

WSR 21-10-002
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-56—Filed April 21, 2021, 4:25 p.m., effective May 1, 2021]

Effective Date of Rule: May 1, 2021.

Purpose: The purpose of this emergency rule is to open commercial shrimp seasons in Puget Sound.

Citation of Rules Affected by this Order: Amending WAC 220-340-520 and 220-340-030.

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: Permanent rules regulating state commercial shrimp harvest in Puget Sound and the Strait of Juan de Fuca require adoption of harvest seasons contained in this emergency rule. This emergency rule:

- (1) Defines the shrimp management areas and regions open to spot and nonspot commercial harvest.
- (2) Defines spot pot gear requirements.
- (3) Defines nonspot gear requirements.
- (4) Implements labeling requirements for groundline pot gear.
- (5) Implements restrictions for the concurrent use of spot shrimp and nonspot shrimp pot gear.
- (6) Implements a fishing declaration requirement for all shrimp pot fisheries in Puget Sound.
- (7) Sets harvest restrictions for and opens the nonspot commercial pot fishery.
- (8) Sets harvest restrictions for and opens the spot commercial pot fishery.
- (9) Sets the harvest and gear limitations for and opens the Puget Sound shrimp trawl fishery.
- (10) Requires purchase of shrimp harvested by the designated fisheries to be done by appropriately licensed dealers.

The emergency regulation is needed to allow adequate flexibility for the state commercial shrimp fisheries to respond to dynamic changes in market conditions and to allow for full utilization of both the commercial spot and nonspot shares. Sections of this regulation add additional reporting requirements to allow managers to track commercial fishing effort. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 20, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-52000D Puget Sound shrimp pot and trawl fishery—

Season. Notwithstanding the provisions of WAC 220-340-520, effective 12:00 a.m. on May 1, 2021, until further notice, or until they expire pursuant to RCW 34.05.350, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp Pot Harvests:

(a) All waters of Shrimp Management Areas 1A, 1B, 1C, 2E, 2W and 3 are open to the harvest of all shrimp species, effective immediately, until further notice, except as provided for in this section:

(i) Each sub-area of Marine Fish/Shellfish Management and Catch Reporting Area 23A (23A-E, 23A-W, 23A-C, and 23A-S) are closed to the commercial harvest of non-spot shrimp until the commercial spot shrimp share is taken.

(ii) Shrimp Management Area 1A is closed to the commercial harvest of non-spot shrimp until the commercial spot shrimp share is taken.

(iii) Discovery Bay Shrimp District is open to the commercial harvest of non-spot shrimp.

(iv) Shrimp Management Areas 1B, 2E, and 2W are closed to the commercial harvest of spot shrimp.

(b) There is no minimum size limit for spot shrimp or non-spot shrimp.

(c) Shrimp pot gear used for commercial harvest must meet the following requirements:

(i) A shrimp pot may not exceed a maximum 153 inch bottom perimeter and a maximum of 24 inch height.

(ii) The entire top, bottom, and sides of the shrimp pot must be constructed of mesh material. Use of liners is prohibited.

(iii) Entrance tunnels to shrimp pots may be constructed of any size mesh material. All entrance tunnels must open into the pot from the side. The sum of the maximum widths of all entrance tunnel openings must not exceed half of the perimeter of the bottom of the pot.

(iv) Spot shrimp may only be harvested using pots with a minimum mesh size of 1 inch. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1-3/4 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(v) Non-spot shrimp may only be harvested using pots with a minimum mesh size 1/2 inch. Mesh of 1/2 inch is defined as a mesh that a 3/8 inch square peg will pass through, excluding the entrance tunnels,

except for flexible (web) mesh pots, where the mesh must be at a minimum 1 1/8 inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(d) Buoys must have the number of pots deployed per groundline recorded on each end-buoy of a groundline.

(e) It is lawful to concurrently fish spot shrimp pots and non-spot pots with the following restrictions:

(i) Spot pots and non-spot pots may not be deployed concurrently within the same Catch Reporting Area.

(ii) All shrimp harvested must be landed and recorded on a shellfish receiving ticket before subsequent harvest may occur.

(f) Each fisher or alternate operator is required to report their intended catch area of harvest, target species (spot or non-spot), and the amount of pounds that are being targeted prior to the deployment of any shrimp gear to either shrimp.report@dfw.wa.gov or by text message to 360-302-6372.

(g) It is unlawful to harvest non-spot and spot shrimp in the same day.

(h) It is unlawful to harvest shrimp in more than one catch area per day.

(2) Shrimp Non-spot Pot Harvest Restrictions

(a) The non-spot shrimp catch accounting period is weekly from Wednesday through Tuesday, totaling 7 days in length.

(b) It is unlawful for the combined total harvest of non-spot shrimp per license to exceed 600 pounds per non-spot shrimp catch accounting week from Shrimp Management Areas 1A, 1B, 1C, 2E and 2W combined.

(c) Harvest of non-spot shrimp is not permitted deeper than 150 feet in Region 2E. Region 2E is comprised of Catch Areas 24A, 24B, 24C, 24D, and 26AE (26A northerly of a line drawn from the southern tip of Possession Point on Whidbey Island 110° true to the shipwreck on the opposite shore).

(d) Harvest of non-spot shrimp is not permitted deeper than 175 feet in Region 2W. Region 2W is comprised of Catch Areas 25B, 25C, 25D, and 26AW.

(3) Shrimp Spot Pot Harvest Restrictions:

(a) The spot shrimp catch accounting period starts May 1, 2021 at 12:00 a.m. through August 10, 2021 at 11:59 p.m.

(b) It is unlawful for the total harvest within the spot shrimp accounting period to exceed 4,500 pounds of spot shrimp per license from Shrimp Management Areas 1A, 1C, and 3 combined.

(c) It is unlawful for more than 3,000 pounds of spot shrimp per license to be landed prior to Tuesday, July 13, 2021 at 11:59 p.m.

(4) Shrimp trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open, effective immediately, until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Catch Area 22A within SMA 1B east of a line projected 122.47°W longitude and west of a line projected 122.43°W longitude in Rosario Strait is open effective 6:00 a.m. on May 1, 2021.

(c) The waters of south Lopez Sound (the portion of Catch Area 22A south of a line projected east and west from the northern tip of Trump Island) will open at 12:00 a.m. on July 10, 2021.

(d) The remaining portion of Shrimp Management Area 1B and Catch Areas 20B and 22A outside the area described in sections 4 (b, c) above will open effective 12:00 a.m. May 16, 2021.

(e) Catch Area 21A (north and west of a line from the southern tip of Sinclair Island to Carter Point on Lummi Island) will open at 12:00 a.m. on July 1, 2021.

(f) Catch Area 20A (west of a line from the southwest corner of Point Roberts to Sandy Point) will open at 12:00 a.m. on August 1, 2021

(g) Trawling is allowed only in waters deeper than 120 feet in Catch Area 20A.

(5) All shrimp taken under this section must be sold to licensed Washington State wholesale fish dealers.

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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.

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 220-340-03000H Shellfish harvest logs. Notwithstanding the provisions of WAC 220-340-030, effective immediately, until further notice, or until they expire pursuant to RCW 34.05.350, it is unlawful for vessel operators engaged in commercial harvest of shrimp from Puget Sound with shellfish pot gear to fail to report their daily catch by text message, e-mail or FAX to WDFW by 10:00 a.m. the day after the shrimp are harvested. Text message and e-mail daily catch reports must be submitted to shrimp.report@dfw.wa.gov, and FAX reports must be transmitted to FAX number 360-302-3031. Daily catch reports must include the following information as it is recorded on the fish receiving ticket: fisher name, buyer name, pounds landed per shrimp species, catch area, date of harvest, date of sale, and complete fish ticket serial number, including the first alphanumeric letter. If the fish receiving ticket is faxed as the daily harvest report, the date of harvest must be recorded on the bottom half of the ticket.

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WSR 21-10-006
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-57—Filed April 22, 2021, 12:40 p.m., effective May 1, 2021]

Effective Date of Rule: May 1, 2021.

Purpose: The purpose of this emergency rule is to open coastal commercial salmon seasons and specify landing requirements.

Citation of Rules Affected by this Order: Amending WAC 220-354-300.

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

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

Reasons for this Finding: A harvestable quota of salmon is available for the troll fleet. This regulation is necessary to both meet conservation limits and to provide fishing opportunity and its corresponding economic benefit. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans, and have been adopted for federal waters by the National Oceanic and Atmospheric Administration. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 22, 2021.

Kelly Susewind
Director

NEW SECTION

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

Notwithstanding the provisions of WAC 220-354-300, WAC 220-353-050 and WAC 220-354-010, effective May 1, 2021, until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons and under conditions provided below:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude open: May 1 through June 29, 2021.

(2) Grays Harbor Control Zone, defined by a line drawn from the Westport Lighthouse (46°53'18" N. lat., 124°07'01" W. long.); thence to Buoy #2 (46°52'42" N. lat., 124°12'42" W. long.); thence to Buoy #3 (46°55'00" N. lat., 124°14'48" W. long.); thence to the Grays Harbor north jetty (46°55'36" N. lat., 124°10'51" W. long.), open: May 1 through June 29, 2021.

(3) In Washington Catch Reporting Areas 1, 3 and 4, landing and possession limit of 75 Chinook per vessel per landing week, defined as Thursday through Wednesday.

(4) The Cape Flattery and Columbia River Control Zones are closed. The Mandatory Yelloweye Rockfish Conservation Area is closed.

(5) Minimum size for Chinook salmon is 27 inches in length (20 1/2 inches frozen dressed). No minimum size for pink, sockeye or chum salmon. It is unlawful to possess coho salmon.

(6) For delivery to Washington ports east of the Sekiu River, vessels must notify WDFW at (360) 249-1215 or by email at Wendy.Beeghley@dfw.wa.gov prior to crossing the Bonilla-Tatoosh line with area fished, total Chinook and halibut catch aboard, and destination with approximate time of delivery. Vessels may not land fish east of Port Angeles or east of the Megler-Astoria bridge.

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

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

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WSR 21-10-011

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed April 23, 2021, 8:48 a.m., effective April 23, 2021, 8:48 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-72-020 Certificate requirements and 246-72-080 Renewals and updating license information. Current certificate requirements for medical marijuana certified consultants (MMCC) under WAC 246-72-020 require an initial applicant to have obtained a cardio-pulmonary resuscitation (CPR) card from a training course that includes both a written examination and skills demonstration test in order to receive a MMCC credential from the department of health (department). The department is amending this section of rule to temporarily suspend the skills demonstration portion of the CPR requirement to allow initial applicants to move forward in the department's application process during the coronavirus disease (COVID-19) response. WAC 246-72-080 renewals does not specify CPR requirements include a skills demonstration test to be compliant, however, the department interprets this requirement to be the same as defined in WAC 246-72-020. Therefore, the department is also revising WAC 246-72-080 in this rule making to clarify that the in-person CPR requirement suspension applies to renewing applicants as well as initial applications. This is the third filing of these emergency rules and will replace the previous emergency rule filed on December 24, 2020, under WSR 21-02-011. It remains necessary as the COVID-19 pandemic continues to make in-person courses unavailable.

Citation of Rules Affected by this Order: Amending WAC 246-72-020 and 246-72-080.

Statutory Authority for Adoption: RCW 69.51A.290.

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

Reasons for this Finding: RCW 69.51A.290 provides the department authority to adopt rules and requirements for licensing and regulating the MMCC. Under the COVID-19 pandemic restrictions, in-person CPR training programs have been suspended making it impossible for current and new applicants to obtain licensure and continue providing services allowed under WAC 246-72-030 to patients in Washington during the COVID-19 pandemic. The skills demonstration portion of the CPR requirement was adopted in rule back in 2017 to address patient concerns relating to certified consultant trainings. A consultant's role includes spending a significant amount of time assisting patients (some with acute or chronic health conditions) with getting registered and product selection.

The immediate amendment of these existing rules is necessary for the preservation of public health, safety, and general welfare. Licensees have shared that they are struggling to meet the CPR requirements to gain or maintain their MMCC. Furthermore, retailers are required to have an MMCC on staff in order to serve patients from the medical marijuana community. If licensees are not able to gain or renew their certification, not only will the MMCC be unable to provide care, but the retail store itself may no longer be able to provide services to medical patients at all, making it very difficult or impossible for

patients to access their medication. By temporarily suspending the skills demonstration portion of the CPR training requirement under WAC 246-72-020 and 246-72-080, both new and renewing applicants will be able to continue with certification and provide the necessary health care services to patients in need. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest and the governor's order.

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

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

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

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

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

Date Adopted: April 22, 2021.

Jessica Todorovich
Chief of Staff
for Umair A. Shah, MD, MPH
Secretary

OTS-2302.1

AMENDATORY SECTION (Amending WSR 18-07-030, filed 3/12/18, effective 4/12/18)

WAC 246-72-020 Certificate requirements. An applicant for a medical marijuana consultant certificate must submit to the department:

- (1) A completed initial application on forms provided by the department;
- (2) Fees required under WAC 246-72-110;
- (3) Certificate of successful completion from an approved training program;
- (4) Proof of being age twenty-one or older. Acceptable forms of proof are a copy of the applicant's valid driver's license or other government-issued identification card, United States passport, or certified birth certificate;
- (5) Proof of current CPR certification from a course requiring completion of ~~((both))~~ a written ~~((and skills demonstration))~~ test; and
- (6) Any other documentation required by the secretary.

[Statutory Authority: RCW 69.51A.230. WSR 18-07-030, § 246-72-020, filed 3/12/18, effective 4/12/18. Statutory Authority: RCW 69.51A.290. WSR 16-07-086, § 246-72-020, filed 3/17/16, effective 3/18/16.]

OTS-2528.1

AMENDATORY SECTION (Amending WSR 18-07-030, filed 3/12/18, effective 4/12/18)

WAC 246-72-080 Renewals and updating license information. (1)

Certificates must be renewed every year on the certificate holder's birthday. Initial certificates issued within ninety days of the certificate holder's birthday do not expire until the person's next birthday.

(2) Renewals:

(a) Prior to the certificate expiration date, courtesy renewal notices are mailed to the address on file. Certificate holders must return the renewal notice when renewing their credential. Failure to receive a courtesy renewal notice does not relieve or exempt the renewal requirement.

(b) The certificate holder must attest to completion of annual certification requirements, including current CPR certification as outlined in WAC 246-72-020.

(c) Renewal fees are accepted by the department no sooner than ninety days prior to the expiration date.

(3) Duplicate certificate: A certificate holder may obtain a duplicate certificate by submitting a written request to the department and paying the fee as required in WAC 246-72-990.

(4) Name changes: It is the responsibility of each certificate holder to maintain his or her correct name on file with the department. Requests for name changes must be submitted in writing to the department along with documentation showing the name was legally changed.

(5) Address changes: It is the responsibility of each certificate holder to maintain his or her current address on file with the department. Requests for address changes must be made in writing. The mailing address on file with the department will be used for mailing of all official matters to the certificate holder.

[Statutory Authority: RCW 69.51A.230. WSR 18-07-030, § 246-72-080, filed 3/12/18, effective 4/12/18. Statutory Authority: RCW 69.51A.290. WSR 16-07-086, § 246-72-080, filed 3/17/16, effective 3/18/16.]

WSR 21-10-012
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed April 23, 2021, 9:45 a.m., effective April 23, 2021, 9:45 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule amendment to chapter 392-380 WAC is to clarify the procedural and substantive due process requirements governing the exclusion of children from schools pursuant to RCW 28A.210.120 and 28A.210.320 for the 2020-21 school year.

Citation of Rules Affected by this Order: Amending chapter 392-380 WAC.

Statutory Authority for Adoption: RCW 28A.210.160 and 28A.210.320(3).

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: Recent rules adopted by the Washington state board of health that went into effect August 1, 2020, regarding school immunization requirements increase the possibility that students may be excluded from school due to noncompliance with these requirements at the start of the 2020-21 school year. This, coupled with the current lack of clarity in chapter 392-380 WAC regarding procedural and substantive due process safeguards for students who are excluded from school due to noncompliance with immunization requirements, create an urgent need to immediately amend chapter 392-380 WAC to preserve public health, safety, and the general welfare.

On October 7, 2020, the office of superintendent of public instruction initiated permanent rule making to amend chapter 392-380 WAC. The CR-102 was filed on April 7, 2021. The public hearing will be May 11, 2021, with comments due the same day.

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

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

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

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

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

Date Adopted: April 23, 2021.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

OTS-2569.1

AMENDATORY SECTION (Amending WSR 07-12-020, filed 5/25/07, effective 6/25/07)

WAC 392-380-020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Student" shall mean the same as defined for "child" in RCW 28A.210.070(~~(6)~~).

(2) "Chief administrator" shall mean the same as defined in RCW 28A.210.070(~~(1)~~).

(3) "Full immunization" shall mean the same as defined in RCW 28A.210.070(~~(2)~~).

(4) "Schedule of immunization" shall mean the beginning or continuing of a course of immunization, including the conditions for school attendance when a child is not fully immunized, as prescribed by the state board of health (WAC (~~(246-100-166(5))~~) 246-105-060(2)).

(5) "Certificate of exemption" shall mean the filing of a statement exempting the child from immunizations with the chief administrator of the school, on a form prescribed by the department of health, which complies with RCW 28A.210.090.

(6) "Life-threatening condition" shall mean a health condition that will put the child in danger of death during the school day if a medication or treatment order and a nursing plan are not in place.

(7) "Medication or treatment order" shall mean the authority a registered nurse obtains under RCW 18.79.260(2). The order shall be signed by a licensed health care practitioner listed under RCW 18.79.260(2).

(8) "Nursing plan" shall mean a plan of care developed for the student consistent with the standards of nursing conduct or practice set out in department of health regulations, WAC 246-840-700 et seq. The nursing plan implements the medication or treatment order.

(9) "Exclusion" shall mean the case or instance when the student is denied initial or continued attendance:

(a) Due to failure to:

(i) Submit a schedule of immunization(~~(7)~~) or a certificate of exemption as prescribed in WAC 246-105-050; or

(ii) Maintain the conditions for conditional status attendance prescribed in WAC 246-105-060; or

(b) In the case of a life-threatening health condition, due to failure to submit a medication or treatment order and any medication or equipment identified in the order, unless the school district is required to provide the medication or equipment as a related service under federal law.

(10) "School day" shall mean the same as in RCW 28A.150.030 and shall be inclusive of school or district sponsored field trip experiences and extracurricular activities and summer school.

(11) "Parent" shall (~~mean parent, legal guardian, or other adult in loco parentis~~) have the same meaning as in WAC 392-172A-01125.

[Statutory Authority: RCW 28A.210.160. WSR 07-12-020, § 392-380-020, filed 5/25/07, effective 6/25/07.]

AMENDATORY SECTION (Amending WSR 07-12-020, filed 5/25/07, effective 6/25/07)

WAC 392-380-045 School attendance conditioned upon presentation of proofs. (1) The initial attendance of every student at every public school in the state is conditioned upon proof of immunization as set forth in RCW 28A.210.080.

(2) The chief administrator of each public school shall prohibit the further presence at school of each student already in attendance and who has failed to provide proof of immunization in accordance with RCW 28A.210.080(1). Such exclusion shall be preceded by written notice as set forth in WAC 392-380-050. If written notice has not been provided, any exclusion shall be stayed until notice is received by ((a) the student's parent (~~(, guardian or other adult in loco parentis)~~)).

(3) The initial attendance of every student at every public school who has a life-threatening health condition is conditioned upon:

(a) Presentation by the parent of a medication or treatment order addressing any life-threatening health condition the child has that may require medical services to be performed at the school; and

(b) Formulation of a nursing plan to implement the order.

The parent shall also provide any medication or equipment identified in the medication or treatment order necessary to carry out the order, unless the school district is required to provide the medication or equipment as a related service under federal law.

(4) The chief administrator of each public school shall prohibit the further attendance of each student already in attendance for whom a medication or treatment order has not been provided if the child has a life-threatening health condition that may require medical services to be performed at the school. Any such exclusion shall be preceded by written notice as set forth in WAC 392-380-050. If written notice has not been provided, any exclusion shall be stayed until notice is received by a parent. The school shall continue to prohibit the child's presence until the school:

(a) Receives a medication or treatment order and any medication or equipment identified in the order necessary to carry out the order, unless the school district is required to provide such medication or equipment as a related service under federal law; and

(b) Has a nursing plan in place.

A new medication or treatment order must be submitted whenever there are changes in the medication or treatment needs of the child. The nursing plan shall be amended accordingly.

(5) Upon receipt of a medication or treatment order, the school shall develop a nursing plan.

(6) The requirements of this chapter shall be applied consistent with the requirements of section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act (IDEA).

[Statutory Authority: RCW 28A.210.160. WSR 07-12-020, § 392-380-045, filed 5/25/07, effective 6/25/07.]

AMENDATORY SECTION (Amending WSR 07-12-020, filed 5/25/07, effective 6/25/07)

WAC 392-380-050 Written notice prior to exclusions from school.

~~((1) Schools must provide written notice to parents prior to excluding students from school for failure to comply with WAC 392-380-045.~~

~~(2) The written notice for public school students shall:~~

~~(a) Be delivered in person or by certified mail and provided to parents in their native language if feasible.~~

~~(b) Inform the appropriate parents of the applicable laws and implementing rules. In addition to notification of the applicable laws and regulations, a copy of the laws and regulations shall be included with the notice.~~

~~(c) In cases of exclusion due to lack of proof of immunization, provide information regarding immunization services that are available from or through the local health department and other public agencies.~~

~~(d) Order the student excluded from school and state that such order is effective immediately upon receipt of the notice.~~

~~(e) Describe the rights of the parents and student to a hearing, describe the hearing process, and explain that the exclusion continues until either the necessary proof of immunization, or medication or treatment plan is received, or until a hearing officer determines that the student is no longer excluded from school.)~~

(1) **Written notice.** Before excluding a student from school for failure to comply with WAC 392-380-045, a school must provide written notice of the exclusion to the student's parents in person, by mail, or by email. The written notice must include:

(a) The school's decision to exclude the student from school, effective immediately upon the parents' receipt of the notice.

(b) The duration and conditions of the exclusion, including that the exclusion will continue until the school receives necessary proof of immunization in accordance with RCW 28A.210.080, a medication or treatment plan in accordance with RCW 28A.210.320, or until a chief administrator determines that the student is no longer excluded from school.

(c) Notice of the applicable laws, including a copy of the applicable laws.

(d) In cases of exclusion due to lack of proof of immunization in accordance with RCW 28A.210.080(1), information regarding immunization services that are available through the local health department and other public agencies.

(e) The student's and parents' right to a hearing to challenge the decision under WAC 392-380-080, including where and to whom the hearing must be requested and a description of the hearing process.

(2) **Language assistance.** The school must ensure the written notice is provided 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 or parents with communication disabilities under Title II of the Americans with Disabilities Act.

[Statutory Authority: RCW 28A.210.160. WSR 07-12-020, § 392-380-050, filed 5/25/07, effective 6/25/07.]

AMENDATORY SECTION (Amending WSR 07-12-020, filed 5/25/07, effective 6/25/07)

WAC 392-380-080 Prehearing and hearing process. (~~((1) If a request for hearing is received by the school district, it shall schedule a hearing. The hearing must be scheduled within three school days of receiving the request. The hearing may be continued to a later date if the parent requests a longer period.~~

~~(2) The school district shall establish a hearing process consistent with the procedures set forth for disciplinary cases under chapter 392-400 WAC.)~~ **(1) Requesting a hearing.** A student or the parent may request a hearing to the chief administrator orally or in writing.

(2) Notice. Within one school day after receiving the hearing request, unless otherwise agreed to by the parents, the chief administrator must provide the parents written notice in person, by mail, or by email of the time, date, and location of the hearing.

(3) Hearing. The school must hold a hearing within three school days from the date the school's chief administrator received the hearing request, unless otherwise agreed to by the parents. At the hearing, the chief administrator must provide the parents an opportunity to explain how their student is in compliance with school attendance requirements under WAC 392-380-045.

(4) Hearing decision. The chief administrator must deliver a written hearing decision to the parents in person, by certified mail, or by email within two school business days after the hearing. The written decision must include:

(a) The decision to affirm or reverse the exclusion;

(b) If the decision to exclude the student is affirmed, the duration and conditions of the exclusion, including that the exclusion will continue until the school receives necessary proof of immunization in accordance with WAC 392-380-045(1) or a medication or treatment plan in accordance with WAC 392-380-045(3); and

(c) In cases of exclusion due to lack of proof of immunization in accordance with RCW 28A.219.080(1), information regarding immunization services that are available through the local health department and other public agencies.

(5) Language assistance. The school must ensure the notice, hearing proceedings, and written hearing decision are 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 or parents with communication disabilities under Title II of the Americans with Disabilities Act.

[Statutory Authority: RCW 28A.210.160. WSR 07-12-020, § 392-380-080, filed 5/25/07, effective 6/25/07.]

WSR 21-10-014
EMERGENCY RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed April 23, 2021, 11:08 a.m., effective April 23, 2021, 11:08 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to amend WAC 392-410-135(1) for the 2020-21 school year only. The amendment allows that instructional minutes for physical education can be less than the regularly required one hundred instructional minutes per week for students in grades 1-8. Physical education instruction must still be provided to students in grades 1-12, unless otherwise waived per RCW 28A.230.040.

Citation of Rules Affected by this Order: Amending WAC 392-410-135(1).

Statutory Authority for Adoption: RCW 28A.230.040.

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 many school districts to provide instruction remotely 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 provide flexibility for school districts to offer physical education instructional time for all students in grades 1-8. This change does not remove the requirement for all students in grades 1-8 to receive instruction in physical education, per RCW 28A.230.040.

On October 7, 2020, the office of superintendent of public instruction initiated permanent rule making to amend WAC 392-410-135(1) for the remainder of the 2020-21 school year. The CR-102 was filed on February 17, 2021 (WSR 21-05-072), and a public hearing was held on March 23, 2021.

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: April 23, 2021.

Chris P. S. Reykdal
State Superintendent
of Public Instruction

OTS-2517.2

AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

WAC 392-410-135 Physical education—Grade school and high school requirement. (1) Grades (~~(1-8)~~) 1 through 8. Pursuant to RCW 28A.230.040, an average of at least one hundred instructional minutes per week per year in physical education shall be required of all pupils in the common schools in the grade school program (grades (~~(1-8)~~) 1 through 8) unless waived pursuant to RCW 28A.230.040. For the 2020-21 school year only, the instructional minutes can be less than one hundred instructional minutes per week; however, physical education instruction must be provided to all pupils in the common schools in the grade school program (grades 1 through 8) unless waived pursuant to RCW 28A.230.040.

(2) Grades (~~(9-12)~~) 9 through 12. Pursuant to RCW 28A.230.050, a one credit course or its equivalent shall be offered in physical education for each grade in the high school program (grades (~~(9-12)~~) 9 through 12).

[Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-410-135, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.04.120. WSR 00-23-031, § 180-50-135, filed 11/8/00, effective 12/9/00. Statutory Authority: 1990 c 33. WSR 90-17-009, § 180-50-135, filed 8/6/90, effective 9/6/90. Statutory Authority: RCW 28A.04.120 (6) and (8) and 28A.05.060. WSR 85-20-026 (Order 19-85), § 180-50-135, filed 9/24/85. Statutory Authority: RCW 28A.04.120 (6) and (8). WSR 84-21-004 (Order 12-84), § 180-50-135, filed 10/4/84.]

WSR 21-10-016

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed April 23, 2021, 1:00 p.m., effective April 23, 2021, 1:00 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The agency is amending WAC 182-559-100 (within the foundational community supports program chapter) to remove the community support services benefit exclusion for institutes for mental diseases (IMD).

Citation of Rules Affected by this Order: Amending WAC 182-559-100.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: This filing is necessary to comply with changes made by the Centers for Medicare and Medicaid Services to the foundational community supports program protocol. These changes permit implementation of supportive housing services in approved IMD facilities under Washington state's 1115 Medicaid Transformation 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 1, Repealed 0.

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

Date Adopted: April 23, 2021.

Wendy Barcus
Rules Coordinator

OTS-3005.1

AMENDATORY SECTION (Amending WSR 18-15-007, filed 7/6/18, effective 8/6/18)

WAC 182-559-100 General. (1) Under the authority of the Medicaid transformation project, RCW 71.24.385, and subject to available funds, the Medicaid agency covers targeted foundational community supports to eligible Medicaid beneficiaries, which include the following benefits:

- (a) Community support services; and
- (b) Supported employment services.
- (2) Community support services include:
 - (a) Pretenancy supports:
 - (i) Conducting a functional needs assessment to:

- (A) Identify the participant's preferences related to housing (type, location, living alone or with someone else, identifying a roommate, accommodations needed, or other important preferences); and
- (B) Identify the participant's needs for support to maintain community integration. This includes what type of setting works best for the client, assistance in budgeting for housing/living expenses, assistance in connecting the client with social services to assist with filling out applications and submitting appropriate documentation in order to obtain sources of income necessary for community living and establishing credit, and in understanding and meeting obligations of tenancy.
- (ii) Assisting clients to connect with social services to help with finding and applying for housing necessary to support the clients in meeting their medical care needs;
- (iii) Developing an individualized community integration plan based upon the assessment as part of the overall person-centered plan;
- (iv) Identifying and establishing short and long-term measurable goal(s), and establishing how goals will be achieved and how concerns will be addressed;
- (v) Participating in person-centered plan meetings at redetermination and revision plan meetings, as needed;
- (vi) Providing supports and interventions according to the person-centered plan.
- (b) Tenancy-sustaining services:
- (i) Service planning support and participating in person-centered plan meetings at redetermination and revision plan meetings as needed;
- (ii) Coordinating and linking the client to services including:
- (A) Primary care and health homes;
- (B) Substance use treatment providers;
- (C) Mental health providers;
- (D) Medical, vision, nutritional and dental providers;
- (E) Vocational, education, employment and volunteer supports;
- (F) Hospitals and emergency rooms;
- (G) Probation and parole;
- (H) Crisis services;
- (I) End of life planning; and
- (J) Other support groups and natural supports.
- (iii) Entitlement assistance including assisting clients in obtaining documentation, navigating and monitoring application process and coordinating with the entitlement agency;
- (iv) Assistance in accessing supports to preserve the most independent living, including skills coaching, financing counseling, anger management, individual and family counseling, support groups, and natural supports;
- (v) Providing supports to assist the client in communicating with the landlord and/or property manager regarding the participant's disability (if authorized and appropriate), detailing accommodations needed, and addressing components of emergency procedures involving the landlord and/or property manager;
- (vi) Coordinating with the client to review, update and modify their housing support and crisis plan on a regular basis to reflect current needs and address existing or recurring housing retention barriers; and
- (vii) Connecting the client to training and resources that will assist the client in being a good tenant and lease compliance, including ongoing support with activities related to household management.
- (c) The community support services benefit does not include:

- (i) Payment of rent or other room and board costs;
 - (ii) Capital costs related to the development or modification of housing;
 - (iii) Expenses for utilities or other regular occurring bills;
 - (iv) Goods or services intended for leisure or recreation;
 - (v) Duplicative services from other state or federal programs;
- and
- (vi) Services to clients in a correctional institution (~~or an institute for mental disease (IMD)~~).
- (d) Community support services must be provided:
 - (i) In an integrated setting of the client's choice; and
 - (ii) In a manner that ensures the client's individual right of privacy, dignity, respect, and freedom from coercion and restraint;
 - (iii) Post tenancy, in settings consistent with home and community-based services, as defined in 42 C.F.R. Sec. 441.530, such as those that:
 - (A) Do not have the qualities of an institution;
 - (B) Are not located in a building that is also a publicly or privately operated facility providing inpatient institutional treatment;
 - (C) Are not on the grounds of, or immediately adjacent to a public institution;
 - (D) Do not have the effect of isolating the client from community members who are not receiving medicaid services; and
 - (E) Are not a licensed residential care facility such as an adult family home or assisted living facility.
- (3) Supported employment, such as individual placement and support (IPS) services, is individualized and includes one or more of the following services:
 - (a) Preemployment services:
 - (i) Prevocational/job-related discovery or assessment;
 - (ii) Person-centered employment planning;
 - (iii) Individualized job development and placement;
 - (iv) Job carving;
 - (v) Benefits education and planning; or
 - (vi) Transportation (only in conjunction with the delivery of an authorized service).
 - (b) Employment sustaining services:
 - (i) Career advancement services;
 - (ii) Negotiation with employers;
 - (iii) Job analysis;
 - (iv) Job coaching;
 - (v) Benefits education and planning;
 - (vi) Transportation (only in conjunction with the delivery of an authorized service);
 - (vii) Asset development; or
 - (viii) Follow-along supports.
 - (c) The IPS benefit does not include:
 - (i) Generalized employer contacts that are not connected to a specific enrolled individual or an authorized service;
 - (ii) Employment support for individuals in subminimum wage, or sheltered workshop settings; and
 - (iii) Facility-based habilitation or personal care services.
 - (d) Supported employment services must be provided in settings consistent with settings defined in 42 C.F.R. 441.530 (a) (1) (i) through (v) and (a) (2).
 - (4) Clients who meet the eligibility criteria for both community support services and supported employment services are able to receive

both services concurrently. See WAC 182-559-300 for community support services eligibility criteria and WAC 182-559-350 for supported employment eligibility criteria.

(5) In order to ensure the demand for services remains within available funds, the agency may impose enrollment wait lists for services. The wait list for foundational community supports services is considered on a first-come first-serve basis using the date the client requests community support services.

(6) Services described in this chapter must be approved under the explicit authority of the medicaid transformation project.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 18-15-007, § 182-559-100, filed 7/6/18, effective 8/6/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2014 c 225 § 9 (1)(i) and 2016 1st sp.s c 36 § 213 (1)(f) and (g). WSR 17-11-136, § 182-559-100, filed 5/24/17, effective 7/1/17.]

WSR 21-10-032
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-58—Filed April 27, 2021, 11:46 a.m., effective May 4, 2021]

Effective Date of Rule: May 4, 2021.

Purpose: The purpose of this emergency rule is to open salmon seasons on the Snake River.

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

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

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

Reasons for this Finding: The 2021 Columbia River forecasted return of upriver spring Chinook salmon is sufficiently abundant to allow for harvest opportunity on the Snake River based on Washington Department of Fish and Wildlife Commission Policy C-3620. The *U.S. v. Oregon* (2018-2027) Management Agreement provides Endangered Species Act coverage for this fishery. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 27, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-05000Q Freshwater exceptions to statewide rules—Eastside. Effective May 4, 2021, until further notice, the following provisions of WAC 220-312-050, regarding salmon seasons in the Snake River shall be open as follows. All other provisions of WAC 220-312-050 remain in effect unless modified by emergency rule:

Snake River (Franklin/Walla Wall Counties): From Texas Rapids boat launch (south side of the river upstream of the mouth of Tucannon River) to the fishing restriction boundary below Little Goose Dam and

**including the rock and concrete area between the juvenile bypass re-
turn pipe and little Goose Dam along the shoreline of the facility:**

Salmon:

(a) Open: Tuesdays and Fridays only, beginning May 4, 2021 until further notice:

(b) Daily limit 4, up to 1 adult may be retained. Release all salmon other than hatchery Chinook.

(c) Night Closure.

(d) Barbless hooks required.

(e) Salmon may not be removed from the water unless retained as part of the daily limit.

[]

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

**WSR 21-10-041
RECISSION OF EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD**

[Filed April 28, 2021, 1:14 p.m.]

The Washington state liquor and cannabis board (WSLCB) is rescinding its emergency rule, WAC 314-55-1065, regarding the prohibition of vitamin E acetate, filed on January 6, 2021, as WSR 21-02-092.

The Washington state board of health adopted a permanent prohibition of vitamin E acetate on November 5, 2020, as WSR 20-23-006, with an effective date of November 15, 2020. The WSLCB emergency rule is no longer necessary.

David Postman
Chair

**WSR 21-10-043
RECISSION OF EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD**

[Filed April 28, 2021, 1:17 p.m.]

The Washington state liquor and cannabis board is rescinding its emergency rule, WAC 314-55-1055 requiring the disclosure of all ingredients used in the production of marijuana concentrates for inhalation and marijuana extracts, filed on January 6, 2021, as WSR 21-02-095.

This rule was adopted on February 17, 2021, as WSR 21-05-075, and became effective March 20, 2021.

David Postman
Chair

WSR 21-10-044
EMERGENCY RULES
LIQUOR AND CANNABIS
BOARD

[Filed April 28, 2021, 1:24 p.m., effective April 28, 2021, 1:24 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 314-55-077 Marijuana processor license—Privileges, requirements and fees, and 314-55-079 Marijuana retailer license—Privileges, requirements and fees. The Washington state liquor and cannabis board (board) has adopted rule amendments as WAC 314-55-077(16) and 314-55-079(14) that allows the board to take disciplinary action against any licensed marijuana processor or retailer for failure to comply with the provisions of WAC 246-80-021, concerning the sale of vitamin E acetate. These emergency rules replace and supersede emergency rules filed on January 6, 2021, as WSR 21-02-093 and 21-02-094.

Citation of Rules Affected by this Order: Amending WAC 314-55-077 and 314-55-079.

Statutory Authority for Adoption: RCW 69.50.101, 69.50.327, 69.50.342, 69.50.345.

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 July 2019, the United States Centers for Disease Control and Prevention (CDC), United States Food and Drug Administration (FDA), state and local health departments, and other clinical and public health partners began investigating outbreaks of e-cigarette or vaping associated lung injury (EVALI). In September 2019, the CDC activated its Emergency Operations Center to aid in the investigation of the multi-state outbreak. As of its final update on February 18, 2020, the CDC has identified two thousand eight hundred seven confirmed cases reported across fifty states, the District of Columbia, Puerto Rico and the United States Virgin Islands, including sixty-eight deaths confirmed in twenty-nine states and the District of Columbia. Twenty-seven cases of EVALI, including two deaths, have been reported in Washington state.

As part of the investigation into the multistate outbreak of EVALI, the CDC conducted laboratory tests of forty-eight samples of fluid collected from the lungs of patients with vaping-associated lung disease from ten states. An article released on November 8, 2019, showed that all of the samples contained vitamin E acetate, providing direct evidence of vitamin E acetate at the primary site of injury in the lungs. Vitamin E acetate is a chemical that is used as an additive or thickening ingredient in vapor products. The CDC has not determined that vitamin E acetate is present in only THC vapor products or only non-THC vapor products. THC was identified in eighty-two percent of the samples, and nicotine was identified in sixty-two percent of the samples. A further study found ninety-four percent of EVALI patients tested had vitamin E acetate in the bronchoalveolar lavage but no samples from a health comparison group indicated evidence of vitamin E [acetate]. Two samples showed presence of other toxicants (one each) in the EVALI group but did not provide sufficient evidence to identify another toxicant as the source of disease. The CDC has identified vi-

tamin E acetate as a chemical strongly linked to EVALI and recommends that vitamin E acetate not be added to vapor products.

Based on these findings, the Washington state board of health (SBOH) adopted a permanent prohibition of vitamin E acetate, effective November 15, 2020, as WSR 20-23-006, codified as WAC 246-80-021.

These emergency rules replace and supersede emergency rules filed on January 6, 2021, as WSR 21-02-093 and 21-02-094 that allowed the board to take disciplinary action, without interruption, against any licensed marijuana processor or retailer failing to comply with the provisions of WAC 314-55-1065 prohibiting the use of vitamin E acetate consistent with its regulatory authority.

However, since SBOH has permanently adopted WAC 246-80-021 to prohibit the use of vitamin E acetate, and the board can rely on this authority to enforce compliance, the board's emergency prohibition under WAC 314-55-1065 is no longer necessary. These emergency rules provide enforcement continuity while the permanent rule-development process takes place, consistent with the CR-101 filed on March 31, 2021, as WSR 21-08-035.

The board has the authority and responsibility to adopt rules for the preservation of public health. The immediate adoption of this rule provides uninterrupted enforcement of WAC 246-80-021, and preserves public health, safety and general welfare is necessary. Therefore, continuity of these emergency rules concerning enforcement provisions for WAC 246-80-021 prohibiting the use or sale of vitamin E acetate are necessary.

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

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

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

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

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

Date Adopted: April 28, 2021.

David Postman
Chair

OTS-2297.2

AMENDATORY SECTION (Amending WSR 20-01-172, filed 12/18/19, effective 1/1/20)

WAC 314-55-077 Marijuana processor license—Privileges, requirements, and fees. (1) A marijuana processor license allows the licensee to process, dry, cure, package, and label useable marijuana, marijuana concentrates, and marijuana-infused products for sale at wholesale to marijuana processors and marijuana retailers.

(2) **Application and license fees.**

(a) The application fee for a marijuana processor license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(b) The annual fee for issuance and renewal of a marijuana processor license is one thousand three hundred eighty-one dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee is responsible for all fees required for the criminal history checks.

(c) The application window for marijuana processor licenses is closed. The board may reopen the marijuana processor application window at subsequent times when the board deems necessary.

(3) Any entity and/or principals within any entity are limited to no more than three marijuana processor licenses.

(4) (a) A marijuana processor that makes marijuana-infused solid or liquid product meant to be ingested orally (marijuana edibles) must obtain a marijuana-infused edible endorsement from the department of agriculture as required under chapter 15.125 RCW and rules adopted by the department to implement that chapter (chapter 16-131 WAC). A licensee must allow the board or their designee to conduct physical visits and inspect the processing facility, recipes, and records required under WAC 314-55-087 during normal business hours or at any time of apparent operation without advance notice.

(b) A marijuana processor licensed by the board must ensure marijuana-infused edible processing facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapter 15.125 RCW and rules promulgated to implement chapters 16-131, 16-165 and 16-167 WAC.

(5) (a) A marijuana processor may blend tested useable marijuana from multiple lots into a single package for sale to a marijuana retail licensee so long as the label requirements for each lot used in the blend are met and the percentage by weight of each lot is also included on the label.

(b) A processor may not treat or otherwise adulterate useable marijuana with any organic or nonorganic chemical or other compound whatsoever to alter the color, appearance, weight, or smell of the useable marijuana.

(6) **Recipes, product, packaging, and labeling approval.**

(a) A marijuana processor licensee must obtain label and packaging approval from the board for all marijuana-infused products meant for oral ingestion prior to offering these items for sale to a marijuana retailer. The marijuana processor licensee must submit a picture of the product, labeling, and packaging to the board for approval. More information on the product, packaging, and label review process is available on the board's website.

(b) All recipes for marijuana-infused products meant for oral ingestion (marijuana edible products) must be approved by the department of agriculture under chapter 16-131 WAC. Licensees must obtain recipe approval from the department of agriculture prior to submitting any marijuana edible products, packages, and labels for review and approval by the board. The recipe for any marijuana-infused solid or liquid products meant to be ingested orally must be kept on file at the marijuana processor's licensed premises and made available for inspection by the board or its designee.

(c) If the board denies a marijuana-infused product for sale in marijuana retail outlets, the marijuana processor licensee may request an administrative hearing under chapter 34.05 RCW, Administrative Procedure Act.

(7) With the exception of the marijuana, all ingredients used in making marijuana-infused products for oral ingestion must be a commercially manufactured food as defined in WAC 246-215-01115.

(8) Marijuana-infused edible products in solid or liquid form must be homogenized to ensure uniform disbursement of cannabinoids.

(9) A marijuana processor may infuse food or drinks with marijuana, provided that:

(a) The product or products do not require cooking or baking by the consumer;

(b) Coatings applied to the product or products are compliant with the requirements of this chapter;

(c) The product and package design is not similar to commercially available products marketed for consumption by persons under twenty-one years of age, as defined by WAC 314.55.105 (1)(c).

(10) To reduce the risk to public health, potentially hazardous foods as defined in WAC 246-215-01115 may not be infused with marijuana. Potentially hazardous foods require time-temperature control to keep them safe for human consumption and prevent the growth of pathogenic microorganisms or the production of toxins. Any food that requires refrigeration, freezing, or a hot holding unit to keep it safe for human consumption may not be infused with marijuana.

(11) Other food items that may not be infused with marijuana to be sold in a retail store include:

(a) Any food that has to be acidified to make it shelf stable;

(b) Food items made shelf stable by canning or retorting;

(c) Fruit or vegetable juices (this does not include shelf stable concentrates);

(d) Fruit or vegetable butters;

(e) Pumpkin pies, custard pies, or any pies that contain egg;

(f) Dairy products of any kind such as butter, cheese, ice cream, or milk; and

(g) Dried or cured meats.

(h) Vinegars and oils derived from natural sources may be infused with dried marijuana if all plant material is subsequently removed from the final product. Vinegars and oils may not be infused with any other substance, including herbs and garlic.

(i) Marijuana-infused jams and jellies made from scratch must utilize a standardized recipe in accordance with 21 C.F.R. Part 150, revised as of April 1, 2013.

(12) Consistent with WAC 314-55-104, a marijuana processor may infuse dairy butter or fats derived from natural sources, and use that extraction to prepare allowable marijuana-infused solid or liquid products meant to be ingested orally, but the dairy butter or fats derived from natural sources may not be sold as stand-alone products.

The board may designate other food items that may not be infused with marijuana.

(13) Marijuana processor licensees are allowed to have a maximum of six months of their average useable marijuana and six months average of their total production on their licensed premises at any time.

(14) **Processing service arrangements.** A processing service arrangement is when one processor (processor B) processes useable marijuana or an altered form of useable marijuana (marijuana product) for another licensed processor (processor A) for a fee.

(a) Processor A is the product owner. However, processor B may handle the product under its license as provided in chapter 69.50 RCW and this chapter. Processor B is not allowed to transfer the product to a retailer and may only possess marijuana or marijuana products received from processor A for the limited purposes of processing it for ultimate transfer back to processor A.

(b) Processing service arrangements must be made on a cash basis only as provided in WAC 314-55-115 and payment for the service and return of the processed product must be made within thirty calendar days of delivery to processor B. Failure to do so as provided by the preceding sentence is a violation of this section and any marijuana or marijuana product involved in the transaction will be subject to seizure and destruction. Payment with any marijuana products, barter, trade, or compensation in any form other than cash for processing service arrangements is prohibited under processing service arrangements.

(c) Each processor that enters into a processing service arrangement must include records for each service arrangement in recordkeeping documents which must be maintained consistent with this chapter.

(15) Marijuana may not be returned by any retail licensee to any processor except as provided in this section.

(a) Every processor must maintain on the licensed premises for a period of five years complete records of all refunds and exchanges made under this section including an inventory of marijuana and marijuana products returned to the processor by any retail licensee.

(b) Marijuana may be returned by a retail licensee in the event a retailer goes out of the business of selling marijuana at retail and a cash refund, as defined by WAC 314-55-115, may be made upon the return of the marijuana or marijuana products, so long as WSLCB approval is acquired prior to returns and refunds under this subsection.

(c) Marijuana products different from that ordered by a retailer and delivered to the retailer may be returned to a processor and either replaced with marijuana products which were ordered or a cash refund, as defined by WAC 314-55-115, may be made. These incorrect orders must be discovered and corrected within eight days of the date the delivery was made to be eligible for returns and refunds under this subsection.

(d) A marijuana processor may accept returns of products and sample jars from marijuana retailers for destruction, but is not required to provide refunds to the retailer. It is the responsibility of the retailer to ensure the product or sample jar is returned to the processor.

(16) The board may take disciplinary action against any marijuana processor that fails to comply with the provisions of WAC 246-80-021.

[Statutory Authority: RCW 69.50.342, 69.50.345 and 2019 c 393. WSR 20-01-172, § 314-55-077, filed 12/18/19, effective 1/1/20. Statutory Authority: RCW 69.50.325, 69.50.342, 69.50.345, and 69.50.369. WSR 18-22-055, § 314-55-077, filed 10/31/18, effective 12/1/18. Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-077, filed 5/18/16, effective 6/18/16; WSR 15-11-107, § 314-55-077, filed 5/20/15, effective 6/20/15; WSR 14-10-044, § 314-55-077, filed 4/30/14, effective 5/31/14. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-077, filed 10/21/13, effective 11/21/13.]

OTS-1798.3

AMENDATORY SECTION (Amending WSR 18-22-055, filed 10/31/18, effective 12/1/18)

WAC 314-55-079 Marijuana retailer license—Privileges, requirements, and fees. (1) A marijuana retailer license allows the licensee to sell only useable marijuana, marijuana concentrates, marijuana-infused products, marijuana paraphernalia, and lockable boxes to store marijuana at retail in licensed retail outlets to persons twenty-one years of age and older, except as allowed for persons under twenty-one years of age consistent with RCW 69.50.357 and WAC 314-55-080.

(2) The WSLCB may accept applications for marijuana retail licenses at time frames published on its website at www.lcb.wa.gov. Using estimated consumption data and population data obtained from the office of financial management (OFM) population data, the WSLCB will determine the maximum number of marijuana retail locations per county.

(a) The number of retail locations will be determined using a method that distributes the number of locations proportionate to the most populous cities within each county and to accommodate the medical needs of qualifying patients and designated providers. Locations not assigned to a specific city will be at large. At large locations can be used for unincorporated areas in the county or in cities within the county that have no retail licenses designated.

(b) The number of retail licenses determined by the board can be found on the WSLCB website at www.lcb.wa.gov.

(3) Any entity and/or principals within any entity are limited to no more than five retail marijuana licenses.

(4) Application and license fees.

(a) The application fee for a marijuana retailer's license is two hundred fifty dollars. The applicant is responsible for fees required by the approved vendor for fingerprint evaluation.

(b) The annual fee for issuance and renewal of a marijuana retailer license is one thousand three hundred eighty-one dollars. The WSLCB will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee is responsible for all fees required for the criminal history checks.

(5) Internet sales and delivery of product to customers are prohibited.

(6) Sales of marijuana-infused products not permissible under WAC 314-55-077 are prohibited.

(7) Marijuana retailers may not sell marijuana products below the current acquisition cost.

(8) All marijuana products must be stored behind a counter or other barrier to ensure a customer does not have direct access to the product.

(9) A marijuana retailer may not sell lockable boxes for less than the cost of acquisition or sell boxes received as a donation. The donation of lockable boxes must come from a person or entity that is not a licensed marijuana producer, processor, or retailer.

(10) Marijuana retailer licensees are allowed to have a maximum of four months of their average inventory on their licensed premises at any given time.

(11) A marijuana retailer may transport product to other locations operated by the licensee or to return product to a marijuana processor as outlined in WAC 314-55-085.

(12) A marijuana retailer may accept returns of open marijuana products. Products must be returned in their original packaging with the lot, batch, or inventory ID number fully legible.

(13) A marijuana retailer may dispose of marijuana products as provided in WAC 314-55-097.

(14) The board may take disciplinary action against any marijuana retailer that fails to comply with the provisions of WAC 246-80-021.

[Statutory Authority: RCW 69.50.325, 69.50.342, 69.50.345, and 69.50.369. WSR 18-22-055, § 314-55-079, filed 10/31/18, effective 12/1/18. Statutory Authority: RCW 69.50.342, 69.50.345, 2016 c 170, 2016 c 171, and 2016 c 17. WSR 16-19-102, § 314-55-079, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-079, filed 5/18/16, effective 6/18/16; WSR 15-11-107, § 314-55-079, filed 5/20/15, effective 6/20/15; WSR 14-10-044, § 314-55-079, filed 4/30/14, effective 5/31/14. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-079, filed 10/21/13, effective 11/21/13.]

WSR 21-10-048
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed April 28, 2021, 4:19 p.m., effective April 28, 2021, 4:19 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is amending WAC 388-437-0005 Changes to food assistance in response to the COVID-19 pandemic, to define that households that receive a zero benefit are not eligible for emergency adjustments to food assistance benefit issuances implemented under the Families First Coronavirus Response Act (H.R. 6201, Section 2302).

Citation of Rules Affected by this Order: Amending WAC 388-437-0005.

Statutory Authority for Adoption: RCW 74.04.500, 74.04.510, 74.08A.120.

Other Authority: H.R. 6201.

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: This emergency amendment is required to align department policies with an April 21, 2021, clarification issued by the United States Department of Agriculture's Food and Nutrition Service for the Families First Coronavirus Response Act (H.R. 6201, Section 2302) related to the Supplemental Nutrition Assistance Program, to be implemented immediately.

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

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

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

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

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

Date Adopted: April 28, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4863.1

AMENDATORY SECTION (Amending WSR 21-07-098, filed 3/22/21, effective 4/22/21)

WAC 388-437-0005 Changes to food assistance in response to the COVID-19 pandemic. Starting March 2020, assistance units (AUs) eligible (~~to~~) to receive either federal or state-funded food assistance

benefits, or both, will receive emergency allotments that bring the AU up to the maximum benefit for their household size.

(1) The amount is the maximum food assistance benefit allotment for your AU size under WAC 388-478-0060(1) less the amount received under WAC 388-450-0162 (4) (b).

(2) AUs receiving zero benefits due to income do not qualify for an emergency allotment unless the zero benefit is due to a prorated issuance in the first month of eligibility, as described in WAC 388-412-0015(4), with ongoing months above zero benefits.

(3) Emergency allotments will continue each month until:

(a) The secretary for health and human services rescinds the public health emergency declaration that was issued on January 27, 2020, under section 319 of the Public Health Service Act;

(b) The state-issued emergency or disaster declaration expires;

or

(c) The food and nutrition service directs otherwise.

~~((3))~~ (4) Emergency allotments for state-funded food assistance will continue each month, contingent on the availability of state funds.

[Statutory Authority: RCW 74.04.500, 74.04.510, 74.08A.120 and H.R. 6201. WSR 21-07-098, § 388-437-0005, filed 3/22/21, effective 4/22/21.]

WSR 21-10-049
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-60—Filed April 28, 2021, 4:38 p.m., effective May 1, 2021]

Effective Date of Rule: May 1, 2021.

Purpose: The purpose of this emergency rule is to close recreational salmon fishing in Marine Area 13.

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

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

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

Reasons for this Finding: Preexisting Endangered Species Act (ESA) coverage for the effects of Puget Sound salmon fisheries expires on April 30, 2021. Federal ESA consultations on 2021-2022 Puget Sound salmon fisheries are ongoing, but are unlikely to be completed by May 1. Marine Area 13 salmon fisheries are known to intercept listed Chinook in the May period. Accordingly, Marine Area 13 will temporarily close for salmon fishing starting May 1, 2021. Salmon fisheries in Marine Area 13 will reopen when ESA authorization is received for the proposed 2021-2022 Puget Sound salmon fishing package.

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

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

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

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

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

Date Adopted: April 28, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-313-06000A Puget Sound salmon—Saltwater seasons and daily limits. Effective May 1, 2021, until further notice, the following provisions of WAC 220-313-060 regarding salmon seasons for Marine Area 13, including Fox Island Public Fishing Pier shall be modified as described below. All other provisions of WAC 220-313-060 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Catch Record Card Area 13: Salmon: Closed.

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WSR 21-10-058**EMERGENCY RULES****DEPARTMENT OF HEALTH**

(Dental Quality Assurance Commission)

[Filed April 30, 2021, 7:40 a.m., effective April 30, 2021, 7:40 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 246-817-580 Novel coronavirus disease 2019 screening, this emergency rule extends WSR 21-02-040 filed December 30, 2020. The dental quality assurance commission (commission) adopted this emergency rule to allow dentists to delegate administration of novel coronavirus disease 2019 (COVID-19) screening tests to registered dental assistants, licensed expanded function dental auxiliaries, and licensed dental hygienists with appropriate supervision and demonstration of competency.

Citation of Rules Affected by this Order: New WAC 246-817-580.

Statutory Authority for Adoption: RCW 18.260.040, 18.260.070, 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, screening for the disease is essential in dental practice. Dentistry produces large amounts of aerosols and it is important for dentists to appropriately screen patients prior to dental treatment. Delegation of COVID-19 screening test of patients assists dentists by reducing their workload to effectively continue dental care to patients. Knowing whether a patient is positive for COVID-19 will assist dentists in appropriate oral health treatment planning for the patient.

Standard rule making takes approximately nine to twelve months. The commission is proceeding with permanent rule making under WSR 21-04-050 filed on January 27, 2021. Screening needs to be conducted now, as we are in the middle of a pandemic. The rule is necessary for the preservation of public health, safety, and general welfare of dental patients and staff.

The immediate continuance of this emergency rule is necessary for the preservation of public health, safety, and general welfare. Observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to protecting immediate public interests.

As dental procedures are proceeding during this pandemic, there is an influx of patients needing dental care and a greater need of the dental workforce. Allowing dentists to delegate COVID-19 screening tests with supervision to appropriately credentialed dental staff, will allow dentists to provide safe dental care to more patients.

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: April 26, 2021.

Aaron Stevens, D.M.D., Chairperson
Dental Quality Assurance Commission

OTS-2716.2

NEW SECTION

WAC 246-817-580 Novel coronavirus disease 2019 screening. (1) A supervising dentist may delegate the administration of a test for screening of novel coronavirus disease 2019 to a registered dental assistant and licensed expanded function dental auxiliary under the dentist's close supervision, provided the registered dental assistant and licensed expanded function dental auxiliary has demonstrated skills necessary to perform the task competently.

(2) A supervising dentist may delegate the administration of a test for screening of novel coronavirus disease 2019 to a licensed dental hygienist under the dentist's general supervision, provided the licensed dental hygienist has demonstrated skills necessary to perform the task competently.

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WSR 21-10-073
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed May 3, 2021, 8:23 a.m., effective May 5, 2021]

Effective Date of Rule: May 5, 2021.

Purpose: The department is extending the amendment of the rule listed below to assure [ensure] nursing homes are not significantly impeded from admitting and caring for residents during the COVID-19 outbreak. These amendments will align state nursing home rules with federal rules that were suspended or amended to help facilitate care during the COVID-19 pandemic. The federal rules were amended to allow nursing facilities to provide clinical records to residents and resident representatives in ten working days instead of two working days. Current state rules specify clinical records be accessible to residents and their representatives for review within twenty-four hours and copies must be provided within two working days. The amendment lengthens the time nursing homes have to provide the resident access to, or copies of, the requested clinical record from two to ten days. The amendment does not permit the nursing facility to deny the resident access to records.

The department filed a CR-101 Preproposal statement of inquiry on September 3, 2020, as WSR 20-19-009 to begin the permanent rule-making process. In addition, under the rule development phase of rule making, the department continues with discussions about adding language to the rules to explain the circumstances and time periods under which suspension of rules due to COVID-19 is necessary.

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

Statutory Authority for Adoption: RCW 74.42.620.

Other Authority: Chapter 74.34 RCW.

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

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

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

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

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

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

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

Date Adopted: April 27, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4809.1

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

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

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

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

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

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

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

(2) The resident has the right(÷

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

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

(3) The resident has the right to:

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

(b) Accept or refuse treatment; and

(c) Refuse to participate in experimental research.

(4) The nursing home must inform each resident:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) The nursing home must:

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

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

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

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

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