynamic changes in market conditions and promotes full utilization of the commercial spot and nonspot shares. These rules are in congruence with comanager agreements. There is insufficient time to adopt permanent rules.

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

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

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

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

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: July 25, 2023.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-340-52000J Commercial shrimp pot fishery—Puget Sound.**

Notwithstanding the provisions of WAC 220-340-520, effective immediately, until further notice, or until they expire pursuant to RCW 34.05.350, it is unlawful to fish for shrimp for commercial purposes using pot gear in Puget Sound except as provided for in this section:

(1) In all areas fishers are limited to a maximum of 100 spot shrimp pots, as defined in WAC 220-340-520 (5)d, and a maximum of 100 non-spot shrimp pots, as defined in WAC 220-340-520 (5)e.

(2) Spot Shrimp Pot Harvest:

(a) Spot shrimp harvest is permitted as indicated in the following table opening one hour before official rise until further notice. Any closures take effect one hour after official sunset.

<b>Geographical Management Unit (WAC 220-320-140; WAC 220-320-120)</b>	<b>Open Period</b>
Subregion 1A	Open until further notice
Subregion 1B	Closed
Subregion 1C	Closed
Region 2E	Closed
Region 2W	Open until further notice
Subarea 23A-E	Open until further notice
Subarea 23A-W	Open through July 27, 2023
Subarea 23A-C and MSFS Catch Area 23B	Open through July 26, 2023
Subarea 23A-S and MSFS Catch Area 23D	Open until further notice
MFSF Catch Area 23C	Open until further notice
MFSF Catch Area 25A, excluding the Discovery Bay Shrimp District	Closed
Discovery Bay Shrimp District	Closed
MFSF 29 (Straits - Neah Bay)	Open until further notice
Subarea 26B-1 and MFSF Catch Area 26C	Closed
Subarea 26B-2	Closed
Region 5	Open until further notice
MFSF Catch Area 26D	Closed
MFSF Catch Areas 28A, 28B, 28C, and 28D	Closed

(b) The first spot shrimp catch accounting period started one hour before official sunrise on May 8, 2023, through one hour after official sunset on August 1, 2023.

(c) It is unlawful for the combined total harvest during the first spot shrimp accounting period to have exceeded 5,000 pounds of spot shrimp per license from all Puget Sound shrimp management regions combined.

(d) The second spot shrimp catch accounting period starts one hour before official sunrise on August 2, 2023, through one hour after official sunset on August 22, 2023.

(e) It is unlawful for the total harvest during the first and second spot shrimp accounting periods to have exceeded 5,400 pounds of spot shrimp per license from all Puget Sound shrimp management regions combined.

(f) It is unlawful to harvest spot shrimp from more than one Geographical Management Unit listed in 2(a) in a single day with the following exceptions:

(i) Spot shrimp may be harvested from subregion 1A and subregion 1C on the same day.

(ii) Spot shrimp may be harvested from subarea 23A-E, and either 23A-W, 23A-C or MFSF Catch Area 23B on the same day.

(g) It is lawful to have deactivated non-spot shrimp pots on-board of a commercial vessel that is listed on a Puget Sound shrimp pot license while fishing for spot shrimp.

A deactivated pot is un-baited, has the draw string or door fastened open, and/or is unable to be readily fished.

(3) Non-spot shrimp pot harvests:

(a) The non-spot shrimp species complex is defined as the following species of pandalid shrimp classified in WAC 220-320-010: Dock shrimp (*Pandalus danae*), Coonstripe shrimp (*Pandalus hypsinotus*), Humpy shrimp (*Pandalus goniurus*), Ocean pink shrimp (*Pandalus jordani*), pink shrimp (*Pandalus eous*), Side stripe shrimp (*Pandalus dispar*).

(b) Non-spot shrimp pot harvest is permitted as indicated in the following table opening one hour before official rise until further notice. Any closures take effect one hour after official sunset.

<b>Geographical Management Unit (WAC 220-320-140; WAC 220-320-120)</b>	<b>Open Period</b>
Subregion 1A	Open until further notice
Subregion 1B	Closed
Subregion 1C	Closed
Region 2E	Open until further notice
Region 2W	Open until further notice
Region 3, not including Discovery Bay Shrimp District	Open until further notice
Discovery Bay Shrimp District	Open until further notice
Region 4	Closed
Region 5	Closed
Region 6	Closed

(c) The non-spot shrimp catch accounting periods begin one hour before official sunrise and end one hour after official sunset on the date listed in the following table:

<b>Period Number</b>	<b>Start Date</b>	<b>End Date</b>
<b>1</b>	5/1/2023	5/16/2023

Period Number	Start Date	End Date
2	5/17/2023	5/30/2023
3	5/31/2023	6/13/2023
4	6/14/2023	6/27/2023
5	6/28/2023	7/11/2023
6	7/12/2023	7/25/2023
7	7/26/2023	8/8/2023
8	8/9/2023	8/22/2023
9	8/23/2023	9/5/2023
10	9/6/2023	9/19/2023
11	9/20/2023	10/3/2023
12	10/4/2023	10/15/2023

(d) It is unlawful for the total harvest of non-spot shrimp per license to exceed 1,500 pounds during non-spot shrimp catch accounting period number 1 from subregions 1A, 1B, 1C, and Region 2E combined.

(e) It is unlawful for total harvest of non-spot shrimp to exceed 1,200 pounds per non-spot shrimp catch accounting period from subregions 1A, 1B, 1C, and Region 2E combined during catch accounting periods 2 through 12.

(f) There is no weekly harvest limit of non-spot shrimp from Region 2W, Region 3, or the Discovery Bay Shrimp District.

(g) Harvest of non-spot shrimp is not permitted deeper than 175 feet in Catch Area 23A and all of its subareas (23AE, 23AW, 23AC, 23AS).

(h) Harvest of non-spot shrimp is not permitted deeper than 175 feet in subregion 1A.

(i) It is unlawful to harvest non-spot shrimp in more than one geographical management unit listed in subsection 3(a) in a single day with the following exceptions:

(i) Non-spot shrimp may be harvested from more than one subregion of Region 1 on the same day.

(ii) Non-spot shrimp may be harvested from Discovery Bay Shrimp District and Region 3 on the same day.

(j) It is lawful to have deactivated spot shrimp pots on-board of a commercial vessel that is listed on a Puget Sound shrimp pot license while fishing for non-spot shrimp.

A deactivated pot is un-baited, has the draw string or door fastened open, and/or is unable to be readily fished.

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

#### NEW SECTION

**WAC 220-320-14000B Commercial shrimp geographical management units—Puget Sound.** Notwithstanding the provisions of WAC 220-320-140, for the purposes of Puget Sound shrimp trawl fishing seasons the following areas are designated as 'Beam Trawl Areas'. Non-spot shrimp trawl harvest areas:

Non-spot shrimp beam trawl specific harvest area definitions:

Name	Geographic Area Description (WAC 220-320-140(3))
South Lopez Sound	Those waters of Lopez Sound within subregion 1B that are south of a line projected true east-west from the northern tip of Trump Island (48.5064°, -122.8369°).
Rosario Box	That portion of Catch Area 22A within subregion 1B that are east of a line projected along -122.7833° longitude (east of Blakely Island) and west of a line projected along -122.7167° longitude (west of Cypress Island) in Rosario Strait.
Lummi-Sinclair Triangle	Those waters of Catch Area 21A north and west of a line from the southern tip of Sinclair Island (48.6097°, -122.6572°) to Carter Point (48.6404°, -122.6088°) on Lummi Island.

[ ]

NEW SECTION

**WAC 220-340-54000H Commercial shrimp trawl fishery—Puget Sound.**

Notwithstanding the provisions of WAC 220-340-540, immediately, until further notice, or until they expire pursuant to RCW 34.05.350, it is unlawful to fish for shrimp for commercial purposes using beam trawl gear in Puget Sound except as provided for in Tables a, b, and c of this section:

(a) Non-spot shrimp beam trawl harvest is permitted starting one hour before official sunrise on the hard season opening dates listed for each of the areas detailed below.

Geographic Area Description (WAC 220-320-140(3); WAC 220-320-120)	Open period
Catch Area 20A outside of those waters north and east of a line from Point Roberts Light (48.9716°, -123.0838°) to Sandy Point Light at the Lummi Reservation (48.7868°, -122.7124°)	August 1, 2023, until further notice.
Those waters within the Lummi-Sinclair Triangle.	Open immediately, until further notice.
Those waters of South Lopez Sound.	Open immediately, until further notice.
All waters within subregion 1B, excluding those waters of South Lopez Sound and the Lummi-Sinclair Triangle.	Open immediately, until further notice.
Subarea 23A East, MFSF Catch Areas 23B, and MFSF Catch Area 25A outside of the Discovery Bay Shrimp District.	Open immediately, until further notice.
Subarea 23A West	Open immediately, until further notice.
MFSF Catch Area 23C	Open immediately, until further notice.
MFSF Catch Area 29	Open immediately, until further notice.

(b) Non-spot shrimp beam trawl harvest is permitted starting one hour before official sunrise in the areas detailed below contingent on the harvester bringing an on-board observer on the first trip of the area. If by-catch sampling criteria are not met these areas will open on the later dates described in WAC 220-340-530 (5d,e).

Geographic Area Description (WAC 220-320-140(3); WAC 220-320-120)	Open period
Those waters within the Rosario Box.	Open immediately, until further notice.
Those waters of Catch Area 22A within subregion 1B, excluding the Rosario Box and South Lopez Sound.	Open immediately, until further notice.
Those waters of Catch Area 20B within subregion 1B.	Open immediately, until further notice.

(c) Non-spot shrimp beam trawl harvest is not permitted in the areas of Shrimp Management Regions 1 and 3 detailed below.



<b>Geographic Area Description (WAC 220-320-140(3); WAC 220-320-120)</b>
Discovery Bay Shrimp District
Sequim Bay CSMA
MFSF Catch Area 23D
Subregion 1A

[]

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

REPEALER

The following sections of Washington Administrative Code are repealed, effective immediately:

- WAC 220-340-52000I Commercial shrimp pot fishery—Puget Sound. (23-125)
- WAC 220-340-54000G Commercial shrimp trawl fishery—Puget Sound. (23-71)
- WAC 220-320-14000A Commercial shrimp geographical management units—Puget Sound. (23-62)

WSR 23-16-054  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE

[Order 23-141—Filed July 26, 2023, 9:55 a.m., effective July 28, 2023]

Effective Date of Rule: July 28, 2023.

Purpose: This emergency rule is needed to open recreational salmon seasons in Catch Record Card Area 7.

Citation of Rules Affected by this Order: Amending WAC 220-313-060.

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

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

Reasons for this Finding: This emergency rule is necessary to open salmon seasons in Catch Record Card Area 7. Catch estimates for the Marine Area 7 summer Chinook fishery indicate that through July 21, 2023, 78 percent of the harvest quota (1,696 of 2,181) has been reached; 23 percent of unmarked encounters (971 of 4,258) and 64 percent of sublegal encounters (1,618 of 2,554) have also been accounted for. Based on daily catch rates thus far, this allows space for two additional days of fishing to be added to the 2023 summer Chinook season. 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: July 26, 2023.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-313-06000B Puget Sound salmon—Saltwater seasons and daily limits.** Effective July 28 through July 29, 2023, for Catch Record Card Area 7, the following provisions of WAC 220-313-060 regarding salmon seasons shall be modified as described herein. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

**Catch Record Card Area 7:**

- (a) Daily limit 2 salmon, including no more than 1 hatchery Chinook. Release chum, wild Chinook and wild coho.
- (b) Waters of Rosario Strait and Eastern Strait of Juan de Fuca closure area described in WAC 220-313-020(7): Closed.
- (c) Waters of Bellingham Bay described in WAC 220-313-020(1): Closed.
- (d) Lummi Bay: Waters east of a line from Gooseberry Point to Sandy Point: Closed.

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**WSR 23-16-055**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 23-142—Filed July 26, 2023, 9:55 a.m., effective August 1, 2023]

Effective Date of Rule: August 1, 2023.

Purpose: The purpose of this emergency rule is to open a sockeye fishery in a portion of the Wenatchee River.

Citation of Rules Affected by this Order: Amending WAC 220-312-050.

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 current sockeye passage analysis at Tumwater Dam and mainstem Columbia River Dams, the Washington department of fish and wildlife projects a surplus of harvestable sockeye destined for Lake Wenatchee, well above the natural spawning escapement goal of 23,000 fish. 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: July 26, 2023.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-05000G Freshwater exceptions to statewide rules—Eastside.** Effective August 1 through September 30, 2023, the provisions of WAC 220-312-050 regarding recreational salmon seasons in the Wenatchee River, shall be modified during the dates listed and as described below. All provisions of WAC 220-312-050 not addressed herein remain in effect unless otherwise amended by emergency rule:

**Wenatchee River (Chelan County):** Salmon:

(a) Min. size 12". Daily limit 6, including no more than 2 adult hatchery Chinook and no more than 4 sockeye. Release coho and wild adult Chinook.

- (b) Night closure in effect.
- (c) Selective gear rules in effect, except bait is allowed.

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**WSR 23-16-061**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 23-140—Filed July 26, 2023, 3:55 p.m., effective August 1, 2023]

Effective Date of Rule: August 1, 2023.

Purpose: This emergency rule is necessary to remove size restrictions and daily limits from gamefish in Williams Lake in Stevens County and June, North Windmill, and North North Windmill lakes in Grant County.

Citation of Rules Affected by this Order: Amending WAC 220-312-050.

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

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

Reasons for this Finding: This emergency rule is necessary to provide additional angling and harvest opportunity in Williams, June, North Windmill, and North North Windmill lakes prior to the scheduled treatment with the piscicide rotenone. 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: July 26, 2023.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-05000F Freshwater exceptions to statewide rules—Eastside.** Effective August 1, through October 1, 2023, the following provisions of WAC 220-312-050, regarding gamefish seasons, size restrictions, and daily limits shall be modified as follows. All other provisions of WAC 220-312-050 remain in effect unless modified by emergency rule:

**(1) Williams Lake (Stevens County):** Open for gamefish. No size restrictions, no daily limit for gamefish.

(2) **June Lake (Grant County)**: No size restrictions, no daily limit for gamefish.

(3) **North Windmill Lake (Grant County)**: No size restrictions, no daily limit for gamefish.

(4) **North North Windmill Lake (Grant County)**: No size restrictions, no daily limit for gamefish.

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**WSR 23-16-062**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 23-145—Filed July 26, 2023, 4:00 p.m., effective July 26, 2023, 4:00 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule is to close Chinook retention in Catch Record Card Area 2 on Fridays and Saturdays. This rule also prohibits possession of Chinook onboard a vessel on Fridays and Saturdays in Area 2.

Citation of Rules Affected by this Order: Repealing WAC 220-313-07500R; and amending WAC 220-313-075.

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 purpose of this rule is to modify ocean recreational salmon seasons in Marine Area 2. Marine Area 2 has used more than half of its Chinook catch guideline for the entire season. Closing two days per week to Chinook retention will extend the length of the season and allow fishing to continue as large abundances of coho salmon migrate into the area.

This rule maintains previously established recreational seasons in Areas 1, 3, and 4.

These rules for in-state waters are consistent with federal salmon fishing regulations adopted by the National Marine Fisheries Service in response to actions taken by the Pacific Fishery Management Council to set salmon fishery harvest specifications and management measures; this action is intended to achieve regulatory consistency in federal and state waters for the ocean recreational salmon fishery, which operates in both areas.

There is insufficient time for the Washington department of fish and wildlife to adopt consistent regulations through the permanent rule-making process.

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

Number of Sections Adopted at the Request of a 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: July 26, 2023.

Kelly Susewind  
Director



NEW SECTION**WAC 220-313-07500S Pacific Ocean salmon—Seasons—Closed areas.**

Effective July 28, through October 7, 2023, the provisions of WAC 220-313-075 regarding recreational salmon seasons for Marine Areas 1 through 4 shall be as described below. All other provisions of WAC 220-313-075 not addressed herein remain in effect unless otherwise amended:

(1) **Catch Record Card Area 1:** Open July 28, through September 30, 2023:

- (a) Daily limit of 2 salmon; no more than one may be a Chinook.
- (b) Release wild coho.
- (c) Chinook minimum length 22 inches.
- (d) Coho minimum length 16 inches.

(2) **Catch Record Card Area 2:** Open July 28, through September 30, 2023:

- (a) Open Sundays through Thursdays;
  - (1) Daily limit of 2 salmon; no more than one may be a Chinook.
  - (2) Release wild coho.
  - (3) Chinook minimum length 22 inches.
  - (4) Coho minimum length 16 inches.
- (b) Open Fridays and Saturdays;
  - (1) Daily limit of 2 salmon.
  - (2) Release Chinook and wild coho.
  - (3) Coho minimum length 16 inches.

(4) Possession of Chinook onboard a vessel, including in transit, is unlawful.

(c) July 28, 2023, through September 30, 2023, the Grays Harbor Control Zone is open (see WAC 220-306-040) and subject to rules and daily limits in subsections (2) (a) and (2) (b) of this rule.

(3) **Catch Record Card Area 3:**

(a) Open July 28, through July 31, 2023:

- (i) Daily limit of 2 salmon.
- (ii) Release wild coho.
- (iii) Chinook minimum length 24 inches.
- (iv) Coho minimum length 16 inches.

(b) Open August 1, through September 30, 2023:

- (i) Daily limit of 2 salmon.
- (ii) Release wild coho and chum.
- (iii) Chinook minimum length 24 inches.
- (iv) Coho minimum length 16 inches.

(c) Open October 3, through October 7, 2023, only in the area north of 47°50'00"N. lat. and south of 48°00'00"N. lat.:

- (i) Daily limit 1 Chinook salmon only.
- (ii) Release all salmon except Chinook.
- (iii) Chinook minimum length 24 inches.

(4) **Catch Record Card Area 4:**

(a) Open July 28, through July 31, 2023:

- (i) Daily limit of 2 salmon.
- (ii) Release wild coho.
- (iii) Chinook minimum length 24 inches.
- (iv) Coho minimum length 16 inches.

(v) Waters east of a true north-south line through Sail Rock are closed.

(b) Open August 1, through September 30, 2023:

- (i) Daily limit of 2 salmon.

- (ii) Release wild coho and chum.
- (iii) Release Chinook in waters east of the Bonilla-Tatoosh line.
- (iv) Chinook minimum length 24 inches.
- (v) Coho minimum length 16 inches.

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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.

REPEALER

The following section of Washington Administrative Code is repealed, effective July 28, 2023:

WAC 220-313-07500R Pacific ocean salmon—Seasons—Closed areas. (23-116)

**WSR 23-16-065**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 23-143—Filed July 27, 2023, 11:52 a.m., effective July 29, 2023]

Effective Date of Rule: July 29, 2023.

Purpose: The purpose of this emergency rule is to close recreational Chinook retention and open hatchery coho and pink salmon seasons daily in Catch Record Card Area 9.

Citation of Rules Affected by this Order: Amending WAC 220-313-060.

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

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

Reasons for this Finding: This emergency rule is necessary to open salmon seasons in Catch Record Card Area 7. Catch estimates for the Marine Area 9 summer Chinook fishery indicate that, through July 22, 83 percent of the harvest quota (3,633 of 4,300) has been reached. This one-day reduction in the season is necessary to stay within management guidelines and will align open days with upcoming Marine Area 7 opening. 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: July 27, 2023.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-313-06000C Puget Sound salmon—Saltwater seasons and daily limits.** Effective July 29 through July 31, 2023. For Catch Record Card Area 9, except Edmonds Public Fishing Pier, the following provisions of WAC 220-313-060 regarding salmon seasons shall be modified as described herein. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

**Catch Record Card Area 9, except Edmonds Public Fishing Pier:**

Salmon: Daily limit 2. Release Chinook, chum, and wild coho.

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**WSR 23-16-066**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 23-144—Filed July 27, 2023, 12:08 p.m., effective August 1, 2023]

Effective Date of Rule: August 1, 2023.

Purpose: This emergency rule sets the initial 2023 Puget Sound commercial sea cucumber seasons.

Citation of Rules Affected by this Order: Amending WAC 220-340-730.

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 sets the initial 2023 Puget Sound commercial sea cucumber seasons. Harvestable surpluses of sea cucumbers exist in the districts specified. 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: July 27, 2023.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-340-73000I Sea cucumbers** Effective August 1, 2023, until further notice, or until this rule expires November 24, 2023 pursuant to RCW 34.05.350, the following provisions of WAC 220-340-730 regarding Puget Sound commercial sea cucumber harvest and sales shall be described below. All other provisions of WAC 220-340-730 not addressed herein, and unless otherwise amended, remain in effect:

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber Districts 1, 2-1, and 2-2 Monday through Sunday of each week.

(2) Sea cucumber harvest using shellfish diver gear is allowed in the following catch reporting areas of Sea Cucumber District 5, Monday through Sunday of each week: 28A, 28B, 28C, and 28D.

(3) The maximum cumulative landing of sea cucumbers for each weekly fishery opening period is 1,500 pounds per license.

(4) The maximum cumulative landing of sea cucumbers for August 1 through November 5, 2023 is 9,000 pounds per license from all Puget Sound commercial sea cucumber districts combined.

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**WSR 23-16-068**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 23-146—Filed July 27, 2023, 12:51 p.m., effective July 29, 2023]

Effective Date of Rule: July 29, 2023.

Purpose: This emergency rule is needed to close sturgeon fishing in the Columbia River from The Dalles Dam to Priest Rapids Dam.

Citation of Rules Affected by this Order: Amending WAC 220-312-060.

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

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

Reasons for this Finding: To minimize additional stress to adult sturgeon in the catch-and-release sturgeon fishery from The Dalles Dam upstream to Priest Rapids Dam, joint state action was necessary to minimize any additional sturgeon handle in the recreational fishery. This rule conforms Washington state rules with Oregon state rules. The Washington department of fish and wildlife (WDFW) has received several reports of dead adult sturgeon in the Columbia River. Most of these reports are from the John Day pool, with others coming from The Dalles pool, McNary pool, and the Hanford Reach. Sturgeon mortalities are associated with the stressors of spawning as water temperature increases over the summer. Additionally, these areas are exhibiting decreased abundance and recruitment success, and WDFW is concerned about the negative impacts these adult mortalities will have on individual populations.

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: July 26, 2023.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-06000T Freshwater exceptions to statewide rules—Columbia River.** Effective July 29 through September 15, 2023; the provisions of WAC 220-312-060, WAC 220-312-030, and WAC 220-316-010 regarding white sturgeon retention seasons from The Dalles Dam to Priest Rapids Dam are as follows. All other provisions of WAC 220-312-060, WAC 220-316-010, and WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

**From The Dalles Dam upstream to Priest Rapids Dam:** Effective July 29 through September 15, 2023: Angling for and retention of sturgeon is prohibited.

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**WSR 23-16-107**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 23-148—Filed July 31, 2023, 3:40 p.m., effective August 2, 2023]

Effective Date of Rule: August 2, 2023.

Purpose: The purpose of this emergency rule is to close recreational fishing in the upper Skykomish River.

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

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

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

Reasons for this Finding: This rule is necessary to close fishing in the Skykomish River upstream of Hwy. 2 (above Big Eddy). This rule also maintains previously announced closures in other areas of the Snohomish River system.

Chinook presence has been observed in the Skykomish River in the area near Reiter ponds. Due to limited allowable take of wild Chinook in the Snohomish system, strict controls are needed to conserve Chinook impacts for pink and coho fisheries later this fall.

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: July 31, 2023.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-312-04000P Freshwater exceptions to statewide rules—Puget Sound.** Effective August 2, 2023, until further notice, provisions of WAC 220-312-040 regarding recreational fishing seasons for the Snohomish River system shall be modified as described below. All other provisions of WAC 220-312-040 not addressed herein, or unless otherwise amended by emergency rule remain in effect:

Effective immediately, until further notice, the following waters are closed to all fishing:

- (a) **Cherry Creek**, from mouth upstream
- (b) **Raging River**, from mouth upstream
- (c) **Skykomish River**, from mouth to confluence of North and South forks
- (d) **Skykomish River, North Fork**, from mouth upstream
- (e) **Skykomish River, South Fork**, from mouth upstream
- (f) **Snohomish River**, from mouth to confluence of Skykomish and Snoqualmie rivers
- (g) **Snoqualmie River**, from mouth to Snoqualmie Falls
- (h) **Sultan River**, from mouth upstream
- (i) **Tolt River**, from mouth to confluence of North and South forks
- (j) **Wallace River**, from mouth to 200' upstream of water intake of salmon hatchery

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REPEALER

The following section of Washington Administrative Code is repealed, effective August 2, 2023:

WAC 220-312-04000N Freshwater exceptions to statewide rules—Puget Sound. (23-130)

**WSR 23-16-113**  
**EMERGENCY RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed July 31, 2023, 4:46 p.m., effective July 31, 2023, 4:46 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: In alignment with SHB 1550, passed by the Washington state legislature in 2023, the emergency rules establish the transition to kindergarten program. The rules provide for the administration of, the allocation of state funding for, and minimum standards and requirements for the transition to kindergarten program for the 2023-24 school year.

The office of superintendent of public instruction will also conduct permanent rule making concerning transition to kindergarten programs. The permanent rules are anticipated to be effective by the 2024-25 school year.

Citation of Rules Affected by this Order: New chapter 392-425 WAC; and amending WAC 392-121-106, 392-121-107, 392-121-122, 392-121-137, 392-121-182, 392-122-430, 392-122-435, 392-122-440, 392-122-450, 392-122-500, 392-122-505, 392-122-510, 392-122-515, 392-122-520, 392-122-605, 392-122-805, and 392-122-810.

Statutory Authority for Adoption: 2SHB 1550 (chapter 420, Laws of 2023); and RCW 28A.150.290.

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

Reasons for this Finding: The emergency rules are necessary to establish the transition to kindergarten program for the 2023-24 school year, as directed by SHB 1550, passed by the Washington state legislature in 2023. The emergency rules establish expectations and requirements for local education agencies in implementing and administering transition to kindergarten programs for the 2023-24 school year.

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 11, Amended 17, Repealed 0.

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

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

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

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

Date Adopted: July 31, 2023.

Chris P.S. Reykdal  
State Superintendent of Public Instruction

## OTS-4751.1

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

**WAC 392-121-106 Definition—Enrolled student.** As used in this chapter, "enrolled student" means a person residing in Washington state who:

(1) Is eligible to enroll in the school district's education programs because he or she:

(a) Resides in the school district with or without an address (RCW 28A.225.010, 28A.225.160 and 28A.225.215);

(b) Resides on a United States reservation, national park, national forest, or Indian reservation contiguous to the school district (RCW 28A.225.170);

(c) Resides in a school district not offering the grade for which they are eligible to enroll such as a nonhigh district (RCW 28A.225.210);

(d) Has been released from the school district he or she resides in and has been accepted by the school district claiming enrollment (RCW 28A.225.225 and 28A.225.230);

(e) Will be attending the school district as part of an interdistrict cooperative program (RCW 28A.225.250);

(f) Will be attending school in a school district in another state per a reciprocity agreement pursuant to RCW 28A.225.260; or

(g) Will be attending a public charter school, as defined by RCW 28A.710.010, located within Washington state.

(2) After the close of the prior school year has presented himself or herself, or has been presented, to the school district's or charter school's appropriate official to be entered on the school district's or charter school's rolls for the purpose of attending school in grades kindergarten through ~~((twelve))~~ 12 and transition to kindergarten program;

(3) Is under ~~((twenty-one))~~ 21 years of age at the beginning of the school year;

(4) Actually participated on a school day during the first four school days of the current school term (semester or quarter), or on a school day during the current school year on or prior to the date being counted, in a course of study offered by the school district or charter school as defined in WAC 392-121-107; and

(5) Does not qualify for any of the enrollment exclusions set forth in WAC 392-121-108.

[Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-121-106, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.290(1). WSR 09-21-019, § 392-121-106, filed 10/9/09, effective 11/9/09. Statutory Authority: RCW 28A.150.290. WSR 95-10-011 (Order 95-03), § 392-121-106, filed 4/25/95, effective 5/26/95; WSR 95-01-013, § 392-121-106, filed 12/8/94, effective 1/8/95. Statutory Authority: RCW 28A.41.055 and 28A.41.170. WSR 88-03-013 (Order 88-8), § 392-121-106, filed 1/11/88.]

AMENDATORY SECTION (Amending WSR 16-11-104, filed 5/18/16, effective 6/18/16)

**WAC 392-121-107 Definition—Course of study.** As used in this chapter, "course of study" means those activities for which students enrolled pursuant to chapters 180-16, 180-51, 392-169, 392-134, and 392-410 WAC may be counted as enrolled students for the purpose of full-time equivalent student enrollment counts.

(1) Course of study includes:

(a) Instruction - Teaching/learning experiences conducted by school district staff as directed by the administration and the board of directors of the school district, or teaching/learning experiences conducted by charter school staff as directed by the charter school administration and charter school board, inclusive of intermissions for class changes, recess and teacher/parent-guardian conferences that are planned and scheduled by the district or charter school for the purpose of discussing students' educational needs or progress, and exclusive of time for meals.

(b) Alternative learning experience - Alternative learning experience provided by the school district or charter school in conformance with WAC 392-121-182.

(c) Instruction provided by a contractor - Instruction provided by a contractor in conformance with WAC 392-121-188 or 392-121-1885.

(d) National guard - Participation in a national guard high school career training program for which credit is being given toward either required or elective high school credits pursuant to RCW 28A.300.165 and WAC 392-410-320.

(e) Ancillary service - Any cocurricular service or activity, any health care service or activity, and any other services or activities, for or in which enrolled students are served by appropriate school district or charter school staff. The term shall include, but not be limited to, counseling, psychological services, testing, remedial instruction, speech and hearing therapy, health care services, and if such service is provided by the district or charter school, certificated contact time pursuant to RCW 28A.225.010 (4) (a) with students who are in a home-based instruction program. The term shall exclude all extracurricular activities and all other courses of study defined in this section. In conformance with WAC 392-134-025, school districts and charter schools report the actual number of student contact hours of ancillary service for part-time, private school, and home-based students to the superintendent of public instruction.

(f) Work based learning - Training provided pursuant to WAC 392-410-315 and reported as provided in WAC 392-121-124.

(g) Running start - Attendance at an institution of higher education pursuant to RCW 28A.600.300 through 28A.600.400, chapter 392-169 WAC.

(h) Transition school - Participation in the University of Washington's transition school and early entrance program pursuant to RCW 28A.185.040, and chapter 392-120 WAC. Such participation shall be reported by the University of Washington and shall not be reported by a school district or charter school.

(i) Technical college direct funding - Enrollment at a technical college pursuant to RCW 28A.150.275 and WAC 392-121-187. Such participation shall be reported by the technical college and shall not be reported by a school district unless the technical college and the

school district agree to have the school district report such enrollment.

(j) Dropout reengagement program - Enrollment in a state approved dropout reengagement program pursuant to RCW 28A.175.100 and chapter 392-700 WAC.

(k) Paid work experience - Training provided in accordance with WAC 392-410-316 and reported as provided in WAC 392-121-139.

(l) Transition to kindergarten under Second Substitute House Bill No. 1550 (chapter 420, Laws of 2023) and chapter 392-425 WAC.

(2) Course of study does not include:

(a) Home-based instruction pursuant to RCW 28A.225.010(4): Education programs provided by a parent which do not meet the requirements of WAC 392-121-182 cannot be claimed for state funding;

(b) Private school instruction pursuant to chapter 28A.195 RCW;

(c) Adult education as defined in RCW 28B.50.030(12);

(d) Instruction provided to students who do not reside in Washington state (RCW 28A.225.260);

(e) Enrollment in state institutions, i.e., state operated group homes, county juvenile detention centers, state institutions for juvenile delinquents, county and city adult jails, and state residential habilitation centers;

(f) Instruction preparing a student for the general education development (GED) test if such instruction generates state or federal moneys for adult education;

(g) Enrollment in education centers except as provided under contract with a school district pursuant to RCW 28A.150.305 and WAC 392-121-188 or 392-121-1885;

(h) Enrollment for residents of the Washington state school for the deaf and the Washington state school for the blind;

(i) Extracurricular activities including but not limited to before and after school activities such as classes, sports and other activities offered outside the regular curriculum or for which credit is not earned; or

(j) Attendance at universities, colleges, community colleges, or technical colleges of students not earning high school credit.

[Statutory Authority: RCW 28A.150.290. WSR 16-11-104, § 392-121-107, filed 5/18/16, effective 6/18/16. Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-121-107, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.305. WSR 13-02-004, § 392-121-107, filed 12/19/12, effective 1/19/13. Statutory Authority: RCW 28A.150.290. WSR 09-06-038, § 392-121-107, filed 2/25/09, effective 3/28/09; WSR 07-23-008, § 392-121-107, filed 11/8/07, effective 12/9/07. Statutory Authority: 1997 c 265 § 6 and RCW 28A.150.290. WSR 99-08-008 (Order 99-01), § 392-121-107, filed 3/25/99, effective 4/25/99. Statutory Authority: RCW 28A.150.290. WSR 97-22-013 (Order 97-06), § 392-121-107, filed 10/27/97, effective 11/27/97; WSR 95-18-097, § 392-121-107, filed 9/6/95, effective 10/7/95; WSR 95-01-013, § 392-121-107, filed 12/8/94, effective 1/8/95. Statutory Authority: 1990 c 33. WSR 90-16-002 (Order 18), § 392-121-107, filed 7/19/90, effective 8/19/90. Statutory Authority: RCW 28A.41.055 and 28A.41.170. WSR 88-03-013 (Order 88-8), § 392-121-107, filed 1/11/88.]

AMENDATORY SECTION (Amending WSR 17-16-162, filed 8/2/17, effective 9/2/17)

**WAC 392-121-122 Definition—Full-time equivalent student.** As used in this chapter, "full-time equivalent student" means each enrolled student in the school district or charter school as of one of the enrollment count dates for at least the minimum number of hours set forth in subsection (1) of this section, inclusive of class periods and normal class change passing time, but exclusive of meal intermissions: Provided, That each hour counted shall contain at least 50 minutes of instruction or supervised study provided by appropriate instructional staff. The purpose of recognizing "50 minute hours" is to provide flexibility to school districts and charter schools which utilize block periods of instruction so long as students are ultimately under the jurisdiction of school staff for the equivalent of 60 minute hours: Provided further, That the hours set forth below shall be construed as annual average hours for the purposes of compliance with this chapter.

(1)(a) Prior to the 2018-19 school year, the minimum hours for each grade are as follows:

(i) Kindergarten: 20 hours each week, or 4 hours (240 minutes) for each scheduled school day;

(ii) Primary (grades 1 through 3): 20 hours each week, or 4 hours (240 minutes) each scheduled school day;

(iii) Elementary (grades 4 through 6): 25 hours each week, or 5 hours (300 minutes) each scheduled school day;

(iv) Secondary (grades 7 through 12): 25 hours each week, or 5 hours (300 minutes) each scheduled school day.

(b) Beginning with the 2018-19 school year, the minimum hours for all grades and transition to kindergarten programs are 27 hours and 45 minutes each week (1,665 weekly minutes), or 5 hours and 33 minutes (333 minutes) for each scheduled school day.

(2) Except as limited by WAC 392-121-136, a student enrolled for less than the minimum hours shown in subsection (1) of this section shall be counted as a partial full-time equivalent student.

(a) Prior to the 2018-19 school year, a student's partial full-time equivalent is the student's weekly enrolled hours divided by the minimum hours for the student's grade level set forth in subsection (1)(a) of this section.

(b) Beginning with the 2018-19 school year, a student's partial full-time equivalent is the student's weekly enrolled minutes divided by 1,665.

(3) The full-time equivalent of a student's running start enrollment pursuant to RCW 28A.600.300 through 28A.600.400 shall be determined pursuant to chapter 392-169 WAC. If a running start student is enrolled both in high school courses provided by the school district or charter school and in running start courses provided by the college, the high school full-time equivalent and the running start full-time equivalent shall be determined separately.

(4) The full-time equivalent of University of Washington transition school students shall be determined pursuant to chapter 392-120 WAC.

(5) The full-time equivalent of a student's alternative learning experience shall be determined pursuant to WAC 392-121-182.

[Statutory Authority: RCW 28A.150.290. WSR 17-16-162, § 392-121-122, filed 8/2/17, effective 9/2/17. Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-121-122, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.305. WSR 13-02-004, § 392-121-122, filed 12/19/12, effective 1/19/13. Statutory Authority: RCW 28A.150.290. WSR 08-04-009, § 392-121-122, filed 1/24/08, effective 2/24/08; WSR 97-22-013 (Order 97-06), § 392-121-122, filed 10/27/97, effective 11/27/97; WSR 95-01-013, § 392-121-122, filed 12/8/94, effective 1/8/95. Statutory Authority: RCW 28A.41.055 and 28A.41.170. WSR 88-03-013 (Order 88-8), § 392-121-122, filed 1/11/88.]

AMENDATORY SECTION (Amending WSR 17-16-162, filed 8/2/17, effective 9/2/17)

**WAC 392-121-137 Full-time equivalent enrollment of students with a disability.** In determining the full-time equivalent enrollment of students reported as students with a disability pursuant to chapter 392-172A WAC, the following rules apply:

(1) If the student is enrolled exclusively in an ungraded special education program, the student's grade level shall be based on the typical grade level of students of the same age (e.g., a student who is six years old at the beginning of the school year shall be counted as a first grader).

(2) If the student is enrolled in a grade level below the typical grade level of students of the same age, the school district or charter school shall have the option of counting the student in the grade enrolled or the typical grade level of students of the same age.

(3) A student with a disability who is five years old at the beginning of the school year may be counted as a kindergarten student only if the student is enrolled in a kindergarten program and is provided special education services in addition to the kindergarten program.

(4) A student with a disability and enrolled in a transition to kindergarten program may be counted for transition to kindergarten funding.

[Statutory Authority: RCW 28A.150.290. WSR 17-16-162, § 392-121-137, filed 8/2/17, effective 9/2/17. Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-121-137, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.290. WSR 09-06-038, § 392-121-137, filed 2/25/09, effective 3/28/09; WSR 97-22-013 (Order 97-06), § 392-121-137, filed 10/27/97, effective 11/27/97; WSR 95-01-013, § 392-121-137, filed 12/8/94, effective 1/8/95.]

AMENDATORY SECTION (Amending WSR 20-15-062, filed 7/10/20, effective 8/10/20)

**WAC 392-121-182 Alternative learning experience requirements.**

(1) **Scope.** This section applies solely to school districts and charter schools claiming state funding pursuant to WAC 392-121-107 for an alternative learning experience.



(2) **Requirements.** A school district or charter school must meet the requirements of this section and chapter 392-550 WAC to count an alternative learning experience as a course of study pursuant to WAC 392-121-107.

(3) **Student eligibility.** A student enrolled in an alternative learning experience course must meet the following conditions:

(a) The student must meet the definition of an enrolled student under WAC 392-121-106;

(b) The student is enrolled in grades K-12;

(c) The student must not meet any of the enrollment exclusions in WAC 392-121-108;

~~((e))~~ (d) The student's residence must be in Washington state as provided in WAC 392-137-115; and

~~((d))~~ (e) For students whose residence is not located in the school district providing an alternative learning experience course (nonresident student), the district must:

(i) Document the school district in which the nonresident student's residence is located;

(ii) Establish procedures that address, at a minimum, the coordination of student counting for state funding so that no enrolled student is counted for more than one full-time equivalent in the aggregate. The procedure must include, but not be limited to, the following:

(A) When a resident district and one or more nonresident district(s) will each be claiming basic education funding for a student in the same month or months, the districts must execute a written agreement that at minimum identifies the maximum aggregate basic education funding each district may claim for the duration of the agreement. A nonresident district may not claim funding for a student until after the effective date of the agreement.

(B) When a district is providing alternative learning experiences to nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC, the district may not claim funding for the student until after a release transfer is completed by the resident district and the nonresident serving district.

(4) **Enrollment count dates.**

(a) Alternative learning experience enrollment is claimed based on the monthly count dates as defined in WAC 392-121-119.

(b) For alternative learning experience programs that end prior to June 1st, the June enrollment count date may be the last school day in May and include students whose written student learning plan pursuant to WAC 392-550-025(1) has an ending date that is the last school day in May.

(c) Graduating alternative learning experience students whose last school day is in May may be included in the June enrollment count if the following conditions are met:

(i) The alternative learning experience program calendar identifies that the last day of school for the graduating students is in May; and

(ii) The student's written student learning plan pursuant to WAC 392-550-025(1) includes an end date that is the last day of school for graduating students in May.

(5) **Reporting of student enrollment.**

(a) For the first time a student's alternative learning experience enrollment is claimed for state funding, the following requirements must be met:

(i) A completed written student learning plan pursuant to WAC 392-550-025(1) is in place with a start date that is before the monthly count day; and

(ii) There is documented evidence of student participation as required by WAC 392-121-106(4).

(b) On subsequent monthly count dates, a student's alternative learning experience course(s) can be claimed for state funding if the following requirements are met:

(i) A completed written student learning plan pursuant to WAC 392-550-025(1) is in place on the monthly count date;

(ii) The contact requirement pursuant to WAC 392-550-025(2) was met in the prior month;

(iii) The monthly progress evaluation requirement pursuant to WAC 392-550-025(3) was met in the prior month; and

(iv) If the monthly progress evaluation showed unsatisfactory progress, the intervention plan requirement pursuant to WAC 392-550-025(4) is met.

(c) Students must be excluded from the monthly count including students who have not had contact with a certificated teacher for (~~twenty~~) 20 consecutive school days. Any such student must be excluded from the monthly count until the student has met with a certificated teacher and resumed participation in their alternative learning experience or is participating in another course of study as defined in WAC 392-121-107.

(d) The student count must exclude students who as of the enrollment count date have completed the requirements of the written student learning plan prior to ending date specified in the plan and who have not had a new written student learning plan established with a new beginning and ending date that encompasses the count date.

**(6) Student full-time equivalency.**

(a) The full-time equivalency of students enrolled in alternative learning experiences is based on the estimated average weekly hours of learning activity described in the written student learning plan.

(b) Pursuant to WAC 392-121-122, (~~twenty-seven~~) 27 hours and (~~forty-five~~) 45 minutes each week (~~((one thousand six hundred sixty-five)) 1,665~~ weekly minutes) equal one full-time equivalent.

(c) Enrollment of part-time alternative learning experience students is subject to the provisions of chapter 392-134 WAC and generates a pro rata share of full-time funding based on the estimated average weekly minutes of learning activity described in the written student learning plan divided by (~~((one thousand six hundred sixty-five)) 1,665~~ weekly minutes).

(d) Kindergarten students claimed for more than a 0.50 full-time equivalent must meet the state-funded full-day kindergarten requirements, as provided for in RCW 28A.150.315.

(e) The full-time equivalent limitations outlined in WAC 392-121-136 and the nonstandard school year limitations outlined in WAC 392-121-123 apply to alternative learning enrollment.

[Statutory Authority: Chapter 28A.232 RCW and RCW 28A.232.030. WSR 20-15-062, § 392-121-182, filed 7/10/20, effective 8/10/20. Statutory Authority: RCW 28A.150.290, 28A.710.220, 28A.232.010, and 28A.150.315. WSR 18-19-040, § 392-121-182, filed 9/13/18, effective 10/14/18; WSR 18-10-045, § 392-121-182, filed 4/26/18, effective 5/27/18. Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-121-182, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.290. WSR 15-03-056, § 392-121-182, filed 1/14/15, effective

tive 2/14/15. Statutory Authority: RCW 28A.150.290(1). WSR 13-22-076, § 392-121-182, filed 11/5/13, effective 12/6/13. Statutory Authority: RCW 28A.150.305. WSR 12-17-107, § 392-121-182, filed 8/20/12, effective 9/20/12. Statutory Authority: 2011 c 34 § 2(5). WSR 11-17-147, § 392-121-182, filed 8/24/11, effective 9/1/11. Statutory Authority: RCW 28A.150.305. WSR 11-12-022, § 392-121-182, filed 5/24/11, effective 9/1/11. Statutory Authority: RCW 28A.150.290. WSR 09-06-038, § 392-121-182, filed 2/25/09, effective 3/28/09. Statutory Authority: RCW 28A.150.290 and 2005 c 356. WSR 05-13-154, § 392-121-182, filed 6/21/05, effective 7/22/05. Statutory Authority: 1997 c 265 § 6 and RCW 28A.150.290. WSR 99-08-008 (Order 99-01), § 392-121-182, filed 3/25/99, effective 4/25/99. Statutory Authority: RCW 28A.150.290. WSR 95-18-097, § 392-121-182, filed 9/6/95, effective 10/7/95; WSR 95-01-013, § 392-121-182, filed 12/8/94, effective 1/8/95. Statutory Authority: RCW 28A.150.290, 28A.150.250 and 28A.150.260. WSR 91-02-096 (Order 50), § 392-121-182, filed 1/2/91, effective 2/2/91. Statutory Authority: RCW 28A.41.055 and 28A.41.170. WSR 88-03-013 (Order 88-8), § 392-121-182, filed 1/11/88.]

#### OTS-4752.1

AMENDATORY SECTION (Amending WSR 22-24-029, filed 11/30/22, effective 12/31/22)

**WAC 392-122-430 Physical, social, and emotional support (PSES) staff—Apportionment of state moneys.** (1) State moneys for PSES staff shall be allocated as provided in this chapter.

(2) PSES staff allocations based on the prototypical school formula provided in RCW 28A.150.260 and the Omnibus Appropriations Act for PSES staff will be based upon budgeted assumptions as provided in the F-203 revenue estimate from September through December for the year budgeted.

(3) School districts, charter schools, and tribal compact schools must input their estimated PSES staffing penalty units, if applicable, for purposes of funding from September through December.

(4) Enrollment will only include student full-time equivalent (FTE) enrolled in the general education program 01 as defined in RCW 28A.150.260 and transition to kindergarten program 09 as defined in Second Substitute House Bill No. 1550 (chapter 420, Laws of 2023) and chapter 392-425 WAC.

(5) Funded ratios starting with January apportionment will be based on actual average annual FTE enrollment reported in the P-223.

(6) School districts, charter schools, and tribal compact schools must meet the legislative compliance requirements of PSES staffing to generate the full allotment.

[Statutory Authority: RCW 28A.150.260. WSR 22-24-029, § 392-122-430, filed 11/30/22, effective 12/31/22.]

AMENDATORY SECTION (Amending WSR 22-24-029, filed 11/30/22, effective 12/31/22)

**WAC 392-122-435 Physical, social, and emotional support (PSES)—Student enrollment.** (1) Grade level and transition to kindergarten enrollment reported on the P-223 will be considered in the compliance calculations for January, March, and June.

(2) Only students in program 01 - Basic education and program 09 - Transition to kindergarten will be included in the calculation. Enrollment in career and technical education, skill center, alternative learning experience, open doors, and running start programs will be excluded from the calculation.

[Statutory Authority: RCW 28A.150.260. WSR 22-24-029, § 392-122-435, filed 11/30/22, effective 12/31/22.]

AMENDATORY SECTION (Amending WSR 22-24-029, filed 11/30/22, effective 12/31/22)

**WAC 392-122-440 Physical, social, and emotional support (PSES)—Staff.** (1) The superintendent of public instruction will include in the calculation of PSES compliance of those staff that are coded in programs 01, 09, or 97 to one of the following duty root and activity code combinations:

- Duty root 39 - All activities - Orientation and mobility specialist;
- Duty root 42 - All activities - Counselor;
- Duty root 43 - All activities - Occupational therapist;
- Duty root 44 - All activities - Social worker;
- Duty root 45 - All activities - Speech, language pathology/ audio;
- Duty root 46 - All activities - Psychologists;
- Duty root 47 - All activities - Nurse;
- Duty root 48 - All activities - Physical therapist;
- Duty root 49 - All activities - Behavior therapist;
- Duty root 64 - All activities - Contractor ESA;
- Duty root 96 - Activity 24 - Family engagement coordinator;
- Duty roots 91 - 99 - Activity 25 - Pupil management and safety;
- Duty roots 91 - 99 - Activity 26 - Health/related services.

(2) S-275 data as of the published apportionment cutoff dates in January, March, and June will be considered in the calculation.

(3) Districts must prioritize funding allocated for PSES staff to staff who hold a valid ESA certificate appropriate for that role.

(4) Staff coded to the above duty roots and activity codes in program 21 will be multiplied by the annual percentage of students receiving special education instruction used in the determination of 3121 revenue for inclusion in the compliance calculation.

[Statutory Authority: RCW 28A.150.260. WSR 22-24-029, § 392-122-440, filed 11/30/22, effective 12/31/22.]

AMENDATORY SECTION (Amending WSR 22-24-029, filed 11/30/22, effective 12/31/22)

**WAC 392-122-450 Physical, social, and emotional support (PSES) compliance—Calculations.** (1) Funded staffing units will be calculated using each grade level and transition to kindergarten funding formula calculations.

(2) Staffing units will be combined at the district level and compared to the staffing units generated using the prototypical funding model.

(3) Penalty units are determined by subtracting the prototypical funded staff units from the district's actual funded units.

(4) Staff in the S-275 or the supplemental tool not assigned to a valid grade grouping will be included into the high school funding formula.

[Statutory Authority: RCW 28A.150.260. WSR 22-24-029, § 392-122-450, filed 11/30/22, effective 12/31/22.]

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

**WAC 392-122-500 K-3 class size—Apportionment of state moneys.**

(1) State moneys for K-3 class size including transition to kindergarten program 09 as defined in Second Substitute House Bill No. 1550 (chapter 420, Laws of 2023) and chapter 392-425 WAC shall be allocated as provided in this chapter.

(2) Elementary teacher allocations based on the prototypical schools formula provided in RCW 28A.150.260 and the Omnibus Appropriations Act for grades K-3 and transition to kindergarten program (grade T) will be based upon budgeted grades K-3 and grade T enrollment as stated in the F-203 revenue estimate from September through December for the year budgeted.

(3) School districts, charter schools, and tribal compact schools must input their estimated grades K-3 and grade T class size for purposes of funding from September through December.

(4) K-3 enrollment will not include student full-time equivalent (FTE) enrolled in alternative learning experience programs that meet the requirements of WAC 392-121-182.

(5) Funded class size starting with January apportionment will be based on the actual average annual FTE enrollment reported in the P-223.

(6) School districts, charter schools, and tribal compact schools must meet the legislative compliance requirements of K-3 class size funding in order to generate the full allotment.

[Statutory Authority: RCW 28A.150.290 and 28A.710.040(5). WSR 21-04-039, § 392-122-500, filed 1/26/21, effective 2/26/21.]

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

**WAC 392-122-505 K-3 class size—Student enrollment.** (1) Grade level K-3 and transition to kindergarten program enrollment reported on the P-223 will be considered in the compliance calculations for the months of January, March, and June.

(2) All students in alternative learning experience programs that meet the requirements of WAC 392-121-182 will be excluded from the compliance calculation.

[Statutory Authority: RCW 28A.150.290 and 28A.710.040(5). WSR 21-04-039, § 392-122-505, filed 1/26/21, effective 2/26/21.]

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

**WAC 392-122-510 K-3 class size—Teachers.** (1) The superintendent of public instruction will include in the calculation of K-3 class size compliance those teachers reported on the S-275 that are coded in programs 01 to grade group K, 1, 2, or 3, and program 09 for transition to kindergarten (grade T), and are reported in one of the following duty roots:

- Duty root 31 - Elementary homeroom teacher;
- Duty root 33 - Other teacher;
- Duty root 34 - Elementary specialist teacher;
- Duty root 52 - Substitute teacher;
- Duty root 63 - Contractor teacher.

(2) S-275 data as of the published apportionment cutoff dates in January, March, and June will be considered in the calculation.

(3) Program 21 special education teachers coded to grade K, 1, 2, or 3, and grade T multiplied by the annual percentage of students receiving special education instruction used in determination of a district's, tribal compact school's, or charter school's 3121 revenue will be included.

(4) Teachers coded to program 02 alternative learning experience will be excluded.

[Statutory Authority: RCW 28A.150.290 and 28A.710.040(5). WSR 21-04-039, § 392-122-510, filed 1/26/21, effective 2/26/21.]

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

**WAC 392-122-515 K-3 class size compliance—Supplemental FTE teachers.** (1) Supplemental teacher full-time equivalent (FTE) teachers must be reported to the superintendent of public instruction prior to the published S-275 apportionment cutoff dates in January, March, and June to be considered. Supplemental teacher FTE must be reported by individual grade level K, 1, 2, ~~(and)~~ 3, and transition to kindergarten (grade T).

(2) Supplemental FTE teacher reporting shows the net change in full-time equivalent teachers after October 1st of the school year not reflected in report S-275 under WAC 392-122-510. Supplemental full-time equivalent teachers are determined as follows:

(a) Determine the teacher FTE that would be reported for each employee for the school year on report S-275 if the current data were submitted for the October 1st snapshot as required in the S-275 instructions and subtract the teacher FTE as of October 1st actually reported for the employee on the most current report S-275.

(b) Include decreases as well as increases in staff after October 1st and not reflected in report S-275. Decreases include terminations, retirements, unpaid leave, and reassignment of staff.

[Statutory Authority: RCW 28A.150.290 and 28A.710.040(5). WSR 21-04-039, § 392-122-515, filed 1/26/21, effective 2/26/21.]

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

**WAC 392-122-520 K-3 class size—Calculation.** Funded class size will be calculated by dividing the total teachers and supplemental teacher FTE across all grades K-3 and transition to kindergarten (grade T) collectively as provided in WAC 392-122-510 into the calculated combined total enrollment in grade levels of T, K, 1, 2, or 3.

[Statutory Authority: RCW 28A.150.290 and 28A.710.040(5). WSR 21-04-039, § 392-122-520, filed 1/26/21, effective 2/26/21.]

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

**WAC 392-122-605 Apportionment of state moneys for the state learning assistance program.** (1)(a) State learning assistance program moneys shall be allocated as provided in the state Operating Appropriations Act in effect at the time the apportionment is due.

(b) The superintendent of public instruction may withhold the monthly learning assistance program apportionment payment to a school district, charter school, or tribal compact school if the school district, charter school, or tribal compact school fails to submit its annual report for the prior school year to the superintendent of public instruction by the established due date. The first learning assistance program apportionment payment of the school year and subsequent allocations may be withheld until the annual reports are completed in approvable form.

(2) Learning assistance program moneys include a district learning assistance program base allocation and a learning assistance program high-poverty based school allocation for eligible schools.

(a) A school district's funded students for the learning assistance program base allocation shall be the sum of the district's annual average full-time equivalent enrollment in grades K-12 and transition to kindergarten program for the prior school year multiplied by the district's percentage of October headcount enrollment in grades

K-12 eligible for free or reduced-price lunch in the prior school year. The prior school year's October headcount enrollment for free and reduced-price lunch shall be as reported in the comprehensive education data and research system as of March 31st of the prior school year.

(b) (i) A school is eligible for the learning assistance program high-poverty based school allocation if it is funded through the prototypical model and has at least (~~fifty~~) 50 percent of its students eligible for free and reduced-price meals in the prior school year. The percentage is determined by the school's percentage of October headcount enrollment in grades K-12 for free and reduced-price lunch as reported in the comprehensive education data and research system as of March 31st of the prior school year.

(ii) An eligible school's funded students for the learning assistance high-poverty based allocation shall be the sum of the school's annual average full-time enrollment in grades K-12 and transition to kindergarten program for the prior year.

[Statutory Authority: RCW 28A.150.290 and 28A.710.040 (5). WSR 21-04-039, § 392-122-605, filed 1/26/21, effective 2/26/21. Statutory Authority: RCW 28A.150.290 and 28A.155.075. WSR 19-04-097, § 392-122-605, filed 2/5/19, effective 3/8/19. Statutory Authority: RCW 28A.165.075 and 28A.150.290. WSR 18-02-082, § 392-122-605, filed 1/2/18, effective 2/2/18; WSR 16-16-078, § 392-122-605, filed 7/29/16, effective 9/1/16. Statutory Authority: RCW 28A.150.290, 1989 1st ex.s. c 19 and 1990 1st ex.s. c 16. WSR 91-03-118 (Order 2), § 392-122-605, filed 1/23/91, effective 2/23/91. Statutory Authority: RCW 28A.41.170. WSR 87-09-018 (Order 87-2), § 392-122-605, filed 4/6/87; WSR 86-01-021 (Order 85-16), § 392-122-605, filed 12/9/85; WSR 84-20-078 (Order 84-36), § 392-122-605, filed 10/2/84; WSR 84-13-020 (Order 84-10), § 392-122-605, filed 6/13/84.]

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

**WAC 392-122-805 Formula for distribution of state moneys for the state highly capable students education program.** A school district's or charter school's entitlement for state moneys for the state highly capable students education program shall be calculated as follows:

(1) Multiplying the reporting district's or charter school's average annual full-time equivalent students, as defined in WAC 392-121-133, excluding enrollment reported for transition to kindergarten program by the per pupil allocation established in the State Operating Appropriations Act in effect at the time the apportionment is due; and

(2) The product is the district's or charter school's entitlement subject to WAC 392-122-810 and its provision for enrollment adjustment.

[Statutory Authority: RCW 28A.150.290 and 28A.710.040 (5). WSR 21-04-039, § 392-122-805, filed 1/26/21, effective 2/26/21. Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-122-805, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.290. WSR 09-04-082, § 392-122-805, filed 2/3/09, effective 3/6/09; WSR 96-03-002, § 392-122-805, filed 1/3/96, effective 2/3/96.]



Statutory Authority: RCW 28A.150.290, 1989 1st ex.s. c 19 and 1990 1st ex.s. c 16. WSR 91-03-118 (Order 2), § 392-122-805, filed 1/23/91, effective 2/23/91. Statutory Authority: RCW 28A.41.170. WSR 84-20-078 (Order 84-36), § 392-122-805, filed 10/2/84; WSR 84-13-020 (Order 84-10), § 392-122-805, filed 6/13/84.]

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

**WAC 392-122-810 Distribution of state moneys for the state highly capable students education program.** The superintendent of public instruction shall apportion to districts and charter schools for the state highly capable student education program the amount calculated per district or charter school in WAC 392-122-805 according to the apportionment schedule provided in RCW 28A.510.250. The amount apportioned may be adjusted intermittently to reflect changes in the district's or charter school's average annual full-time equivalent students as reported on the P223, monthly report of school district enrollment form, excluding enrollment reported for transition to kindergarten program.

[Statutory Authority: RCW 28A.150.290 and 28A.710.040(5). WSR 21-04-039, § 392-122-810, filed 1/26/21, effective 2/26/21. Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-122-810, filed 8/28/15, effective 9/28/15. Statutory Authority: 1990 c 33. WSR 90-16-002 (Order 18), § 392-122-810, filed 7/19/90, effective 8/19/90. Statutory Authority: RCW 28A.41.170. WSR 84-20-078 (Order 84-36), § 392-122-810, filed 10/2/84; WSR 84-13-020 (Order 84-10), § 392-122-810, filed 6/13/84.]

**OTS-4726.2**

**Chapter 392-425 WAC  
TRANSITION TO KINDERGARTEN**

NEW SECTION

**WAC 392-425-005 Purpose and authority.** The purpose of this chapter is to provide minimum standards and requirements for transition to kindergarten programs. The chapter is intended to ensure that transition to kindergarten programs serve eligible students of all abilities who need additional preparation to be successful in kindergarten and who lack access to other early learning group settings. The rules in this chapter establish expectations and requirements for local education agencies in implementing and administering transition to kindergarten programs.

The authority for this chapter is under Second Substitute House Bill No. 1550 (chapter 420, Laws of 2023), which requires the office

of superintendent of public instruction to establish rules concerning transition to kindergarten programs.

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NEW SECTION

**WAC 392-425-010 Applicability.** This chapter establishes the minimum administrative requirements and program standards for implementing and administering quality transition to kindergarten programs under Second Substitute House Bill No. 1550 (chapter 420, Laws of 2023) and this chapter.

[]

NEW SECTION

**WAC 392-425-015 Eligibility.** A transition to kindergarten program may be implemented and administered by the following local education agencies, in accordance with Second Substitute House Bill No. 1550 (chapter 420, Laws of 2023):

- (1) Common school districts;
- (2) State tribal compact schools authorized under chapter 28A.715 RCW;
- (3) For school years 2023-24 and 2024-25, only charter schools authorized under RCW 28A.710.080(2) may implement and administer a transition to kindergarten program.

[]

NEW SECTION

**WAC 392-425-020 Definitions.** "Eligible local education agency" means a local education agency authorized to administer a transition to kindergarten program under WAC 392-425-015.

"Screening process and tool" means using one or more instruments or methods of assessing and measuring the ability and need of an individual student.

[]

NEW SECTION

**WAC 392-425-025 Notification of intent to offer a transition to kindergarten program.** For the 2023-24 school year, an eligible local education agency planning to implement and administer a transition to kindergarten program during the 2023-24 school year, must notify the office of superintendent of public instruction. The notice must be

provided through a process established by the office of superintendent of public instruction.

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NEW SECTION

**WAC 392-425-030 Local area early learning coordination.** For the 2023-24 school year, an eligible local education agency administering a transition to kindergarten program must make a best effort to coordinate with local childcare and early learning providers.

[]

NEW SECTION

**WAC 392-425-035 Staff qualifications.** A person serving as a teacher in a transition to kindergarten program must hold a valid teaching certificate in accordance with Title 181 WAC. Certificated educators with an early childhood education endorsement are strongly recommended. Paraeducators for transition to kindergarten programs must have met the minimum hiring requirements and must make progress on the paraeducator certificate program in accordance with Title 179 WAC.

[]

NEW SECTION

**WAC 392-425-040 Student eligibility.** (1) Children meeting the following criteria are eligible to participate in a transition to kindergarten program offered by an eligible local education agency:

(a) A child who has been determined, by the local education agency, to benefit from additional preparation for kindergarten through a screening process and tool; and

(b) A child who is at least four years old by August 31st of the school year in which they enroll in a transition to kindergarten program.

(2) In determining student eligibility and admitting students to a transition to kindergarten program, local education agencies must:

(a) Give priority to children most in need of additional preparation to be successful in kindergarten, as demonstrated through a screening process and tool.

(b) Give priority to children with the lowest family income not otherwise participating in another local program.

(c) Not exclude, nor establish a policy to prohibit from participation, an eligible child due only to the presence of a disability.

(d) Not charge tuition or other fees from state-funded eligible students for enrollment in a transition to kindergarten program.

[]

NEW SECTION

**WAC 392-425-045 Minimum instructional requirements (school year, days, and hours).** (1) Eligible local education agencies offering a transition to kindergarten program must offer the program during the local education agency's school year.

(a) The program may begin after the first day of the local education agency's school year.

(b) If a partial-year program is being offered, it must begin by January 31st of the school year.

(c) The program must conclude by the end of the school year.

(2) Transition to kindergarten programs must be offered as an all-day program.

Based on family choice, a child may participate in a transition to kindergarten program as a part-time student (partial day). A part-time student will be counted as a partial full-time equivalent student in accordance with WAC 392-121-122.

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NEW SECTION

**WAC 392-425-050 Transition to kindergarten apportionment procedures.** The local education agency administering a transition to kindergarten program is subject to the apportionment procedures under chapters 392-121 and 392-122 WAC.

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NEW SECTION

**WAC 392-425-055 Assessment for transition to kindergarten students.** For the 2023-24 school year only, the Washington kindergarten inventory of developing skills (WaKIDS) must be administered at the beginning of the program. Additionally, it is recommended that the WaKIDS whole-child assessment be administered at least one more time during the school year. A student's parent or guardian has the option to decline or excuse their student from the assessment.

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