

WSR 21-06-001
EMERGENCY RULES
PENINSULA COLLEGE

[Filed February 17, 2021, 12:30 p.m., effective February 17, 2021, 12:30 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address the grievance process for formal complaints of sexual harassment and are scheduled to take effect on August 14, 2020. This requires emergency updates to the college's student conduct code to be compliant with federal regulations. Chapter 132A-125 WAC will be repealed in its entirety and new chapter 132A-126 WAC will be submitted.

Citation of Rules Affected by this Order: New chapter 132A-126 WAC; and repealing chapter 132A-125 WAC.

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

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

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

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 29, Amended 0, Repealed 23; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 29, Amended 0, Repealed 23.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: August 14, 2021.

Kelly Griffith
Executive Assistant
to the President
Rules Coordinator

OTS-2515.1

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132A-125-005	Preamble.
WAC 132A-125-010	Authority.

WAC 132A-125-015	Definitions.
WAC 132A-125-020	Statement of jurisdiction.
WAC 132A-125-025	Student rights.
WAC 132A-125-030	Prohibited student conduct.
WAC 132A-125-035	Disciplinary sanctions—Terms— Conditions.
WAC 132A-125-040	Initiation of disciplinary action.
WAC 132A-125-045	Appeal of disciplinary action.
WAC 132A-125-050	Brief adjudicative proceedings authorized.
WAC 132A-125-055	Brief adjudicative proceedings—Initial hearing.
WAC 132A-125-060	Brief adjudicative proceedings—Review of an initial decision.
WAC 132A-125-065	Brief adjudicative proceedings—Agency record.
WAC 132A-125-070	Student conduct committee proceedings.
WAC 132A-125-075	Student conduct committee proceedings— Appeals.
WAC 132A-125-080	Student conduct committee proceedings— Hearings and presentations of evidence.
WAC 132A-125-085	Student conduct committee proceedings— Initial decision.
WAC 132A-125-090	Student conduct committee proceedings— Appeal of initial decision.
WAC 132A-125-095	Summary suspension.
WAC 132A-125-100	Supplemental sexual misconduct procedures.
WAC 132A-125-105	Supplemental definitions.
WAC 132A-125-110	Supplemental complaint process.
WAC 132A-125-115	Supplemental appeal rights.

OTS-2516.2

Chapter 132A-126 WAC
CODE OF STUDENT RIGHTS AND RESPONSIBILITIES

NEW SECTION

WAC 132A-126-005 Preamble. Peninsula College is a diverse and dynamic learning community. As such, the college maintains a strong commitment to providing a learning environment that is civil and free

from disruptive behavior. All members of the college community share in the responsibility to promote a positive learning environment, demonstrate mutual respect and dignity, and avoid adversarial relationships. Thus, students are expected to act as responsible members of this community, maintain a high degree of honesty and integrity, comply with the rules and regulations of the college, and respect the rights, privileges, and property of the college community.

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NEW SECTION

WAC 132A-126-010 Authority. The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president for student services or their designee. The student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

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NEW SECTION

WAC 132A-126-015 Definitions. The following definitions shall apply for the purposes of this student conduct code:

(1) "Business day" means a weekday, excluding weekends and college holidays.

(2) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(3) "Complainant" is an alleged victim of sexual misconduct.

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

(5) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

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

(7) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) Sending the document by email and first class mail to the specified college official's office and college email address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(8) "Instructional day" is a day identified in the academic calendar and quarterly schedule as a classroom instruction day.

(9) "President" is the president of the college. The president is authorized to:

(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

(10) "Respondent" is the student against whom disciplinary action is initiated.

(11) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) Sending the document by email and by certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.

(12) "Sexual misconduct" has the meaning ascribed to this term in WAC 132A-126-030(13).

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

(14) "Student conduct officer" is a college administrator designated by the president to be responsible for implementing and enforcing the student conduct code.

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NEW SECTION

WAC 132A-126-020 Statement of jurisdiction. (1) The Peninsula College code of student rights and responsibilities shall apply to student conduct that occurs:

(a) On college premises;

(b) At or in connection with college-sponsored activities; or

(c) To off-campus conduct that, in the judgment of the college, adversely affects the college community or the pursuit of its objectives.

(2) Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, super-

vised work experiences, or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off campus.

(5) The student conduct officer has sole discretion, on a case-by-case basis to bring a student conduct proceeding under this code for academic dishonesty. Nothing in this code precludes instructors and/or academic divisions or departments from imposing an academic sanction, up to and including a failing grade in an academic course or dismissal from an academic program, in response to academic dishonesty.

Policies and procedures governing the imposition of academic sanctions for academic dishonesty can be found in the college's academic integrity policy, the course syllabus, and any applicable program handbook.

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NEW SECTION

WAC 132A-126-025 Statement of student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy, which are deemed necessary to achieve the educational goals of the college:

(1) **Academic freedom.**

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation that is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment that is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) **Due process.**

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

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

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NEW SECTION

WAC 132A-126-030 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages or assists another person to commit an act(s) of misconduct, which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Obstructive or disruptive conduct.** Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:

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

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

(4) **Assault, intimidation, harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, for purposes of this code, "bullying" is defined as repeated or

aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

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

(6) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(7) **Failure to comply with directive.** Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of his or her duties including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Possession, holding, wearing, transporting, storage, or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

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

(b) A student with a valid concealed weapons permit may store a firearm in his or her vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

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

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

(9) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm to any student.

(10) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** The use, possession, delivery, sale or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** The use, possession, delivery, sale or being observably under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana

na, federal law prohibits such use on college premises or in connection with college activities.

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

(d) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

(11) **Lewd conduct.** Conduct that is lewd or obscene that is not otherwise protected under the law.

(12) **Discriminatory conduct.** Discriminatory conduct that harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 132A-126-205 Prohibited conduct under Title IX.

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

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

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

(iii) Creates an intimidating, hostile, or offensive environment for other campus community members.

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

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

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

(ii) **Nonconsensual sexual contact.** Any actual or attempted sexual touching, however slight, with any body part or object, by a person

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

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

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

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

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

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

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

(I) The length of the relationship;

(II) The type of relationship; and

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

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

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

(B) Suffer substantial emotional distress.

For the purposes of this code, "consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive envi-

ronment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications.

(15) **Retaliation.** Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state, or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) **Safety violations.** Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(19) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceed-

ings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

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NEW SECTION

WAC 132A-126-035 Disciplinary sanctions—Terms—Conditions. The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code.

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

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

(3) **Disciplinary probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance, depending upon the seriousness of the violation, and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college.

(4) **Disciplinary suspension.** Dismissal from the college and from student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(5) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken. Disciplinary terms and conditions that may be imposed in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

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

future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

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

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

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

(7) **No contact order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

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NEW SECTION

WAC 132A-126-040 Initiation of disciplinary action. (1) All disciplinary actions shall be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting, the student conduct officer may take disciplinary action based upon the available information.

(3) The student conduct officer, prior to taking disciplinary action in a case involving allegations of sexual misconduct, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(4) Within ten days of the initial disciplinary meeting and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting his or her decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(5) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), as described in WAC 132A-126-035.

(c) Refer the matter directly to the student conduct committee for such disciplinary action, as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

(6) In cases involving allegations of sexual misconduct, the student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure that prompt notice of the protective disciplinary sanctions and/or conditions occurs.

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NEW SECTION

WAC 132A-126-045 Appeal of disciplinary action. (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within ten days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

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

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

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

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

(7) The student conduct committee shall hear appeals from:

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

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

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

(a) Suspensions of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

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

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

(9) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the student conduct officer following the same procedures as set forth above for the respondent:

(a) The dismissal of a sexual misconduct complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(10) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(11) Except as otherwise specified in this chapter, a complainant who timely appeals a disciplinary decision or who intervenes as a party to a respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

[]

NEW SECTION

WAC 132A-126-050 Brief adjudicative proceedings authorized.

Brief adjudicative proceedings shall be used for student conduct appeals involving the following disciplinary actions:

(1) Suspensions of ten instructional days or less;

(2) Disciplinary probation;

(3) Written reprimands;

(4) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions; and

(5) Appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:

(a) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or

(b) Issues a verbal warning to the respondent.

[]

NEW SECTION

WAC 132A-126-055 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) The parties to a brief adjudicative proceeding are the respondent, the student conduct officer, and in cases involving sexual misconduct, the complainant. Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the agency's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon the respondent and the student conduct officer within ten days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within ten days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) In cases involving allegations of sexual misconduct, the conduct review officer, on the same date the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection. The notice will also inform the complainant of their appeal rights.

(5) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

[]

NEW SECTION

WAC 132A-126-060 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the conduct review officer within twenty-one days of service of the initial decision.

(2) The president shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make

a disposition of the matter within twenty days after the requestor is submitted.

(5) If the president upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

(6) In cases involving allegations of sexual misconduct, the president, on the same date the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of their appeal rights.

[]

NEW SECTION

WAC 132A-126-065 Brief adjudicative proceedings—Agency record.

The agency record for brief adjudicative proceedings shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. These records shall be maintained as the official record of the proceedings.

[]

NEW SECTION

WAC 132A-126-070 Student conduct committee proceedings. (1) The

student conduct committee shall consist of five members:

- (a) Two full-time students appointed by the student government;
- (b) Two faculty members appointed by the president;

(c) One faculty member or administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The faculty member or administrator appointed on a yearly basis shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee, so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition the committee for disqualification of a committee member.

[]

NEW SECTION

WAC 132A-126-075 Appeal—Student conduct committee. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The chair may shorten this notice period if both parties agree, and also may continue the hearing at a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request, filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of:

(a) The conduct officer's notification of imposition of discipline (or referral to the committee); and

(b) The notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) In cases heard by the committee, each party may be accompanied at the hearing by a nonattorney assistant of their choice. The respondent in all appeals before the committee, or a complainant in an appeal involving allegations of sexual misconduct before the committee, may elect to be represented by an attorney at their own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to

the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent and/or the complainant is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

(10) At the option of the college president, the college may appoint an administrative law judge to serve as a hearing officer responsible for handling procedural matters otherwise assigned to the chair and to conduct the hearing on behalf of the student conduct committee.

[]

NEW SECTION

WAC 132A-126-080 Student conduct committee hearings—Presentations of evidence.

(1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision; or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer, unless represented by an assistant attorney general, shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

In cases involving allegations of sexual misconduct, no party shall directly question or cross-examine one another. Attorneys for the parties are also prohibited from questioning the opposing party absent express permission from the committee chair. Subject to this exception, all cross-examination questions shall be directed to the committee chair, who in their discretion shall pose the questions on the party's behalf.

[]

NEW SECTION**WAC 132A-126-085 Student conduct committee—Initial decision.**

(1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty days following the later of the conclusion of the hearing, or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

(5) In cases involving allegations of sexual misconduct, the chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties. The notice will also inform the complainant of their appeal rights.

[]

NEW SECTION

WAC 132A-126-090 Appeal from student conduct committee initial decision. (1) A party who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within ten days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to all parties within twenty days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) In cases involving allegations of sexual misconduct, the president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

(5) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

[]

NEW SECTION

WAC 132A-126-095 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges, for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a no-

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

(5) (a) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(b) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(c) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(d) If the student fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(e) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(f) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices that may be bound or protected by it.

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

[]

NEW SECTION

WAC 132A-126-100 Sexual misconduct proceedings. Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

[]

NEW SECTION

WAC 132A-126-200 Supplemental Title IX student conduct procedures—Order of precedence. This supplemental procedure applies to

allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the college's standard disciplinary procedures, WAC 132A-126-005 through 132A-126-095, these supplemental procedures shall take precedence.

[]

NEW SECTION

WAC 132A-126-205 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

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

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

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

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

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

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

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

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

who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

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

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

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

(i) The length of the relationship;

(ii) The type of relationship; and

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

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

[]

NEW SECTION

WAC 132A-126-210 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

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

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

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

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, WAC 132A-126-020 through 132A-126-095.

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

[]

NEW SECTION

WAC 132A-126-215 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

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

- (a) Set forth the basis for Title IX jurisdiction;
- (b) Identify the alleged Title IX violation(s);
- (c) Set forth the facts underlying the allegation(s);
- (d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);
- (e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:
 - (i) The advisors will be responsible for questioning all witnesses on the party's behalf;
 - (ii) An advisor may be an attorney; and
 - (iii) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.
- (3) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

[]

NEW SECTION

WAC 132A-126-220 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132A-126-040. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

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

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

[]

NEW SECTION

WAC 132A-126-225 Rights of parties. (1) The college's student conduct procedures, WAC 132A-126-040 through 132A-126-095, and this supplemental procedure shall apply equally to all parties.

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

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

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

[]

NEW SECTION

WAC 132A-126-230 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

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

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

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

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

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

(a) Spousal/domestic partner privilege;

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

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

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

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

(f) Other legal privileges identified in RCW 5.60.060.

[]

NEW SECTION

WAC 132A-126-235 Initial order. (1) In addition to complying with WAC 132A-126-055, the student conduct committee will be responsible for conferring and drafting an initial order that:

- (a) Identifies the allegations of sexual harassment;
 - (b) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;
 - (c) Makes findings of fact supporting the determination of responsibility;
 - (d) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;
 - (e) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;
 - (f) Describes any disciplinary sanction or conditions imposed against the respondent, if any;
 - (g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college's education programs or activities; and
 - (h) Describes the process for appealing the initial order to the college president.
- (2) The committee chair will serve the initial order on the parties simultaneously.

[]

NEW SECTION

WAC 132A-126-240 Appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 132A-126-060.

(2) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

The president's office shall serve the final decision on the parties simultaneously.

[]

WSR 21-06-006
EMERGENCY RULES
ARTS COMMISSION

[Filed February 17, 2021, 3:49 p.m., effective February 17, 2021, 3:49 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The grants program is increasing the amount the executive director can approve for individual grant awards by amending WAC 30-02-015 Grants.

Citation of Rules Affected by this Order: Amending 1.

Statutory Authority for Adoption: RCW 43.46.040.

Other Authority: RCW 43.46.005 and 43.46.055.

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 Washington state arts commission is pursuing permanent adoption of this rule amendment and has filed WSR 21-05-045 on February 11, 2021. The COVID-19 pandemic has had a severe and negative impact on Washington's creative economy. The emergency adoption of this proposed amendment provides the agency flexibility and capacity to provide effective rapid-response and sustained operating support in the form of grants during, but not limited to, this and other natural disasters, emergencies, and when resolving structural inequities that impact the conservation and development of the state's artistic resources as described in RCW 43.46.005 and authorized by 43.46.055.

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

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

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

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

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

Date Adopted: February 17, 2021.

Karen Hanan
Executive Director

OTS-2914.1

AMENDATORY SECTION (Amending WSR 19-07-001, filed 3/6/19, effective 4/6/19)

WAC 30-12-015 Grants. (1) The commission provides grants through a competitive process to organizations or individuals for the

purpose of developing, sponsoring, and promoting the growth and development of the arts and arts education in the state of Washington.

(2) Staff create and publish applications, application cycles, forms and documents, guidelines, eligibility requirements, review criteria, and select review panelists.

(3) Staff manage the application process. Panelists evaluate and score applications and offer recommendations to the board. See also WAC 30-12-017 (Applications) and WAC 30-12-030 (Panels).

(4) The board reviews panel recommendations and approves grants, except as noted below.

(a) The executive director may approve grants that do not exceed ((three)) five thousand dollars. Grants approved by the executive director are subject to ratification by the board at the next board meeting.

(b) The board may delegate to the executive director approval of grants that exceed ((three)) five thousand dollars. Grants approved by the executive director are subject to ratification by the board at the next board meeting.

[Statutory Authority: RCW 43.46.040. WSR 19-07-001, § 30-12-015, filed 3/6/19, effective 4/6/19; WSR 18-02-086, § 30-12-015, filed 1/2/18, effective 2/2/18. Statutory Authority: Chapter 43.46 RCW. WSR 10-23-102, § 30-12-015, filed 11/16/10, effective 12/17/10.]

WSR 21-06-007
EMERGENCY RULES
DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed February 18, 2021, 9:44 a.m., effective February 18, 2021, 9:44 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To comply with P.L. 116.260, Supporting Youth and Foster Families through the Pandemic Act 2021, the emergency rules:

- Allow youth who are eligible for extended foster care services to voluntarily reenter the program upon reaching the maximum eligibility age of twenty-one on or after April 1, 2020;
- Allow program participants to remain in the program, regardless of their age, until September 30, 2021; and
- Relieve program participants from being exited from the program for not being able to participate in required education, training, or employment activities or providing documentation of a medical condition that prevents their participation in these activities.

Citation of Rules Affected by this Order: Amending WAC 110-90-0020, 110-90-0040, 110-90-0110, 110-90-0140, 110-90-0160, 110-90-0190, 110-90-0200, 110-145-1305, 110-147-1305, and 110-148-1305.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: P.L. 116-260, Proclamation of the Governor 21-02.

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: P.L. 116-260 forbids states from refusing foster care services to persons who, during the COVID-19 pandemic, either have or will become too old to be eligible for services and eliminates certain additional eligibility elements.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 10, 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 0, Repealed 0.

Date Adopted: February 18, 2021.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-14-066, filed 6/28/19, effective 7/29/19)

WAC 110-90-0020 What is the purpose of the extended foster care program? The extended foster care program provides an opportunity for young adults who are dependent at age eighteen to voluntarily agree to continue receiving foster care services, ~~(, including placement services, while the youth:~~

- ~~(1) Completes a high school or a high school equivalency program;~~
 - ~~(2) Completes a secondary or post-secondary academic or vocational program;~~
 - ~~(3) Participates in a program or activity designed to promote employment or remove barriers to employment;~~
 - ~~(4) Is engaged in employment for eighty hours or more per month;~~
- or
- ~~(5) Is unable to engage in subsections (1) through (4) of this section due to a documented medical condition.)~~

[Statutory Authority: RCW 74.12.340, 74.04.050, 74.04.055, 74.08.090 and WAC 110-20-0010. WSR 19-14-066, § 110-90-0020, filed 6/28/19, effective 7/29/19. WSR 18-14-078, recodified as § 110-90-0020, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, and 13.34.030. WSR 16-14-065, § 388-25-0502, filed 6/30/16, effective 7/31/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030 and Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). WSR 16-06-044, § 388-25-0502, filed 2/24/16, effective 3/26/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030. WSR 14-13-051, § 388-25-0502, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 74.13.031, 13.34.267, and 2008 federal legislation "Fostering Connections to Success and Increasing Adoptions Act." WSR 13-08-017, § 388-25-0502, filed 3/25/13, effective 4/25/13.]

AMENDATORY SECTION (Amending WSR 19-14-066, filed 6/28/19, effective 7/29/19)

WAC 110-90-0040 Who is eligible for extended foster care? (1) To be eligible for the extended foster care program, a youth, on his or her eighteenth birthday must be dependent under chapter 13.34 RCW and:

- ~~(a) ((Enrolled in school as described in WAC 110-90-0050;~~
- ~~(b) Have applied for, or can demonstrate intent to timely enroll in a post-secondary academic or vocational education program as described in WAC 110-90-0060;~~
- ~~(c) Participating in a program or activity designed to promote employment or remove barriers to employment as described in WAC 110-90-0070;~~
- ~~(d) Engaged in employment for eighty hours or more per month;~~
- ~~(e) Unable to engage in subsection (1)(a) through (d) of this section due a documented medical condition as described in WAC 110-90-0100; or~~
- ~~(f)) Enroll in the extended foster care program; or~~

~~(b) ((Did not enroll))~~ Not enrolled in the extended foster care program; and

(i) Had their dependency dismissed on their eighteenth birthday; and

(ii) Is requesting to enroll in the extended foster care program through a voluntary placement agreement (VPA) prior to reaching the age of twenty-one. ~~((; and~~

~~(iii) Meets one of the criteria found in subsection (1)(a) through (e) of this section.))~~

(2) A dependent youth in the custody of juvenile rehabilitation, the department of corrections, county detention, or jail ~~((who otherwise meets the eligibility criteria in subsection (1)(a) through (f) of this section))~~ may enroll in the extended foster care program.

(3) If the youth was in the extended foster care program but then unenrolled or lost their eligibility, the youth may reenroll in the extended foster care program through a VPA before the age of twenty-one. ~~((The youth must meet one of the criteria in subsection (1)(a) through (e) when requesting to reenroll in the extended foster care program.))~~

(4) If the youth was in the extended foster care program through a VPA and was dismissed from the program between April 1, 2020, and September 30, 2021, because the youth reached the age of twenty-one, the youth may reenroll in the extended foster care program through a VPA until September 30, 2021.

[Statutory Authority: RCW 74.12.340, 74.04.050, 74.04.055, 74.08.090 and WAC 110-20-0010. WSR 19-14-066, § 110-90-0040, filed 6/28/19, effective 7/29/19. WSR 18-14-078, recodified as § 110-90-0040, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, and 13.34.030. WSR 18-01-048, § 388-25-0506, filed 12/12/17, effective 1/12/18; WSR 16-14-065, § 388-25-0506, filed 6/30/16, effective 7/31/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030 and Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). WSR 16-06-044, § 388-25-0506, filed 2/24/16, effective 3/26/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030. WSR 14-13-051, § 388-25-0506, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 74.13.031, 13.34.267, and 2008 federal legislation "Fostering Connections to Success and Increasing Adoptions Act." WSR 13-08-017, § 388-25-0506, filed 3/25/13, effective 4/25/13.]

AMENDATORY SECTION (Amending WSR 19-14-066, filed 6/28/19, effective 7/29/19)

WAC 110-90-0110 How does a youth agree to participate in the extended foster care program? (1) An eligible dependent youth can agree to participate by:

(a) Signing an extended foster care agreement; or

(b) For developmentally disabled youth, remaining in the foster care placement and continuing in an appropriate educational program.

(2) An eligible nondependent youth who did not elect to participate in the program on their eighteenth birthday can agree to participate by:

(a) Signing a voluntary placement agreement (VPA) before reaching age twenty-one; or

(b) Establishing a nonminor dependency before reaching age twenty-one if the department denied entry into the program.

(3) An eligible nonminor dependent youth requesting to reenter the program may agree to participate by signing a VPA prior to reaching age twenty-one.

(4) An eligible youth as defined in WAC 110-90-0040 requesting to reenter the program may agree to participate by signing a VPA until September 30, 2021, if the youth was dismissed from the program between April 1, 2020, and September 30, 2021, based solely on reaching the age of twenty-one.

(5) In order to continue receiving extended foster care services after entering into a VPA with the department, the youth must agree to the entry of an order of dependency within one hundred eighty days of the date that the youth is placed in foster care pursuant to a VPA

[Statutory Authority: RCW 74.12.340, 74.04.050, 74.04.055, 74.08.090 and WAC 110-20-0010. WSR 19-14-066, § 110-90-0110, filed 6/28/19, effective 7/29/19. WSR 18-14-078, recodified as § 110-90-0110, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, and 13.34.030. WSR 18-01-048, § 388-25-0528, filed 12/12/17, effective 1/12/18. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030 and Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). WSR 16-06-044, § 388-25-0528, filed 2/24/16, effective 3/26/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030. WSR 14-13-051, § 388-25-0528, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 74.13.031, 13.34.267, and 2008 federal legislation "Fostering Connections to Success and Increasing Adoptions Act." WSR 13-08-017, § 388-25-0528, filed 3/25/13, effective 4/25/13.]

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 19-14-066, filed 6/28/19, effective 7/29/19)

WAC 110-90-0140 If an extended foster care participant loses his or her eligibility before he or she turns twenty-one, may he or she reapply for extended foster care? (1) Yes. If a youth was receiving extended foster care services and lost eligibility, he or she may reapply as long as the youth(~~(~~

~~(1) Has)) has not turned twenty-one. (~~;~~ and))~~

(2) Meets one of the conditions for eligibility in WAC ~~110-90-0040 (1)(a) through (e))~~. A youth dismissed from the program between April 1, 2020, and September 30, 2021, only because the youth reached the age of twenty-one may reapply for the extended foster care program until September 30, 2021.

[Statutory Authority: RCW 74.12.340, 74.04.050, 74.04.055, 74.08.090 and WAC 110-20-0010. WSR 19-14-066, § 110-90-0140, filed 6/28/19, effective 7/29/19. WSR 18-14-078, recodified as § 110-90-0140, filed

6/29/18, effective 7/1/18. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, and 13.34.030. WSR 18-01-048, § 388-25-0534, filed 12/12/17, effective 1/12/18; WSR 14-13-051, § 388-25-0534, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 74.13.031, 13.34.267, and 2008 federal legislation "Fostering Connections to Success and Increasing Adoptions Act." WSR 13-08-017, § 388-25-0534, filed 3/25/13, effective 4/25/13.]

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

AMENDATORY SECTION (Amending WSR 20-15-066, filed 7/13/20, effective 8/13/20)

WAC 110-90-0160 How does DCYF determine a youth's continuing eligibility for the EFC program? To determine a youth's continuing eligibility for the EFC program, prior to every court review hearing DCYF will determine if the youth continues to:

- (1) Agree to participate in the EFC program;
- ~~(2) ((Meet the eligibility criteria in WAC 110-90-0040 (1)(a) through (f));~~
- ~~(3))~~ (2) Reside in an approved placement; and
- ~~((4))~~ (3) Comply with the youth's responsibilities in WAC 110-90-0190.

[Statutory Authority: 2017 c 6. WSR 20-15-066, § 110-90-0160, filed 7/13/20, effective 8/13/20. WSR 18-14-078, recodified as § 110-90-0160, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, and 13.34.030. WSR 16-14-065, § 388-25-0540, filed 6/30/16, effective 7/31/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030 and Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). WSR 16-06-044, § 388-25-0540, filed 2/24/16, effective 3/26/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030. WSR 14-13-051, § 388-25-0540, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 74.13.031, 13.34.267, and 2008 federal legislation "Fostering Connections to Success and Increasing Adoptions Act." WSR 13-08-017, § 388-25-0540, filed 3/25/13, effective 4/25/13.]

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

AMENDATORY SECTION (Amending WSR 20-15-066, filed 7/13/20, effective 8/13/20)

WAC 110-90-0190 What must youth do to remain in the EFC program? To remain in the EFC program, unless otherwise authorized by court order, the youth must:

- (1) Agree to participate in the program as expressed in the written EFC agreement;

(2) ~~((Maintain the standard of eligibility as set by the youth's academic program, employment related program, employment status, or documented medical condition;~~

~~(3))~~ Participate in the case plan, including monthly health and safety visits;

~~((4))~~ (3) Acknowledge that DCYF has responsibility for the youth's care and placement by authorizing DCYF to have access to records related to court-ordered medical, mental health, drug/alcohol treatment services, additional necessary services, educational records needed to determine continuing eligibility for the program, medical records related to a documented medical condition for purposes of qualifying for EFC under WAC 110-90-0040 (1)(f); and

~~((5))~~ (4) Remain in the approved foster care placement and follow placement rules as follows:

(a) Stay in the placement identified by DCYF or approved by the court;

(b) Obtain approval from their caseworker and notify their caregiver for extended absences from the placement of more than three days; and

(c) Comply with court orders and any specific rules developed in collaboration by the youth, caregiver and caseworker.

[Statutory Authority: 2017 c 6. WSR 20-15-066, § 110-90-0190, filed 7/13/20, effective 8/13/20. WSR 18-14-078, recodified as § 110-90-0190, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, and 13.34.030. WSR 16-14-065, § 388-25-0546, filed 6/30/16, effective 7/31/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030 and Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). WSR 16-06-044, § 388-25-0546, filed 2/24/16, effective 3/26/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030. WSR 14-13-051, § 388-25-0546, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 74.13.031, 13.34.267, and 2008 federal legislation "Fostering Connections to Success and Increasing Adoptions Act." WSR 13-08-017, § 388-25-0546, filed 3/25/13, effective 4/25/13.]

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 20-15-066, filed 7/13/20, effective 8/13/20)

WAC 110-90-0200 When is a youth no longer eligible for the EFC program? A youth is no longer eligible for the EFC program and DCYF will ask the court to dismiss the nonminor dependency, when the youth:

(1) ~~((Graduates from high school or equivalency program and has not demonstrated intent to timely enroll in a post-secondary academic or vocational program;~~

~~(2) Graduates from a post-secondary education or vocational program;~~

~~(3) Reaches their twenty-first birthday))~~ Reaches the age of twenty-one or older before April 1, 2020;

~~((4) Is no longer participating or engaging in any of the eligibility criteria under WAC 110-90-0040 (1)(a) through (f);)~~

~~((5))~~ (2) No longer agrees to participate in EFC services; or

~~((6))~~ (3) Fails or refuses to comply with youth responsibilities outlined in WAC 110-90-0190; or

(4) Only after September 30, 2021, a youth who is twenty-one years of age or older will no longer be eligible for the EFC program and DCYF will ask the court to dismiss the nonminor dependency.

[Statutory Authority: 2017 c 6. WSR 20-15-066, § 110-90-0200, filed 7/13/20, effective 8/13/20. WSR 18-14-078, recodified as § 110-90-0200, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, and 13.34.030. WSR 16-14-065, § 388-25-0548, filed 6/30/16, effective 7/31/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030 and Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351). WSR 16-06-044, § 388-25-0548, filed 2/24/16, effective 3/26/16. Statutory Authority: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030. WSR 14-13-051, § 388-25-0548, filed 6/12/14, effective 7/13/14. Statutory Authority: RCW 74.13.031, 13.34.267, and 2008 federal legislation "Fostering Connections to Success and Increasing Adoptions Act." WSR 13-08-017, § 388-25-0548, filed 3/25/13, effective 4/25/13.]

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 20-05-024, filed 2/7/20, effective 3/9/20)

WAC 110-145-1305 What definitions do I need to know to understand this chapter? The following words and terms are for the purpose of this chapter and are important to understand these requirements:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child as defined in RCW 26.44.020.

"Adult" means a person eighteen years old or older, not in the care of the department.

"Agency" is defined in RCW 74.15.020(1).

"Assessment" means the appraisal or evaluation of a child's physical, mental, social and emotional condition.

"Business hours" means hours during the day in which state business is commonly conducted. Typically the hours between 9 a.m. and 5 p.m. on weekdays are considered to be standard hours of operation.

"Capacity" means the age range, gender, and maximum number of children on your current license.

"Care provider" means any person who is licensed or authorized to provide care for children and cleared to have unsupervised access to children under the authority of a license.

"Case manager" means a facility employee who coordinates the planning efforts of all the persons working on behalf of a child.

"Chapter" means chapter 110-145 WAC.

"Child," "children," or "youth" for this chapter, means a person who is one of the following:

- (a) Under eighteen years old;
- (b) Up to twenty-one years of age and enrolled in services through the department of social and health services developmental disabilities administration (DDA) the day prior to their eighteenth birthday and pursuing either a high school or equivalency course of study (GED/HSEC), or vocational program;
- (c) (~~Up to twenty-one years of age and participates~~) Participating in the extended foster care program;
- (d) Up to twenty-one years of age with intellectual and developmental disabilities; or
- (e) Up to twenty-five years of age and under the custody of juvenile rehabilitation.

"Child placing agency" or "CPA" means an agency licensed to place children for temporary care, continued care, or adoption.

"Compliance agreement" means a written improvement plan to address the changes needed to meet licensing requirements.

"Crisis residential center (secure)" means a licensed facility open twenty-four-hours a day, seven days a week that provides temporary residential placement, assessment and services in a secure facility to prevent youth from leaving the facility without permission per RCW 13.32A.030(15).

"Crisis residential center (semi-secure)" means a licensed facility open twenty-four hours a day, seven days a week that provides temporary residential placement, assessment and services for runaway youth and youth in conflict with their family or in need of emergency placement.

"CW" means the division of child welfare within DCYF. CW provides case management to children and families involved in the child welfare system.

"Day treatment" is a specialized service that provides educational and therapeutic group experiences for emotionally disturbed children.

"DDA" means the developmental disabilities administration. DDA provides services and case management to children and adults who meet the eligibility criteria.

"Deescalation" means strategies used to defuse a volatile situation, to assist a child to regain behavior control, and to avoid a physical restraint or other behavioral intervention.

"Department" or "DCYF" means the department of children, youth, and families.

"Developmental disability" is a disability as defined in RCW 71A.10.020.

"Direct care" means direct, hands-on personal care and supervision to group care children and youth.

"DOH" means the department of health.

"Electronic monitoring" means video or audio monitoring or recording used to watch or listen to children as a way to monitor their behavior.

"Emergency respite center (ERC)" means a licensed facility that may be commonly known as a crisis nursery, which provides emergency or crisis care for nondependent children birth through seventeen years for up to seventy-two hours to prevent child abuse or neglect per RCW 74.15.020(d). ERCs may choose to be open up to twenty-four hours a day, seven days a week. Facilities may also provide family assessment, family support services and referral to community services.

"FBI" means the Federal Bureau of Investigation.

"Group care" is a general term for a licensed facility that is maintained and operated for a group of children on a twenty-four-hour basis to provide a safe and healthy living environment that meets the developmental needs of the children in care per RCW 74.15.020 (1)(f).

"Group home" is a specific license for residential care that provides care and supervision for children or youth.

"Group receiving center" means a licensed facility that provides the basic needs of food, shelter, and supervision for children placed by the department, generally for thirty or fewer days.

"Guns or weapons" means any device intended to shoot projectiles under pressure or that can be used to attack. These include but are not limited to BB guns, pellet guns, air rifles, stun guns, antique guns, handguns, rifles, shotguns, and archery equipment.

"Health care staff" means anyone providing qualified medical consultation to your staff or medical care to the children and youth in your care.

"Hearing" means the administrative review process conducted by an administrative law judge.

"I, my, you, and your" refers to an applicant for a license issued under this chapter, and to any party holding a license under this chapter.

"Infant" means a child less than twelve months of age.

"Intellectual and developmental disability" means children with deficits in general mental abilities and impairment in everyday adaptive functioning.

"Interim facility" means an overnight youth shelter, emergency respite center or a resource and assessment center.

"LD" means the licensing division of DCYF. LD licenses and monitors foster homes, child placing agencies, and licensed group care facilities.

"License" means a permit issued by us that your facility meets the licensing standards established in this chapter.

"Licensed health care provider" means an MD (medical doctor), DO (doctor of osteopathy), ND (doctor of naturopathy), PA (physician's assistant), or an ARNP (advanced registered nurse practitioner).

"Local fire authority" means your local fire inspection authority having jurisdiction in the area where your facility is located.

"Maternity service" as defined in RCW 74.15.020. These are also referred to as pregnant and parenting youth programs.

"Medically fragile" means the condition of a child who requires the availability of twenty-four-hour skilled care from a health care professional or specially trained staff or volunteers in a group care setting. These conditions may be present all the time or frequently occurring. If the technology, support and services being received by the medically fragile children are interrupted or denied, the child may, without immediate health care intervention, experience death.

"Missing child" means any child less than eighteen years of age in licensed care or under the care, custody, and authority of DCYF and the child's whereabouts are unknown, the child has left care without the permission of the child's caregiver or DCYF, or both. This does not include children in a dependency guardianship.

"Multidisciplinary teams (MDT)" means groups formed to assist children who are considered at risk youth or children in need of services, and their parents.

"Negative action" means a court order, court judgment, or adverse action taken by an agency, in any state, federal, local, tribal, or

foreign jurisdiction, that results in a finding against the applicant reasonably related to the individual's suitability, and competence to care for or have unsupervised access to children in out-of-home care. This may include, but is not limited to:

- (a) A decision issued by an administrative law judge;
- (b) A final determination, decision, or finding made by an agency following an investigation;
- (c) An adverse licensing action, including termination, revocation, or denial of a license or certification, or if there is a pending adverse action, the voluntary surrender of a license, certification, or contract in lieu of an adverse action;
- (d) A revocation, denial, or restriction placed on any professional license; or
- (e) A final decision of a disciplinary board.

"Nonambulatory" means not able to walk or exit to safety without the physical assistance of another individual.

"Out-of-home placement" means a child's placement in a home or facility other than the child's parent, guardian, or legal custodian.

"Overnight youth shelter" means a licensed nonprofit agency that provides overnight shelter to homeless or runaway youth in need of emergency sleeping arrangements.

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

"Property or premises" means a facility's buildings and adjoining grounds that are managed by a person or agency in charge.

"Psychotropic medication" means a type of medicine that is prescribed to affect or alter thought processes, mood, sleep, or behavior. These include antipsychotic, antidepressant, and anti-anxiety medications.

"Relative" means a person who is related to a child per RCW 74.15.020.

"Resource and assessment center" means an agency that provides short-term emergency and crisis care for a period up to seventy-two hours, (excluding Saturdays, Sundays, and holidays) to children who have been removed from their parent's or guardian's care by child protective services or law enforcement.

"Staff" or "staff member" means a person who provides services for your facility and is paid by your facility. The definition of staff member includes paid interns.

"Staffed residential home" means a licensed facility that provides twenty-four-hour care to six or fewer children who require more supervision than can be provided in a foster home.

"Treatment plan" means individual plans that identify the service needs of the child, including the child's parent or guardian, and identifies the treatment goals and strategies for achieving those goals.

"Volunteer" means a person who provides services for your facility without compensation.

"Washington state patrol fire protection bureau" or "WSP/FPB" means the state fire marshal.

"We, our, and us" refers to DCYF and its staff.

"Young child" refers to a child age twelve months through eight years old.

[Statutory Authority: RCW 43.43.832, 74.13.031, 74.15.030 and P.L. 115-12. WSR 20-05-024, § 110-145-1305, filed 2/7/20, effective 3/9/20. WSR 18-14-078, recodified as § 110-145-1305, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832. WSR 18-11-138, § 388-145-1305, filed 5/23/18, effective 6/23/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-145-1305, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-145-1305, filed 12/11/14, effective 1/11/15.]

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

WAC 110-147-1305 What definitions do I need to know to understand this chapter? The following words and terms are for the purpose of this chapter and are important to understanding these requirements:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child as defined in RCW 26.44.020.

"Adult" means a person eighteen years old or older, not in the care of the department.

"Agency" is defined in RCW 74.15.020(1).

"Assessment" means the appraisal or evaluation of a child's physical, mental, social and/or emotional condition.

"Business hours" means hours during the day in which business is commonly conducted. Typically the hours between 9 a.m. and 5 p.m. on weekdays are considered to be standard business hours.

"CA" means children's administration.

"Care provider" means any person who is licensed or authorized to provide care for children and cleared to have unsupervised access to children under the authority of a license.

"Case manager" means the private agency employee who coordinates the planning efforts of all the persons working on behalf of a child.

"Certification" means a licensed child placing agency (CPA) review that a foster home being supervised by that CPA meets licensing regulations. The final decision for licensing is the responsibility of CA.

"Chapter" means chapter 388-147 WAC.

"Child," "children," or "youth" for this chapter, means a person who is one of the following:

(1) Under eighteen years of age;

(2) Up to twenty-one years of age and enrolled in services through the developmental disabilities administration (DDA) the day prior to his or her eighteenth birthday and pursuing either a high school or equivalency course of study (GED/HSEC), or vocational program;

(3) (~~Up to twenty-one years of age and participates~~) Participating in the extended foster care program;

(4) Up to twenty-one years of age with intellectual and developmental disabilities; or

(5) Up to twenty-one years of age and under the custody of the Washington state juvenile justice rehabilitation administration.

"Child placing agency" or "(CPA)" means an agency licensed to place children for foster care or adoption.

"Compliance agreement" means a written improvement plan to address the changes needed to meet licensing requirements.

"DCFS" means the division of children and family services within children's administration. DCFS provides case management to children and families involved in the child welfare system.

"DDA" means the developmental disabilities administration.

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

"Developmental disability" is a disability as defined in RCW 71A.10.020.

"DLR" means the division of licensed resources within children's administration. DLR licenses and monitors foster homes, child placing agencies, and licensed group care facilities.

"FBI" means the Federal Bureau of Investigation.

"Foster home or foster family home" means a person(s) licensed to regularly provide twenty-four-hour care in their home to children.

"Guns or weapons" means any device intended to shoot projectiles under pressure or that can be used to attack. These include but are not limited to BB guns, pellet guns, air rifles, stun guns, antique guns, handguns, rifles, shotguns and archery equipment.

"Health care staff" means anyone providing qualified medical consultation to your staff or medical care to the children and youth in your care.

"Hearing" means the administrative review process conducted by an administrative law judge.

"I, my, you, and your" refers to an applicant for a license issued under this chapter, and to any party holding a license under this chapter.

"Infant" means a child less than twelve months of age.

"Intellectual and developmental disability" means children with deficits in general mental abilities and impairment in everyday adaptive functioning.

"License" means a permit issued by us confirming that your agency meets the licensing standards established in this chapter.

"Licensed health care provider" means an MD (medical doctor), DO (doctor of osteopathy), ND (doctor of naturopathy), PA (physician's assistant), or an ARNP (advanced registered nurse practitioner).

"Licensor" means either:

(1) A DLR employee who recommends approvals for, or monitors licenses or certifications for facilities and agencies established under this chapter; or

(2) An employee of a child placing agency who certifies or monitors foster homes supervised by the child placing agency.

"Maternity service" as defined in RCW 74.15.020. These are also referred to as pregnant and parenting youth programs.

"Medically fragile" means the condition of a child who requires the availability of twenty-four-hour skilled care from a health care professional or specially trained family or foster family member. These conditions may be present all the time or frequently occurring. If the technology, support and services being received by the medically fragile children are interrupted or denied, the child may, without immediate health care intervention, experience death.

"Missing child" means any child less than eighteen years of age in licensed care or under the care, custody, and authority of CA and the child's whereabouts are unknown and/or the child has left care without the permission of the child's caregiver or CA. This does not include children in dependency guardianship.

"Nonambulatory" means not able to walk or exit to safety without the physical assistance of another individual.

"Out-of-home placement" means a child's placement in a home or facility other than the child's parent, guardian, or legal custodian.

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

"Property or premises" means a facility's buildings and adjoining grounds that are managed by a person or agency in charge.

"Relative" means a person who is related to a child as defined in RCW 74.15.020.

"Respite" means brief, temporary relief care provided by an in-home or out-of-home provider paid by the department. The respite provider fulfills some or all of the care provider responsibilities for a short time.

"Treatment plan" means individual plans that identify the service needs of the child, including the child's parent or guardian, and identifies the treatment goals and strategies for achieving those goals.

"Volunteer" means a person who provides services without compensation, for your agency.

"Washington state patrol fire protection bureau" or "WSP/FPB" means the state fire marshal.

"We, our, and us" refers to the department of social and health services, including DLR and DCFS staff.

"Young child" refers to a child age twelve months through eight years old.

[WSR 18-14-078, recodified as § 110-147-1305, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832. WSR 18-11-138, § 388-147-1305, filed 5/23/18, effective 6/23/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-147-1305, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-147-1305, filed 12/11/14, effective 1/11/15.]

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

WAC 110-148-1305 What definitions do I need to know to understand this chapter? The following definitions are for the purpose of this chapter and are important to understanding these requirements:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child as defined in RCW 26.44.020.

"Adult" means a person eighteen years of age and older, not in the care of the department.

"Agency" is defined in RCW 74.15.020(1).

"CA" means children's administration.

"Capacity" means the age range, gender and maximum number of children on your current license.

"Care provider" means any person who is licensed or authorized to provide care for children, and cleared to have unsupervised access to children under the authority of a license.

"Case manager" means the private agency employee who coordinates the planning efforts of all the persons working on behalf of a child.

"Certification" means either:

(1) Our review of whether you meet the licensing requirements, even though you do not need to be licensed; or

(2) A licensed child placing agency (CPA) representing that a foster home being supervised by that CPA meets licensing requirements. The final decision for licensing is the responsibility of CA.

"Chapter" means chapter 388-148 WAC.

"Child," "children," or "youth" for this chapter, means a person who is one of the following:

(1) Under eighteen years of age;

(2) Up to twenty-one years of age and enrolled in services through developmental disabilities administration (DDA) the day prior to his or her eighteenth birthday and pursuing either a high school or equivalency course of study (GED/HSEC), or vocational program;

(3) (~~Up to twenty-one years of age and participates~~) Participating in the extended foster care program;

(4) Up to twenty-one years of age with intellectual and developmental disabilities; or

(5) Up to twenty-one years of age and under the custody of the Washington state juvenile justice rehabilitation administration.

"Child placing agency or CPA" means an agency licensed to place children for foster care or adoption.

"Compliance agreement" means a written improvement plan to address the changes needed to meet licensing requirements.

"DCFS" means the division of children and family services within children's administration. DCFS provides case management to children and families involved in the child welfare system.

"DDA" means the developmental disabilities administration.

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

"Developmental disability" is a disability as defined in RCW 71A.10.020.

"DLR" means the division of licensed resources within children's administration. DLR licenses and monitors foster homes, child placing agencies, and group care facilities.

"FBI" means the Federal Bureau of Investigation.

"Foster home or foster family home" means a person(s) licensed to regularly provide twenty-four-hour care in their home to children.

"Guns or weapons" means any device intended to shoot projectiles under pressure or that can be used to attack. These include but are not limited to BB guns, pellet guns, air rifles, stun guns, antique guns, handguns, rifles, shotguns and archery equipment.

"Hearing" means the administrative review process conducted by an administrative law judge.

"I, my, you, and your" refers to an applicant for a license issued under this chapter, and to any party holding a license under this chapter.

"Infant" means a child less than twelve months of age.

"Intellectual and developmental disability" means children with deficits in general mental abilities and impairment in everyday adaptive functioning.

"License" means a permit issued by us confirming that you and your home meet the licensing standards established in this chapter.

"Licensed health care provider" means an MD (medical doctor), DO (doctor of osteopathy), ND (doctor of naturopathy), PA (physician's assistant), or an ARNP (advanced registered nurse practitioner).

"Licensor" means either:

(1) A DLR employee who recommends approvals for, or monitors licenses or certifications for facilities and agencies established under this chapter; or

(2) An employee of a child placing agency who certifies or monitors foster homes supervised by the child placing agency.

"Maternity services" as defined in RCW 74.15.020. These are also referred to as pregnant and parenting youth programs.

"Medically fragile" means the condition of a child who requires the availability of twenty-four-hour skilled care from a health care professional or specially trained family or foster family member. These conditions may be present all the time or frequently occurring. If the technology, support and services being received by the medically fragile children are interrupted or denied, the child may, without immediate health care intervention, experience death.

"Missing child" means any child less than eighteen years of age in licensed care or under the care, custody, and authority of CA and the child's whereabouts are unknown and/or the child has left care without the permission of the child's caregiver or CA. This does not include children in dependency guardianship.

"Nonambulatory" means not able to walk or exit to safety without the physical assistance of another individual.

"Out-of-home placement" means a child's placement in a home or facility other than the home of a child's parent, guardian, or legal custodian.

"Probationary license" means a license issued as part of a corrective action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies.

"Property or premises" means your buildings and grounds adjacent to your residential property that are owned or managed by you.

"Psychotropic medication" means a type of medicine prescribed to affect or alter thought processes, mood, sleep, or behavior. These include anti-psychotic, anti-depressant, and anti-anxiety medications.

"Relative" means a person who is related to a child as defined in RCW 74.15.020.

"Respite" means brief, temporary relief care provided by an in-home or out-of-home provider paid by the department. The respite provider fulfills some or all of the care provider responsibilities for a short time.

"Treatment plan" means individual plans that identify the service needs of the child, including the child's parent or guardian, and identifies the treatment goals and strategies for achieving those goals.

"Washington state patrol fire protection bureau or WSP/FPB" means the state fire marshal.

"We, our, and us" refers to the department of social and health services, including DLR and DCFS staff.

"Young child" refers to a child age twelve months through eight years old.

[WSR 18-14-078, recodified as § 110-148-1305, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, 74.39A.056, 43.43.832. WSR 18-11-138, § 388-148-1305, filed 5/23/18, effective 6/23/18. Statutory Authority: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031, and P.L. 113-183. WSR 16-17-101, § 388-148-1305, filed 8/19/16, effective 9/19/16. Statutory Authority: Chapters 13.34 and 74.13 RCW, RCW 74.15.030(2), 74.15.311(2), 74.13.032, 13.04.011, 74.13.020, 13.34.030, 74.13.031, 13.34.145, 74.15.311, 74.15.030, and 2013 c 105. WSR 15-01-069, § 388-148-1305, filed 12/11/14, effective 1/11/15.]

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

WSR 21-06-008
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-13—Filed February 18, 2021, 10:14 a.m., effective March 1, 2021]

Effective Date of Rule: March 1, 2021.

Purpose: Amends recreational sea cucumber rules for Puget Sound.

Citation of Rules Affected by this Order: Amending WAC

220-330-090.

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

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

Reasons for this Finding: This emergency rule is needed to align the personal use sea cucumber regulation with provisions of the 2020-21 Puget Sound sea cucumber management plan. This regulation will close the personal use sea cucumber fishery in all marine areas effective March 1, 2021, until further notice to protect aggregations during peak spawning season. This regulation is needed to manage the fishery within court-ordered sharing requirements and ensure conservation. 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: February 18, 2021.

Kelly Susewind
Director

[NEW SECTION]

WAC 220-330-09000A Sea cucumbers Notwithstanding the provisions of WAC 220-330-090, effective March 1, 2021 until further notice, it is unlawful to take or possess sea cucumbers taken for personal use in all waters of Puget Sound; Marine Areas 4B, 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, and 13.

[]

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

WSR 21-06-010
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-14—Filed February 18, 2021, 4:41 p.m., effective February 18, 2021, 4:41 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule will allow nontreaty commercial fishing opportunities in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Rules Affected by this Order: Amending WAC 220-358-030.

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

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

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

Reasons for this Finding: Sets 2021 winter, spring, and summer select area commercial seasons. Impacts to nonlocal stocks are expected to be minimal and local Chinook stocks reared for the select area sites are available for harvest. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of February 16, 2021. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. The Washington and Oregon fish and wildlife commissions have developed policies to guide

the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: February 18, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-358-03000X Columbia River seasons below Bonneville.

Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-335-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

(1) Tongue Point and South Channel:

Open_Dates	Open_Days	Open_Time	Open_Duration
Feb 18 - Mar 12	Mon, Wed, Thu (nights)	7:00 p.m. - 7:00 a.m.	10 nights
Apr 20	Tue (morning)	12:30 a.m. - 4:30 a.m.	4 hrs
Apr 23	Fri (morning)	4:00 a.m. - 8:00 a.m.	4 hrs
Apr 27 - Apr 30	Tue, Thur (nights)	7:00 p.m. - 7:00 a.m.	2 nights
May 3 - Jun 15	Mon, Wed, Thu (nights)	7:00 p.m. - 7:00 a.m.	19 nights
Jun 17 - Jun 18	Mon (night)	7:00 p.m. - 7:00 a.m.	1 night

Tongue Point only:

Open_Dates	Open_Days	Open_Time	Open_Duration
Mar 15 - Mar 16	Tues (night)	9:00 p.m. - 1:00 a.m.	4 hrs

Open_Dates	Open_Days	Open_Time	Open_Duration
Mar 17 - Mar 18	Wed (night)	9:30 p.m. - 1:30 a.m.	4 hrs
Mar 18 - Mar 19	Thu (night)	10:00 p.m. - 2:00 a.m.	4 hrs

South Channel only:

Open_Dates	Open_Days	Open_Time	Open_Duration
Mar 15 - Mar 19	Mon, Wed, Thu (nights)	7:00 p.m. - 7:00 a.m.	3 nights
Mar 22 - Mar 26	Mon, Thu (nights)	7:00 p.m. - 7:00 a.m.	2 nights
Mar 29 - Mar 30	Mon (night)	9:00 p.m. - 1:00 a.m.	4 hrs
Apr 1 - Apr 2	Fri (night)	11:00 p.m. - 3:00 a.m.	4 hrs
Apr 6	Tue (morning)	3:30 a.m. - 7:30 a.m.	4 hrs
Apr 8	Thu (night)	6:30 p.m. - 10:30 p.m.	4 hrs
Apr 12 - Apr 13	Mon (night)	8:30 p.m. - 12:30 a.m.	4 hrs
Apr 14 - Apr 15	Thu (night)	9:30 p.m. - 1:30 a.m.	4 hrs

(a) Area:

The Tongue Point Winter-Spring Subarea is defined as waters of the Columbia River bounded by a line from the end of the southern-most pier (#1) at the Tongue Point Job Corps facility projecting in a straight line through flashing red USCG light "6" to the shore of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker located on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on the southwest shore of Lois Island. If the marker on the Oregon shore is not in place, the upper boundary is defined by a line projecting easterly from a point (46°10'57.7"N latitude 123°44'35.3"W longitude) on the Oregon shore approximately 300 yards northwest of the railroad bridge crossing the John Day River to a regulatory marker on the southwest shore of Lois Island.

For summer fisheries, the open waters include the entire Tongue Point Select Area as described in OAR 635-042-0170 (1)(a) and WAC 220-301-010 (11)(c). If the marker on the eastern shore of Tongue Point is not in place, the downstream boundary is defined by a line projecting from a point (46°12'31.1"N latitude 123°45'34.0"W longitude) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island.

The South Channel Select Area is defined as waters of the Columbia River bounded by a line from a regulatory marker on the Oregon shore at John Day Point projecting northeasterly to a regulatory marker on the southwest shore of Lois Island, and a line from a regulatory marker on Settler Point projecting northwesterly to the flashing red USCG light "10" then projecting westerly to the eastern tip of Burnside Island.

(b) Gear: Gillnets:

Winter season (Through Apr 18): 7-inch minimum mesh size restriction

Spring and Summer seasons (Apr 20 - Jun 18): 9 3/4-inch maximum mesh size restriction

The maximum net length is 1,500 feet (250 fathoms).

In the Tongue Point winter-spring subarea and the Tongue Point Select Area, the lead line weight may not exceed two pounds per any one fathom;

In the South Channel Select Area, there is no lead line weight limit and attachment of additional weight and anchors directly to the lead line is permitted.

(2) Blind Slough and Knappa Slough:

Open_Dates	Open_Days	Open_Time	Open_Duration
Feb 18 - Mar 19	Mon, Wed, Thu (nights)	7:00 p.m. - 7:00 a.m.	13 nights
Mar 22 - Mar 26	Mon, Thu (nights)	7:00 p.m. - 7:00 a.m.	2 nights
Apr 19 - Apr 23	Mon, Thu (nights)	7:00 p.m. - 7:00 a.m.	2 nights
Apr 27 - Apr 30	Tue, Thu (nights)	7:00 p.m. - 7:00 a.m.	2 nights
May 3 - Jun 15	Mon, Wed, Thu (nights)	7:00 p.m. - 7:00 a.m.	19 nights
Jun 17 - Jun 18	Mon (night)	7:00 p.m. - 7:00 a.m.	1 night

Blind Slough only:

Open_Dates	Open_Days	Open_Time	Open_Duration
Mar 29 - Apr 13	Mon, Thu (nights)	7:00 p.m. - 7:00 a.m.	5 nights
Apr 14 - Apr 15	Wed (night)	7:00 p.m. - 7:00 a.m.	1 night

Knappa Slough only:

Open_Dates	Open_Days	Open_Time	Open_Duration
Mar 29 - Mar 30	Mon (night)	9:00 p.m. - 1:00 a.m.	4 hrs
Apr 1 - Apr 2	Thu (night)	11:00 p.m. - 3:00 a.m.	4 hrs
Apr 6	Tue (morning)	3:30 a.m. - 7:30 a.m.	4 hrs
Apr 8	Thu (night)	6:30 p.m. - 10:30 p.m.	4 hrs
Apr 12 - Apr 13	Tue (night)	8:30 p.m. - 12:30 a.m.	4 hrs
Apr 14 - Apr 15	Wed (night)	9:30 p.m. - 1:30 a.m.	4 hrs

(a) Area:

The Blind Slough Select Area is defined as waters of Blind Slough and Gnat Creek from a north-south line represented by regulatory markers at the mouth of Blind Slough upstream to a regulatory marker in Gnat Creek located approximately 0.5 miles southeasterly (upstream) of the Barendse Road Bridge.

The Knappa Slough Select Area is defined as waters of Knappa Slough, Calendar Slough, and Big Creek Slough bounded to the north (upstream) by a line projecting from a regulatory marker on the eastern shore of Karlson Island to the northernmost regulatory marker at the mouth of Blind Slough and bounded to the west (downstream) by a line projecting southerly from a regulatory marker on the southwestern tip of Karlson Island through regulatory markers on the western tips of Minaker Island to a marker on the Oregon shore.

The waters of Knappa Slough within a 100-foot radius of the railroad bridge crossing Big Creek are closed. Prior to May 3, the western (downstream) boundary in Knappa Slough is a north-south line projecting through the easternmost tip of Minaker Island and regulatory markers on Karlson Island and the Oregon shore.

(b) Gear: Gillnets:

Winter season (through Apr 15): 7-inch minimum mesh size restriction.

Spring and Summer seasons (Apr 19 - Jun 18): 9 3/4-inch maximum mesh size restriction.

The maximum net length is 600 feet (100 fathoms).

There is no lead line weight limit and attachment of additional weight or anchors directly to the lead line is permitted.

(c) Miscellaneous:

Permanent transportation rules in effect. In accordance with WACs 220-69-230 (1)(i) and 220-22-010 (9)(a-b), commercial fishers are expected, and fish dealers are required, to report landings for winter-summer fisheries in Knappa Slough and Blind Slough separately using appropriate zone codes. Fish dealers are requested to keep landings from these two sites separate to aid in sampling.

(3) Deep River Select Area:

Open_Dates	Open_Days	Open_Time	Open_Duration
Feb 18 - Mar 19	Mon, Wed, Thu (nights)	7:00 p.m. - 7:00 a.m.	13 nights
Mar 22 - Apr 1	Mon, Thu (nights)	7:00 p.m. - 7:00 a.m.	4 nights
Apr 19 - Apr 23	Mon, Thu (nights)	7:00 p.m. - 7:00 a.m.	2 nights
Apr 27 - Apr 30	Tue, Thu (nights)	7:00 p.m. - 7:00 a.m.	2 nights
May 3 - Jun 15	Mon, Wed, Thu (nights)	7:00 p.m. - 7:00 a.m.	19 nights

(a) Area:

From the mouth of Deep River defined as a line from USCG navigation marker #16 southwest to a marker on the Washington shore, upstream to the Highway 4 Bridge.

(b) Gear: Gillnets:

Winter season (through Apr 1): 7-inch minimum mesh size restriction.

Spring and Summer seasons (Apr 19 - Jun 15): 9 3/4-inch maximum mesh size restriction.

The maximum net length is 600 feet (100 fathoms).

There is no lead line weight limit and attachment of additional weight or anchors directly to the lead line is permitted.

Nets may not fully cross navigation channel. It is unlawful to operate in any river, stream, or channel any net longer than three-fourths the width of the stream (WAC 220-20-015(1)). It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of nets, whether fishing singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department WAC 220-20-010(17).

(c) Miscellaneous:

Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by WDFW staff.

Winter season: fishers are required to call 360-846-5268 or 360-795-0319 to confirm the place and time of sampling.

Spring season: a sampling station will be established at WDFW's Oneida Road boat ramp, about 0.5 miles upstream of the Deep River area downstream boundary (USCG navigation marker #16).

(4) Allowable Sales: Salmon (except Chum), white sturgeon, and shad. A maximum of three white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes all Select Area fisheries.

(5) 24-hour quick reporting is in effect for Washington buyers (WAC 220-352-315). Permanent transportation rules in effect. Oregon buyers are required to submit fish receiving tickets electronically pursuant to OAR 635-006-0210. Unique catch reporting codes have been established for Blind Slough and Knappa Slough to facilitate separation of landings and sampling for winter/spring fisheries. Blind Slough and Knappa Slough have unique catch reporting codes to facilitate separation of landings and sampling for winter/spring fisheries.

(6) Multi-Net Rule: Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater (WAC 220-358-030(2)).

(7) Lighted Buoys: Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

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

WSR 21-06-012

EMERGENCY RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed February 19, 2021, 8:29 a.m., effective February 19, 2021, 8:29 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-817-581 Novel coronavirus disease 2019 vaccination, this emergency rule allows dentists to delegate administration of novel coronavirus disease 2019 (COVID-19) vaccination to licensed dental hygienists with close supervision and demonstration of competency.

Citation of Rules Affected by this Order: New WAC 246-817-581.

Statutory Authority for Adoption: RCW 18.29.050 and 18.32.0365.

Other Authority: RCW 18.32.002.

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

Reasons for this Finding: In response to the COVID-19 pandemic, dentists are among the essential health providers who can safely administer vaccinations and help address this public health emergency. Mass vaccination across the state will take cooperation and coordination across the entire health system. Dentists and delegated dental hygienists can increase capacity for priority populations who may not otherwise be connected to the traditional health care system during the pandemic. Increased capacity of health care workers administering the COVID-19 vaccine will help Washington end this pandemic. Allowing delegation of COVID-19 vaccination to dental hygienists also assists dentists by reducing their workload to effectively continue providing dental care to patients.

Standard rule making takes approximately nine to twelve months. The rule is necessary for the preservation of public health, safety, and general welfare of dental patients and staff. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to protecting immediate public interests.

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

Number of Sections Adopted at the Request of a 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 1, Amended 0, Repealed 0.

Date Adopted: January 7, 2021.

Aaron Stevens, DMD, Chairperson
Dental Quality Assurance Commission

OTS-2845.3

NEW SECTION**WAC 246-817-581 Novel coronavirus disease 2019 vaccination.** (1)

A supervising dentist may delegate the administration of a vaccination of novel coronavirus disease 2019 to a licensed dental hygienist under the dentist's close supervision, provided the licensed dental hygienist has demonstrated skills necessary to perform the task competently.

(2) For the purpose of administering vaccination for the novel coronavirus disease 2019, a dentist's approval of the vaccination protocol and screening meets the dentist's requirement to diagnose the condition to be treated and personal authorization of the procedure as required by close supervision under WAC 246-817-510(1).

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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.

WSR 21-06-018
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-15—Filed February 19, 2021, 6:07 p.m., effective February 22, 2021]

Effective Date of Rule: February 22, 2021.

Purpose: Amends rules for Puget Sound commercial sea urchins.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000A; and amending WAC 220-340-750.

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

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

Reasons for this Finding: This emergency rule closes harvest of red sea urchins in Sea Urchin Management Districts 1 and 2 (21A, 21B, 22A, 22B) because the quota for red sea urchin in these areas has been reached. This closure is needed to fulfill obligations of state and tribal comanager agreements. Immediate adoption of this rule is necessary for the preservation of the public health, safety, or general welfare. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to public interest. 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: February 19, 2021.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-340-75000B Commercial sea urchin fisheries. Notwithstanding the provisions of WAC 220-340-750, effective February 22, 2021, until further notice:

(1) It is unlawful for any person to fish for, take, or possess for commercial purposes any green sea urchins less than 2.25 inches; or red sea urchins measuring less than 3.25 inches or greater than 5

inches. All measurements are caliper measurements of the largest shell (test) diameter, exclusive of the spines.

(2) The following areas are open for green sea urchin harvest only, seven days-per-week: Sea Urchin District 1; District 2 Marine Fish-Shellfish Management and Catch Reporting Areas 21A, 21B, 22A, 22B, 23A; District 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude; and District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude; District 6; and District 7 except all waters of Hale Passage and Wollochet Bay within the following lines: west of a line projected true south from the shoreline near Point Fosdick at 122 degrees 35 minutes west longitude to 47 degrees 14 minutes north latitude, and thence projected true west to the shoreline of Fox Island, and east of a line projected true south from the shoreline near Green Point at 122 degrees 41 minutes west longitude to 47 degrees 16.5 minutes north latitude, and thence projected true east to the shoreline of Fox Island.

(3) The following areas are open for red sea urchin harvest seven days-per-week: Sea Urchin District 2 Marine Fish-Shellfish Management and Catch Reporting Areas 23B, 25A, 25B; and District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude.

(4) The maximum cumulative landings for green sea urchins and red sea urchins for each weekly fishery opening period is 1,500 pounds per species per valid designated sea urchin harvest license. Each fishery week begins Monday and ends Sunday.

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REPEALER

The following section of the Washington Administrative Code is repealed effective February 22, 2021:

WAC 220-340-75000A Commercial sea urchin fisheries.
(21-06)

WSR 21-06-023
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed February 22, 2021, 4:40 p.m., effective February 22, 2021, 4:40 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department of social and health services division of child support (DCS) files this CR-103E Rule-making order to adopt emergency rules amending chapter 388-14A WAC to implement SHB 2302, (chapter 227, Laws of 2020) regarding abatement of child support obligations for certain incarcerated individuals as well as other administrative provisions regarding service and mailing of modification requests and hearing notices. Relevant provisions of SHB 2302 took effect on February 1, 2021. This filing cancels and supersedes the CR-103E Rule-making order filed as WSR 21-05-011 on February 4, 2021.

Citation of Rules Affected by this Order: New WAC 388-14A-3935, 388-14A-3940, 388-14A-3945, 388-14A-3950, 388-14A-3955, 388-14A-3960, 388-14A-3965, 388-14A-3970 and 388-14A-3975; and amending WAC 388-14A-1020, 388-14A-3800, 388-14A-3900, 388-14A-3901, 388-14A-3903, 388-14A-3925, and 388-14A-6100.

Statutory Authority for Adoption: Emergency rule making is authorized under RCW 34.05.350 (1)(a) and (b) in order to implement SHB 2302 (chapter 227, Laws of 2020) regarding incarceration abatement and administrative provisions regarding service and mailing of modification requests and hearing notices, which took effect on February 1, 2021. Further authority is found in RCW 26.09.105, 26.18.170, 26.19.011, 26.19.071, 26.23.050, 26.23.110, 34.05.020, 34.05.060, 34.05.220, 74.08.090, 74.20A.055, and 74.20A.056.

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

Reasons for this Finding: The legislature enacted SHB 2302 during the 2020 legislative session. Several provisions required to implement incarceration abatement, as well as service and mailing procedures for modification requests and hearing notices, have a February 1, 2021, effective date. Provisions direct DCS to abate child support payments for certain incarcerated individuals. Provisions also direct the office of administrative hearings to send certain mailings and notices that were previously sent by DCS. Emergency rule making is necessary to effectuate these statutory changes.

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 9, Amended 7, 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 9, Amended 7, 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 9, Amended 7, Repealed 0.

Date Adopted: February 22, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4852.3

AMENDATORY SECTION (Amending WSR 19-02-017, filed 12/21/18, effective 1/21/19)

WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement? For purposes of this chapter, the following definitions apply:

"Abatement" means the temporary reduction of child support obligations of an incarcerated person who is required to pay support.

"Absence of a court order" means that there is no court order either setting a support obligation for the noncustodial parent (NCP), or specifically relieving the NCP of a support obligation, for a particular child.

"Absent parent" is a term used for a noncustodial parent.

"Accessible coverage" means health care coverage which provides primary care services to the children with reasonable effort by the custodial parent.

"Accrued debt" means past-due child support which has not been paid.

"Acknowledged father" means a man who has established a father-child relationship by:

(1) Signing a valid acknowledgment of paternity under RCW 26.26.300 through 26.26.375 prior to January 1, 2019;

(2) Signing a valid acknowledgment of parentage under RCW 26.26A.200 through 26.26A.265 on or after January 1, 2019; or

(3) Signing a valid acknowledgment of paternity or parentage under another jurisdiction's laws.

"Acknowledged parent" means an individual who, after January 1, 2019, has established a parent-child relationship by signing a valid acknowledgment of parentage under RCW 26.26A.200 through 26.26A.265.

"Adjudicated parent" means a person who has been adjudicated by a court of competent jurisdiction to be the parent of a child.

"Administrative order" means a determination, finding, decree or order for support issued under RCW 74.20A.055, 74.20A.056, or 74.20A.059 or by the agency of an Indian tribe or another state or country's agency under an administrative process, establishing the existence of a support obligation (including medical support) and ordering the payment of a set or determinable amount of money for current support and/or a support debt. Administrative orders include:

(1) An order entered under chapter 34.05 RCW;

(2) An agreed settlement or consent order entered under WAC 388-14A-3600; and

(3) A support establishment notice which has become final by operation of law.

"Agency" means the Title IV-D provider of a state or tribe, or the central authority of another country. For the state of Washington, the Title IV-D provider is the division of child support (DCS) within the department of social and health services (DSHS).

"Agreed settlement" is an administrative order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. An agreed settlement does not require the approval of an administrative law judge.

"Aid" or "public assistance" means cash assistance under the temporary assistance for needy families (TANF) program, the aid to families with dependent children (AFDC) program, federally funded or state-funded foster care, and includes day care benefits and medical benefits provided to families as an alternative or supplement to TANF.

"Alternate recipient" means a child of the employee or retiree named within a support order as being entitled to coverage under an employer's group health plan.

"Annual fee" means the fee charged on never-assistance cases based on the amount of collections between October 1 and September 30 each year, required by the Federal Deficit Reduction Act of 2005 and RCW 74.20.040.

"Applicant/custodian" means a person who applies for nonassistance support enforcement services on behalf of a child or children residing in their household.

"Applicant/recipient," "applicant," and "recipient" means a person who receives public assistance on behalf of a child or children residing in their household.

"Arrears" means the debt amount owed for a period of time before the current month.

"Assistance" means cash assistance under the state program funded under Title IV-A of the federal Social Security Act.

"Assistance unit" means a cash assistance unit as defined in WAC 388-408-0005. An assistance unit is the group of people who live together and whose income or resources the department counts to decide eligibility for benefits and the amount of benefits.

"Birth costs" means medical expenses incurred by the custodial parent or the state, tribe, or country for the birth of a child.

"Cash medical support" means a combination of:

(1) A parent's monthly payment toward the premium paid for coverage provided by a public entity or by another parent, which represents the obligated parent's proportionate share of the premium paid, but this amount is limited to no more than twenty-five percent of the obligated parent's basic support obligation; and

(2) A parent's proportionate share of uninsured medical expenses.

"Central authority" means the agency designated by a government to facilitate support enforcement with a foreign reciprocating country (FRC) pursuant to section 459A of the federal Social Security Act.

"Child," for the purposes of this chapter, means:

(a) An individual for whom a child support obligation is being established or enforced; or

(b) A dependent child as defined in RCW 74.20A.020(3); and

(c) Unless the context or the facts of a particular case clearly requires otherwise, "child" may be used interchangeably with the term "children."

"Children," for the purpose of this chapter, means more than one child, unless the context or the facts of a particular case clearly requires the term to refer to only one child.

"Conditionally assigned arrears" means those temporarily assigned arrears remaining on a case after the period of public assistance ends.

"Conference board" means a method used by the division of child support for resolving complaints regarding DCS cases and for granting exceptional or extraordinary relief from debt.

"Consent order" means a support order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. A consent order requires the approval of an administrative law judge.

"Controlling order" means the only order issued or, where multiple orders exist, the order determined by a tribunal to control prospective current support pursuant to the Uniform Interstate Family Support Act (UIFSA), chapter 26.21A RCW.

"Controlling order state" means the state in which the only order was issued or, where multiple orders exist, the state in which the order determined by a tribunal to control prospective current support pursuant to the UIFSA was issued.

"Country" means a foreign country (or a political subdivision thereof) declared to be a Foreign Reciprocating Country (FRC) under 42 U.S.C. 659A and any foreign country (or political subdivision thereof) with which the state has entered into a reciprocal arrangement for the establishment and enforcement of support obligations to the extent consistent with federal law pursuant to 42 U.S.C. 659A.

"Court order" means a judgment, decree or order of a Washington state superior court, or a court of comparable jurisdiction of an Indian tribe or another state or country.

"Current support" or **"current and future support"** means the amount of child support which is owed for each month.

"Custodial parent or CP" means the person, whether a parent or not, with whom a dependent child resides the majority of the time period for which the division of child support seeks to establish or enforce a support obligation.

"Date the state assumes responsibility for the support of a dependent child on whose behalf support is sought" means the date that the TANF or AFDC program grant is effective. For purposes of this chapter, the state remains responsible for the support of a dependent child until public assistance terminates, or support enforcement services end, whichever occurs later.

"Delinquency" means failure to pay current child support when due.

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

"Dependent child" means a person:

- (1) Seventeen years of age or younger who is not self-supporting, married, or a member of the United States armed forces;
- (2) Eighteen years of age or older for whom a court order requires support payments past age eighteen;
- (3) Eighteen years of age or older, but under nineteen years of age, for whom an administrative support order exists if the child is participating full-time in a secondary school program or the same level of vocational or technical training.

"Determination of parentage" means the establishment of the parent-child relationship by:

- (1) A judicial proceeding;
- (2) The signing of a valid acknowledgment of paternity under:
 - (a) RCW 26.26.300 through 26.26.375 prior to January 1, 2019; or

(b) Another jurisdiction's laws dealing with the acknowledgment or affidavit of paternity or the acknowledgment of parentage; or

(3) The signing of a valid acknowledgment of parentage under RCW 26.26A.200 through 26.26A.265 on or after January 1, 2019.

"Differentiated support amount" means an amount of child support that represents a parent's support obligation for more than one child and may justifiably be divided into "per child" amounts for each child covered by the support order, based on information contained in the support order.

"Differentiated support order" means a child support order which provides a monthly amount of child support for two or more children, and either provides a specific support obligation for each child or provides enough information in the order so that the monthly amount may justifiably be divided into a "per child" amount for each child covered by the support order.

"Disbursement" means the amount of child support distributed to a case that is paid to the family, state, other child support enforcement agency in another state or foreign country, Indian tribe, or person or entity making the payment.

"Disposable earnings" means the amount of earnings remaining after the deduction of amounts required by law to be withheld.

"Distribution" means how a collection is allocated or split within a case or among multiple cases.

"Domestic partner" means a state registered domestic partner as defined in chapter 26.60 RCW.

"Earnings" means compensation paid or payable for personal service. Earnings include:

- (1) Wages or salary;
- (2) Commissions and bonuses;
- (3) Periodic payments under pension plans, retirement programs, and insurance policies of any type;
- (4) Disability payments under Title 51 RCW;
- (5) Unemployment compensation under RCW 50.40.020, 50.40.050 and Title 74 RCW;
- (6) Benefits under the family and medical leave insurance program under Title 50A RCW;
- (7) Gains from capital, labor, or a combination of the two; and
- (8) The fair value of nonmonetary compensation received in exchange for personal services.

"Employee" means a person to whom an employer is paying, owes, or anticipates paying earnings in exchange for services performed for the employer.

"Employer" means any person or organization having an employment relationship with any person. This includes:

- (1) Partnerships and associations;
- (2) Trusts and estates;
- (3) Joint stock companies and insurance companies;
- (4) Domestic and foreign corporations;
- (5) The receiver or trustee in bankruptcy; and
- (6) The trustee or legal representative of a deceased person.

"Employment" means personal services of whatever nature, including service in interstate commerce, performed for earnings or under any contract for personal services. Such a contract may be written or oral, express or implied.

"Family" means the person or persons on whose behalf support is sought, which may include a custodial parent and one or more children,

or one or more children in foster care placement. The family is sometimes called the assistance unit.

"Family arrears" means the amount of past-due support owed to the family, which has not been conditionally, temporarily or permanently assigned to a state. Also called "nonassistance arrears."

"Family member" means the caretaker relative, the child or children, and any other person whose needs are considered in determining eligibility for assistance.

"Foreign order" means a court or administrative order entered by a tribunal other than one in the state of Washington, including an order entered by a tribunal in an Indian tribe or another state or country.

"Foreign reciprocating country" or FRC means a country which the federal government has declared to be a foreign reciprocating country, which means that the foreign country has established, or undertakes to establish, procedures for the establishment and enforcement of duties of support owed to custodial parents who are residents of the United States, and that such procedures are substantially in conformity with the standards prescribed under title IV-D of the federal Social Security Act.

"Foster care case" means a case referred to the Title IV-D agency by the Title IV-E agency, which is the department of children, youth, and families (DCYF).

"Fraud," for the purposes of vacating an agreed settlement or consent order, means:

- (1) The representation of the existence or the nonexistence of a fact;
- (2) The representation's materiality;
- (3) The representation's falsity;
- (4) The speaker's knowledge that the representation is false;
- (5) The speaker's intent that the representation should be acted on by the person to whom it is made;
- (6) Ignorance of the falsity on the part of the person to whom it is made;
- (7) The latter's:
 - (a) Reliance on the truth of the representation;
 - (b) Right to rely on it; and
 - (c) Subsequent damage.

"Full support enforcement services" means the entire range of services available in a Title IV-D case.

"Good cause" for the purposes of late hearing requests and petitions to vacate orders on default means a substantial reason or legal justification for delay, including but not limited to the grounds listed in civil rule 60. The time periods used in civil rule 60 apply to good cause determinations in this chapter.

"Head of household" means the parent or parents with whom the dependent child or children were residing at the time of placement in foster care.

"Health care costs" means medical expenses. Certain statutes in chapter 26.19 RCW refer to medical expenses as health care costs.

"Health care coverage" means fee for service, health maintenance organization, preferred provider organization, and other types of private health insurance and public health care coverage under which medical services could be provided to a dependent child or children. These services include, but are not limited to: Medical/surgical (in-patient, outpatient, physician) care, medical equipment (crutches, wheel chairs, prosthesis, etc.), pharmacy products, optometric care,

dental care, orthodontic care, preventive care, mental health care, and physical therapy. The term "health care coverage" includes, but is not limited to, health insurance coverage.

"Health insurance" or **"health insurance coverage"** is included in the definition of "health care coverage." Health insurance coverage includes any coverage under which medical services are provided by an employer or a union whether that coverage is provided through a self-insurance program, under the employee retirement income security act of 1974, a commercial insurer pursuant to chapters 48.20 and 48.21 RCW, a health care service contractor pursuant to chapter 48.44 RCW, or a health maintenance organization pursuant to chapter 48.46 RCW, and the state through chapter 41.05 RCW.

"Hearing" means an adjudicative proceeding authorized by this chapter, or chapters 26.23, 74.20 and 74.20A RCW, conducted under chapter 388-02 WAC and chapter 34.05 RCW.

"I/me" means the person asking the question which appears as the title of a rule.

"Income" includes:

- (1) All gains in real or personal property;
- (2) Net proceeds from the sale or exchange of real or personal property;
- (3) Earnings;
- (4) Interest and dividends;
- (5) Proceeds of insurance policies;
- (6) Other periodic entitlement to money from any source; and
- (7) Any other property subject to withholding for support under the laws of this state.

"Income withholding action" includes all withholding actions which DCS is authorized to take, and includes but is not limited to the following actions:

- (1) Asserting liens under RCW 74.20A.060;
- (2) Serving and enforcing liens under chapter 74.20A RCW;
- (3) Issuing orders to withhold and deliver under chapter 74.20A RCW;
- (4) Issuing notices of payroll deduction under chapter 26.23 RCW; and
- (5) Obtaining wage assignment orders under RCW 26.18.080.

"Initiating agency" or **"initiating jurisdiction"** means a state or Tribal IV-D agency or the central authority of another country, as defined in this rule, in which an individual has applied for or is receiving services.

"Intergovernmental IV-D case" means a IV-D case in which the non-custodial parent lives and/or works in a different jurisdiction than the custodial parent and children that has been referred by an initiating agency to a responding agency for services. An intergovernmental IV-D case may include any combination of referrals between states, tribes, and countries. An intergovernmental IV-D case also may include cases in which a state agency is seeking only to collect support arrearages, whether owed to the family or assigned to the state.

"Locate" can mean efforts to obtain service of a support establishment notice in the manner prescribed by WAC 388-14A-3105.

"Medical assistance" means medical benefits under Title XIX of the federal Social Security Act provided to families as an alternative or supplement to TANF. This term includes public health care coverage, which is called apple health in Washington state.

"Medical expenses," for the purpose of establishing support obligations under RCW 26.09.105, 74.20A.055 and 74.20A.056, or for the

purpose of enforcement action under chapters 26.18, 26.23, 74.20 and 74.20A RCW, including the notice of support debt and the notice of support owed, means medical costs incurred on behalf of a child, which include:

- Medical services related to an individual's general health and well-being, including but not limited to, medical/surgical care, preventive care, mental health care and physical therapy; and
- Prescribed medical equipment and prescribed pharmacy products;
- Health care coverage, such as coverage under a health insurance plan, including the cost of premiums for coverage of a child;
- Dental, orthodontic, and optometrical costs incurred on behalf of a child; and
- Copayments and/or deductibles incurred on behalf of a child.

Medical expenses are sometimes also called health care costs or medical costs.

"Medical support" consists of:

(1) Health care coverage, which may be health insurance coverage or public health care coverage; and

(2) Cash medical support, which consists of:

(a) A parent's monthly payment toward the premium paid for coverage provided by a public entity or by another parent, which represents the obligated parent's proportionate share of the premium paid, but no more than twenty-five percent of the obligated parent's basic support obligation; and

(b) A parent's proportionate share of uninsured medical expenses.

"Monthly payment toward the premium" means a parent's contribution toward premiums paid for coverage provided by a public entity or by another parent, which is based on the obligated parent's proportionate share of the premium paid, but is limited to no more than twenty-five percent of the obligated parent's basic support obligation.

"National Medical Support Notice" or **"NMSN"** is a federally mandated form that DCS uses to enforce a health insurance support obligation; the NMSN is a notice of enrollment as described in RCW 26.18.170.

"Noncustodial parent or NCP" means the natural or biological parent, adoptive parent, adjudicated parent, presumed parent, responsible stepparent or person who signed and filed an affidavit acknowledging paternity or parentage, from whom the state seeks support for a dependent child. A parent is considered to be an NCP when for the majority of the time during the period for which support is sought, the dependent child resided somewhere other than with that parent.

"Nonmedical expenses" means amounts incurred on behalf of a child which are not medical expenses as defined in this chapter. Nonmedical expenses include, but are not limited to, day care or other special childrearing expenses such as tuition and long-distance transportation costs to and from the parents for visitation purposes.

"Obligated parent" means a parent who is required under a child support order to provide medical support, which could include health care coverage or to reimburse the other parent for his or her share of uninsured medical expenses for a dependent child. The obligated parent could be either the NCP or the CP.

"Other ordinary expense" means an expense incurred by a parent which:

- (1) Directly benefits the dependent child; and
- (2) Relates to the parent's residential time or visitation with the child.

"Parent" means an individual who has established a parent-child relationship under:

- (1) RCW 26.26.101 prior to January 1, 2019;
- (2) RCW 26.26A.100 on or after January 1, 2019; or
- (3) Under the laws of another jurisdiction.

"Parent-child relationship" means the legal relationship between a child and a parent of the child. The term includes the mother-child relationship and the father-child relationship.

"Participant" means an employee or retiree who is eligible for coverage under an employer group health plan.

"Pass-through" means the portion of a support collection distributed to assigned support that the state pays to a family currently receiving TANF.

"Past support" means support arrears.

"Paternity testing" means blood testing or genetic tests of blood, tissue or bodily fluids. This is also called genetic testing.

"Payment services only" or **"PSO"** means a case on which the division of child support's activities are limited to recording and distributing child support payments, and maintaining case records. A PSO case is not a IV-D case.

"Permanently assigned arrears" means those arrears which the state may collect and retain up to the amount of unreimbursed assistance.

"Physical custodian" means custodial parent (CP).

"Plan administrator" means the person or entity which performs those duties specified under 29 U.S.C. 1002 (16)(A) for a health plan. If no plan administrator is specifically so designated by the plan's organizational documents, the plan's sponsor is the administrator of the plan. Sometimes an employer acts as its own plan administrator.

"Premium" means the amount paid for coverage provided by a public entity or by another parent for a child covered by a child support order. This term may also mean "cost of coverage."

"Presumed parent" means a person who, by operation of law under RCW 26.26.116, is recognized as the parent of a child until that status is rebutted or confirmed in a judicial proceeding.

"Private insurance" is a term used in this chapter to refer to accessible health insurance for a child provided by a parent without the need for service of a national medical support notice, and does not include public health care coverage provided by the state.

"Proportionate share" or **"proportional share"** means an amount equal to a parent's percentage share of the combined monthly net income of both parents as computed on the worksheets when determining a parent's child support obligation under chapter 26.19 RCW.

"Public health care coverage," sometimes called "state purchased health care," means state-financed or federally financed medical coverage, whether or not there is an assignment of rights. For children residing in Washington state, public health care coverage is called apple health; this includes coverage through the department of social and health services or the health care authority, except for coverage under chapter 41.05 RCW. For children residing outside of Washington, this includes coverage through another state's agencies that administer state purchased health care programs.

"Putative father" includes all men who may possibly be the father of the child or children on whose behalf the application for assistance or support enforcement services is made.

"Reasonable efforts to locate" means any of the following actions performed by the division of child support:

- (1) Mailing a support establishment notice to the noncustodial parent in the manner described in WAC 388-14A-3105;
- (2) Referral to a sheriff or other server of process, or to a locate service or department employee for locate activities;
- (3) Tracing activity such as:
 - (a) Checking local telephone directories and attempts by telephone or mail to contact the custodial parent, relatives of the non-custodial parent, past or present employers, or the post office;
 - (b) Contacting state agencies, unions, financial institutions or fraternal organizations;
 - (c) Searching periodically for identification information recorded by other state agencies, federal agencies, credit bureaus, or other record-keeping agencies or entities; or
 - (d) Maintaining a case in the division of child support's automated locate program, which is a continuous search process.
- (4) Referral to the state or federal parent locator service;
- (5) Referral to the attorney general, prosecuting attorney, the IV-D agency of another state, or the Department of the Treasury for specific legal or collection action;
- (6) Attempting to confirm the existence of and to obtain a copy of a paternity acknowledgment; or
- (7) Conducting other actions reasonably calculated to produce information regarding the NCP's whereabouts.

"Required support obligation for the current month" means the amount set by a superior court order, tribal court order, or administrative order for support which is due in the month in question.

"Resident" means a person physically present in the state of Washington who intends to make their home in this state. A temporary absence from the state does not destroy residency once it is established.

"Residential care" means foster care, either state or federally funded.

"Residential parent" means the custodial parent (CP), or the person with whom the child resides that majority of the time.

"Responding agency" or **"responding jurisdiction"** means the agency that is providing services in response to a referral from an initiating agency in an intergovernmental IV-D case.

"Responsible parent" is a term sometimes used for a noncustodial parent.

"Responsible stepparent" means a stepparent who has established an in loco parentis relationship with the dependent child.

"Retained support," depending on the context in which it is used, can mean one of the following:

- (1) An amount paid directly to the custodial parent by the non-custodial parent during a time when there is an open TANF grant, which the custodial parent does not immediately report or turn over to the department;
- (2) A debt owed to the division of child support by anyone other than a noncustodial parent; or
- (3) Amounts collected and retained by the division of child support which are applied to current or past due child support obligations which have been assigned to the state.

"Satisfaction of judgment" means payment in full of a court-ordered support obligation, or a determination that such an obligation is no longer enforceable.

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

"Self-support reserve" or **"self support reserve"** means an amount equal to one hundred twenty-five percent of the federal poverty guideline for a one-person family.

"State" means a state or political subdivision, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a federally recognized Indian tribe or a foreign country.

"Superior court order" means a judgment, decree or order of a Washington state superior court, or of a court of comparable jurisdiction in an Indian tribe or another state or country.

"Support debt" means support which was due under a support order but has not been paid. This includes:

- (1) Delinquent support;
- (2) A debt for the payment of expenses for the reasonable or necessary care, support and maintenance including uninsured medical expenses, birth costs, child care costs, and special child rearing expenses of a dependent child or other person;
- (3) A debt under RCW 74.20A.100 or 74.20A.270; or
- (4) Accrued interest, fees, or penalties charged on a support debt, and attorney's fees and other litigation costs awarded in an action under Title IV-D to establish or enforce a support obligation.

"Support enforcement services" means all actions the Title IV-D agency is required to perform under Title IV-D of the Social Security Act and state law.

"Support establishment notice" means a notice and finding of financial responsibility under WAC 388-14A-3115, a notice and finding of parental responsibility under WAC 388-14A-3120, or a notice and finding of medical responsibility under WAC 388-14A-3125.

"Support money" means money paid to satisfy a support obligation, whether it is called child support, spousal support, alimony, maintenance, reimbursement for uninsured medical expenses, health care coverage, or birth costs.

"Support obligation" means the obligation to provide for the necessary care, support and maintenance of a dependent child or other person as required by law, including health care coverage, uninsured medical expenses, birth costs, and child care or special child rearing expenses.

"Support order" means a court order, administrative order or tribal court order which contains a determination, finding, decree or order that sets a child support obligation (including medical support) and orders either the payment of a set or determinable amount of money for current support and/or a support debt, or the provision of medical support, or both. For purposes of abatement under this chapter, a support order includes the child support obligation and the obligations based on the terms of the basic child support order, such as those determined by notices of support owed.

"Temporarily assigned arrears" means those arrears which accrue prior to the family receiving assistance, for assistance applications dated on or after October 1, 1997, but before October 1, 2008. After the family terminates assistance, temporarily assigned arrears become conditionally assigned arrears.

"Temporary assistance for needy families," or **"TANF"** means cash assistance under the temporary assistance for needy families (TANF) program under Title IV-A of the Social Security Act.

"Title IV-A" means Title IV-A of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 U.S.C.

"Title IV-A agency" means the part of the department of social and health services which carries out the state's responsibilities under the temporary assistance for needy families (TANF) program (and the aid for dependent children (AFDC) program when it existed).

"Title IV-D" means Title IV-D of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 U.S.C.

"Title IV-D agency" or **"IV-D agency"** means the agency responsible for carrying out the Title IV-D plan in a state or tribe. For the state of Washington, this is the division of child support (DCS) within the department of social and health services (DSHS).

"Title IV-D case" is a case in which the division of child support provides services which qualifies for funding under the Title IV-D plan.

"Title IV-D plan" means the plan established under the conditions of Title IV-D and approved by the secretary, Department of Health and Human Services.

"Title IV-E" means Title IV-E of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 U.S.C.

"Title IV-E case" means a foster care case.

"Tribal TANF" means a temporary assistance for needy families (TANF) program run by a tribe.

"Tribunal" means a state court, tribal court, administrative agency, or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage, and includes such courts, agencies or entities in other states or countries.

"Underlying order" means an existing child support order for which DCS serves a notice of support owed under RCW 26.23.110 to determine a sum certain support obligation.

"Undifferentiated support amount" means an amount of child support that represents a parent's support obligation for more than one child which cannot justifiably be divided into "per child" amounts for each child covered by the support order.

"Undifferentiated support order" means a child support order which provides a monthly amount of child support for two or more children, but does not provide a specific support obligation for each child or does not contain enough information in either the order or the worksheets associated with the order to justify dividing the monthly amount into "per child" amounts for each child covered by the support order.

"Uninsured medical expenses," for the purpose of establishing or enforcing support obligations, means:

(1) Medical expenses not paid by insurance for medical, dental, orthodontic, prescription, and optometrical costs incurred on behalf of a child; and

(2) Premiums, copayments, or deductibles incurred on behalf of a child.

"Unreimbursed assistance" means the cumulative amount of assistance which was paid to the family and which has not been reimbursed by assigned support collections.

"Unreimbursed medical expenses" means any amounts paid by one parent for uninsured medical expenses, which that parent claims the obligated parent owes under a child support order, which percentage share is stated in the child support order itself, not just in the worksheets.

"Washington State Support Registry" or "WSSR" is the entity created under RCW 26.23.030 within the division of child support (DCS) which, among other duties, contains a central unit for the collection, accounting and disbursement of support payments.

"We" means the division of child support, part of the department of social and health services of the state of Washington.

"You" means the reader of the rules, a member of the public, or a recipient of support enforcement services.

[Statutory Authority: Part I of 2018 c 150 and RCW 26.09.105, 26.18.170, 26.23.050, 34.05.220 (1)(a), 34.05.350(1), 74.08.090, and 74.20.040(9). WSR 19-02-017, § 388-14A-1020, filed 12/21/18, effective 1/21/19. Statutory Authority: RCW 26.23.120, 34.05.350 (1)(b), 43.20A.550, 74.04.055, 74.08.090, 74.20.040(9), 74.20A.310 and 45 C.F.R. Parts 301.1, 302.36, 303.7, 303.11, 305.63, and 308.2. WSR 13-01-075, § 388-14A-1020, filed 12/18/12, effective 1/18/13. Statutory Authority: 2011 c 283, RCW 34.05.220, 43.20A.550, 74.04.055, 74.04.057, 74.08.090, 74.20A.055, 74.20A.056, and 74.20A.310. WSR 12-01-002, § 388-14A-1020, filed 12/7/11, effective 1/7/12. Statutory Authority: RCW 26.09.105(17), 26.18.170(19), 26.23.050(8), 26.23.110(14), 34.05.020, 34.05.060, 34.05.220, 74.08.090, 74.20.040, 74.20A.055(9), and 74.20A.056(11). WSR 11-12-006, § 388-14A-1020, filed 5/19/11, effective 6/19/11. Statutory Authority: RCW 26.18.170, 26.23.035, 26.23.050, [26.23.]110, 74.20.040, 74.20A.030, [74.20A.]055, [74.20A.]056, and 74.20A.310. WSR 09-02-059, § 388-14A-1020, filed 1/5/09, effective 1/27/09. Statutory Authority: 2007 c 143, §§ 1, 2, 3, 4, 5, 7, 8, and 9. WSR 08-12-029, § 388-14A-1020, filed 5/29/08, effective 7/1/08. Statutory Authority: RCW 74.20A.310, 45 C.F.R. 302.31 and 302.33. WSR 06-03-120, § 388-14A-1020, filed 1/17/06, effective 2/17/06. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056, 74.20A.310. WSR 05-14-101, § 388-14A-1020, filed 6/30/05, effective 7/31/05. Statutory Authority: RCW 74.08.090, 74.20A.310, and 26.18.170, 42 U.S.C. 666 (a)(19), Child Support Performance and Incentives Act of 1998, 45 C.F.R. 303.31, and 45 C.F.R. 303.32. WSR 04-17-119, § 388-14A-1020, filed 8/17/04, effective 9/17/04. Statutory Authority: RCW 74.08.090, 26.23.035, 34.05.220(1), 74.20A.055, 74.20A.056. WSR 01-03-089, § 388-14A-1020, filed 1/17/01, effective 2/17/01. Formerly WAC 388-11-011 and 388-14-020.]

AMENDATORY SECTION (Amending WSR 13-01-075, filed 12/18/12, effective 1/18/13)

WAC 388-14A-3800 Once a support order is entered, can it be changed? (1) A support order entered by a superior court may only be modified by a superior court or a court of comparable jurisdiction of an Indian tribe or another state or country. The Uniform Interstate Family Support Act (UIFSA, adopted in Washington as chapter 26.21A RCW) determines which state, tribe or country may modify the order.

(2) If the order specifically states how the amount of support may be adjusted, the division of child support (DCS) may bring an administrative action under RCW 26.23.110 and WAC 388-14A-3310.

(3) As provided in WAC 388-14A-3900, DCS may review any support order to determine whether DCS should petition to modify the support provisions of the order.

(4) Either DCS, the CP or the NCP may petition to modify an administrative order under WAC 388-14A-3925. Acting as a responding jurisdiction, DCS may petition to modify an administrative order at the request of the initiating jurisdiction.

(5) Under appropriate circumstances, an administrative support order may be vacated. See WAC 388-14A-3700.

(6) Child support orders may be changed under WAC 388-14A-3940 to include abatement language for purposes of abatement as required by this chapter.

[Statutory Authority: RCW 26.23.120, 34.05.350 (1)(b), 43.20A.550, 74.04.055, 74.08.090, 74.20.040(9), 74.20A.310 and 45 C.F.R. Parts 301.1, 302.36, 303.7, 303.11, 305.63, and 308.2. WSR 13-01-075, § 388-14A-3800, filed 12/18/12, effective 1/18/13. Statutory Authority: RCW 74.08.090, 34.05.310 (4)(d), chapter 26.19 RCW, RCW 34.05.220(1), 74.20A.055, 74.20A.056. WSR 03-20-072, § 388-14A-3800, filed 9/29/03, effective 10/30/03. Statutory Authority: RCW 74.08.090, chapter 26.19 RCW, 34.05.220(1), 74.20A.055, 74.20A.056. WSR 01-03-089, § 388-14A-3800, filed 1/17/01, effective 2/17/01. Formerly WAC 388-11-140.]

AMENDATORY SECTION (Amending WSR 13-01-075, filed 12/18/12, effective 1/18/13)

WAC 388-14A-3900 Does DCS review my support order to see if it should be modified? (1) When the division of child support (DCS) is providing support enforcement services under Title IV-D of the Social Security Act, DCS must:

(a) Review a superior court or administrative order for child support to determine whether DCS will petition to modify the child support provisions of the order; or

(b) Evaluate an intergovernmental case to determine whether to refer the case to an Indian tribe or another state or country for review of the support order for modification.

(2) Recipients of payment services only under WAC 388-14A-2000(1) are not eligible for a review of their support order under this section until they have submitted an application for support enforcement services.

(3) DCS reviews a child support order for the limited purpose of referring the order to the appropriate tribunal to add abatement language under WAC 388-14A-3940.

[Statutory Authority: RCW 26.23.120, 34.05.350 (1)(b), 43.20A.550, 74.04.055, 74.08.090, 74.20.040(9), 74.20A.310 and 45 C.F.R. Parts 301.1, 302.36, 303.7, 303.11, 305.63, and 308.2. WSR 13-01-075, § 388-14A-3900, filed 12/18/12, effective 1/18/13. Statutory Authority: RCW 74.08.090, 45 C.F.R. 302.70, 45 C.F.R. 303.7, 45 C.F.R. 303.8. WSR 01-03-089, § 388-14A-3900, filed 1/17/01, effective 2/17/01. Formerly WAC 388-11-143.]

AMENDATORY SECTION (Amending WSR 13-01-075, filed 12/18/12, effective 1/18/13)

WAC 388-14A-3901 Under what circumstances does DCS review a support order for modification? (1) The division of child support (DCS) reviews child support orders under WAC 388-14A-3900 when DCS has enough locate information to obtain personal service on both parties to the order; and:

(a) The department is paying public assistance or has determined that the children are eligible for medical assistance, and thirty-five months have passed since:

- (i) DCS last reviewed the order under this section;
- (ii) The order was last modified; or
- (iii) The order was entered; or

(b) A party to the order, the IV-D agency of a tribe or another state, or the central authority of another country, submits a request for review to DCS and thirty-five months have passed since:

(i) DCS or another state or tribe's IV-D agency last reviewed the order under this section;

- (ii) The order was last modified; or
- (iii) The order was entered.

(2) DCS may refer a request for review to another state or tribe's IV-D agency for action.

(3) DCS reviews a child support order for the limited purpose of referring the order to the appropriate tribunal to add abatement language under WAC 388-14A-3940. A review under this subsection does not impact reviews conducted under subsections (1) or (2) of this section.

[Statutory Authority: RCW 26.23.120, 34.05.350 (1)(b), 43.20A.550, 74.04.055, 74.08.090, 74.20.040(9), 74.20A.310 and 45 C.F.R. Parts 301.1, 302.36, 303.7, 303.11, 305.63, and 308.2. WSR 13-01-075, § 388-14A-3901, filed 12/18/12, effective 1/18/13. Statutory Authority: RCW 74.08.090, 45 C.F.R. 302.70, 45 C.F.R. 303.7, 45 C.F.R. 303.8. WSR 01-03-089, § 388-14A-3901, filed 1/17/01, effective 2/17/01. Formerly WAC 388-11-143.]

AMENDATORY SECTION (Amending WSR 20-04-032, filed 1/28/20, effective 2/28/20)

WAC 388-14A-3903 How does DCS decide whether to petition for modification of a support order? (1) The division of child support (DCS) petitions to modify a support order when DCS finds during the review that each of the following conditions are present:

(a) The proposed change in child support based on the Washington state child support schedule:

- (i) Is at least fifteen percent above or below the current support obligation;
- (ii) Is at least one hundred dollars per month above or below the current support obligation; and
- (iii) Is at least a two thousand four hundred dollar change over the remaining life of the support order; or
- (iv) Will provide enough income to:

(A) Make the family ineligible for public assistance if the non-custodial parent (NCP) pays the full amount due under the proposed order; or

(B) Allow a family, otherwise eligible for public assistance, to remain off of assistance.

(b) The case meets the legal requirements for modification under RCW 26.09.170, 74.20A.059, or WAC 388-14A-3925.

(2) DCS may petition to modify the order without regard to subsection (1)(a)(i) of this section if the reason DCS reviewed the order is the noncustodial parent's incarceration.

(3) DCS may petition to modify the order without regard to subsection (1)(a) of this section when:

(a) The order does not require the NCP to provide health insurance coverage for the children; and

(b) Health insurance coverage is available through the NCP's employer or union at a reasonable cost; or

(c) Both parties agree to an order modifying the support amount; or

(d) DCS learns that an NCP is incarcerated and qualifies for abatement under this chapter and the child support order does not include abatement language.

[Statutory Authority: 2019 c 275 §§ 2 and 3, RCW 26.09.170, 74.20A.059, 26.09.105, 26.18.170, 74.04.055, 74.08.090, 74.20.040(9), and 74.20A.310. WSR 20-04-032, § 388-14A-3903, filed 1/28/20, effective 2/28/20. Statutory Authority: RCW 74.08.090, 45 C.F.R. 302.70, 45 C.F.R. 303.7, 45 C.F.R. 303.8. WSR 01-03-089, § 388-14A-3903, filed 1/17/01, effective 2/17/01. Formerly WAC 388-11-143.]

AMENDATORY SECTION (Amending WSR 19-02-017, filed 12/21/18, effective 1/21/19)

WAC 388-14A-3925 Who can ask to modify an administrative support order?

(1) The division of child support (DCS), the custodial parent (CP) or the noncustodial parent (NCP) may file a petition and request a hearing to prospectively modify an administrative order for child support. The request must be in writing and must state:

(a) Any circumstances that have changed;

(b) Any relief requested; and

(c) The proposed new support amount.

(2) The petitioning party must file the request for modification with DCS.

(3) Acting as a responding jurisdiction, DCS may file a petition to prospectively modify an administrative order for child support on behalf of an initiating jurisdiction in an intergovernmental case.

(4) ((DCS)) Office of Administrative Hearings serves a copy of the request for modification and notice of hearing on all other parties by ((first class)) regular mail at their last known address ((last known to DCS)).

(5) DCS((~~7~~)) or the administrative law judge (ALJ)((~~, or the department review judge~~)):

(a) Prospectively modifies orders according to the terms of chapter 26.19 RCW and RCW 74.20A.059; and

(b) May only modify an order issued by a tribunal in another state according to the terms of RCW 26.21A.550.

(6) A request to add a requirement for the custodial parent (CP) to provide health care coverage, or to add a provision in the order to

include the CP's share of uninsured medical expenses, is not by itself a sufficient basis for modification of the order.

(7) If the nonpetitioning party fails to appear at the hearing, the ALJ issues a default order based on the Washington state child support schedule and the worksheets submitted by the parties, considering the terms set out in the request for modification.

(8) If the petitioning party fails to appear at the hearing, the ALJ enters an order dismissing the petition for modification.

(9) If the petition for modification does not comply with the requirements of subsection (1)(a) and (b) of this section, the ALJ may:

(a) Dismiss the petition; or

(b) Continue the hearing to give the petitioning party time to amend according to WAC 388-14A-3275 or to complete the petition.

(10) The ALJ may set the effective date of modification as the date the order is issued, the date the request was made, or any time in between. If an effective date is not set in the order, the effective date is the date the modification order is entered.

(11) For purposes of abatement under this chapter, DCS, the CP, or the NCP may seek changes to a child support order to add abatement language under WAC 388-14A-3940.

[Statutory Authority: Part I of 2018 c 150 and RCW 26.09.105, 26.18.170, 26.23.050, 34.05.220 (1)(a), 34.05.350(1), 74.08.090, and 74.20.040(9). WSR 19-02-017, § 388-14A-3925, filed 12/21/18, effective 1/21/19. Statutory Authority: RCW 26.23.120, 34.05.350 (1)(b), 43.20A.550, 74.04.055, 74.08.090, 74.20.040(9), 74.20A.310 and 45 C.F.R. Parts 301.1, 302.36, 303.7, 303.11, 305.63, and 308.2. WSR 13-01-075, § 388-14A-3925, filed 12/18/12, effective 1/18/13. Statutory Authority: 2007 c 143, §§ 1, 2, 3, 4, 5, 7, 8, and 9. WSR 08-12-029, § 388-14A-3925, filed 5/29/08, effective 7/1/08. Statutory Authority: RCW 34.05.220(2), 43.20A.550, 74.04.055, 74.08.090, 74.20.040, 74.20A.310. WSR 07-08-055, § 388-14A-3925, filed 3/29/07, effective 4/29/07. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056. WSR 02-06-098, § 388-14A-3925, filed 3/4/02, effective 4/4/02. Statutory Authority: RCW 74.08.090, 26.23.050, 74.20A.055, 74.20A.059. WSR 01-03-089, § 388-14A-3925, filed 1/17/01, effective 2/17/01. Formerly WAC 388-11-140.]

NEW SECTION

WAC 388-14A-3935 What does DCS do with respect to abatement when it learns the noncustodial parent is an incarcerated parent? (1) If the child support order contains abatement language, the division of child support (DCS) administers the abatement under WAC 388-14A-3945.

(2) If the child support order was entered in Washington state and does not contain abatement language, DCS refers the child support order to the appropriate tribunal for the limited purpose of adding abatement language under WAC 388-14A-3940, except as provided in subsection (3) of this section.

(3) DCS may review for modification under WAC 388-14A-3901 when the child support order does not contain abatement language and the department is paying public assistance for the child or children.

[]

NEW SECTION

WAC 388-14A-3940 Who can ask to add abatement language to an administrative support order? (1) The division of child support (DCS), the custodial parent (CP), or the noncustodial parent (NCP) may file a petition and request a hearing under chapter 26.09 RCW for the limited purpose of adding abatement language to an administrative order for child support.

(2) The petitioning party must submit the request to add abatement language to DCS.

(3) Acting as a responding jurisdiction, DCS may file a petition for the limited purposes of adding abatement language to an administrative order for child support on behalf of an initiating jurisdiction in an intergovernmental case.

(4) OAH serves a copy of the request to add abatement language and notice of hearing on all other parties by regular mail at their last known address.

(5) A hearing under this section:

(a) Is for the limited purpose of determining whether statutorily required abatement language under RCW 26.09.335 should be added to the administrative support order;

(b) Is separate from the administration of the abatement by DCS under WAC 388-14A-3945;

(c) Does not otherwise modify or adjust the administrative support order; and

(d) Does not impact DCS's or any party's right to request a prospective modification of the administrative support order under WAC 388-14A-3925.

(e) Does not impact when DCS reviews a support order for modification under WAC 388-14A-3901.

(6) DCS may enter into an agreed settlement or consent order with the parties under WAC 388-14A-3600 to add abatement language to an administrative support order.

(7) If the nonpetitioning party fails to appear at the hearing, the ALJ issues a default order against that party.

(8) If the petitioning party fails to appear at the hearing, the ALJ enters an order dismissing the petition.

[]

NEW SECTION

WAC 388-14A-3945 How does DCS administer abatement of an incarcerated person's child support order? (1) The division of child support (DCS) abates a noncustodial parent's (NCP's) child support order under this chapter when it learns that the NCP is an incarcerated person and all of the following are true:

(a) The NCP is incarcerated for or begins serving a sentence of at least six months in confinement;

(b) The child support order contains abatement language; and

(c) DCS has reviewed its records and determines the NCP has no access to or possession of income or assets to pay child support while incarcerated.

(2) There is a rebuttable presumption that an incarcerated person has no access to or possession of income or assets to pay child sup-

port while incarcerated. DCS may assert it has rebutted the presumption. See WAC 388-14A-3955.

(3) When the requirements of subsection (1) of this section are met, the child support order is abated to ten dollars per month without regard to the number of children covered by that order.

(4) The first month support is abated is the date the NCP became confined or February 1, 2021, whichever is later.

(5) The abatement ends on the last day of the third full month following the NCP's release from confinement, unless an order entered in the court or administrative forum specifies a different date.

(6) DCS sends a notice of abatement to notify the custodial parent (CP) by regular mail to their last known address, with a copy to the NCP, that the abatement has been applied.

(7) If the CP disagrees with the notice of abatement, the CP may:

(a) Request a timely hearing within twenty days of the date of the notice of abatement (see WAC 388-14A-3965);

(b) Request an untimely hearing within one year of the date of the notice of abatement (see WAC 388-14A-3965); or

(c) Request in writing to terminate or reverse the abatement at any time during the period of abatement (see WAC 388-14A-3970).

(8) If the NCP disagrees with the notice of abatement, the NCP may request in writing to terminate or reverse the abatement at any time during the period of abatement (see WAC 388-14A-3960).

(9) If the abatement results in an overpayment by the NCP:

(a) Neither DCS nor the CP is required to refund any support collections or payments received by DCS prior to the date on which DCS learned of the incarceration; and

(b) The NCP is not entitled to a refund of any support collections or payments received by DCS prior to the date on which DCS learned of the incarceration.

(10) Abatement of a child support obligation of an incarcerated person does not constitute modification or adjustment of the order.

[]

NEW SECTION

WAC 388-14A-3950 What does DCS do to reinstate the support order when the NCP is released from confinement? (1) Unless otherwise specified in a court or administrative order, the support order is automatically reinstated as follows:

(a) Effective the first day of the fourth full month after the NCP is released from confinement, support is reinstated at fifty percent of the support amount provided in the underlying order, but not less than the presumed minimum obligation of \$50 per month per child; and

(b) Effective one year after release from confinement, support is reinstated at one hundred percent of the support amount provided in the underlying order.

(2) DCS informs the parties in writing at their last known address when reinstating support at fifty percent and one hundred percent.

(3) If the support order is modified under RCW 26.09.170 or RCW 74.20A.059 during the period of abatement, this provision regarding

reinstatement of support at fifty percent in subsection (1) of this section does not apply. DCS enforces the modified support obligation.

[]

NEW SECTION

WAC 388-14A-3955 What does DCS do when it determines an incarcerated person's support order should not be abated? (1) If DCS reviews its records and determines the NCP has access to or possession of income or assets to pay child support while incarcerated, DCS sends a notice regarding non-abatement of child support, sometimes called the notice regarding non-abatement, to the NCP and a copy to the custodial parent (CP).

(a) There is a rebuttable presumption that an incarcerated person has no access to or possession of income or assets available to pay child support while incarcerated.

(b) The notice regarding non-abatement includes the reason or reasons DCS believes it has rebutted the presumption that the NCP is unable to pay their child support obligation while incarcerated.

(2) The parties may request an adjudicative proceeding if they disagree with the notice regarding non-abatement.

(a) The parties may request a timely hearing within twenty days of the date of the notice regarding non-abatement.

(b) The parties may request an untimely hearing within one year of the date of the notice regarding non-abatement.

(c) The parties may request a late hearing one year or more after the after the date of the notice regarding non-abatement but must demonstrate good cause.

(3) For purposes of this chapter, correctional industries compensation does not count as income or assets to pay child support.

[]

NEW SECTION

WAC 388-14A-3960 What happens at a hearing on a notice regarding non-abatement of child support? (1) The noncustodial parent (NCP) or custodial parent (CP) may request a hearing on a notice regarding non-abatement of child support, sometimes called the notice regarding non-abatement.

(2) The purpose of the hearing is for the administrative law judge (ALJ) to determine whether DCS's notice is upheld or dismissed.

(3) The ALJ must allow DCS to orally amend the notice regarding non-abatement at the hearing to conform to the evidence. The ALJ may grant a continuance, if necessary, to allow the parties additional time to present evidence or argument in response to the amendment.

(4) The administrative law judge issues an order:

(a) Upholding DCS's determination that support should not be abated because the NCP has access to or possession of income or assets to pay child support while incarcerated; or

(b) Dismissing the notice regarding non-abatement because the NCP does not have access to or possession of income or assets to pay child support while incarcerated.

(5) If the order says child support should be abated, DCS abates and sends a notice of abatement to the parties. See WAC 388-14A-3940.

[]

NEW SECTION

WAC 388-14A-3965 What happens at a hearing on a notice of abatement? (1) The custodial parent (CP) has the burden of proof to demonstrate to the administrative law judge (ALJ) that the NCP has access to or possession of income or assets to pay child support while incarcerated.

(2) Any party to the hearing may show good cause why the abatement should end and support reinstated at a date other than what is specified in WAC 388-14A-3945.

(3) The ALJ must allow DCS to orally amend the notice of abatement at the hearing to conform to the evidence. The ALJ may grant a continuance, if necessary, to allow the parties additional time to present evidence or argument in response to the amendment.

(4) The administrative law judge issues an order:

(a) Upholding the notice of abatement;

(b) Upholding the notice of abatement and, upon a finding of good cause, specifying the date abatement ends; or

(c) Dismissing the notice of abatement because the objecting party met the burden of proof to show that NCP has access to or possession of income or assets to pay child support while incarcerated.

[]

NEW SECTION

WAC 388-14A-3970 Who may request to terminate or reverse an abatement? (1) The division of child support (DCS), the custodial parent (CP), or the noncustodial parent (NCP) may submit a request to terminate or reverse an abatement at any time during the period of abatement. The request must be in writing.

(a) If DCS or the CP is the requesting party, they must include documents or other evidence demonstrating that the NCP has access to or possession of income or assets to pay child support while incarcerated.

(b) If the NCP is the requesting party, no supporting documents are required.

(2) The requesting party must file the request to terminate or reverse the abatement with DCS or the office of administrative hearings (OAH).

(3) Acting as a responding jurisdiction, DCS may file a request to terminate or reverse an abatement on behalf of an initiating jurisdiction in an intergovernmental case.

[]

NEW SECTION

WAC 388-14A-3975 What happens at a hearing to terminate or reverse an abatement? (1) If the requesting party was required to submit supporting documents and did not do so, any other party may file a motion to dismiss. The requesting party may ask for a continuance to provide supporting documents.

(2) If the hearing is dismissed because supporting documents were not submitted, the requesting party may file a petition to vacate the dismissal.

(3) If a hearing is held, the ALJ may reverse the abatement or terminate the abatement on a specific date upon a finding that the NCP has access to or possession of assets or income to provide support while incarcerated.

(4) If the requesting party fails to appear after being sent a notice of hearing, the request must be dismissed.

(5) Depending on the type of evidence provided at the hearing, the ALJ may order that the abatement of the support order be:

(a) Reversed, meaning that the determination that support should be abated is vacated and all amounts owed under the support order are reinstated; or

(b) Terminated, meaning that the abatement of support ends as of the date specified in the order.

[]

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-6100 The division of child support accepts oral requests for hearing or conference board. (1) Except for the instances listed in subsections (8) and (9), the division of child support (DCS) accepts either a written or an oral request for hearing or conference board, even though other sections of this chapter or the relevant statutes may provide that objections and hearing requests should be in writing.

(2) The subject matter of the objection determines whether the matter is set as a conference board or hearing, unless there is a specific request for an administrative hearing under chapter 34.05 RCW.

(3) DCS processes oral and written requests for hearing in the same manner.

(4) An oral request for hearing is complete if it contains enough information to identify the person making the request, the DCS action, and the case or cases involved in the hearing request.

(5) The effective date of an oral request for hearing is the date that someone makes a complete oral request for hearing, to any DCS representative in person or by leaving a message on the automated voice mail system of any DCS field office.

(6) When making an oral request, you do not need to specify whether you want a hearing under chapter 34.05 RCW or a conference board under WAC 388-14A-6400.

(7) You can make an oral request for hearing or conference board on behalf of another person, if you have written authorization to act on their behalf. The effective date of an oral request for hearing or conference board made on behalf of another person is the later of the

date of the complete oral request for hearing or the date that DCS receives the written authorization.

(8) There are (~~two~~) three types of hearing requests which must be in writing:

(a) A petition for prospective modification under WAC 388-14A-3925; (~~and~~)

(b) A petition for reimbursement for day care expenses under WAC 388-14A-4300; and

(c) A request to terminate or reverse an abatement under WAC 388-14A-3960.

(9) You must also make the following requests in writing:

(a) A request for a determination of controlling order under the Uniform Interstate Family Support Act (UIFSA), chapter 26.21A RCW, as described in WAC 388-14A-7305; and

(b) An objection to the determination of controlling order contained in a notice of support debt and registration issued by DCS under WAC 388-14A-7325. WAC 388-14A-7335 describes how to make this objection.

[Statutory Authority: RCW 34.05.220(2), 43.20A.550, 74.04.055, 74.08.090, 74.20.040, 74.20A.310. WSR 07-08-055, § 388-14A-6100, filed 3/29/07, effective 4/29/07. Statutory Authority: RCW 74.08.090, 34.05.220. WSR 01-03-089, § 388-14A-6100, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-500.]

**WSR 21-06-026
EMERGENCY RULES****DEPARTMENT OF REVENUE**

[Filed February 23, 2021, 9:41 a.m., effective February 23, 2021, 9:41 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 458-20-193 (Rule 193) and 458-20-221 (Rule 221) provide guidance regarding the need for a seller to have a physical presence in Washington in order to establish the required nexus for the state to impose a sales or use tax collection obligation on retail sales into Washington. The United States Supreme Court's recent decision in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), allowed Washington to impose a sales or use tax collection obligation on sellers who do not have a physical presence in this state. Pursuant to this decision and RCW 82.08.0254, 82.12.0255, and 82.32.733, effective October 1, 2018, the department required remote sellers meeting certain thresholds to collect retail sales or use tax on all taxable sales sourced to Washington. Recent legislation (SSB 5581 (2019)) further clarified the sales tax collection obligation for remote sellers. Until the final rules reflecting these changes are adopted through the standard rule-making process, the department wants the public to be aware that the current Rules 193 and 221 may contain outdated or incomplete information regarding who is required to collect sales or use tax on taxable retail sales into Washington.

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

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

Other Authority: RCW 34.05.350.

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

Reasons for this Finding: Taxpayers rely on Rules 193 and 221 to determine whether they are required to collect sales or use tax on taxable retail sales sourced to Washington. Effective October 1, 2018, the department imposed a sales or use tax collection obligation on remote sellers meeting certain thresholds, under the authority of RCW 82.08.0254, 82.12.0255, and 82.32.733. SSB 5581 (2019) further clarified the sales tax collection obligation for remote sellers. Because of these changes in the law, Rules 193 and 221 require substantive updates using the standard rule-making process. Until these rules are amended, the department wants to ensure the public does not use current Rules 193 and 221 to determine their sales or use tax collection obligations beginning October 1, 2018.

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

Date Adopted: February 23, 2021.

Atif Aziz
Rules Coordinator

OTS-1457.1

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

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

(1) **Introduction.** The U.S. Supreme Court's recent decision in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), clarified that Washington may impose a sales and use tax collection obligation on sellers who do not have a physical presence in this state. Pursuant to this decision, RCW 82.08.0254, 82.12.0255, and 82.32.733, effective October 1, 2018, Washington required remote sellers meeting certain thresholds to collect retail sales or use tax on all taxable sales sourced to Washington. Recent legislation (Substitute Senate Bill No. 5581 (2019)) further clarified the sales tax collection obligation for remote sellers. As a result, this rule may include outdated or incomplete guidance regarding who is required to collect Washington's retail sales or use tax. Please see our web site for the most recent information on those requirements. This rule explains the application of the business and occupation (B&O) and retail sales taxes to interstate sales of tangible personal property.

(a) The following rules may also be helpful:

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

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

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

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

(b) This rule contains examples that identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances.

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

(2) **Scope of rule.** In general, Washington imposes its B&O and retail sales taxes on sales of tangible personal property if the seller has nexus with Washington and the sale occurs in Washington. This rule

explains the applicable nexus and place of sale requirements with respect to sales of tangible personal property. This rule does not cover sales of intangibles or services and does not address the use tax obligation of a purchaser of goods in Washington. For information on payment responsibilities for use tax see WAC 458-20-178.

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

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

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

(c) Part III - Drop shipment sales.

Part I - Nexus Standards for Sales of Tangible Personal Property

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

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

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

(i) The person has property in this state;

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

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

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

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

(c) **Employees.** A person has employees in this state if the person is required to report its employees for Washington unemployment insurance tax purposes, or the facts and circumstances otherwise indicate that the person has employees in the state.

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

For purposes of this rule, the term "agent or other representative" includes an employee, independent contractor, commissioned sales

representative, or other person acting either at the direction of or on behalf of another.

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

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

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

(f) **Trade convention exception.** For the physical presence nexus standard described in this subsection, the department may not make a determination of nexus based solely on the attendance or participation of one or more representatives of a person at a single trade convention per calendar year in Washington state in determining if such person is physically present in this state for the purposes of establishing substantial nexus with this state. This does not apply to persons making retail sales at a trade convention in this state, including persons taking orders for products or services where receipt will occur at a later time in Washington state. RCW 82.32.531.

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

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

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

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

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

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

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

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

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

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

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

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

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

Prior to July 1, 2017, RCW 82.04.220 provided that for B&O tax purposes a person who stopped the business activity that created nexus

in Washington continued to have nexus for the remainder of that calendar year, plus one additional calendar year.

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

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

Part II - Sourcing Sales of Tangible Personal Property

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

(202) Receive and receipt.

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

(b) Receipt by a shipping company.

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

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

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

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

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

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

Example 2. Department Store has retail stores located in Washington, Oregon, and in several other states. John, a Washington resident, goes to Department Store's store in Portland, Oregon to purchase luggage. John takes possession of the luggage at the store. Although Department Store has nexus with Washington through its Washington store locations, Department Store is not liable for B&O tax and does not

have any responsibility to collect Washington retail sales tax on this transaction because the purchaser, John, took possession of the luggage at the seller's business location outside of Washington.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Example 10. An out-of-state manufacturer/seller of a bulk good with nexus in Washington sells the good to a Washington-based purchaser in the business of selling small quantities of the good under its own label in its own packaging. The purchaser directs the seller to deliver the goods to a third-party packaging plant located out-of-state for repackaging of the goods in the purchaser's own packaging. The purchaser then has a third-party shipping company pick up the goods at the packaging plant. The Washington purchaser takes constructive possession of the goods outside of Washington because it has exercised dominion and control over the goods by having them repackaged at an out-of-state packaging facility before shipment to Washington. The sale is not subject to B&O and retail sales tax in this state because the purchaser received the goods outside of Washington.

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

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

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

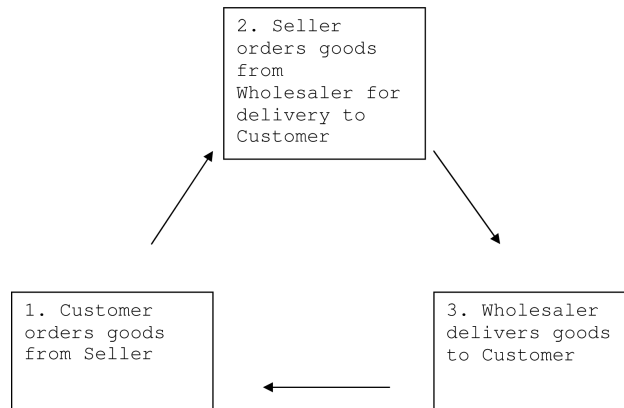
(a) **Sales of commercial aircraft parts.** As more particularly provided in RCW 82.04.627, the sale of certain parts to the manufacturer of a commercial airplane in Washington is deemed to take place at the site of the final testing or inspection.

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

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

Part III - Drop Shipments

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



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

- (a) The seller and wholesaler do not have nexus;
- (b) The seller has nexus and the wholesaler does not;
- (c) The wholesaler has nexus and the seller does not; and
- (d) The seller and wholesaler both have nexus. In each of the following scenarios, the customer receives the property in Washington and the sale is sourced to Washington. Further, in each of the following scenarios, a reseller permit or other approved exemption certificate has been acquired to document any wholesale sales in Washington.

For information about reseller permits issued by the department, see WAC 458-20-102.

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

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

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

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

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

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 18-06-078, § 458-20-193, filed 3/6/18, effective 4/6/18; WSR 17-09-087, § 458-20-193, filed 4/19/17, effective 5/20/17; WSR 16-12-083, § 458-20-193, filed 5/31/16, effective 7/1/16. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.24.550(2), and 82.26.220(2). WSR 15-15-025, § 458-20-193, filed 7/7/15, effective 8/7/15. Statutory Authority: RCW 82.32.300, 82.01.060(2), chapters 82.04, 82.08, 82.12 and 82.32 RCW. WSR 10-06-070, § 458-20-193, filed 2/25/10, effective 3/28/10. Statutory Authority: RCW 82.32.300. WSR 91-24-020, § 458-20-193, filed 11/22/91, effective 1/1/92. Formerly WAC 458-20-193A and 458-20-193B.]

AMENDATORY SECTION (Amending WSR 89-06-016, filed 2/23/89, effective 4/1/89)

WAC 458-20-221 Collection of use tax by retailers and selling agents. The U.S. Supreme Court's recent decision in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), clarified that Washington may impose a sales and use tax collection obligation on sellers who do not have a physical presence in this state. Pursuant to this decision, RCW 82.08.0254, 82.12.0255, and 82.32.733, effective October 1, 2018, Washington required remote sellers meeting certain thresholds to collect retail sales or use tax on all taxable sales sourced to Washington. Recent legislation (Substitute Senate Bill No. 5581 (2019)) further clarified the sales tax collection obligation for remote sellers. As a result, this rule may include outdated or incomplete guidance regarding who is required to collect Washington's retail sales or use tax. Please see our web site for the most recent information on those requirements.

(1) **Statutory requirements.** RCW 82.12.040(1) provides that every person who maintains a place of business in this state, maintains a stock of goods in this state, or engages in business activities within this state must obtain a certificate of registration and must collect use tax from purchasers at the time it makes sales of tangible personal property for use in this state. The legislature has directed the department of revenue to specify, by rule, activities which constitute engaging in business activities within this state. These are activities which are sufficient under the Constitution of the United States to require the collection of use tax.

(2) **Definitions.**

(a) "Maintains a place of business in this state" includes:

(i) Maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business; or

(ii) Soliciting sales or taking orders by sales agents or traveling representatives.

(b) "Engages in business activities within this state" includes:

(i) Purposefully or systematically exploiting the market provided by this state by any media-assisted, media-facilitated, or media-solicited means, including, but not limited to, direct mail advertising, unsolicited distribution of catalogues, computer-assisted shopping, telephone, television, radio or other electronic media, or magazine or newspaper advertisements or other media; or

(ii) Being owned or controlled by the same interests which own or control any seller engaged in business in the same or similar line of business in this state; or

(iii) Maintaining or having a franchisee or licensee operating under the seller's trade name in this state if the franchisee or licensee is required to collect use tax.

(c) "Purposefully or systematically exploiting the market provided by this state" is presumed to take place if the gross proceeds of sales of tangible personal property delivered from outside this state to destinations in this state exceed five hundred thousand dollars during a period of twelve consecutive months.

(3) **Liability of buyers for use tax.** Persons in this state who buy articles of tangible personal property at retail are liable for use tax if they have not paid sales tax. See WAC 458-20-178.

(4) **Obligation of sellers to collect use tax.** Persons who obtain a certificate of registration, maintain a place of business in this state, maintain a stock of goods in this state, or engage in business activities within this state are required to collect use tax from persons in this state to whom they sell tangible personal property at retail and from whom they have not collected sales tax. Use tax collected by sellers shall be deemed to be held in trust until paid to the department. Any seller failing to collect the tax or, if collected, failing to remit the tax is personally liable to the state for the amount of tax. (For exceptions as to sale to certain persons engaged in interstate or foreign commerce see WAC 458-20-175.)

(5) **Local use tax.** Persons who are obligated to collect use tax solely because they are engaged in business activities within this state as defined in subsection (2)(b)(i) of this section may elect to collect local use tax at a uniform statewide rate of .005 without the necessity of reporting taxable sales to the local jurisdiction of delivery. Amounts collected under the uniform rate shall be allocated by the department to counties and cities in accordance with ratios reflected by the distribution of local sales and use taxes collected from all other taxpayers. Persons not electing to collect at the uniform statewide rate or not eligible to collect at the uniform state rate shall collect local use tax in accordance with WAC 458-20-145.

(6) **Reporting frequency.** Persons who are obligated to collect use tax solely because they are engaged in business activities within this state as defined in subsection (2)(b) of this section shall not be required to file returns and remit use tax more frequently than quarterly.

(7) **Selling agents.** RCW 82.12.040 of the law provides, among other things, as follows:

(a) "Every person who engages in this state in the business of acting as an independent selling agent for persons who do not hold a valid certificate of registration, and who receives compensation by reason of sales of tangible personal property of his principals made for use in this state, shall, at the time such sales are made, collect from the purchasers the tax imposed under this chapter, and for that purpose shall be deemed a retailer as defined in this chapter."

(b) However, in those cases where the agent receives compensation by reason of a sale made pursuant to an order given directly to his principal by the buyer, and of which the agent had no knowledge at the time of sale, the said agent will be relieved of all liability for the collection of or payment of the tax. Furthermore, in other cases where payment is made by the buyer direct to the principal and the agent is unable to collect the tax from the buyer, the agent will be relieved from all liability for the collection of the tax from the buyer and for payment of the tax to the department, provided that within ten days after receipt of commission on any such sale, the agent shall forward to the department a written statement showing the following: Name and address of purchaser, date of sale, type of goods sold, and selling price. (Agents may avoid all liability for collection of this tax, provided their principals obtain a certificate of registration.)

(8) **Time and manner of collection.** The use tax is computed upon the value of the property sold. At the time of making a sale of tangible personal property, the use of which is taxable under the use tax, the seller must collect the tax from the purchaser and upon request give to the purchaser a receipt therefor. This receipt need not be in any particular form, and may be an invoice which identifies the property sold, shows the sale price thereof and the amount of the tax. It

is a misdemeanor for a retailer to refund, remit, or rebate to a purchaser or transferee, either directly or indirectly, by whatever means, all or any part of the use tax.

(9) **Effective date.** This rule shall take effect on April 1, 1989.

[Statutory Authority: RCW 82.32.300. WSR 89-06-016 (Order 89-4), § 458-20-221, filed 2/23/89, effective 4/1/89; WSR 83-08-026 (Order ET 83-1), § 458-20-221, filed 3/30/83; Order ET 70-3, § 458-20-221 (Rule 221), filed 5/29/70, effective 7/1/70.]

WSR 21-06-028
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed February 23, 2021, 10:12 a.m., effective February 24, 2021]

Effective Date of Rule: February 24, 2021.

Purpose: The developmental disabilities administration (DDA) is enacting these changes to align chapter 388-845 WAC with home and community based services (HCBS) waiver amendments approved by the Centers for Medicare and Medicaid Services (CMS).

Citation of Rules Affected by this Order: New WAC 388-845-0920, 388-845-0930, 388-845-0940, 388-845-1101, 388-845-1161, 388-845-1162, 388-845-1163, 388-845-1870, 388-845-1880, 388-845-1890, 388-845-2145, 388-845-2150 and 388-845-2155; repealing WAC 388-845-0300, 388-845-0305, 388-845-0310, 388-845-0400, 388-845-0405, 388-845-0410, 388-845-0700, 388-845-0705, 388-845-0710, 388-845-1300, 388-845-1305, 388-845-1310, 388-845-1400, 388-845-1405, 388-845-1410, 388-845-1900, 388-845-1905, 388-845-1910, 388-845-2160, 388-845-2165 and 388-845-2170; and amending WAC 388-845-0001, 388-845-0055, 388-845-0060, 388-845-0110, 388-845-0210, 388-845-0215, 388-845-0220, 388-845-0225, 388-845-0230, 388-845-0425, 388-845-0500, 388-845-0510, 388-845-0515, 388-845-0520, 388-845-0525, 388-845-0650, 388-845-0800, 388-845-0810, 388-845-0820, 388-845-0900, 388-845-0905, 388-845-0910, 388-845-1100, 388-845-1105, 388-845-1110, 388-845-1150, 388-845-1155, 388-845-1160, 388-845-1505, 388-845-1607, 388-845-1700, 388-845-1800, 388-845-1805, 388-845-1810, 388-845-2000, 388-845-2005, 388-845-2010, and 388-845-3070.

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

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

Reasons for this Finding: Filing these amendments on an emergency basis is necessary to ensure federal compliance and maintain federal funding for the state. This is the third filing on these sections; however, the rule text in the second filing differed from the rule text in the first filing. The rule text has changed because DDA is progressing through the permanent rule-making process and feedback from stakeholders has resulted in some changes. This third filing is necessary to keep the emergency rule in place until DDA completes the permanent rule-making process. The department filed a CR-101 Preproposal statement of inquiry as WSR 20-20-100 on October 5, 2020, to begin the permanent rule-making process. In addition, under the rule development phase of permanent rule making, DDA has been circulating the text for feedback and progressing 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 0, Amended 0, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 13, Amended 38, Repealed 21.
Date Adopted: February 17, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4833.5

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

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

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

"CARE" means comprehensive assessment and reporting evaluation.

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

"Community crisis stabilization services" or "CCSS" means a state-operated program that provides short-term supports to clients who are in crisis, or who are at risk of hospitalization or institutional placement.

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

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

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

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

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

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

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

"HCBS waiver" is a DDA 1915(c) home and community based services waiver program.

"Home" means present (~~or intended~~) place of residence.

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

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

"Integrated settings" mean typical community settings not designed specifically for individuals with disabilities in which the majority of persons employed and participating are individuals without disabilities.

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

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

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

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

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

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

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

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

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

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

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

"You" means the client or participant.

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

[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 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-0055 How do I remain eligible for the waiver? (1)

Once you are enrolled in a DDA 1915(c) HCBS waiver, you can remain eligible if you continue to meet eligibility criteria in WAC 388-845-0030, and:

(a) You complete a reassessment with DDA at least once every twelve months to determine if you continue to meet all of these eligibility requirements;

(b) You must either receive a waiver service at least once in every thirty consecutive days, as specified in WAC 182-513-1320(3), or your health and welfare needs require monthly monitoring, which will be documented in your client record;

(c) You complete an in-person DDA assessment/reassessment interview per WAC 388-828-1520.

(2) For the children's intensive in-home behavioral supports waiver, you must meet the criteria in subsection (1) of this section and you must:

(a) Be under age twenty-one;

(b) Live with your family; (~~and~~)

(c) Have an annual participation agreement signed by your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s); and

(d) Continue to participate in the program as outlined in the annual participation agreement.

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

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-0055, 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, § 388-845-0055, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0055, 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, § 388-845-0055, 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, § 388-845-0055, 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, § 388-845-0055, filed 12/13/05, effective 1/13/06.]

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

- WAC 388-845-0060 Can your waiver enrollment be terminated?** DDA may terminate your waiver enrollment if DDA determines that:
- (1) Your health and welfare needs cannot be met in your current waiver or for one of the following reasons:
 - (a) You no longer meet one or more of the requirements listed in WAC 388-845-0030;
 - (b) You do not have an identified need for a waiver service at the time of your annual person-centered service (~~(plan/individual support)~~) plan;
 - (c) You do not use a waiver service at least once in every thirty consecutive days and your health and welfare do not require monthly monitoring;
 - (d) You are on the community protection waiver and:
 - (i) You choose not to be served by a certified residential community protection provider-intensive supported living services (CP-ISLS);
 - (ii) You engage in any behaviors identified in WAC 388-831-0240 (1) through (4); and
 - (iii) DDA determines that your health and safety needs or the health and safety needs of the community cannot be met in the community protection program;
 - (e) You choose to unenroll from the waiver;
 - (f) You reside out-of-state;
 - (g) You cannot be located or do not make yourself available for the annual waiver reassessment of eligibility;
 - (h) You refuse to participate with DDA in:
 - (i) Service planning;
 - (ii) Required quality assurance and program monitoring activities; or
 - (iii) Accepting services agreed to in your person-centered service plan(~~(/individual support plan)~~) as necessary to meet your health and welfare needs;
 - (i) You are (~~(residing)~~) in a hospital, jail, prison, nursing facility, ICF/IID, or other institution (~~(and remain in residence)~~) for at least one full calendar month, and (~~(are still in residence)~~) are under the care of that setting:
 - (i) At the end of that full calendar month(~~(7)~~) and there is no immediate plan for you to return to the community;
 - (ii) At the end of the twelfth month following the effective date of your current person-centered service (~~(plan/individual support)~~) plan, as described in WAC 388-845-3060; or
 - (iii) At the end of the waiver fiscal year, whichever date occurs first;
 - (j) Your needs exceed the maximum funding level or scope of services under the basic plus waiver as specified in WAC 388-845-3080; or
 - (k) Your needs exceed what can be provided under WAC 388-845-3085.
 - (2) Services offered on a different waiver can meet your health and welfare needs and DDA enrolls you on a different waiver.

[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, § 388-845-0060, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0060, 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, § 388-845-0060, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, and Title 71A RCW. WSR 09-10-021, § 388-845-0060, filed 4/28/09, effective 5/29/09; WSR 07-20-050, § 388-845-0060, 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, § 388-845-0060, filed 12/13/05, effective 1/13/06.]

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

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

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

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

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

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

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

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

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

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

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

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

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

(12) Waiver services do not cover:

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

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

- (a) Necessary to meet a basic health and safety need; (~~and~~)
- (b) The least restrictive means for meeting that need; and
- (c) Requested by the waiver participant.

[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 18-14-001, filed 6/20/18, effective 7/21/18)

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

SERVICE	YEARLY LIMIT
AGGREGATE SERVICES: ((Chemical)) Extermination of cimex lectularius (bedbugs) Community ((guide)) <u>engagement</u> Environmental adaptations Occupational therapy Physical therapy Positive behavior support and consultation Skilled nursing Specialized ((medical)) equipment and supplies Specialized ((psychiatric services)) <u>habilitation</u> Speech, hearing, and language services Staff and family consultation ((and training)) Transportation Wellness education	Total costs must not exceed six thousand one hundred ninety-two dollars per year per participant

SERVICE	YEARLY LIMIT
<u>Therapeutic adaptations</u>	<u>Limited to a single one-time authorization every five years and limited to funds available in the client's aggregate and emergency funding</u>
EMPLOYMENT SERVICES: Individual technical assistance ((Prevocational services)) Supported employment	Limits determined by DDA assessment and employment status((; no new enrollment in prevocational services after September 1, 2015)))
Community inclusion	Limits determined by ((DDA assessment)) <u>the person-centered service plan</u>
((BEHAVIORAL HEALTH)) STABILIZATION SERVICES: ((Behavioral health)) <u>Crisis diversion bed</u> ((services <u>Positive behavior support and consultation))</u> <u>Specialized habilitation</u> <u>Staff and family consultation</u>	Limits determined by a ((behavioral health professional or DDA)) <u>the person-centered service plan</u>
((Specialized psychiatric services))	
((Personal care))	((Limits determined by the CARE tool used as part of the DDA assessment))
Respite care	Limits determined by DDA assessment
Risk assessment	Limits determined by DDA
((Emergency assistance is only for basic plus waiver aggregate services)) <u>Community engagement</u> <u>Environmental adaptations</u> <u>Occupational therapy</u> <u>Physical therapy</u> <u>Positive behavior support</u> <u>Specialized equipment and supplies</u> <u>Speech, hearing, and language services</u> <u>Skilled nursing</u> <u>Staff and family consultation</u> <u>Transportation</u>	<u>Six thousand dollars per year</u> ((; preauthorization required)) <u>for emergency assistance funding</u>

[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.]

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

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

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

SERVICE	YEARLY LIMIT
((Chemical)) Extermination of cimex lectularius (bedbugs) Community ((guide)) <u>engagement</u> Community transition Environmental ((adaptions)) <u>adaptations</u> Occupational therapy Physical therapy Positive behavior support and consultation Residential habilitation Risk assessment Skilled nursing Specialized ((medical)) equipment and supplies ((Specialized psychiatric services)) Speech, hearing, and language services Staff and family consultation ((and training)) Transportation Wellness education	Determined by the person-centered service plan

SERVICE	YEARLY LIMIT
<u>Specialized habilitation</u>	<u>Limited to four thousand dollars per waiver year</u>
EMPLOYMENT SERVICES: Individualized technical assistance ((Prevocational services)) Supported employment	Limits determined by DDA assessment and employment status ((; no new enrollment in prevocational services after September 1, 2015))
Community inclusion	Limits determined by ((DDA assessment)) <u>the person-centered service plan</u>
((BEHAVIORAL HEALTH)) STABILIZATION SERVICES: ((Behavioral health)) Crisis diversion bed ((services)) ((Positive behavior support and consultation)) Specialized ((psychiatric services)) <u>habilitation</u> <u>Staff and family consultation</u>	Limits determined by ((a behavioral health professional or DDA)) <u>the person-centered service plan</u>
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, 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 18-14-001, filed 6/20/18, effective 7/21/18)

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

SERVICE	YEARLY LIMIT
((Chemical)) Extermination of cimex lectularius (bedbugs) Community transition Environmental adaptations Occupational therapy Physical therapy Positive behavior support and consultation Residential habilitation Risk assessment Skilled nursing Specialized ((medical)) equipment and supplies ((Specialized psychiatric services)) Speech, hearing, and language services Staff and family consultation ((and training)) Transportation	Determined by the person-centered service plan
EMPLOYMENT SERVICES: Individual technical assistance ((Prevocational services)) Supported employment	Limits determined by DDA assessment and employment status ((; no new enrollment in prevocational services after September 1, 2015))
((BEHAVIORAL HEALTH)) STABILIZATION SERVICES: ((Behavioral health)) Crisis diversion bed ((services)) ((Positive behavior support and consultation)) Specialized ((psychiatric services)) <u>habilitation</u> <u>Staff and family consultation</u>	Limits determined by ((a behavioral health professional or DDA)) <u>the person-centered service plan</u>

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

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

[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 18-14-001, filed 6/20/18, effective 7/21/18)

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

SERVICE	YEARLY LIMIT
Assistive technology Environmental adaptations Nurse delegation ((Positive behavior support and consultation)) Specialized clothing Specialized ((medical)) equipment and supplies Specialized habilitation Staff and family consultation ((and training)) ((Therapeutic equipment and supplies)) Transportation Vehicle modifications	((Determined by the person-centered service plan. Total cost of waiver services must not exceed the average cost of four thousand dollars per month per participant.)) <u>Fifteen thousand dollars per year for any combination of services</u>
Respite care	Limits determined by the DDA assessment. ((Costs are included in the total average cost of four thousand dollars per month per participant for all waiver services.))
((BEHAVIORAL HEALTH)) STABILIZATION SERVICES: ((Behavioral health)) Crisis diversion ((bed services Positive behavior support and consultation)) Specialized habilitation Staff and family consultation	Limits determined by ((behavioral health professional or DDA)) <u>the person-centered service plan</u>
Risk assessment Positive behavior support	Limits determined by DDA

SERVICE	YEARLY LIMIT
<u>Environmental adaptations (Accessibility and repairs)</u> <u>Specialized habilitation</u> <u>Staff and family consultation</u> <u>Vehicle modifications</u>	<u>Six thousand dollars per year for emergency assistance funding</u>
<u>Music therapy</u> <u>Equine therapy</u>	<u>Five thousand dollars per year for combination of services</u>
<u>Therapeutic adaptations</u>	<u>Limited to a single, one-time authorization not to exceed fifteen thousand dollars every five waiver years</u>

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

[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 20-05-080, filed 2/18/20, effective 3/20/20)

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

SERVICE	YEARLY LIMIT
Assistive technology Community engagement Environmental ((adap tions) adaptations) Occupational therapy Peer mentoring Person-centered plan facilitation Physical therapy Positive behavior support and consultation Respite care Skilled nursing Specialized clothing Specialized ((med ical) equipment and supplies)	Total cost of waiver services must not exceed annual allocation determined by the person-centered service plan

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

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

- (a) Level 1 = one thousand two hundred dollars;
- (b) Level 2 = one thousand eight hundred dollars;
- (c) Level 3 = two thousand four hundred dollars; or
- (d) Level 4 = three thousand six hundred dollars.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. 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 388-845-0425 Are there limits to the assistive technology you may receive? The assistive technology you may receive has the following limits:

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

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

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

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

(b) The treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation of your use of the equipment and determined its effectiveness in meeting your identified need.

(4) Assistive technology requires prior approval by the DDA regional administrator or designee.

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

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

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

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. 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 18-14-001, filed 6/20/18, effective 7/21/18)

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

(a) Under age 21 and currently authorized to receive positive behavior support and consultation for the support of behavioral health

or autism treatment when unable to access through the medicaid state plan; or

(b) On the community protection waiver and require behavior support to address sexual aggression, arson, or assaultive behaviors which make the client eligible for the community protection waiver.

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

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

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

~~((2) Positive behavior support and consultation may also be provided as a behavioral health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.))~~

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

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

(3) The dollar amounts for aggregate services in your basic plus waiver or the dollar amounts in the annual allocation for the individual and family services (IFS) waiver limit the amount of service unless provided as a ~~((behavioral health))~~ stabilization service.

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

(5) Positive behavior support and consultation ~~((not provided as a behavioral health stabilization service))~~ requires prior approval by the DDA regional administrator or designee for the following waivers:

(a) Basic plus;

(b) Core;

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

(d) IFS.

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

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

(b) Not otherwise covered under the medicaid state plan.

[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 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0515 What is ((chemical)) extermination of bedbugs?

(1) ((Chemical)) Extermination of cimex lectularius (bedbugs) is professional ((chemical)) extermination of bedbugs.

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

(a) Receive residential habilitation services; or

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

[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 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0520 Who are qualified providers of ((chemical)) extermination of bedbugs? A qualified ((chemical)) extermination provider must be ((÷

~~(1) Licensed as a chemical pesticide applicator by the Washington state department of agriculture; and~~

~~(2))~~ contracted with DDA to provide ((chemical)) extermination of bedbugs.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0520, filed 6/20/18, effective 7/21/18.]

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

WAC 388-845-0525 Are there limits to the ((chemical)) extermination of bedbugs services I may receive? (1) ((Chemical)) Extermination services covers only:

- (a) The assessment or inspection by the qualified provider;
- (b) Application of chemical-based pesticide; and
- (c) One follow-up visit.

(2) ((Chemical)) Extermination of bedbugs is limited to two treatments per plan year.

(3) ((Chemical)) Extermination of bedbugs excludes:

- (a) Lodging during the ((chemical)) extermination process; and
- (b) Preparatory housework associated with the extermination process.

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

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

(5) DDA requires prior approval by the regional administrator or designee for ((chemical)) extermination of bedbugs.

[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 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0650 What are community engagement services? (1) Community engagement ((services are services)) is designed to increase a waiver participant's connection to and engagement in formal and informal community supports by connecting the participant to community resources.

(2) Services are designed to develop creative, flexible, and supportive community resources and relationships for individuals with developmental disabilities.

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

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

(5) ((Outcomes for this service include skill development, opportunities for socialization, valued community roles, and involvement in community activities, organizations, groups, projects, and other resources.

(6)) This service is available ((in)) on the:

- (a) IFS waiver;
- (b) Basic plus waiver; and
- (c) Core waiver when the participant is not receiving residential habilitation services.

[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 18-14-001, filed 6/20/18, effective 7/21/18)

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

[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 13-24-045, filed 11/26/13, effective 1/1/14)

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

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

[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 18-14-001, filed 6/20/18, effective 7/21/18)

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

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

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

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

- (a) Community ~~((guide))~~ engagement;
- (b) Environmental adaptations;
- (c) Occupational therapy;
- (d) Physical therapy;
- (e) Positive behavior support and consultation;
- (f) Skilled nursing;
- (g) Specialized ~~((medical))~~ equipment and supplies;
- (h) ~~((Specialized psychiatric services;~~
- ~~((i))~~ Speech, hearing, and language services;
- ~~((j))~~ (i) Staff and family consultation ~~((and training))~~, which excludes individual and family counseling;
- ~~((k))~~ (j) Transportation; and
- (k) Therapeutic adaptations.

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

- (a) Environmental adaptations;
- (b) Specialized habilitation;
- (c) Staff and family consultation; and
- (d) Vehicle modifications.

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

- (a) The emergency situation has been resolved;
- (b) You are transferred to alternative supports that meet your assessed needs; or
- (c) You are transferred to an alternate waiver that provides the service you need.

[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. Statutory 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 20-05-080, filed 2/18/20, effective 3/20/20)

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

(a) Ensure the health, welfare, and safety of the individual;
 (b) Enable the individual who would otherwise require institutionalization to function with greater independence in the dwelling; and

(c) Increase the individual's independence inside ~~((the dwelling))~~ or outside the dwelling to ~~((provide access to the dwelling))~~ allow the individual to physically enter and move within the home.

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

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

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

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. 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 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-0905 Who is a qualified provider for environmental adaptations? ~~((1) For adaptations that do not require installation, qualified providers are retail vendors with a valid business license contracted with DDA to provide this service.)~~

~~(2) For adaptations requiring installation,)) A qualified ((pro-
viders)) provider must be a registered contractor per chapter 18.27
RCW and contracted with DDA. The contractor ((or subcontractor)) must
be licensed and bonded to perform the specific type of work ((they are
providing)) being provided.~~

~~((3) For debris removal, qualified providers must be contracted
with DDA.))~~

[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, § 388-845-0905, filed
8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012
c 49. WSR 13-24-045, § 388-845-0905, filed 11/26/13, effective 1/1/14.
Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chap-
ter 71A.12 RCW. WSR 06-01-024, § 388-845-0905, filed 12/13/05, effec-
tive 1/13/06.]

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

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

The following service limits apply to environmental adaptations:

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

(2) Environmental adaptations require prior approval by the DDA
regional administrator or designee and must be supported by itemized
and written bids from licensed contractors. For an adaptation that
costs:

(a) One thousand five hundred dollars or less, one bid is re-
quired;

(b) More than one thousand five hundred dollars and equal to or
less than five thousand dollars, two bids are required; or

(c) More than five thousand dollars, three bids are required.

(3) All bids must include:

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

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

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

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

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

~~(7) ((The condition of the dwelling or other projects in progress
in the dwelling may prevent or limit some or all environmental adapta-
tions at the discretion of DDA))~~ Environmental adaptations must not be
performed while other adaptations or remodeling projects are in proc-
ess.

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

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

~~((9))~~ (10) Written consent from the dwelling landlord is required prior to starting any environmental adaptations for a rental property. The landlord must not require removal of the environmental adaptations at the end of the waiver participant's tenancy as a condition of the landlord approving the environmental adaptation to the waiver participant's dwelling.

~~((10))~~ (11) Environmental adaptations must not add to the total square footage of the dwelling, convert nonliving space to living space, or create a new room.

~~((11))~~ (12) The dollar amounts for aggregate services in your basic plus, CIIBS waiver or the dollar amount of your annual IFS allocation limit the amount of service you may receive.

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

~~((13))~~ (14) Damage prevention and repairs under the CIIBS and IFS waivers are subject to the following restrictions:

(a) Limited to the cost of restoration to the original function;
 (b) Limited to the dollar amounts of the ~~((IFS waiver))~~ participant's annual allocation;

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

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

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

~~((14))~~ (15) The following adaptations are not covered as an environmental adaptation:

- (a) Building fences and fence repairs;
- (b) Carpet or carpet replacement;
- (c) Air conditioning, heat pumps, generators, or ceiling fans;
- (d) Roof repair or siding;
- (e) Deck construction or repair; and
- (f) Jetted tubs or saunas.

~~((15))~~ (16) Environmental ~~((adaptions))~~ adaptations are limited to additional services not otherwise covered under the medicaid state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. 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.]

NEW SECTION

WAC 388-845-0920 What is equine therapy? (1) Equine therapy is the use of horses to provide experiences that support mental health and emotional well-being.

(2) Services may include horsemanship as part of a therapeutic team and participation in other activities associated with preparing a horse for a client's riding lesson.

(3) Equine therapy is available in the CIIBS waiver.

[]

NEW SECTION

WAC 388-845-0930 Who are qualified providers of equine therapy?

(1) The provider of equine therapy must be a certified therapeutic horseback riding instructor and contracted with DDA to provide this service.

(2) The provider of equine therapy must have one year of experience working with individuals with developmental disabilities.

[]

NEW SECTION

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

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

(2) The department requires your behavior specialist's written recommendation regarding your need for the service. This recommendation must take into account that the service is expected to complement the existing behavior support plan to address behavior support needs.

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

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

(5) Equine therapy services must not exceed the CIIBS combined specialized-hourly services allocation of five thousand dollars per plan year.

(6) Equine therapy services must not be used to provide hippo-therapy, which is an occupational therapy service.

(7) The department reserves the right to terminate the authorization for service if there is not a demonstrable improvement in behav-

ior as documented by the contracted equine therapist or other treatment provider.

[]

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

WAC 388-845-1100 What are ((behavioral health)) stabilization services - crisis diversion ((bed services))? ((Behavioral health)) (1) Crisis diversion ((bed services)) beds are ((short-term emergent residential services that may be provided in a client's home, licensed or certified setting, or state operated setting. These services are available to eligible clients whose current living situation is disrupted and the client is at risk of institutionalization. These services are)) available in all five HCBS waivers administered by DDA as ((behavioral health)) a stabilization ((services)) service in accordance with WAC 388-845-1150 through 388-845-1160.

(2) Crisis diversion beds are short-term residential habilitative supports provided by trained specialists and include direct care, supervision or monitoring, habilitative supports, referrals, and consultation. Crisis diversion beds are available to individuals determined by DDA to be at risk of institutionalization.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-1100, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1100, 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, § 388-845-1100, 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, § 388-845-1100, filed 12/13/05, effective 1/13/06.]

NEW SECTION

WAC 388-845-1101 Where may stabilization services - crisis diversion be provided? Stabilization services - crisis diversion beds may be provided in a client's home or a licensed or certified setting.

[]

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

WAC 388-845-1105 Who is a qualified provider of ((behavioral health)) stabilization services - crisis diversion ((bed services))? Providers of ((behavioral health)) stabilization services - crisis diversion ((bed services)) beds must be:

- (1) DDA certified residential agencies per chapter 388-101 WAC;
- (2) Other department licensed or certified agencies; or
- (3) State-operated ((agency)) agencies.

[Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1105, 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, § 388-845-1105, filed 12/13/05, effective 1/13/06.]

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

WAC 388-845-1110 What are the limits of ((behavioral health)) stabilization services - crisis diversion ((bed services))? (1) Clinical and support needs for ((behavioral health)) stabilization services - crisis diversion ((bed services)) beds are limited to those identified in the waiver participant's DDA assessment and documented in the person-centered service plan.

(2) ((Behavioral health)) Stabilization services - crisis diversion ((bed services)) beds are intermittent and temporary. A behavioral health professional may make a recommendation about your need for ((behavioral health)) stabilization services - crisis diversion ((bed services)) beds. DDA determines the duration and amount of ((behavioral health)) stabilization services - crisis diversion ((bed services)) beds you will receive.

(3) The costs of ((behavioral health)) stabilization services - crisis diversion ((bed services)) beds do not count toward the dollar amounts for aggregate services in the basic plus or CIIBS waiver or the annual allocation in the individual and family services waiver.

(4) Stabilization services - crisis diversion beds are limited to additional services not otherwise covered under the state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-1110, 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, § 388-845-1110, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1110, 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, § 388-845-1110, 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, § 388-845-1110, filed 12/13/05, effective 1/13/06.]

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

WAC 388-845-1150 What are ((behavioral health)) stabilization services? (1) ((Behavioral health)) Stabilization services assist persons who are experiencing a behavioral health crisis.

(2) ((Behavioral health)) Stabilization services are available in the basic plus, core, children's intensive in-home behavior support (CIIBS), individual and family services (IFS), and community protection waivers.

(3) A participant may be eligible for ~~((behavioral health))~~ stabilization services if:

(a) A behavioral health professional ~~((or))~~ and DDA has determined the participant is at risk of institutionalization or hospitalization; and

(b) The participant needs:

(i) ~~((Positive behavior support and consultation))~~ Specialized habilitation;

(ii) ~~((Specialized psychiatric services for people age twenty-one and older))~~ Staff and family consultation; or

(iii) ~~((Behavioral health))~~ Crisis diversion ~~((bed services available to participants on the individual and family services, basic plus, core, CIIBS, and community protection waivers))~~ beds.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-1150, 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, § 388-845-1150, 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, § 388-845-1150, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1150, 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, § 388-845-1150, 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, § 388-845-1150, filed 12/13/05, effective 1/13/06.]

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

WAC 388-845-1155 Who are qualified providers of ~~((behavioral health))~~ stabilization services? Providers of these ~~((behavioral health))~~ stabilization services are listed in the rules in this chapter governing the specific services listed in WAC 388-845-1150.

[Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-1155, 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, § 388-845-1155, filed 12/13/05, effective 1/13/06.]

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

WAC 388-845-1160 Are there ~~((limitations))~~ limits to the ~~((behavioral health))~~ stabilization services that you can receive? (1) ~~((Clinical and support needs for behavioral health))~~ Stabilization services are limited to those identified in your DDA assessment and documented in the person-centered service ~~((plan/individual support))~~ plan.

(2) ~~((Behavioral health))~~ Stabilization services are intermittent and ~~((temporary))~~ ninety days or less. ~~((The duration and amount of~~

~~services you need to stabilize your crisis is determined by a behavioral health professional and/or DDA.)~~

(3) The costs of (~~behavioral health~~) stabilization services do not count toward the dollar amounts for aggregate services in the basic plus or CIIBS waiver or the annual allocation in the IFS waiver.

~~((4) Behavioral health stabilization services require prior approval by DDA or its designee.))~~

[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, § 388-845-1160, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1160, 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, § 388-845-1160, 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, § 388-845-1160, filed 12/13/05, effective 1/13/06.]

NEW SECTION

WAC 388-845-1161 What is music therapy? (1) Music therapy is the use of musical interventions to promote the accomplishment of individualized goals within a therapeutic relationship.

(2) Services may include music improvisation, receptive music listening, song writing, lyric discussion, music and imagery, music performance, or other expressive musical forms.

(3) Music therapy is available in the CIIBS waiver.

[]

NEW SECTION

WAC 388-845-1162 Who are qualified providers of music therapy?

(1) Qualified providers of music therapy are agencies or individuals who are or employ board certified music therapists (MT-BC) as defined by the certification board for music therapists;

(2) Are contracted with DDA to provide this service; and

(3) Have one year of experience working with individuals with developmental disabilities.

[]

NEW SECTION

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

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

(2) The department requires your behavior specialist's written recommendation regarding your need for the service. This recommenda-

tion must take into account that the service is expected to complement the existing behavior support plan to address behavior support needs.

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

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

(5) Music therapy services must not exceed the CIIBS combined specialized-hourly services allocation of five thousand dollars per year.

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

[]

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

WAC 388-845-1505 Who are qualified providers of residential habilitation services for the core waiver? Providers of residential habilitation services for participants in the core waiver must be one of the following:

(1) Individuals contracted with DDA to provide residential support as a "companion home" provider;

(2) Individuals contracted with DDA to provide training as an "alternative living provider";

(3) Agencies contracted with DDA and certified per chapter 388-101 WAC;

(4) State-operated living alternatives (SOLA);

(5) Licensed and contracted group care homes, foster homes, child ((placing)) placement agencies or staffed residential homes per chapter ((388-148)) 110-148 WAC.

[Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1505, 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, § 388-845-1505, 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, § 388-845-1505, filed 12/13/05, effective 1/13/06.]

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

WAC 388-845-1607 Can someone who lives with you be your respite provider? ((Someone)) A person who lives with you may be your respite care provider as long as ((he or she)) that person is not your primary care provider and is not ((contracted to provide)) providing any other DSHS paid service to you in the month that person provides respite care to you. The ((limitations)) limits listed in WAC 388-845-0111 also apply.

[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 388-845-1700 What is waiver skilled nursing? (1) Waiver skilled nursing means long-term, intermittent, and hourly skilled nursing services consistent with waiver objectives of avoiding institutionalization.

(2) Waiver skilled nursing services are available in the basic plus, community protection (CP), core, and individual and family services (IFS) waivers, and are limited to participants age twenty-one and older unless skilled nursing is authorized as nurse delegation.

(3) Waiver skilled nursing services include nurse delegation services provided by a registered nurse under WAC 388-845-1170.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-1700, 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, § 388-845-1700, 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, § 388-845-1700, 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, § 388-845-1700, filed 12/13/05, effective 1/13/06.]

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

WAC 388-845-1800 What are specialized ((medical)) equipment and supplies? (1) Specialized ((~~medical~~)) equipment and supplies are durable and nondurable medical equipment, or equipment necessary to prevent institutionalization, not available through the medicaid state plan or are in excess of what is available through the medicaid state plan benefit which enables individuals:

(a) To increase their abilities to perform their activities of daily living;

(b) To perceive, control, or communicate with the environment in which they live; or

(c) On the IFS and CIIBS waiver only, to improve daily functioning through sensory integration when prescribed in a written therapeutic plan by the current treating professional.

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

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

~~((3))~~ (4) Also included are items necessary for life support and ancillary supplies and equipment necessary to the proper functioning of the equipment and supplies described in subsection (1) of this section.

~~((4))~~ (5) Specialized ~~((medical))~~ equipment and supplies include the maintenance and repair of specialized ~~((medical))~~ equipment not covered through the medicaid state plan.

~~((5) Specialized medical equipment and supplies are available in all DDA HCBS waivers.)~~

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. 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 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-1805 Who are the qualified providers of specialized ~~((medical))~~ equipment and supplies? (1) The provider of specialized ~~((medical))~~ equipment and supplies must be a medical equipment supplier contracted with DDA or ~~((have))~~ having a state contract as a Title XIX vendor~~((-))~~;

(2) ~~((For IFS only,))~~ A provider contracted with DDA as a goods and services shopper; or

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

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. 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 20-05-080, filed 2/18/20, effective 3/20/20)

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

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

(2) Specialized ((medical)) equipment and supplies require prior approval by the DDA regional administrator or designee for each authorization.

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

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

(5) Medications, personal hygiene products, supplements, and vitamins are excluded.

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

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

(8) Items excluded from specialized equipment and supplies include nonspecialized recreational or exercise equipment, ~~((such as))~~ including but not limited to trampolines, treadmills, swing sets, and hot tubs.

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

(10) For a participant on the IFS or CIIBS waiver, specialized equipment and supplies are limited to those items needed to improve daily functioning through sensory integration. The item must be in a written therapeutic plan by the participant's current treating professional.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. 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.]

NEW SECTION

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

(1) Specialized habilitation services provide community-based and in-

dividualized support with the intent of reaching an identified habilitative goal in the person-centered service plan.

(2) Service must assist a client to learn or maintain skills in the category of self-empowerment, safety awareness, self-advocacy, interpersonal effectiveness, effective social communication, appropriate, coping strategies for everyday life changes, managing daily tasks, or adaptive skills.

(3) Specialized habilitation must promote inclusion in the community

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

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

[]

NEW SECTION

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

(1) Certified life skills coach;

(2) Individuals with bachelor's, master's, or doctoral degrees in social work, sociology, psychology, education; child development, gerontology, nursing or other related field; or

(3) In a university internship program for social work, sociology, psychology, education, child development, gerontology, sociology, gerontology, or nursing.

[]

NEW SECTION

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

(1) Specialized habilitation services are limited to address a maximum of three goals at a time.

(2) Support needs for specialized habilitation, and must be identified in your DDA assessment and documented in the person-centered service plan.

(3) Specialized habilitation services must not exceed:

(a) Four-thousand dollars of your basic plus aggregate funding;

(b) Your IFS annual allocation in combination with other waiver services;

(c) Fifteen thousand dollars within your total CIIBS aggregate budget and six thousand dollars emergency funding when eligible per WAC 388-845-0800 and 388-845-0820.

(4) Specialized habilitation services do not cover education, vocational, skills acquisition training through community first choice,

behavioral health, ABA, skilled nursing, occupational therapy, physical therapy, or speech, language, and hearing services that are covered benefits through the medicaid state plan, including early and periodic screening, diagnosis, and treatment and part B special education services.

(5) Specialized habilitation must not be authorized to clients enrolled in residential habilitation.

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

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

[]

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

WAC 388-845-2000 What is staff and family consultation ((and training))? (1) Staff and family consultation ((and training)) is ((professional)) assistance, not covered by the medicaid state plan, to families or direct service providers to help them meet the individualized and specific needs of a participant as outlined in the participant's person-centered service plan and necessary to improve the participant's independence and inclusion in their community.

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

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

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

(b) Positioning and transfer;

(c) Basic and advanced instructional techniques;

(d) ((Positive behavior support)) Consultation with potential referral resources;

(e) Augmentative communication systems;

(f) Diet and ((nutrition)) nutritional guidance;

(g) Disability information and education;

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

(i) Environmental ((safety)) consultation;

(j) Assistive technology safety; ((and))

(k) Consultation to an existing plan of care; and

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

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-2000, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-2000, filed 6/20/18, effective 7/21/18. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-845-2000, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-2000, filed 11/26/13, effective 1/1/14. Statutory

Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-2000, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. WSR 10-22-088, § 388-845-2000, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-2000, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-2000, filed 12/13/05, effective 1/13/06.]

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

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

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

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. 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 chap-

ter 71A.12 RCW. WSR 06-01-024, § 388-845-2005, filed 12/13/05, effective 1/13/06.]

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

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

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

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

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

(a) Live with the participant; and

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

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

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

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

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. 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.]

NEW SECTION

WAC 388-845-2145 What are therapeutic adaptations? (1) Therapeutic adaptations are modifications to an existing room in the waiver participant's current home and are necessary to reduce or eliminate environmental sensory stressors, enable effective social support, or give a sense of control to the waiver participant in order for a therapeutic plan to be implemented.

- (2) Therapeutic adaptations include on-time room modifications not related to physical accessibility such as:
- (a) Noise reduction or enhancement;
 - (b) Lighting adjustment;
 - (c) Wall softening;
 - (d) Anchored and nonremovable tactile accents; or
 - (e) Anchored and nonremovable visual accents.

[]

NEW SECTION

- WAC 388-845-2150 Who is a qualified provider of therapeutic adaptations?** (1) A qualified provider of therapeutic adaptations is a person who is contracted with DDA and:
- (a) A registered contractor per chapter 18.27 RCW and licensed and bonded to perform the specific type of work they are providing; or
 - (b) A medical equipment supplier with a state contract as a Title XIX vendor.
- (2) A qualified provider of therapeutic adaptations may also be someone who is contracted with DDA as:
- (a) A purchasing goods and services contractor; or
 - (b) A CIIBS goods and services contractor.

[]

NEW SECTION

- WAC 388-845-2155 Are there limits to the therapeutic adaptations I may receive?** The following limits apply to your receipt of therapeutic adaptations:
- (1) Therapeutic adaptations are limited to one adaptation request every five waiver years.
 - (2) Funding is limited to the aggregate budget in the basic plus and IFS waiver or fifteen thousand dollars on the CIIBS waiver.
 - (3) Modifications may not add square footage to the home or convert nonliving space into living space.
 - (4) The department requires a written recommendation by a behavioral health provider, occupational therapist, or physical therapist within the waiver participant's current therapeutic plan.
 - (5) Therapeutic adaptations are limited to items not otherwise covered under the state plan, including EPSDT, but consistent with waiver objectives of avoiding institutionalization.
 - (6) Therapeutic adaptations require prior approval by the DDA regional administrator or designee.
 - (7) Therapeutic adaptations are limited to those identified in the client's person-centered service plan.

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

WAC 388-845-3070 What happens if you do not sign your person-centered service plan? (1) If you do not sign your initial person-centered service plan (PCSP), DDA must not provide waiver services to you until you sign the PCSP.

(2) If you do not sign your PCSP and it is a reassessment or review, DDA will:

(a) Continue providing services identified in your current PCSP until the end of the notice period under WAC 388-825-105; and

(b) Return your PCSP to you for your signature.

(3) If you do not return your signed PCSP within two months of your reassessment or review, DDA (~~must~~) may terminate your services.

(4) Your appeal rights are under:

(a) WAC 388-845-4000; and

(b) WAC 388-825-120 through 388-825-165.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-3070, 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, § 388-845-3070, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-3070, 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, § 388-845-3070, 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, § 388-845-3070, 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, § 388-845-3070, filed 12/13/05, effective 1/13/06.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-845-0300	What are adult family home (AFH) services?
WAC 388-845-0305	Who is a qualified provider of AFH services?
WAC 388-845-0310	Are there limits to the AFH services I can receive?
WAC 388-845-0400	What are adult residential care (ARC) services?
WAC 388-845-0405	Who is a qualified provider of ARC services?
WAC 388-845-0410	Are there limits to the ARC services I can receive?
WAC 388-845-0700	What are community guide services?
WAC 388-845-0705	Who may be a qualified provider of community guide services?

- WAC 388-845-0710 Are there limits to the community guide services I may receive?
- WAC 388-845-1300 What are personal care services?
- WAC 388-845-1305 Who are the qualified providers of personal care services?
- WAC 388-845-1310 Are there limits to the personal care services you can receive?
- WAC 388-845-1400 What are prevocational services?
- WAC 388-845-1405 Who are the qualified providers of prevocational services?
- WAC 388-845-1410 Are there limits to the prevocational services you may receive?
- WAC 388-845-1900 What are specialized psychiatric services?
- WAC 388-845-1905 Who are qualified providers of specialized psychiatric services?
- WAC 388-845-1910 Are there limitations to the specialized psychiatric services you can receive?
- WAC 388-845-2160 What is therapeutic equipment and supplies?
- WAC 388-845-2165 Who are qualified providers of therapeutic equipment and supplies?
- WAC 388-845-2170 Are there limits to your receipt of therapeutic equipment and supplies?

WSR 21-06-032
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed February 23, 2021, 2:27 p.m., effective February 23, 2021, 2:27 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to align truancy timelines for alternative learning experience (ALE) settings with revised timelines in the non-ALE setting. The office of superintendent of public instruction (OSPI) established truancy requirements in ALE aligned with truancy requirements of non-ALE settings set to take effect January 1, 2021. OSPI has since filed an emergency rule in November 2020 (WAC 392-401A-035, WSR 20-17-086) modifying these requirements for the non-ALE setting until March 1, 2021, and again in February 2021 modifying these requirements for the non-ALE setting until the 2021-22 school year in response to the COVID-19 pandemic. This revision aligns ALE timelines with those in non-ALE settings.

Citation of Rules Affected by this Order: Amending WAC 392-550-040.

Statutory Authority for Adoption: RCW 28A.232.010, 28A.232.030.

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

Reasons for this Finding: The COVID-19 pandemic has required that many school districts shift their instructional models in school year 2020-21, either completely or partially, in order to ensure the safety of their students, staff, and communities. The immediate adoption of this emergency rule is therefore necessary for the preservation of the public health, safety, and general welfare in order to support districts in implementing remote learning and support students in access learning. By extending the period before districts are required to implement truancy protocols in ALE settings, OSPI intends to provide districts additional time to refine their student tracking and engagement processes and continue to attempt to engage families in a similar fashion as in the non-ALE setting.

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

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

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

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

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

Date Adopted: February 22, 2021.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

OTS-2791.2

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

WAC 392-550-040 Truancy. (1) This section provides the process for determining truancy, required interventions, and a threshold for filing a truancy petition for students enrolled in alternative learning experience courses. Beginning (~~(January 1, 2021)~~) with the 2021-22 school year, this process should be used in place of the thresholds provided in RCW 28A.225.030. All other requirements of compulsory attendance outlined in chapter 28A.225 RCW apply.

(2) If a child required to attend school under RCW 28A.225.010 fails to meet the contact requirements of an alternative learning experience under this chapter without valid justification, the school district or charter school in which the child is enrolled must perform the following procedures:

(a) (i) The school district or charter school must inform the child's parent by a notice through direct personal contact whenever the child has failed to make weekly contact without valid justification.

(ii) The notice must inform the parent of the potential consequences of additional missed weekly contacts.

(iii) The school district or charter school must ensure that this notification is in a language the parents understand, which may require language assistance for parents with limited-English proficiency under Title VI of the Civil Rights Act of 1964.

(b) (i) After the second consecutive week of missed contact without valid justification or third cumulative week of missed contact without valid justification, the school district or charter school must schedule a conference with the parent and child to discuss the missed contact, administer a screener, and develop a data-based intervention plan to reduce the child's missed contacts.

(ii) The purpose of the conference is to understand the underlying reasons for the missed contact and to develop an intervention plan to address them.

(iii) In middle school and high school, the conference must include the application of the Washington assessment of the risks and needs of students (WARNS), or other screener that identifies barriers to attendance, by a school district's designee under RCW 28A.225.026.

(iv) The conference may take place in-person, by phone, or through interactive video communication.

(v) The conference must take place within one calendar week.

(vi) If the child's parent does not attend the scheduled conference, the conference may be conducted with the student and school official. The parent must be notified of the steps to be taken to eliminate the child's missed weekly contacts.

(3) (a) (i) If the actions performed under subsection (2) of this section are not successful in substantially reducing an enrolled student's missed weekly contacts without valid justification, the school district or charter school must file a petition and supporting affidavit for a civil action with the juvenile court alleging a violation of RCW 28A.225.010 by the parent, the child, or the parent and the child.

(ii) The petition must be filed no later than the fifth consecutive or sixth cumulative missed weekly contact without valid justifi-

cation. The petition may be filed earlier and it may include the student's previous history of unexcused absences.

(b) A petition filed under this section must include the supporting documentation as provided in RCW 28A.225.030(1).

(c) For nonresident students, the petition must be filed in the county juvenile court that is most accessible for the student and parent. When determining the appropriate county court in which to file a truancy petition for nonresident students, the following must be considered:

(i) Proximity to the student or parents' primary place of residence;

(ii) The guidance from the juvenile court closest to the student or parents' primary place of residence; and

(iii) Preference stated by the student or parent, if communication with the parent(s) has been established.

(4) The petition must follow the requirements of RCW 28A.225.035.

(5) (a) Pursuant to RCW 28A.225.035, the petition must be stayed and the child and the child's parents must be referred to a community truancy board or other coordinated means of intervention.

(b) The school district or charter school offering alternative learning experience course(s), or program designee, is responsible for coordinating with the juvenile court to determine whether a community truancy board is the best intervention for the child or if another coordinated means of intervention will be more likely to support the student to return to school.

[Statutory Authority: Chapter 28A.232 RCW and RCW 28A.232.030. WSR 20-15-062, § 392-550-040, filed 7/10/20, effective 8/10/20.]

WSR 21-06-033
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-17—Filed February 23, 2021, 4:30 p.m., effective February 24, 2021, 6:00 a.m.]

Effective Date of Rule: February 24, 2021, 6:00 a.m.

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 220-359-02000L; 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 is consistent with actions of Columbia River Compact hearings on January 26 and February 23, 2021. Conforms state rules with tribal rules. 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 the federal ESA. On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

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: February 23, 2021.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-359-02000M 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 (Bonneville pool only)

(a) Season: 6 AM Monday, March 1, 2021 to 6 PM Friday, March 5, 2021

(b) Gear: Gillnets with no minimum mesh size restriction.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 38 to 54 inches fork length in Bonneville pool may be sold or kept for subsistence purposes.

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

(2) Open Areas: SMCRA 1H (John Day pool only)

(a) Season: 6 AM Wednesday, February 24, 2021 to 6 PM Friday, February 26, 2021

(b) Gear: Gillnets with no minimum mesh size restriction.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon from 43 to 54 inches fork length in John Day pool may be sold or kept for subsistence purposes.

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

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

(a) Season: Immediately to 6 PM Friday, March 19, 2021.

(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. 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 sold or kept for subsistence purposes. Sturgeon within the legal-size limit and caught in the platform and hook and line fishery may only be sold if caught during the open period and open pool of an open gillnet fishery.

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

(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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REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. February 24, 2021:

WAC 220-359-02000L Columbia River salmon seasons above Bonneville Dam. (21-12)

WSR 21-06-036
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed February 24, 2021, 8:10 a.m., effective February 25, 2021]

Effective Date of Rule: February 25, 2021.

Purpose: The department is enacting WAC 388-845-2019 on an emergency basis to make temporary modifications to developmental disabilities administration's (DDA) home and community based services (HCBS) waivers in order to control the spread of the COVID-19 virus and meet immediate health and safety needs. This is the fourth emergency filing on WAC 388-845-2019, and the language in this fourth filing is identical to that of the third emergency filed as WSR 20-22-035. However, language in this filing and the third emergency filing differs substantively from the first and second emergency filings because DDA is progressing through the permanent rule-making process and has received feedback that has resulted in changes to rule language.

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

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

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

Reasons for this Finding: Enacting this rule on an emergency basis is necessary to address effects of the COVID-19 outbreak, and it is in the public interest to do so as following notice and comment requirements in the permanent rule-making process would delay temporary changes intended to help clients avoid disruptions in service. The changes in this emergency filing are necessary to implement temporary changes to the HCBS waivers as approved by the Centers for Medicare and Medicaid Services (CMS) in an Appendix K. The changes in this rule address the effects of COVID-19 on clients, providers, and DDA staff by temporarily doing the following: Suspending limits on respite services; permitting the state to exceed the budget for some DDA waivers; allowing assistive technology to be available on all waivers; permitting waiver services to be provided remotely when needed; expanding settings where some services can be provided to clients who are quarantined or hospitalized; and other changes.

An Appendix K is a standalone appendix that may be utilized by states during emergency situations to request amendment to approved 1915(c) waivers. It includes actions that states can take under the existing section 1915(c) home and community-based waiver authority in order to respond to an emergency. DDA's currently-approved Appendix K expires February 28, 2021. If CMS approves an additional Appendix K, DDA plans to file a fifth emergency to reflect the changes that would be approved in that Appendix K waiver.

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

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

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

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

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

Date Adopted: February 18, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4794.4

NEW SECTION

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

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

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

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

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

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

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

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

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

receiving waiver services (e.g., transportation to a family member's home).

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

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

- (a) Residential habilitation;
- (b) Respite care;
- (c) Positive behavior support;
- (d) Staff and family consultation;
- (e) Behavioral health stabilization- positive behavior support;
- (f) Behavioral health stabilization- crisis diversion beds;
- (g) Nurse delegation; and
- (h) Skilled nursing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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WSR 21-06-039
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-19—Filed February 24, 2021, 12:30 p.m., effective February 24, 2021, 12:30 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Columbia River commercial smelt fishery.

Citation of Rules Affected by this Order: Repealing WAC 220-358-06000D; and amending WAC 220-358-060.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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 sets a limited Columbia River commercial fishery for eulachon smelt. The regulation is consistent with a conservative research-level fishery, reduced from the level-one fishery as described in the "Washington and Oregon Eulachon Management Plan" for the Columbia River. The expected return of eulachon to the Columbia River in 2021 is expected to be similar in magnitude to the run in 2020. The fishery serves as an important test fishery to monitor run strength and timing and to collect biological data. National Oceanic and Atmospheric Association fisheries concurs that a limited fishery is consistent with recovery of eulachon smelt. Rule is consistent with Columbia River Compact action of January 26 and February 24, 2021. There is insufficient time to adopt permanent regulations.

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

Number of Sections Adopted at the Request of a 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: February 24, 2021.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-358-06000D Commercial fisheries—Columbia River below Bonneville Dam—Smelt. Notwithstanding the provisions of WAC

220-358-060, the Columbia River and Washington tributaries are closed to fishing for eulachon smelt except as provided below:

Open Dates: Immediately through March 11, 2021, open Monday's and Thursday's only, 5:00 a.m. to 5:00 p.m. (12-hour periods).

Open Area: Columbia River - SMCRA 1A, 1B, 1C.

Gear: It is unlawful to use anything other than gillnets. Gillnets must meet the following specifications per WAC 220-358-060: mesh size not to exceed 2 inches stretch measure; not to exceed 1,500 feet in length along the cork line.

Use of monofilament nets is permissible.

Allowable sales: Smelt.

Other: 24-hour quick-reporting is required for Washington wholesale dealers, as provided in WAC. 220-352-315.

Multi-Net Rule: Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

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

REPEALER

The following section of Washington Administrative Code is repealed effective March 12, 2021:

WAC 220-358-06000D Commercial fisheries—Columbia River
below Bonneville Dam—Smelt.

WSR 21-06-044
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-20—Filed February 25, 2021, 8:13 a.m., effective February 25, 2021, 8:13 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to open recreational crab seasons in Marine Area 2 north of Point Chehalis and Marine Area 2-2 (Grays Harbor).

Citation of Rules Affected by this Order: Repealing WAC 220-330-04000W; and amending WAC 220-330-040.

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: Based on recent marine toxin test results, the Washington department of health (DOH) has determined that Dungeness crab are safe for human consumption in that portion of Marine Area 2 north of Point Chehalis and in Marine Area 2-2 (Grays Harbor) and recommends that sport crab fishing can reopen. In addition, DOH recommends that sport crab fishing remain closed in Marine Area 1, the portion of Marine Area 2 between Point Chehalis and Leadbetter Point and Marine Area 2-1 (Willapa Bay). 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 11, 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: February 24, 2021.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-330-04000X Crab—Areas and seasons Notwithstanding the provisions of WAC 220-330-040 effective Immediately, until further notice, recreational crab seasons in waters of Marine Area 1,2, and 2-1 shall be modified as follows. All other provisions of WAC 220-330-040

not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) Effective immediately until further notice, it is unlawful to fish for Dungeness crab in Marine Area 1 and that portion of Marine 2 from Point Chehalis to Leadbetter Point, including Marine Area 2-1 (Willapa Bay.)

(2) Effective immediately it is unlawful to set, maintain, operate, or possess in those waters listed in subsections (1) of this section, any baited or unbaited shellfish pots or ring nets for any reason.

[]

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

REPEALER

The following section of Washington Administrative code is repealed:

WAC 220-330-04000W Crab—Areas and seasons. (20-271)

WSR 21-06-051
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-19—Filed February 25, 2021, 1:12 p.m., effective March 1, 2021]

Effective Date of Rule: March 1, 2021.

Purpose: The purpose of this emergency rule is to set initial recreational spring Chinook seasons for the Columbia River, from the mouth to the Hwy. 395 Bridge at Pasco. This rule also aligns salmon and steelhead daily limits in Deep River (Wahkiakum Co.) with adjacent waters of the mainstem Columbia when recreational salmon seasons are open in those adjacent waters.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000D; and amending WAC 220-312-030 and 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: Sets the 2021 spring recreational salmon season in the Columbia River from Buoy 10 upstream to the Oregon/Washington border, including shad and hatchery steelhead. ESA impacts for wild fish are available to recreational fisheries in order to access hatchery fish. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of February 23, 2021.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River Compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal Endangered Species Act (ESA). On February 23, 2018, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2018-2027 *U.S. v. Oregon* Management Agreement.

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and take public testimony when considering

proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached. There is insufficient time to promulgate permanent rules.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 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: February 24, 2021.

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000H Freshwater exceptions to statewide rules—Columbia. Effective March 1 through May 5, 2021, the provisions of WAC 220-312-060 regarding Columbia River salmon and steelhead seasons from the mouth (Buoy 10) to the Hwy. 395 Bridge at Pasco, and shad seasons from the mouth to the Bonneville Dam, shall be modified as described below. All other provisions of WAC 220-312-060 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) From a true north-south line through Buoy 10, upstream to a deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse One) in a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock.

a. Fishing for salmon or steelhead from a vessel is prohibited in the area of the mainstem Columbia River between boundary lines as described and includes all of Carrolls Channel: Downstream boundary is defined as from a point on the Washington shore projected through Dolphin Marker J (near Shipping Terminal 9), southerly across the Columbia River to Columbia Park Boat Ramp in Rainier, Oregon. Upstream boundary is defined as from a point on the Washington Shore projected through Cottonwood Island Dike Light "31", southerly across the Columbia River to a deadline marker on the Oregon shore. Carrolls Channel is defined as waters beginning at the upstream end of Cottonwood Island downstream to the Cowlitz and Columbia River confluence

b. Salmon and steelhead: Effective March 1 through April 4, 2021: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

c. Shad: Effective March 1 through April 4, 2021: No min. size. No daily limit.

(2) From a deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse One) in a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock upstream to Bonneville Dam:

- a. Closed to angling from a floating device or by any method except hand-cast lines from shore.
- b. Salmon and steelhead: Effective March 1 through April 4, 2021: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.
- c. Shad: Effective March 1 through April 4, 2021: No minimum size. No daily limit.

(3) From Bonneville Dam to The Dalles Dam: Salmon and steelhead:

- a. Effective March 1 through March 15, 2021: Daily limit is 2. Release all salmon.
- b. Effective March 16 through May 5, 2021: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

(4) From The Dalles Dam to Hwy. 730 at the Washington/Oregon border: Salmon and steelhead:

- a. Effective March 1 through March 15, 2021: Daily limit is 1. Release all salmon. Release wild steelhead.
- b. Effective March 16 through May 5, 2021: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

(5) From Hwy. 730 at the Washington/Oregon border to Hwy. 395 Bridge at Pasco: Salmon and steelhead:

- Effective March 1 through March 31, 2021: Daily limit is 1. Release all salmon.

[]

NEW SECTION

WAC 220-312-03000V Freshwater exceptions to statewide rules—Southwest. Effective March 1 through April 4, 2021, the provisions of WAC 220-312-030 regarding Deep River salmon and steelhead seasons shall be modified as described below. All other provisions of WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

Deep River (Wahkiakum Co.): Salmon and steelhead:

- Effective March 1 through April 4, 2021: Daily limit is 6, no more than 2 adults may be retained of which no more than 1 may be an adult Chinook. Release all salmon other than hatchery Chinook.

[]

REPEALER

The following section of the Washington Administrative Code is repealed effective March 1, 2021:

WAC 220-312-06000D Freshwater exceptions to statewide
rules—Columbia (20-259)

WSR 21-06-058
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-22—Filed February 26, 2021, 11:28 a.m., effective February 26, 2021, 11:28 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: In December 2020, the Washington department of fish and wildlife (WDFW) adopted rules in chapter 220-460 WAC for holders of commercial whale watching licenses. The purpose of this emergency rule is to delay the effective date of WAC 220-460-020, which sets forth license application processes, from March 1 to May 1, 2021.

Citation of Rules Affected by this Order: Amending WAC 220-460-020.

Statutory Authority for Adoption: RCW 77.12.047, 77.65.615, 77.65.620, 77.15.020, 77.04.012, 77.04.55 [77.04.055].

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 Washington legislature is considering legislation that may modify the fee schedule for commercial whale watching licenses or may provide a temporary waiver of license fees to provide economic relief to small businesses. This rule will benefit the general welfare by delaying the need to apply for a commercial whale watching license while uncertainty exists about whether such fees may soon be waived or refunded. Even if such legislation is not ultimately adopted, delaying the implementation of WAC 220-460-020 by two months will at minimum allow businesses more time to apply for commercial whale watching licenses and budget for the license fees.

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

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

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

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

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

Date Adopted: February 26, 2021.

Amy H. Windrope
Deputy Director

[NEW SECTION]

WAC 220-460-02000A Commercial whale watching licenses—Application process and deadline. Effective March 1 through April 30, 2021, a commercial whale watching license is not required for commercial

whale watching motorized vessel, sailboat, and kayak operators. All other provisions regarding application requirements specified in WAC 220-460-020 are suspended through April 30, 2021.

[]

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

WSR 21-06-059
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed February 26, 2021, 12:02 p.m., effective February 28, 2021]

Effective Date of Rule: February 28, 2021.

Purpose: The department is extending emergency adoption of WAC 388-434-0015 Extension of certification periods and waiver of eligibility reviews and mid-certification reviews during the COVID-19 pandemic, to implement administrative flexibilities regarding certification periods and mid-certification reviews as allowed under H.R. 8337, Continuing Appropriations Act, 2021 and Other Extensions Act of 2020. This is the third emergency filing on this subject and extends the second emergency rule filed as WSR 20-22-065 on October 30, 2020. The first emergency rule filed as WSR 20-10-046 on April 29, 2020, for the months of April, May, and June 2020, was intentionally allowed to expire.

The department is concurrently proceeding with the permanent rule-making process. The department filed a CR-101 Preproposal statement of inquiry as WSR 20-22-062 on October 30, 2020, and a CR-102 Proposed rule making as WSR 21-06-049 on February 25, 2021.

Citation of Rules Affected by this Order: New WAC 388-434-0015.

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

Other Authority: H.R. 8337.

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

Reasons for this Finding: Emergency adoption of this rule is required to implement administrative flexibilities that protect the health, safety, and general welfare of Washington residents by supporting ongoing access to public assistance.

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

Number of Sections Adopted at the Request of a 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 1, Amended 0, Repealed 0.

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

Date Adopted: February 25, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4805.4

NEW SECTION

WAC 388-434-0015 Extension of certification periods and waiver of eligibility reviews and mid-certification reviews during the COVID-19 pandemic. (1) Recertification requirements for food assistance under WAC 388-434-0010 are waived in the months listed below and your certification period will automatically be extended as follows:

(a) Certification periods ending in November 2020 and December 2020 will be automatically extended by two months;

(b) Certification periods ending in January 2021 and February 2021 will be automatically extended by four months, if not previously extended.

(2) Eligibility review requirements for cash assistance under WAC 388-434-0005 are waived as follows:

(a) All eligibility reviews due in November 2020 and December 2020;

(b) Eligibility reviews, not already extended, due in January 2021 and February 2021.

(3) If your cash assistance eligibility review is waived under subsection (2) of this section, the following programs are included:

(a) Temporary assistance for needy families;

(b) State family assistance;

(c) Aged, blind or disabled cash assistance; and

(d) Housing and essential needs referral.

(4) If your working family support certification period ends under WAC 388-493-0010, your certification period will be extended as described in subsection (1) of this section.

(5) Mid-certification review requirements for cash and food assistance under WAC 388-418-0011 are waived from November 1, 2020, to June 30, 2021.

(6) You are still required to report changes under WAC 388-418-0005.

(7) The department will review and act upon any new information we receive from you during this time under WAC 388-418-0020.

[]

WSR 21-06-063
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-21—Filed February 26, 2021, 3:30 p.m., effective March 2, 2021]

Effective Date of Rule: March 2, 2021.

Purpose: The purpose of this rule is to open recreational smelt seasons in the Cowlitz River.

Citation of Rules Affected by this Order: Repealing WAC 220-315-03000C; and amending WAC 220-315-030.

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

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

Reasons for this Finding: This rule sets a limited Cowlitz River recreational fishery for eulachon smelt. This rule conforms to the Washington and Oregon Eulachon Management Plan and remains within harvest guidelines. The expected return of eulachon to the Columbia River in 2021 is expected to be similar in magnitude to the run in 2019 and 2020. The fishery serves as an important test fishery to monitor run strength and timing and to collect biological data. National Oceanic and Atmospheric Administration fisheries concurs that a limited fishery is consistent with recovery of eulachon smelt. There is insufficient time to adopt permanent regulations.

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

Number of Sections Adopted at the Request of a 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: February 26, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-315-03000C Smelt—Areas and seasons Notwithstanding the provisions of WAC 220-315-030, the Columbia River and Washington tributaries are closed to fishing for eulachon smelt except as provided below:

Open Dates: Tuesday March 2, 2021.

8:00 a.m. to 1:00 p.m. (5-hour period).

Open Area: Cowlitz River (bank only) from the HWY 432 Bridge upstream to the Al Helenberg Memorial Boat Ramp located approximately 1,300 feet upstream of the HWY 411/A Street Bridge in Castle Rock.

Daily Limit: 10 pounds. Possession limit equal to one daily limit. In the field, it is unlawful for each person harvesting smelt to fail to use a separate container to hold their catch and the container must be in the harvester's presence or identified with the harvester's name.

Gear: Smelt may be taken with dip net only.

[]

REPEALER

The following section of Washington Administrative Code is repealed effective 1:01 p.m. March 3, 2021:

WAC 220-315-03000C Smelt—Areas and seasons

WSR 21-06-065
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-23—Filed February 26, 2021, 4:01 p.m., effective March 1, 2021]

Effective Date of Rule: March 1, 2021.

Purpose: Amends rules for Puget Sound commercial scallops.

Citation of Rules Affected by this Order: Amending WAC
220-340-610.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 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 surplus of pink and spiny scallops exists in the department of health (DOH) Approved Commercial Shellfish Growing Areas of Marine Fish/Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 23A, 23B, 25A and 25B. 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: February 26, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-61000J Commercial scallop fishery—Puget Sound Notwithstanding the provisions of WAC 220-340-610, effective March 1, 2021 until further notice, it is unlawful to take or possess pink or spiny scallops taken for commercial purposes except as provided for in this section:

(1) It is unlawful to fish for, take, or possess pink or spiny scallops with shellfish dive gear without a commercial scallop dive fishery license holder on board the designated harvest vessel.

(2) Pink or spiny scallop harvest using shellfish diver gear is only allowed in Washington Department of Health (DOH) Approved Commercial Shellfish Growing Areas of Marine Fish/Shellfish Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, 23A, 23B, 25A and 25B.

(3) It is unlawful for more than two divers from a harvest vessel to be in the water at any one time during pink or spiny scallop harvest operations or when commercial quantities of pink or spiny scallops are on board the vessel.

(4) It is unlawful to possess any other species of commercial shellfish during pink or spiny scallop harvest operations and when pink or spiny scallops are onboard the harvest vessel.

[]

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

WSR 21-06-066
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-25—Filed February 26, 2021, 4:02 p.m., effective February 26, 2021, 4:02 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends rules for coastal recreational crab fishery.

Citation of Rules Affected by this Order: Repealing WAC 220-330-04000X; and amending WAC 220-330-040.

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: Based on recent marine toxin test results the Washington department of health (DOH) has determined that Dungeness crab are safe for human consumption in that portion of Marine Area 2 north of Point Chehalis and inside the Westport Boat Basin and recommends that sport crab fishing can remain open. In addition, DOH recommends that sport crab fishing remain closed in Marine Area 1, the portion of Marine Area 2-2 that is outside the Westport Boat Basin and the portion of Marine Area 2 between Point Chehalis and Leadbetter Point and Marine Area 2-1 (Willapa Bay). 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: February 26, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-330-04000Y Crab—Areas and seasons Notwithstanding the provisions of WAC 220-330-040 effective immediately, until further notice, recreational crab seasons in waters of Marine Area 1, 2, and 2-1 shall be modified as follows. All other provisions of WAC 220-330-040 not addressed herein remain in effect unless otherwise amended by emergency rule:

(1) Effective immediately until further notice, it is unlawful to fish for Dungeness crab in Marine Area 1 and that portion of Marine Area 2-2 that is outside the Westport Boat Basin as defined in WAC 220-300-320 and that portion of Marine 2 from Point Chehalis to Leadbetter Point, including Marine Area 2-1 (Willapa Bay.)

(2) Effective immediately it is unlawful to set, maintain, operate, or possess in those waters listed in subsections (1) of this section, any baited or unbaited shellfish pots or ring nets or any other method of catching crab for any reason.

[]

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

REPEALER

The following section of Washington Administrative code is repealed:

WAC 220-330-04000X Crab—Areas and seasons. (21-20)

WSR 21-06-068
EMERGENCY RULES
BUILDING CODE COUNCIL

[Filed March 1, 2021, 7:37 a.m., effective March 1, 2021, 7:37 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To modify the effective date to the amended section of chapter 51-50 WAC specifically addressing chapter 9, section 904.

Citation of Rules Affected by this Order: New 1.

Statutory Authority for Adoption: RCW 19.27.031.

Other Authority: RCW 19.27.074.

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: To better assist the state in getting an adequate number of inspectors qualified to do the inspections.

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 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 1, 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: February 19, 2021.

Diane Glenn
Chair

[AMENDATORY SECTION (Amending WSR 19-24-058, filed 11/27/19, effective 7/1/20)]

WAC 51-54A-0904 Alternative automatic fire-extinguishing systems.

904.1.1 (Effective Date 07/1/2021)—Certification of service personnel for fire-extinguishing equipment. Service personnel performing system design, installation or conducting system maintenance or testing on automatic fire-extinguishing systems, other than automatic sprinkler systems, shall possess the appropriate ICC/NAFED certification.

904.1.1.1 (Effective Date 07/1/2021)—Preengineered kitchen fire-extinguishing systems. A current ICC/NAFED certification for preengineered kitchen fire-extinguishing systems is required when performing design, installation, inspection/testing or maintenance on kitchen suppression systems.

904.1.1.2 (Effective Date 07/1/2021)—**Engineered fire suppression systems**. A current ICC/NAFED certification for engineered fire suppression systems is required when performing design, installation, inspection/testing or maintenance on kitchen suppression systems.

904.1.1.3 (Effective Date 07/1/2021)—**Preengineered industrial fire-extinguishing system**. A current ICC/NAFED certification for preengineered industrial fire-extinguishing system is required when performing design, installation, inspection/testing or maintenance on kitchen suppression systems.

904.12 Commercial cooking systems. The automatic fire-extinguishing system for commercial cooking systems shall be of a type recognized for protection of commercial cooking equipment and exhaust systems of the type and arrangement protected. Preengineered automatic dry and wet chemical extinguishing systems shall be tested in accordance with UL 300 and listed and labeled for the intended application. Other types of automatic fire-extinguishing systems shall be listed and labeled for specific use as protection for commercial cooking operations. The system shall be installed in accordance with this code, its listing and the manufacturer's installation instructions. Signage shall be provided on the exhaust hood or system cabinet, indicating the type and arrangement of cooking appliances protected by the automatic fire-extinguishing system. Signage shall indicate appliances from left to right, be durable, and the size, color, and lettering shall be approved. Automatic fire-extinguishing systems of the following types shall be installed in accordance with the referenced standard indicated, as follows:

1. Carbon dioxide extinguishing systems, NFPA 12;
2. *Automatic sprinkler systems*, NFPA 13;
3. Foam-water sprinkler systems or foam-water spray systems, NFPA 16;
4. Dry-chemical extinguishing systems, NFPA 17;
5. Wet-chemical extinguishing systems, NFPA 17A.

EXCEPTION: Factory-built commercial cooking recirculating systems that are tested in accordance with UL 710B and *listed, labeled* and installed in accordance with Section 304.1 of the *International Mechanical Code*.

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

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

WSR 21-06-073
EMERGENCY RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed March 1, 2021, 9:31 a.m., effective March 1, 2021, 9:31 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To require a general government employer to grant leave with pay (LWP) to allow an employee to take a reasonable amount of leave with pay for an employee to travel and receive each dose of COVID-19 immunization if the vaccine is not offered at the workplace; to allow a general government employer to grant a reasonable amount of LWP for an employee to receive each dose of COVID-19 immunization if the vaccine is offered at the workplace; and to allow a higher education employer to grant a reasonable amount of LWP for an employee to receive each does [dose] of COVID-19 immunization if the vaccine is not offered at the workplace. An employer may authorize leave in excess of one day in extraordinary circumstances, such as to accommodate travel where the vaccine is unavailable locally. The employer may require that the request for leave be supported by documentation, which may include proof of the vaccination. If state or federal law provides paid leave specifically to receive the COVID-19 vaccination, the provisions concerning leave for immunization no longer apply. The proposed rules also allow an employer to grant leave without pay for an employee to protect themselves, or a relative or household member, from risks related to COVID-19.

Citation of Rules Affected by this Order: Amending WAC 357-31-325, 357-31-326, and 357-31-330.

Statutory Authority for Adoption: Chapter 41.06 RCW.

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: To align Title 357 WAC with Governor Jay Inslee's Proclamation 20-05 which declares a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. Our governor further declared that state agencies and departments are directed to use state resources and to do everything reasonably possible to assist affected political subdivisions in an effort to respond to and recover from the outbreak. The worldwide outbreak of COVID-19 and the effects of its extreme risk of person-to-person transmission throughout the United States and Washington state significantly impact the life and health of our people, as well as the economy of Washington state, and is a public disaster that affects life, health, property or the public peace.

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 3, 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 3, Repealed 0.

Date Adopted: March 1, 2021.

Roselyn Marcus
Assistant Director of Legal
and Legislative Affairs

OTS-2885.4

AMENDATORY SECTION (Amending WSR 20-24-019, filed 11/20/20, effective 12/28/20)

WAC 357-31-325 When must an employer grant leave with pay for other miscellaneous reasons? Leave with pay **must** be granted to an employee in accordance with WAC 357-31-320 and for the following reasons:

(1) To allow an employee to receive assessment from the employee assistance program.

(2) When an employee is scheduled to take an examination or participate in an interview for a position with a state employer during scheduled work hours.

(a) Employers may limit the number of occurrences or the total amount of paid leave that will be granted to an employee to participate in an interview or take an examination during scheduled work hours.

(b) Employers may deny an employee's request to participate in an interview or take an examination during scheduled work hours based upon operational necessity.

(3) When an employee is required to appear during working hours for a physical examination to determine physical fitness for military service.

(4) To allow a general government employee to take paid leave, not to exceed thirty days in a two-year period to participate in life-giving procedures, such as medical procedures, including testing, sampling, or donation of organs, tissues, and other body components for the purpose of donation, without compensation. For this subsection blood or plasma donations are not considered life-giving procedures.

(a) General government employers may take operational necessity into account and require the employee to provide reasonable advance notice.

(b) Employees must provide written proof from an accredited medical institution, physician, or other medical professional that the employee will or has participated in a life-giving procedure.

(5) When a general government employee is required by Centers for Disease Control and Prevention guidelines to self-quarantine due to novel coronavirus disease 2019 (COVID-19), but is otherwise healthy and has not tested positive for COVID-19, and the employer has determined the employee does not have the option to telework. An employer may subsequently determine that a telework option exists for the employee and direct the employee to telework. If the employee is directed to telework under this subsection and declines to do so, the employee must use other available leave options. The employee may receive up to fourteen days of leave with pay under this subsection. This subsection is effective until the expiration of proclamation

20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later. An employer may require written verification, including verification submitted electronically, confirming the circumstances warranting the self-quarantine or inability to telework, which may include a signed affidavit from the employee or any other information requested by the employer.

(6) To allow a general government employee to take a reasonable amount of leave with pay for the employee to travel and receive each dose of COVID-19 immunization if the vaccine is not offered at the workplace. An employer may authorize leave in excess of one day in extraordinary circumstances, such as to accommodate travel where the vaccine is unavailable locally. The employer may require that the request for leave be supported by documentation, which may include proof of the vaccination. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency to the state of Washington, or any amendment thereto, whichever is later. This subsection no longer applies if state or federal law otherwise provides paid leave specifically for employees to receive the COVID-19 immunization.

[Statutory Authority: Chapter 41.06 RCW. WSR 20-24-019, § 357-31-325, filed 11/20/20, effective 12/28/20; WSR 14-11-033, § 357-31-325, filed 5/14/14, effective 6/16/14; WSR 10-23-041, § 357-31-325, filed 11/10/10, effective 12/13/10; WSR 09-03-014, § 357-31-325, filed 1/9/09, effective 2/13/09; WSR 08-07-062, § 357-31-325, filed 3/17/08, effective 4/18/08; WSR 05-21-055, § 357-31-325, filed 10/13/05, effective 11/15/05; WSR 05-08-138, § 357-31-325, filed 4/6/05, effective 7/1/05.]

AMENDATORY SECTION (Amending WSR 20-24-019, filed 11/20/20, effective 12/28/20)

WAC 357-31-326 When may an employer grant leave with pay? (1) A general government employer **may** grant leave with pay for an employee to perform civil duties as a volunteer including, but not limited to, firefighting, search and rescue efforts, or donating blood. Leave granted to participate in blood and plasma donations must not exceed five days in a two-year period.

(2) A higher education employer may grant leave with pay for an employee to perform civil duties as a volunteer including, but not limited to, firefighting, search and rescue efforts, participating in life-giving procedures, or donating blood. Leave granted to participate in life-giving procedures must not exceed five days in a two-year period.

(3) In the department of natural resources, leave with pay equivalent to one regular workshift **may** be allowed for the purpose of rest and recuperation after ten consecutive calendar days performing emergency work under an incident command system, defined in RCW 38.52.010. The employer may grant one additional day of leave with pay for rest and recuperation after twenty-one consecutive calendar days performing emergency work under an incident command system.

(4) When a higher education employee is required by Centers for Disease Control and Prevention guidelines to self-quarantine due to novel coronavirus disease 2019 (COVID-19), but is otherwise healthy

and has not tested positive for COVID-19, and the employer has determined the employee does not have the option to telework. An employer may subsequently determine that a telework option exists for the employee and direct the employee to telework. If the employee is directed to telework under this subsection and declines to do so, the employee must use other available leave options. The employee may receive up to fourteen days of leave with pay under this subsection. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later. An employer may require written verification, including verification submitted electronically, confirming the circumstances warranting the self-quarantine or inability to telework, which may include a signed affidavit from the employee or any other information requested by the employer.

(5) A general government employer may grant a reasonable amount of leave with pay for an employee to receive each dose of COVID-19 immunization if the vaccine is offered at the workplace. An employer may authorize leave in excess of one day for receipt of the vaccine in extraordinary circumstances, such as to accommodate travel where the vaccine is unavailable locally. The employer may require that the request for leave be supported by documentation, which may include proof of the vaccination. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency to the state of Washington, or any amendment thereto, whichever is later. This subsection no longer applies if state or federal law otherwise provides paid leave specifically for employees to receive the COVID-19 immunization.

(6) A higher education employer may grant a reasonable amount of leave with pay for an employee to receive each dose of COVID-19 immunization if the vaccine is not offered at the workplace. An employer may authorize leave in excess of one day for receipt of the vaccine in extraordinary circumstances, such as to accommodate travel where the vaccine is unavailable locally. The employer may require that the request for leave be supported by documentation, which may include proof of the vaccination. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency in the state of Washington, or any amendment thereto, whichever is later. This subsection no longer applies if state or federal law otherwise provides paid leave specifically for employees to receive the COVID-19 immunization.

[Statutory Authority: Chapter 41.06 RCW. WSR 20-24-019, § 357-31-326, filed 11/20/20, effective 12/28/20; WSR 17-18-029, § 357-31-326, filed 8/28/17, effective 10/2/17. Statutory Authority: RCW 41.06.133. WSR 17-11-049, § 357-31-326, filed 5/15/17, effective 6/19/17. Statutory Authority: Chapter 41.06 RCW. WSR 09-03-014, § 357-31-326, filed 1/9/09, effective 2/13/09.]

AMENDATORY SECTION (Amending WSR 09-17-056 and 09-18-113, filed 8/13/09 and 9/2/09, effective 12/3/09)

WAC 357-31-330 For what reasons may an employer grant leave without pay? Leave without pay may be allowed for any of the following reasons in accordance with the employer's leave policy:

(1) For any reason leave with pay may be granted, as long as the conditions for leave with pay are met;

(2) Educational leave;

(3) Leave for government service in the public interest;

(4) Military leave of absence as required by WAC 357-31-370;

(5) Parental leave as required by WAC 357-31-460;

(6) Family care emergencies as required by WAC 357-31-295;

(7) Bereavement or condolence;

(8) Absence due to inclement weather as provided in WAC 357-31-255;

(9) To accommodate annual work schedules of employees occupying cyclic year positions as specified in WAC 357-19-295;

(10) Serious health condition of an eligible employee's child, spouse, registered domestic partner, or parent as required by WAC 357-31-525;

(11) Leave taken voluntarily to reduce the effect of an employer's layoff;

(12) Leave that is authorized in advance by the appointing authority as part of a plan to reasonably accommodate a person of disability; ((or))

(13) Employees receiving time loss compensation; or

(14) For an employee to protect themselves, or a relative or household member, from risks related to coronavirus disease 2019 (COVID-19). In determining whether to grant leave, an employer may consider whether the employee is needed to provide essential services because the employee is a health care provider, an emergency responder or otherwise necessary to maintain public safety. This subsection is effective until the expiration of proclamation 20-05, issued February 29, 2020, by the governor and declaring an emergency to the state of Washington, or any amendment thereto, whichever is later.

[Statutory Authority: Chapter 41.06 RCW. WSR 09-17-056 and 09-18-113, § 357-31-330, filed 8/13/09 and 9/2/09, effective 12/3/09; WSR 09-03-014, § 357-31-330, filed 1/9/09, effective 2/13/09; WSR 05-08-138, § 357-31-330, filed 4/6/05, effective 7/1/05.]

WSR 21-06-074
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-26—Filed March 1, 2021, 10:04 a.m., effective March 1, 2021, 10:04 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule is to require evisceration of commercially landed crab from inside Grays Harbor.

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000F and 220-340-45000V; and amending WAC 220-340-420 and 220-340-450.

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

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

Reasons for this Finding: Mandatory, minimum meat recovery requirements for coastal crab will be achieved by the opening dates contained herein. The Washington department of health has determined that while the meat in Dungeness crab in all areas of the Washington coast is safe for human consumption, the viscera from crab caught between the Washington/Oregon border and Point Chehalis, Washington including Willapa Bay and Grays Harbor are unsafe for human consumption and have issued a recommendation requiring evisceration of all crab caught in this area. To strengthen the enforcement of an evisceration requirement needed to protect public health, all crab landed into Washington from any west coast area south of Point Chehalis, Washington and Willapa Bay and Grays Harbor must be eviscerated. Domoic acid levels in the crab viscera in the area north of Point Chehalis, Washington (except in Grays Harbor) are below federal action levels and are considered safe for human consumption, landings of crab from this area do not require similar processing restrictions to remove the viscera necessary to protect public health. However, restrictions on where fishermen may fish their gear are needed to ensure that crab are not harvested from areas with high domoic acid in the viscera (south of Point Chehalis, Washington and Willapa Bay and Grays Harbor) and reported as landings from areas where domoic acid in viscera are low (north of Point Chehalis, Washington). Further delaying the opening of the coastal commercial Dungeness crab fishery until domoic acid in crab viscera is below federal action levels, which could take several months, would cause significant economic harm to the coastal crab industry and to the coastal communities dependent on this highly valuable fishery. In addition, delaying the season into spring poses an additional risk to marine mammals including Endangered Species Act (ESA) listed humpback whales and Marine Mammal Protection Act (MMPA) Gray whales which are more abundant off the Washington coast in the spring by increasing the risk of entanglement with commercial crab gear. Emergency rules are necessary to implement a longer gear set period which will allow for safer fishing conditions and improved enforceability of area restrictions when gear is set. A delay due to elevated marine toxins aligns with the Tri-State Crab Agreement and similar rules in Oregon and California. Tribal special management area descriptions conform with recent state/tribal agreements. There is in-

sufficient time to adopt permanent rules. The Westport Boat Basin is closed to commercial crab fishing to prevent conflicts with vessel traffic in a limited area.

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

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

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

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

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

Date Adopted: March 1, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-42000G Commercial crab fishery—Unlawful acts. Notwithstanding the provisions of WAC 220-340-420, effective immediately until further notice:

(1) It is unlawful to land, or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean from any vessel, unless:

(a) The vessel hold inspection certificate numbers are recorded on all shellfish fish receiving tickets completed for coastal Dungeness crab landings until further notice and;

(b) The vessel has a valid Oregon vessel inspection certificate or a Washington vessel inspection certificate dated on or after February 15, 2021 identified with an individual inspection number that includes the letters "EVS" indicating that evisceration is required for all crab sold by this license or the letters "NOR" indicating north of Point Chehalis, WA (46°53.18 N. Lat) (except Grays Harbor) and evisceration is not required.

(c) A Washington vessel inspection certificate is only valid when signed by an authorized WDFW employee.

(2) It is unlawful to possess or deliver Dungeness crab unless the following conditions are met:

(a) All crab caught north of Point Arena, CA and south of Point Chehalis, WA (46°53.18 N. Lat) including Willapa Bay and Grays Harbor must be delivered to a processing facility with an approved Hazard Analysis and Critical Control Point (HACCP) plan and eviscerated or;

(b) Dungeness crab are delivered to a Washington Department of Fish and Wildlife licensed Fish Dealer and/or Wholesale Fish Buyer and transported or sold to a facility with an approved HACCP plan and eviscerated. The vessel inspection number must accompany the crab to the final designation where it will be eviscerated.

(3) It is unlawful to donate, sell or attempt to sell to retailers or consumers live or whole Dungeness crab when caught north of

Cape Falcon, OR (45°46'00" N. Lat) and south of Point Chehalis, WA (46°53.18 N. Lat), and Willapa Bay and Grays Harbor.

(3) Unless otherwise amended all other provisions of the permanent rule remain in effect.

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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.

NEW SECTION

WAC 220-340-45000W Commercial crab fishery—Seasons and areas—

Coastal. Notwithstanding the provisions of WAC 220-340-450, effective immediately until further notice: it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided in this section.

(1) Open area:

(a) The area from the WA/OR border (46°15.00) to the US-Canadian border.

(b) For the purposes of this section, the waters of Willapa Bay include the marine waters east of a line connecting 46°44.76 N, 124°05.76 W and 46°38.93 N, 124°04.33 W.

(2) No license or vessel may set gear south of Point Chehalis, WA (46°53.18 N. Lat) and Willapa Bay and Grays Harbor unless they have been issued a valid Oregon vessel inspection certificate dated on or after February 15, 2021 or a Washington vessel inspection certificate dated on or after February 15, 2021 identified with a vessel inspection number that includes the letters "EVS" indicating that evisceration is required for all crab landed by this license or vessel until further notice.

(3) Licenses or vessels issued a valid Washington crab vessel inspection certificate dated on or after February 15, 2021 identified with a vessel inspection number that includes the letters "NOR" may land crab for live, whole cooked or evisceration.

(4) It unlawful for licenses and vessels with a vessel inspection number that includes the letters "NOR" to deploy or operate shellfish pots south of Point Chehalis, WA (46°53.18 N. Lat) and Willapa Bay and Grays Harbor.

(5) For waters of the Pacific Ocean north of Point Arena, California, it is unlawful for a person to use a vessel to fish in any area where the season opening is delayed due to marine biotoxins for the first 30 days following the opening of the area if the vessel was employed in the coastal crab fishery during the previous 45 days.

(6) The Quinault primary special management area (PSMA) is closed to fishing for Dungeness crab until further notice. The PSMA includes the area shoreward of a line approximating the 27-fathom depth curve between Raft River (47°28.00) and Copalis River (47°08.00) according to the following coordinates:

(a) Northeast Corner (Raft River): 47°28.00' N. Lat. 124°20.70' W. Lon.

(b) Northwest Corner: 47°28.00' N. Lat. 124°34.00' W. Lon.

(c) Southwest Corner: 47°08.00' N. Lat. 124°25.50' W. Lon.

(d) Southeast Corner (Copalis River): 47°08.00' N. Lat. 124°11.20' W. Lon.

(7) The Quileute special management area (SMA) is closed to fishing for Dungeness crab until further notice. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

(a) Northeast Corner (Cape Johnson): 47°58.00' N. Lat. 124°40.40' W. Lon.

(b) Northwest Corner: 47°58.00' N. Lat. 124°49.00' W. Lon.

(c) Southwest Corner: 47°40.50' N. Lat. 124°40.00' W. Lon.

(d) Southeast Corner (Destruction Island): 47°40.50' N. Lat. 124°24.43' W. Lon.

(8) The Makah special management area (SMA) is closed to fishing until further notice. The SMA includes the waters between 48°02.15 N. Lat. and 48°19.50 N. Lat. east of a line connecting those points and approximating the 25-fathom line according to the following coordinates:

(a) Northeast Corner (Tatoosh Island)

(b) Northwest Corner: 48°19.50' N. Lat. 124°50.45' W. Lon.

(c) Southwest Corner: 48°02.15' N. Lat. 124°50.45' W. Lon.

(d) Southeast Corner: 48°02.15' N. Lat. 124°41.00' W. Lon.

(9) It is unlawful to fish for Dungeness crab in the Westport Boat Basin as defined in WAC 220-300-320.

(10) Unless otherwise amended all other provisions of the permanent rule remain in effect.

[]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-340-42000F Commercial crab fishery—Unlawful acts.
(21-11)

WAC 220-340-45000V Commercial crab fishery—Seasons and
areas—Coastal. (21-11)

WSR 21-06-083
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-27—Filed March 1, 2021, 5:09 p.m., effective March 1, 2021, 5:09 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends rules for Puget Sound commercial sea urchins.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000B; and amending WAC 220-340-750.

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

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

Reasons for this Finding: This emergency rule closes harvest of red sea urchins in Sea Urchin Management District 2 (23B, 25A, 25B) because the quota for red sea urchin in these areas has been reached. This closure is needed to fulfill obligations of state and tribal co-manager agreements. Immediate adoption of this rule is necessary for the preservation of the public health, safety, or general welfare. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to public interest. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: March 1, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-75000C Commercial sea urchin fisheries. Notwithstanding the provisions of WAC 220-340-750, effective immediately, until further notice:

(1) It is unlawful for any person to fish for, take, or possess for commercial purposes any green sea urchins less than 2.25 inches; or red sea urchins measuring less than 3.25 inches or greater than 5 inches. All measurements are caliper measurements of the largest shell (test) diameter, exclusive of the spines.

(2) The following areas are open for green sea urchin harvest only, seven days-per-week: Sea Urchin District 1; District 2 Marine Fish-Shellfish Management and Catch Reporting Areas 21A, 21B, 22A, 22B, 23A; District 3 east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude; and District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude; District 6; and District 7 except all waters of Hale Passage and Wollochet Bay within the following lines: west of a line projected true south from the shoreline near Point Fosdick at 122 degrees 35 minutes west longitude to 47 degrees 14 minutes north latitude, and thence projected true west to the shoreline of Fox Island, and east of a line projected true south from the shoreline near Green Point at 122 degrees 41 minutes west longitude to 47 degrees 16.5 minutes north latitude, and thence projected true east to the shoreline of Fox Island.

(3) The following areas are open for red sea urchin harvest seven days-per-week: Sea Urchin District 4 west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude.

(4) The maximum cumulative landings for green sea urchins and red sea urchins for each weekly fishery opening period is 1,500 pounds per species per valid designated sea urchin harvest license. Each fishery week begins Monday and ends Sunday.

[]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-340-75000B Commercial sea urchin fisheries.
(21-15)