

WSR 07-22-038
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed October 30, 2007, 2:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-11-098.

Title of Rule and Other Identifying Information: WAC 388-416-0015 Certification periods for CN medical and SCHIP, 388-418-0025 Effect of changes on medical program eligibility, 388-450-0210 Countable income for medical programs, 388-478-0075 Medical programs—Monthly income standards based on the federal poverty level, 388-505-0210 Children's medical eligibility, 388-505-0211 Premium requirements for SCHIP, 388-542-0010 Purpose and scope of SCHIP, 388-542-0020 Other rules that apply to SCHIP, 388-542-0050 Definitions for SCHIP terms, and 388-542-0300 Waiting period for SCHIP coverage following employer coverage.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on December 27, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 28, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRPAU-RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on December 27, 2007.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by December 20, 2007, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To comply with provisions of 2SSB 5093 (chapter 5, Laws of 2007) which authorizes medical assistance coverage for all children living in households with income at or below 250% of the federal poverty level (FPL). An emergency rule was adopted under WSR 07-16-022 on July 22, 2007, while HRSA completes the permanent rule-making process.

Reasons Supporting Proposal: This rule change will expand healthcare coverage to more children.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, and 74.09.700.

Statute Being Implemented: 2SSB 5093 (chapter 5, Laws of 2007).

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kevin Cornell, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1423.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no economic impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Client eligibility rules for medical programs are exempt under RCW 34.05.328 (5)(b)(vii).

October 25, 2007

Stephanie E. Schiller

Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

WAC 388-416-0015 Certification periods for categorically needy (CN) ~~((medical and state children's health insurance program (SCHIP)))~~ scope of care medical assistance programs. (1) A certification period is the period of time a person is determined eligible for a categorically needy (CN) scope of care medical program. Unless otherwise stated in this section, the certification period begins on the first day of the month of application and continues to the last day of the last month of the certification period.

(2) For a child eligible for the newborn medical program, the certification period begins on the child's date of birth and continues through the end of the month of the child's first birthday.

(3) For a woman eligible for a medical program based on pregnancy, the certification period ends the last day of the month that includes the sixtieth day from the day the pregnancy ends.

(4) For families the certification period is twelve months with a six-month report required as a condition of eligibility as described in WAC 388-418-0011.

(5) For children, the certification period is twelve months. Eligibility is continuous without regard to changes in circumstances other than aging out of the program, moving out of state, failing to pay a required premium(s), incarceration or death. ~~((When the medical assistance unit is also receiving benefits under a cash or food assistance program, the medical certification period is updated to begin anew at each:~~

~~(a) Approved application for cash or food assistance; or
(b) Completed eligibility review.))~~

~~(6) ((For an SSI-related person the certification period is twelve months.~~

~~(7))~~ When the child turns nineteen the certification period ends even if the twelve-month period is not over. The certification period may be extended past the end of the month the child turns nineteen when:

(a) The child is receiving inpatient services (see WAC 388-505-0230) on the last day of the month the child turns nineteen;

(b) The inpatient stay continues into the following month or months; and

(c) The child remains eligible except for exceeding age nineteen.

~~((8))~~ (7) For an SSI-related person the certification period is twelve months.

(8) When the medical assistance unit is also receiving benefits under a cash or food assistance program, the medical certification period is updated to begin anew at each:

- (a) Approved application for cash or food assistance; or
- (b) Completed eligibility review.

(9) A retroactive certification period can begin up to three months immediately before the month of application when:

- (a) The client would have been eligible for medical assistance if the client had applied; and
- (b) The client received covered medical services as described in WAC 388-501-0060 and 388-501-0065.

~~((9))~~ (10) If the client is eligible only during the three-month retroactive period, that period is the only period of certification.

~~((10))~~ (11) Any months of a retroactive certification period are added to the designated certification periods described in this section.

~~((11))~~ (12) ((For a child determined eligible for SCHIP medical benefits as described in chapter 388-542 WAC:

(a) The certification periods are described in subsections (1), (5), and (7) of this section;

(b) There is not a retroactive eligibility period as described in subsections (8), (9), and (10); and

(c) For a child who has creditable coverage at the time of application, the certification period begins on the first of the month after the child's creditable coverage is no longer in effect, if:

- (i) All other SCHIP eligibility factors are met; and
- (ii) An eligibility decision is made per WAC 388-406-0035)

There is no retroactive eligibility for premium-based children's healthcare as described in WAC 388-505-0210 and chapter 388-542 WAC. If creditable coverage exists at the time of application, the certification period begins the month after creditable coverage ends.

AMENDATORY SECTION (Amending WSR 05-23-013, filed 11/4/05, effective 1/1/06)

WAC 388-418-0025 Effect of changes on medical program eligibility. (1) You continue to be eligible for ~~((Medicaid))~~ medical assistance until the department determines your ineligibility or eligibility for another medical program. This applies to you if, during a certification period, you become ineligible for, or are terminated from, or request termination from:

- (a) A CN Medicaid program; ~~((or))~~
- (b) A children's healthcare program; or
- (c) Any of the following cash grants:

- (i) TANF;
- (ii) SSI; or

(iii) GA-X. See WAC 388-434-0005 for changes reported during eligibility review.

(2) If you become ineligible for refugee cash assistance, refugee medical assistance can be continued through the eight-month limit, as described in WAC 388-400-0035(4).

(3) If you receive a TANF cash grant or family medical, you are eligible for a medical extension, as described under WAC 388-523-0100, when your cash grant or family medical program is terminated as a result of:

(a) Earned income; or

(b) Collection of child or spousal support.

(4) A change in income during a certification period does affect eligibility for all medical programs except:

(a) Pregnant women's medical programs;

(b) Children's ~~((medical for newborns (F05)))~~ healthcare programs, except as specified in subsection (5); or

~~((c) ((Children's medical benefits (F06);~~

~~((d) Children's health program (F08); or~~

~~((e)))~~ The first six months of the medical extension benefits.

(5) For a child receiving benefits under ~~((SCHIP))~~ the premium-based children's healthcare programs as described in WAC 388-505-0210 and chapter 388-542 WAC, the department must redetermine eligibility for a ~~((Medicaid))~~ nonpremium-based medical program when the family reports:

(a) Family income has decreased to less than two hundred percent federal poverty level (FPL);

(b) The child becomes pregnant;

(c) A change in family size; or

(d) The child receives SSI.

AMENDATORY SECTION (Amending WSR 05-23-013, filed 11/4/05, effective 1/1/06)

WAC 388-450-0210 Countable income for medical programs. (1) For purposes of medical program eligibility, a client's countable income is income which remains when:

(a) The income cannot be specifically excluded; and

(b) All appropriate deductions and disregards allowed by a specific program, have been applied.

(2) A client's countable income cannot exceed the income standard for the specific medical programs described in WAC 388-478-0065, 388-478-0070, 388-478-0075, 388-478-0080, or 388-513-1305, 388-513-1315, or 388-513-1395 unless the program allows for those limits to be exceeded.

(3) Unless modified by subsection (4) of this section, the TANF/SFA income rules, as described in this chapter, are used to determine a client's countable income for the following programs:

(a) Family medical program as described in WAC 388-505-0220;

(b) Medical extensions as described in chapter 388-523 WAC;

(c) Pregnant women's program as described in WAC 388-462-0015;

(d) Children's ~~((medical))~~ healthcare programs as described in WAC 388-505-0210; and

~~((e) ((Children's health program as described in WAC 388-505-0210; and~~

~~((f)))~~ Psychiatric indigent inpatient (PII) program as described in WAC 388-865-0217.

(4) Exceptions to the TANF/SFA cash assistance methodology apply as follows:

(a) The financial responsibility of relatives when a client is applying for medical for families, children, pregnant women or for the psychiatric indigent inpatient program is specified in WAC 388-408-0055;

(b) Actual work-related child and dependent care expenses, which are the client's responsibility, are income deductions (the limits on this deduction in WAC 388-450-0170 (3) and (4) do not apply);

(c) Court or administratively ordered current or back support paid to meet the needs of legal dependents, are income deductions;

(d) Only income actually contributed to an alien client from the alien's sponsor is countable unless the sponsor signed the affidavit of support I-864 or I-864A. See subsection (5) of this section;

(e) TANF/SFA gross earned income limits as described in WAC 388-450-0165 do not apply;

(f) The fifty percent earned income deduction is not used to calculate countable income for CN scope of care programs with income levels based upon the federal poverty level (FPL). These programs are listed in subsections (3)(c)(~~(7)~~) and (d) (~~and (e) of this section~~). The only work related income deductions for these programs are:

(i) Ninety dollars; and

(ii) Actual work-related child and dependent care expenses, as described in (b) of this subsection; and

(iii) Child support as described in (c) of this subsection.

(g) When determining medically needy (MN) or MN scope of care coverage for children or pregnant women for the programs described in subsections (3)(c)(~~(7)~~) and (d), (~~and (e)~~) the exception described in subsection (4)(f) is not used as the MN income standards are not based on the FPL;

(h) A nonrecurring lump sum payment is considered as follows:

(i) For TANF-related medical, as income in the month the client receives payment, and a resource if the client retains the payment after the month of receipt; or

(ii) For SSI-related medical, see WAC 388-475-0300(4).

(i) Diversion cash assistance (DCA), is not countable income;

(j) Effective April 1, 2002, the department will disregard an increase in earned income when:

(i) A family is receiving benefits under the family medical program; and

(ii) The increase occurs during the second or third month of eligibility. The disregard stops the last day of the third month of eligibility for a family medical program.

(5) When an alien's sponsor has signed the affidavit of support I-864 or I-864A, the sponsor's income and resources are counted as described in WAC 388-450-0155, 388-450-0156, 388-450-0160, and 388-470-0060.

(6) Except when this state has adopted more liberal rules, SSI income rules are used to determine a client's countable income for the following programs:

(a) SSI-related CN or MN; and

(b) Medicare savings programs. Refer to chapter 388-475 WAC.

AMENDATORY SECTION (Amending WSR 06-16-026, filed 7/24/06, effective 8/24/06)

WAC 388-478-0075 Medical programs—Monthly income standards based on the federal poverty level (FPL). (1) Each year, the federal government publishes new

federal poverty level (FPL) income standards in the Federal Register found at <http://aspe.hhs.gov/poverty/index.shtml>. The income standards for the following medical programs change on the first of April every year based on the new FPL:

(a) (~~Children's health program is one hundred percent of FPL;~~

~~(b))~~ Pregnant women's program up to one hundred eighty-five percent of FPL;

~~((e))~~ (b) Children's (~~categorically needy~~) healthcare programs up to two hundred percent of FPL;

~~((d))~~ (c) Healthcare for workers with disabilities (HWD) up to two hundred twenty percent of FPL; and

~~((e) The state children's health insurance program (SCHIP) is)~~ (d) Premium-based coverage under the children's healthcare programs over two hundred percent of FPL but not over two hundred fifty percent of FPL.

(2) The department uses the FPL income standards to determine:

(a) The mandatory or optional Medicaid status of an individual; and

(b) Premium amount, if any, for a (~~Medicaid~~) child.

(3) There are no resource limits for the programs under this section.

AMENDATORY SECTION (Amending WSR 05-23-013, filed 11/4/05, effective 1/1/06)

WAC 388-505-0210 Children's (~~medical eligibility~~) healthcare programs. (~~(1) A child under the age of one is eligible for categorically needy (CN) medical assistance when:~~

~~(a) The child's mother was eligible for and receiving coverage under a medical program at the time of the child's birth; and~~

~~(b) The child remains with the mother and resides in the state;~~

~~(2) Children under the age of nineteen are eligible for CN medical assistance when they meet the requirements for:~~

~~(a) Citizenship or U.S. national status as defined in WAC 388-424-0001 or "qualified alien" status as described in WAC 388-424-0006 (1) or (4);~~

~~(b) State residence as described in chapter 388-468 WAC;~~

~~(c) A Social Security number as described in chapter 388-476 WAC; and~~

~~(d) Family income does not exceed two hundred percent federal poverty level (FPL) as described in WAC 388-478-0075 at each application or review.~~

~~(3) Children under the age of nineteen are eligible for the state children's health insurance program (SCHIP), as described in chapter 388-542 WAC, when:~~

~~(a) They meet the requirements of subsection (2)(a), (b), and (c) of this section;~~

~~(b) They do not have other creditable health insurance coverage; and~~

~~(c) Family income exceeds two hundred percent of the federal poverty level (FPL), but does not exceed two hundred fifty percent of the FPL as described in WAC 388-478-0075.~~

~~(4) Children under the age of twenty-one are eligible for CN medical assistance when they meet:~~

(a) Citizenship or immigrant status, state residence, and social security number requirements as described in subsection (2)(a), (b), and (c) of this section;

(b) Income levels described in WAC 388-478-0075; and

(c) One of the following criteria:

(i) Reside, or are expected to reside, in a medical hospital, intermediate care facility for mentally retarded (ICF/MR), or nursing facility for thirty days or more;

(ii) Reside in a psychiatric or chemical dependency facility for ninety days or more;

(iii) Are in foster care; or

(iv) Receive subsidized adoption services.

(d) For a child meeting the criteria (c)(i) of this subsection, the only parental income the department considers available to the child is the amount the parent chooses to contribute.

(e) For a child meeting the criteria in (c)(ii) of this subsection, parental income is counted as described in WAC 388-408-0055 (1)(e).

(5) Children are eligible for CN medical assistance if they:

(a) Receive Supplemental Security Income (SSI) payments based upon their own disability; or

(b) Received SSI cash assistance for August 1996, and except for the August 1996 passage of amendments to federal disability definitions, would be eligible for SSI cash assistance.

(6) Children under the age of nineteen are eligible for medically needy (MN) medical assistance as defined in chapter 388-500 WAC when they:

(a) Meet citizenship or immigrant status, state residence, and social security number requirements as described in subsection (2)(a), (b), and (c); and

(b) Have income above two hundred fifty percent federal poverty level (FPL) as described in WAC 388-478-0075.

(7) A child is eligible for SSI related MN when the child:

(a) Meets the blind and/or disability criteria of the federal SSI program or the condition in subsection (5)(b); and

(b) Has countable income above the level described in WAC 388-478-0070(1).

(8) Noncitizen children under the age of eighteen, including visitors or students from another country, undocumented children and "qualified alien" children as defined in WAC 388-424-0001 who are ineligible due to the five-year bar as described in WAC 388-424-0006(3), are eligible for the state-funded children's health program, if:

(a) The department determines the child ineligible for any CN or MN scope of care medical program;

(b) Family income does not exceed one hundred percent federal poverty level (FPL) as described in WAC 388-478-0075;

(c) They meet state residence as described in chapter 388-468 WAC; and

(d) Program limits established by the legislature would not result in an overexpenditure of funds.

(9) There are no resource limits for children under CN, MN, SCHIP, or children's health coverage.

(10) Children may also be eligible for:

(a) Family medical as described in WAC 388-505-0220;

or

(b) Medical extensions as described in WAC 388-523-0100.

(11) Except for a client described in subsection (4)(e)(i) and (ii), an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for CN or MN medical coverage. Funding for children's healthcare coverage may come through Title XIX (Medicaid) or Title XXI for the Social Security Act (SCHIP), or through state-funded programs. There are no resource limits for children's medical programs, but children must meet the eligibility criteria below to qualify for these programs.

(1) Newborns are eligible for federally matched categorically needy (CN) coverage through their first birthday when:

(a) The child's mother was eligible for and receiving medical assistance at the time of the child's birth; and

(b) The child remains with the mother and resides in the state.

(2) Children under the age of nineteen who are U.S. citizens, U.S. nationals, or qualified aliens as described in WAC 388-424-0001 and WAC 388-424-0006 (1) and (4) are eligible for federally matched CN coverage under children's healthcare programs when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC;

(b) A social security number or application as described in chapter 388-476 WAC;

(c) Proof of citizenship or immigrant status and identity as required by WAC 388-490-0005(11);

(d) Family income is at or below two-hundred percent federal poverty level (FPL), as described in WAC 388-478-0075 at each application or review;

(e) They received supplemental security income (SSI) cash payments in August 1996 and would continue to be eligible for those payments except for the August 1996 passage of amendments to federal disability definitions; or

(f) They are eligible for SSI-related CN or MN coverage.

(3) Noncitizen children under the age of nineteen, who do not meet qualified alien status as described in WAC 388-424-0006 (1) or (4), or are ineligible due to the five-year ban as described in WAC 388-424-0006(3), are eligible for state-funded CN coverage under children's healthcare programs when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC; and

(b) Family income is at or below two hundred percent FPL at each application or review.

(4) Children under the age of nineteen are eligible for premium-based CN coverage under children's healthcare programs as described in chapter 388-542 WAC when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC;

(b) Family income is over two-hundred percent FPL, as described in WAC 388-478-0075, but not over two-hundred fifty percent FPL at each application or review;

(c) They do not have other creditable health insurance as described in WAC 388-542-0050; and

(d) They pay the required monthly premiums as described in WAC 388-505-0211

(5) Children under age nineteen are eligible for the medically needy (MN) Medicaid program when they meet:

(a) Citizenship or immigrant status, state residence, and social security number requirements as described in subsection (2)(a), (b), and (c); and

(b) They are ineligible for other federal Medicaid programs; and

(c) Meet their spenddown obligation as described in WAC 388-519-0100 and 388-519-0110.

(6) Children under the age of twenty-one who reside or expect to reside in a medical institution, intermediate care facility for the mentally retarded (ICF/MR), hospice care center, nursing home, or psychiatric facility may be eligible for medical coverage. See WAC 388-505-0230 "Family related institutional medical" and WAC 388-513-1320 "Determining institutional status for long-term care."

(7) Children who are in foster care under the legal responsibility of the state, or a federally recognized tribe located within the state, are eligible for federally matched CN Medicaid coverage through the month of their:

(a) Eighteenth birthday;

(b) Twenty-first birthday if children's administration determines they remain eligible for continued foster care services; or

(c) Twenty-first birthday if they were in foster care on their eighteenth birthday and that birthday was on or after July 22, 2007.

(8) Children who receive subsidized adoption services are eligible for federally matched CN Medicaid coverage.

(9) Children under age of nineteen may also be eligible for:

(a) Family medical as described in WAC 388-505-0220;

(b) Medical extensions as described in WAC 388-523-0100; or

(c) SSI-related MN if they:

(i) Meet the blind and/or disability criteria of the federal SSI program, or the condition of subsection (2)(e); and

(ii) Have countable income above the level described in WAC 388-478-0070(1).

(10) Children who are ineligible for other children's healthcare programs due to citizenship or immigrant status requirements may be eligible for the alien emergency medical program (AEM) if they meet the following criteria:

(a) They have a documented emergent medical condition as defined in WAC 388-500-0005;

(b) They meet the other AEM program requirements as described in WAC 388-438-0110; and

(c) They have income that exceeds children's healthcare program standards.

(11) Except for a client described in subsection (6), an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for children's healthcare programs.

AMENDATORY SECTION (Amending WSR 04-16-064, filed 7/30/04, effective 8/30/04)

WAC 388-505-0211 Premium requirements for ((SCHIP)) premium-based children's healthcare programs. (1) For the purposes of this chapter, "premium" means an amount paid for medical coverage.

~~(2) ((For a child found eligible for the state children's health insurance program (SCHIP) under WAC 388-505-0210(3), payment of a premium is required as a condition of eligibility)) Payment of a premium is required as a condition of eligibility for premium-based children's healthcare coverage, as described in WAC 388-505-0210(4), unless the child is:~~

~~(a) Pregnant; or~~

~~(b) An American Indian or Alaska native.~~

~~(3) ((A child is exempt from the premium requirement if the child meets one of the following:~~

~~(a) The child is pregnant; or~~

~~(b) The child is an American Indian or Alaska native.~~

~~(4)) The premium requirement begins the first of the month following the determination of eligibility. There is no premium requirement for medical coverage received in a month or months before the determination of eligibility.~~

~~((5)) (4) The premium amount for the assistance unit is based on the net available income as described in WAC 388-450-0005. If the household includes more than one assistance unit, the premium amount billed for the assistance units may be different amounts.~~

~~((6)) (5) The premium amount for each ((SCHIP)) eligible child is fifteen dollars per month per child, up to a maximum of forty-five dollars per month, per household.~~

~~((7) The department bills the family for the lesser of:~~

~~(a) A maximum of forty-five dollars per month; or~~

~~(b) The total of the highest premiums, for up to three children in the assistance unit.~~

~~(8) Premium payment is a condition of eligibility for assistance units that include SCHIP children--)) (6) All ((SCHIP)) children in an assistance unit are ineligible for medical coverage when the head of household((s)) fails to pay required premium payments ((are)) for three consecutive months ((in arrears)). ((Three months in arrears means a balance exists for three months--))~~

~~((9)) (7) When the department terminates the medical coverage of a ((SCHIP)) child due to nonpayment of premiums, the child has a three-month period of ineligibility beginning the first of the following month. The three-month period of ineligibility is rescinded only when the:~~

~~(a) Past due premiums are paid in full prior to the begin date of the period of ineligibility; or~~

~~(b) ((SCHIP child has a change in circumstances such that)) The child becomes eligible for ((Medicaid)) a nonpremium-based medical program. The department ((cannot)) will not rescind the three-month period of ineligibility for reasons other than the criteria described in this subsection.~~

~~((10)) (8) The department writes off past-due premiums after twelve months.~~

~~((11)) (9) When the designated three-month period of ineligibility is over, all past due premiums that are an obligation of the head of household must be paid or written off before a child can become eligible for ((SCHIP)) premium-based children's healthcare.~~

~~((12)) (10) A family cannot designate partial payment of the billed premium amount as payment for a specific child in the assistance unit. The full ((amount of the)) premium ((bill)) amount is the obligation of the head of household of the assistance unit. A family can decide to request medical~~

coverage only for certain children in the assistance unit, if they want to reduce premium obligation.

~~((13))~~ (11) A change that affects the premium amount is effective the month after the change is reported and processed.

~~((14))~~ (12) A sponsor or other third party may pay the premium on behalf of the child or children in the assistance unit. The premium payment requirement remains the obligation of head of household of the assistance unit. The failure of a sponsor or other third party to pay the premium does not eliminate the:

(a) Establishment of the period of ineligibility described in subsection ~~((9))~~ (7) of this section; or

(b) Obligation of the head of household to pay past-due premiums.

AMENDATORY SECTION (Amending WSR 06-15-134, filed 7/19/06, effective 8/19/06)

WAC 388-542-0010 Purpose and scope of ~~((SCHHP))~~ premium-based children's healthcare programs. ~~((+))~~ The department administers ~~((the state children's health insurance program (SCHHP) to provide access to))~~ premium-based children's healthcare through a combination of state and federal funding sources as described below:

~~((a) Medical care for children whose family income exceeds the limit for Medicaid eligibility but is not greater than two hundred fifty percent of the federal poverty level (FPL); and~~

~~(b) Prenatal care and medical services for a pregnant woman;~~

~~(i) Who is ineligible for Medicaid due to immigration status; and~~

~~(ii) Whose family income is at or below one hundred eighty five percent FPL))~~ (1) Federally-matched healthcare coverage as authorized by Title XXI of the social security act (SCHIP) and RCW 74.09.450 for citizen and federally qualified immigrant children whose family income is above two hundred percent of the federal poverty level (FPL) but is not above two hundred fifty percent of the FPL.

~~(2) ((SCHHP is authorized by Title XXI of the Social Security Act and by RCW 74.09.450)) State funded healthcare coverage for noncitizen children with family income above two hundred percent FPL, but not above two hundred fifty percent FPL, who are ineligible for Title XXI federally matched children's healthcare coverage due to immigration issues.~~

AMENDATORY SECTION (Amending WSR 06-07-014, filed 3/3/06, effective 4/3/06)

WAC 388-542-0020 Other rules that apply to ~~((SCHHP))~~ premium-based children's healthcare programs. In addition to the rules of this chapter, ~~((SCHHP))~~ premium-based children's healthcare clients are subject to the following rules:

(1) Chapter 388-538 WAC, Managed care (except WAC 388-538-061, 388-538-063, and 388-538-065) if the child is covered under federally matched CN coverage;

(2) WAC 388-505-0210 ~~((3) and (8))~~ (4), Children's ~~((medical))~~ healthcare program eligibility;

(3) WAC 388-505-0211, Premium requirements for ~~((SCHHP children))~~ premium-based children's healthcare programs;

(4) WAC 388-416-0015~~((10))~~ (12), Certification periods for categorically needy (CN) scope of care medical assistance programs; and

(5) WAC 388-418-0025 ~~((4) and (5))~~, ~~((Change of circumstance))~~ Effect of changes on medical program eligibility.

AMENDATORY SECTION (Amending WSR 04-16-064, filed 7/30/04, effective 8/30/04)

WAC 388-542-0050 Definitions for ~~((SCHHP terms))~~ premium-based children's healthcare programs. The following definitions, as well as those found in WAC 388-538-050 and in 388-500-0005 Medical definitions, apply to ~~((the state children's health insurance program (SCHHP)))~~ premium-based children's healthcare programs.

"**Creditable coverage**" means most types of public and private health coverage, except Indian health services, that provides access to physicians, hospitals, laboratory services, and radiology services. This term applies to the coverage whether or not the coverage is equivalent to that offered under ~~((SCHHP))~~ premium-based children's healthcare programs. "Creditable coverage" is described in 42 U.S.C. Sec. 1397jj.

"**Employer-sponsored dependent coverage**" means creditable health coverage for dependents offered by a family member's employer or union, for which the employer or union may contribute in whole or part towards the premium. Extensions of such coverage (e.g., COBRA extensions) also qualify as employer-sponsored dependent coverage as long as there remains a contribution toward the premiums by the employer or union.

AMENDATORY SECTION (Amending WSR 04-16-064, filed 7/30/04, effective 8/30/04)

WAC 388-542-0300 Waiting period for ~~((SCHHP))~~ premium-based healthcare programs coverage following employer coverage. (1) The ~~((medical assistance administration (MAA)))~~ department requires applicants to serve a waiting period of four full consecutive months before ~~((SCHHP))~~ receiving premium-based children's healthcare programs coverage if the client or family:

(a) Chooses to end employer sponsored dependent coverage. The waiting period begins the day after the employment-based coverage ends; or

(b) Fails to exercise an optional coverage extension (e.g., COBRA) that meets the following conditions. The waiting period begins on the day there is a documented refusal of the coverage extension when the extended coverage is:

(i) Subsidized in part or in whole by the employer or union;

(ii) Available and accessible to the applicant or family; and

(iii) At a monthly cost to the family meeting the limitation of subsection (2)(b)(iv).

(2) ~~((MAA))~~ The department does not require a waiting period prior to ~~((SCHP))~~ coverage under premium-based children's healthcare programs when:

(a) The client or family member has a medical condition that, without treatment, would be life-threatening or cause serious disability or loss of function; or

(b) The loss of employer-sponsored dependent coverage is due to any of the following:

(i) Loss of employment with no post-employment subsidi- coverage as described in subsection (1)(b);

(ii) Death of the employee;

(iii) The employer discontinues employer-sponsored dependent coverage;

(iv) The family's total out-of-pocket maximum for employer-sponsored dependent coverage is fifty dollars per month or more;

(v) The plan terminates employer-sponsored dependent coverage for the client because the client reached the maxi- mum lifetime coverage amount;

(vi) Coverage under a COBRA extension period expired;

(vii) Employer-sponsored dependent coverage is not reason- ably available (e.g., client would have to travel to another city or state to access care); or

(viii) Domestic violence caused the loss of coverage for the victim.

WSR 07-23-006

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed November 8, 2007, 11:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07- 17-183.

Title of Rule and Other Identifying Information: WAC 392-121-122 Definition—Full-time equivalent student.

Hearing Location(s): Office of the Superintendent of Public Instruction, Old Capitol Building, 600 South Wash- ington, Olympia, WA, on January 7, 2008, at 9:00 a.m.

Date of Intended Adoption: January 8, 2008.

Submit Written Comments to: Mitch Thompson, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504- 7200, e-mail Mitch.Thompson@k12.wa.us, fax (360) 725- 6306.

Assistance for Persons with Disabilities: Contact Cla- rice Nnanabu by January 6, 2008, TTY (360) 664-3631 or (360) 725-6271.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To change the WAC to address correctly what the full-time equivalent is for a kindergartner.

Reasons Supporting Proposal: Current WAC identifies a full-time equivalent (FTE) kindergartner as two hours a day for one hundred eighty days or four hours a day for ninety days. This is the calculation for half-time FTE, not a full- time FTE. Districts could potentially claim a kindergartner who attends one hour a day as a half-time (0.50) FTE instead

of a quarter-time (0.25) FTE. Changing the WAC clarifies the FTE as four hours a day for each day of the school year (seven hundred twenty hours, not the three hundred sixty cur- rently stated).

Statutory Authority for Adoption: RCW 28A.150.290 (1).

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

Name of Proponent: Office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Mitch Thompson, Old Capitol Building, 600 South Washing- ton, Olympia, WA, (360) 725-6306; Implementation: Calvin W. Brodie, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6301; and Enforcement: Jennifer Priddy, Old Capitol Building, 600 South Washington, Olym- pia, WA, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328.

November 7, 2007

Dr. Terry Bergeson
State Superintendent

AMENDATORY SECTION (Amending Order 97-06, filed 10/27/97, effective 11/27/97)

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

(1) The minimum hours for each grade are as follows:

(a) Kindergarten ~~((full day))~~: 20 hours each week, or 4 hours (240 minutes) for ~~((90))~~ each scheduled school day~~((s))~~;

~~((b))~~ ~~((Kindergarten (half day): 10 hours each week, or 2 hours (120 minutes) each scheduled school day;~~

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

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

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

(2) Except as limited by WAC 392-121-136, a student enrolled for less than the minimum hours shown in subsec-

tion (1) of this section shall be counted as a partial full-time equivalent student equal to the student's hours of enrollment divided by the minimum hours for the student's grade level set forth in subsection (1) of this section.

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

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

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

WSR 07-23-034

WITHDRAWAL OF PROPOSED RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

(By the Code Reviser's Office)

[Filed November 13, 2007, 8:58 a.m.]

WAC 392-160-010, 392-160-015, 392-160-020, 392-160-026, 392-160-027, 392-160-028, 392-160-029, 392-160-035, 392-160-040 and 392-160-045, proposed by the superintendent of public instruction in WSR 07-10-131 appearing in issue 07-10 of the State Register, which was distributed on May 16, 2007, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 07-23-037

PROPOSED RULES DEPARTMENT OF LICENSING

[Filed November 13, 2007, 9:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-19-066.

Title of Rule and Other Identifying Information: WAC 308-56A-150 Certificate of vehicle inspection.

Hearing Location(s): Department of Licensing, Conference Room 108, 1125 Washington Street S.E., Olympia, WA 98507, on December 27, 2007, at 10:00 a.m.

Date of Intended Adoption: January 22, 2008.

Submit Written Comments to: Dale R. Brown, P.O. Box 2957, Mailstop 48205, 1125 Washington Street S.E., Olympia, WA 98507-2957, e-mail dbrown@dol.wa.gov, fax (360) 902-7821 or 902-7822, by December 26, 2007.

Assistance for Persons with Disabilities: Contact Dale R. Brown by December 26, 2007, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule making may be required to update the rule with current owner retained destroyed vehicle practices.

Reasons Supporting Proposal: The Washington state patrol will no longer inspect wrecked vehicles if they are owner retained.

Statutory Authority for Adoption: RCW 46.01.110.

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

Name of Agency Personnel Responsible for Drafting: Dale R. Brown, 1125 Washington Street S.E., Olympia, WA, (360) 902-4020; Implementation and Enforcement: Gary VanCamp, 1125 Washington Street S.E., Olympia, WA, (360) 902-0122.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on businesses in the industry.

A cost-benefit analysis is not required under RCW 34.05.328. The contents of the proposed rules are explicitly and specifically dictated by statute.

November 13, 2007

Julie Knittle

Assistant Director

Vehicle Services

AMENDATORY SECTION (Amending WSR 06-22-025, filed 10/25/06, effective 11/25/06)

WAC 308-56A-150 Certificate of vehicle inspection.

(1) **When is a certificate of vehicle inspection required?** A certificate of vehicle inspection, completed by the Washington state patrol or other authorized inspector, must accompany the application for certificate of ownership and include the applicable statutory inspection fee whenever the applicant's vehicle is:

(a) Reported destroyed since the last certificate of ownership was issued and ownership was not retained by the registered owner;

(b) A homemade, assembled, or rebuilt vehicle not previously titled as such;

(c) One (~~whose~~) which the identification number needs verification as requested by the department, county auditor, or authorized agent;

(d) A kit vehicle not previously titled as such (if no vehicle identification number (VIN) or model year previously assigned);

(e) A street rod not previously titled as such;

(f) A glider kit not previously titled as such;

(g) Subject to ownership in doubt described in WAC 308-56A-210(~~(1) except those in WAC 308-56A-210(2))~~);

(h) One which the Washington crime information center (WACIC) or National Crime Information Center (NCIC) indicates may be stolen;

(i) One for which the WACIC/NCIC has failed to respond to the stolen vehicle search required by chapter 46.12 RCW; or

(j) Inspections are not required for snowmobiles or mobile homes.

(2) **Is there a fee charged for a VIN inspection?** Yes, the amount of the fee is established in RCW 46.12.040. The fee is not due when:

(a) The out-of-state fee authorized by chapter 46.12 RCW has been collected on the same application; or

(b) The Washington state patrol or department of licensing has determined that the fee is not due.

(3) **Who is authorized to perform a vehicle inspection?** Vehicle inspections may be performed by:

(a) The Washington state patrol;

(b) Other entities or individuals designated by the director if the vehicle is located in another state or country and the requirement for inspection by the Washington state patrol will cause undue hardship.

(4) **How long is a vehicle certificate of inspection valid?** The vehicle certificate of inspection is valid for the following periods of time after the inspection date:

(a) Sixty days for vehicles:

(i) Reported destroyed;

(ii) Homemade, assembled, rebuilt, street rods, kit vehicles and glider kits;

(iii) If the identification number needs verification, has been removed, defaced, altered, destroyed, illegible or missing;

(iv) With no Washington record or no manufacture certificate/statement of origin (MCO/MSO) except those described in WAC 308-56A-210((2));

(v) Referred for inspection for any reason not listed.

(b) Three hundred sixty-five days for a licensed vehicle dealer.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revisions to rules are required to update rules for 1.6 combined FTE split between the resident high school and the skills center. Revision to allow for state funded full-day kindergarten students be able to be reported for up to a 1.0 AAFTE.

Reasons Supporting Proposal: (1) 2SSB 5790 section 3 allows for students attending skills centers to be funded for up to a 1.6 combined FTE. (2) The legislature created funding for a state funded full-day kindergarten program for high poverty schools. Prior to this being enacted, districts were limited to reporting a 0.5 AAFTE for each kindergarten student.

Statutory Authority for Adoption: RCW 28A.150.290 (1).

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

Name of Proponent: Office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Mitch Thompson, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6306; Implementation: Calvin W. Brodie, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6301; and Enforcement: Jennifer Priddy, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328.

November 14, 2007

Dr. Terry Bergeson
State Superintendent

WSR 07-23-040
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed November 14, 2007, 11:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-17-117.

Title of Rule and Other Identifying Information: WAC 392-121-136 Limitation on enrollment counts.

Hearing Location(s): Office of the Superintendent of Public Instruction, Old Capitol Building, 600 South Washington, Olympia, WA, on January 7, 2008, at 11:00 a.m.

Date of Intended Adoption: January 8, 2008.

Submit Written Comments to: Mitch Thompson, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, e-mail Mitch.Thompson@k12.wa.us, fax (360) 725-6306, by January 6, 2008.

Assistance for Persons with Disabilities: Contact Clarice Nnanabu by January 6, 2008, TTY (360) 664-3631 or (360) 725-6271.

AMENDATORY SECTION (Amending Order 97-06, filed 10/27/97, effective 11/27/97)

WAC 392-121-136 Limitation on enrollment counts. Enrollment counts pursuant to WAC 392-121-106 through 392-121-133 are subject to the following limitations:

(1) Except as provided in (a) (~~and~~), (b) and (c) of this subsection, no student, including a student enrolled in more than one school district, shall be counted as more than one full-time equivalent student on any count date or more than one annual average full-time equivalent student in any school year.

(a) School districts operating approved vocational skills center programs during the summer vacation months may claim additional full-time equivalent students based upon actual enrollment in such vocational skills centers on the first school day of July of each year. Each district operating an approved vocational skills center program shall be entitled to claim one annual average full-time equivalent student for each 900 hours of planned student enrollment for the summer term based upon the July enrollment data.

(b) Enrollment count limitations apply separately to a student's running start, skills center and high school enrollments.

(c) Subject to (b) of this subsection, a student enrolled in a skill center program during the regular school year may be

claimed for up to a combined 1.6 full-time equivalent student.

A student can be claimed for a maximum of a 1.0 full-time equivalent for the skills center enrollment and a maximum of a 1.0 full-time equivalent for the student's high school enrollment.

(2) Running start enrollment counts are limited as provided in chapter 392-169 WAC and specifically as provided in WAC 392-169-060.

(3) The full-time equivalent reported for a five year old preschool student with a disability is limited as provided in WAC 392-121-137.

(4) No kindergarten student, including a student enrolled in more than one school district, shall be counted as more than one-half of an annual average full-time equivalent student in any school year.

(5) A student reported as full-time on Form SPI E-672 pursuant to WAC 392-122-275 for institutional education funding shall not be reported by a school district for basic education funding on that enrollment count date.

(6) A student reported as part-time on Form SPI E-672 shall not be reported by a school district for more than part-time basic education funding on that enrollment count date and the total enrollment reported by one or more school districts for basic education and on Form SPI E-672 must not exceed one full-time equivalent.

(7) Districts providing an approved state-funded full-day kindergarten program as provided in chapter 28A.150 RCW (from E2SSB 5841) may claim up to an additional 0.50 FTE based upon student enrolled hours in excess of the 0.50 FTE provided under subsection (4) of this section.

WSR 07-23-042

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed November 14, 2007, 11:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-19-090.

Title of Rule and Other Identifying Information: WAC 392-127-004 through 392-127-112, Finance—Certificated instructional staff ratio (46:1000) compliance.

Hearing Location(s): Old Capitol Building, 600 South Washington Street, P.O. Box 47200, Olympia, WA 98504-7200, on January 7, 2008, at 10:00 a.m.

Date of Intended Adoption: January 8, 2008.

Submit Written Comments to: Legal Services, Office of Superintendent of Public Instruction, P.O. Box 47200, Olympia, WA 98504-7200, fax (360) 753-4201, by January 6, 2008.

Assistance for Persons with Disabilities: Contact Clarice Nnanabu by January 6, 2008, TTY (360) 664-3631 or (360) 725-6271.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules are part of the state funding formula for K-12 education. These revisions

will provide for the correct calculation of the school district's K-12 staff/student ratio compliance for the 2007-08 school year and thereafter.

Reasons Supporting Proposal: These revisions will implement the updated special education excess cost accounting methodology provided in the August 17, 2007, addendum to OSPI Bulletin 025-07 and guidance in section 507 (2)(b) of the 2007 supplemental operating budget.

Statutory Authority for Adoption: RCW 28A.150.290 (1).

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

Name of Proponent: Office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Charlie Schreck, Office of Superintendent of Public Instruction, (360) 725-6136; Implementation: Ross Bunda, Office of Superintendent of Public Instruction, (360) 725-6308; and Enforcement: Jennifer Priddy, Office of Superintendent of Public Instruction, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable - no small business impact.

A cost-benefit analysis is not required under RCW 34.05.328. The superintendent of public instruction is not subject to RCW 34.05.328 (5)(a)(i). Additionally, this rule is not a significant legislative rule per RCW 34.05.328 (5)(c) (iii).

November 14, 2007

Dr. Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending Order 10, filed 6/1/90, effective 7/2/90)

WAC 392-127-045 FTE basic education certificated instructional employee—Definition. As used in this chapter, "full-time equivalent basic education certificated instructional employee" means ~~((for a basic education certificated instructional employee as defined in WAC 392-121-210))~~ the full-time equivalent calculated pursuant to WAC 392-121-215 for:

(1) A basic education certificated instructional employee as defined in WAC 392-121-210; and

(2) A special education certificated instructional employee, in program 21, as determined by the following:

(a) The total special education, program 21, certificated instructional staff assigned to grades kindergarten through twelve;

(b) Times the annual percentage used in determination of a district's 3121 revenue—the special education cost accounting method required pursuant to section 507 (2)(b) of the 2007 supplemental operating budget.

AMENDATORY SECTION (Amending WSR 00-02-064, filed 1/3/00, effective 2/3/00)

WAC 392-127-065 Supplemental FTE staff—Definition. As used in this chapter, "supplemental full-time equivalent

lent staff" means the net change in full-time equivalents for basic education certificated instructional employees, as determined in WAC 392-127-045, after October 1 of the school year and not reflected in Report S-275. Supplemental full-time equivalent staff are determined as follows:

(1) Determine the basic education certificated instructional FTE that would be reported for each employee for the school year on Report S-275 if the current date were substituted for the October 1 snapshot date as required in S-275 instructions and subtract the basic education certificated instructional FTE as of October 1 actually reported for the employee on the school district's most current Report S-275.

(2) Include decreases as well as increases in staff after October 1 and not reflected in Report S-275. Decreases include terminations, retirements, unpaid leave, and reassignment of staff.

AMENDATORY SECTION (Amending WSR 00-02-064, filed 1/3/00, effective 2/3/00)

WAC 392-127-070 Basic education certificated instructional staff ratio—Definition. As used in this chapter, "basic education certificated instructional staff ratio" means the following calculation:

(1) Add the full-time equivalent basic education certificated instructional employees, as determined in WAC 392-127-045, as reported on the S-275 and any supplemental full-time equivalent staff reported to the superintendent of public instruction;

(2) Divide the result obtained in subsection (1) of this section by the full-time equivalent enrollment for October or that period selected by the school district; and

(3) Multiply the result obtained in subsection (2) of this section by one thousand.

WSR 07-23-043

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed November 14, 2007, 11:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-19-090.

Title of Rule and Other Identifying Information: WAC 392-140-900 through 392-140-913, Finance—Special allocations—K-4 staff enhancement.

Hearing Location(s): Old Capitol Building, 600 South Washington Street, P.O. Box 47200, Olympia, WA 98504-7200, on January 7, 2008, at 9:30 a.m.

Date of Intended Adoption: January 8, 2008.

Submit Written Comments to: Legal Services, Office of Superintendent of Public Instruction, P.O. Box 47200, Olympia, WA 98504-7200, fax (360) 753-4201, by January 6, 2008.

Assistance for Persons with Disabilities: Contact Clarice Nnanabu by January 6, 2008, TTY (360) 664-3631 or (360) 725-6271.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules are part of the state funding formula for K-12 education. These revisions will provide for the correct calculation of the school district's funded K-4 staff/student ratio for the 2007-08 school year and thereafter.

Reasons Supporting Proposal: These revisions will implement the updated special education excess cost accounting methodology provided in the August 17, 2007, addendum to OSPI Bulletin 025-07 and guidance in section 507 (2)(b) of the 2007 supplemental operating budget.

Statutory Authority for Adoption: RCW 28A.150.290 (1).

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

Name of Proponent: Office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Charlie Schreck, Office of Superintendent of Public Instruction, (360) 725-6136; Implementation: Ross Bunda, Office of Superintendent of Public Instruction, (360) 725-6308; and Enforcement: Jennifer Priddy, Office of Superintendent of Public Instruction, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable - no small business impact.

A cost-benefit analysis is not required under RCW 34.05.328. The superintendent of public instruction is not subject to RCW 34.05.328 (5)(a)(i). Additionally, this rule is not a significant legislative rule per RCW 34.05.328 (5)(c) (iii).

November 14, 2007

Dr. Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 05-17-179, filed 8/23/05, effective 9/23/05)

WAC 392-140-903 K-4 Staff enhancement—Definitions. As used in WAC 392-140-900 through 392-140-913:

(1) "Report S-275" means the school district personnel report as defined in WAC 392-121-225.

(2) "Form SPI 1158" means the form provided by the superintendent of public instruction on which school districts report a net change in K-12 full-time equivalent (FTE) staff and/or K-4 FTE staff after October 1.

(3) "Report 1159" means the report produced by the superintendent of public instruction displaying the calculations of K-4 certificated instructional staffing and K-4 apportionment ratios and other information as necessary.

(4) "Form SPI 1160" means the form provided by the superintendent of public instruction on which school districts may select the period of enrollment the superintendent of public instruction shall use to calculate staffing ratios.

(5) "Form SPI 1230" means the form provided by the superintendent of public instruction on which school districts had the option of reporting 1989-90 FTE K-3 basic education classified instructional assistants before September 1, 1999.

(6) "Form SPI 1230K-4" means the form provided by the superintendent of public instruction on which school districts have the option of reporting 1989-90 FTE K-4 basic education classified instructional assistants after September 1, 1999.

(7) "FTE K-4 basic education enrollment" means the school district's K-4 full-time equivalent enrollment reported for basic education funding pursuant to WAC 392-121-122 for the month of October or such other period selected by the district on optional Form SPI 1160.

(8) "FTE basic education certificated instructional employee" means the FTE calculated pursuant to WAC 392-121-215 for a basic education certificated instructional employee assigned in whole or in part to the following programs as defined in the *Accounting Manual for Public School Districts in the State of Washington*:

- (a) Basic education, program 01;
- (b) Vocational, basic, state, program 31;
- (c) Skills center, basic, state, program 45; ~~(and)~~
- (d) District-wide support, program 97; and
- (e) Special education, program 21, as determined by the following:

(i) The total special education, program 21, certificated instructional staff assigned to grades kindergarten through four;

(ii) Times the annual percentage used in determination of a district's 3121 revenue—the special education cost accounting method required pursuant to section 507 (2)(b) of the 2007 supplemental operating budget.

(9) "FTE K-4 basic education certificated instructional employee" means for a FTE basic education certificated instructional employee the following:

(a) If the basic education certificated instructional employee serves only K-4 students, one hundred percent of the FTE assigned to basic education; or

(b) If the basic education certificated instructional employee serves K-4 students and students of one or more other grades, multiply the FTE assigned to basic education by:

(i) The proportion of time spent serving K-4 students to all time serving students;

(ii) The proportion of K-4 students served to all students served; or

(iii) Any combination of (i) or (ii) of this subsection as appropriate.

(10) "FTE K-4 basic education certificated instructional staff" means the sum of FTE K-4 basic education certificated instructional employees for a school district.

(11) "Basic education classified instructional assistant" means a person who is assigned in whole or in part to:

(a) Program 01 - basic education; 31 - vocational, basic, state; or 45 - skills center, basic, state; and

(b) Activity 27 - teaching; and

(c) Duty 910 - aide.

(12) "Basic education classified instructional assistant FTE" means the number determined for a basic education classified instructional assistant as follows:

(a) Determine the hours per year that the employee is assigned as a basic education classified instructional assistant; and

(b) Divide by 2080.

(13) "District FTE K-4 basic education classified instructional assistants" means the sum of a school district's FTE K-4 basic education classified instructional assistants.

(a) If the basic education classified instructional assistant serves only K-4 students, one hundred percent of the FTE determined pursuant to subsection (12) of this section.

(b) If the basic education classified instructional assistant serves K-4 students and students of one or more other grades, multiply the FTE determined pursuant to subsection (12) of this section by:

(i) The proportion of time spent serving K-4 students to all time serving students;

(ii) The proportion of K-4 students served to all students served; or

(iii) Any combination of (b)(i) or (ii) of this subsection as appropriate.

(14) "Actual average salary for basic education classified instructional assistants" means the dollar amount determined for a school district for a school year as follows:

(a) For each basic education certificated instructional assistant reported on Report S-275 determine the assignment salary reported;

(b) Sum the dollar amounts determined pursuant to (a) of this subsection; and

(c) Divide the result of (b) of this subsection by the sum of the school district's FTE basic education classified instructional assistants as reported on Report S-275.

AMENDATORY SECTION (Amending WSR 05-17-179, filed 8/23/05, effective 9/23/05)

WAC 392-140-904 K-4 Staff enhancement—School district reporting. School districts shall report staff information to the superintendent of public instruction as follows:

(1) Required Report S-275. School districts shall report K-4 basic education certificated instructional staff and K-4 basic education classified instructional assistants employed as of October 1 of the school year on Report S-275 pursuant to instructions provided by the superintendent of public instruction.

(2) Optional Form SPI 1158. School districts may use this form to report net changes in K-4 (~~basic education~~) certificated instructional staff in basic or special education or in K-4 basic education classified instructional assistants after October 1 determined as follows:

(a) Determine the base contract K-4 (~~basic education~~) FTE in basic or special education that would be reported for each employee for the school year on Report S-275 if the current date were substituted for the October 1 snapshot date as required in S-275 instructions and subtract the base contract K-4 (~~basic education~~) FTE in basic or special education as of October 1 actually reported for the employee on the school district's most current Report S-275.

(b) Include decreases as well as increases in FTE staff after October 1 and not reflected in Report S-275. Decreases include terminations, retirements, unpaid leave, and reassignment of staff.

(3) Optional Form SPI 1160. School districts may use this form to select an enrollment period other than October:

(a) Enrollment for any month of the school year; or

(b) Annual average enrollment for the school year.

(4) Optional Form SPI 1230 K-4. School districts may use this form to report 1989-90 FTE K-4 classified instructional assistants. This is a one-time form. Once filed, the information from this form is used for all subsequent years unless revised by the district.

(5) Optional report forms for a school year must be filed with the superintendent of public instruction by September 30 following the close of the school year.

AMENDATORY SECTION (Amending WSR 02-09-024, filed 4/8/02, effective 5/9/02)

WAC 392-140-910 K-4 Staff enhancement—Determination of district K-4 certificated instructional staffing ratio. The superintendent of public instruction shall calculate each school district's K-4 certificated instructional staffing ratio as follows:

(1) Add FTE K-4 (~~(basic education)~~) certificated instructional (~~(employees)~~) staff in basic or special education from Report S-275 and any net change in FTE K-4 (~~(basic education)~~) certificated instructional staff in basic or special education reported on Form SPI 1158 pursuant to WAC 392-140-903;

(2) Divide the result of subsection (1) of this section by FTE K-4 basic education enrollment; and

(3) Multiply the result obtained in subsection (2) of this section by 1000.

WSR 07-23-044

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed November 14, 2007, 11:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-17-116.

Title of Rule and Other Identifying Information: WAC 392-121-138 Full-time equivalent enrollment of vocational education students.

Hearing Location(s): Office of the Superintendent of Public Instruction, Old Capitol Building, 600 South Washington, Olympia, WA, on January 7, 2008, at 10:30 a.m.

Date of Intended Adoption: January 8, 2008.

Submit Written Comments to: Mitch Thompson, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, e-mail Mitch.Thompson@k12.wa.us, fax (360) 725-6306, by January 6, 2008.

Assistance for Persons with Disabilities: Contact Clarice Nnanabu by January 6, 2008, TTY (360) 664-3631 or (360) 725-6271.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The WAC is being modified by taking out the word secondary so that it will apply to all education levels.

Reasons Supporting Proposal: The legislature passed 2SHB 1906 which provides for middle school/junior high

school programs. The current WAC only talks of the full-time equivalent enrollment in vocational secondary programs.

Statutory Authority for Adoption: RCW 28A.150.290 (1).

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

Name of Proponent: Office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Mitch Thompson, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6306; Implementation: Calvin W. Brodie, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6301; and Enforcement: Jennifer Priddy, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328.

November 14, 2007

Dr. Terry Bergeson

State Superintendent

AMENDATORY SECTION (Amending WSR 98-07-060, filed 3/17/98, effective 4/17/98)

WAC 392-121-138 Full-time equivalent enrollment of vocational education students. For the purpose of enhanced funding for vocational education, full-time equivalent enrollment in vocational (~~(secondary)~~) and skills center programs shall be based upon the actual hours of enrollment in state approved vocational courses. Vocational full-time equivalent enrollment shall be determined pursuant to WAC 392-121-122 and shall be reported on the same monthly basis as the enrollment for students eligible for basic support.

WSR 07-23-053

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed November 15, 2007, 3:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-17-113.

Title of Rule and Other Identifying Information: The department is repealing all sections in chapter 388-853 WAC, Costs of care of mentally deficient persons residing in state institutions: WAC 388-853-010 Authority, 388-853-030 Schedule of per capita cost, 388-853-035 Exempt income, and 388-853-080 Notice and finding of responsibility—Appeal procedure.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs>.

wa.gov/msa/rpau/docket.html or by calling (360) 664-6094, on December 27, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 28, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRPAU-RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on December 27, 2007.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by December 18, 2007, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is repealing all sections in chapter 388-853 WAC, Costs of care of mentally deficient persons residing in state institutions:

WAC 388-853-010 Authority, replaced by WAC 388-835-0005.

WAC 388-853-030 Schedule of per capita cost, replaced by chapter 388-835 WAC.

WAC 388-853-035 Exempt income, replaced by WAC 388-835-0935.

WAC 388-853-080 Notice and finding of responsibility—Appeal procedure, replaced by WAC 388-835-0940, 388-835-0945, 388-835-0950, and 388-835-0955.

Reasons Supporting Proposal: All sections in chapter 388-853 WAC, Costs of care of mentally deficient persons residing in state institutions, have been replaced by other rules.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: Title 71A RCW.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Brink, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail brinksc@dshs.wa.gov, (360) 725-3416, fax (360) 404-0955; Implementation and Enforcement: Doug Washburn, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail washbdc@dshs.wa.gov, (360) 725-3452, fax (360) 404-0955.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not impact small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These rules do not require a cost-benefit analysis as they are not "significant legislative rules" as defined in RCW 34.05.328 [(5)](c)(iii).

November 8, 2007
Stephanie E. Schiller
Rules Coordinator

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-853-010 Authority.

WAC 388-853-030

Schedule of per capita cost.

WAC 388-853-035

Exempt income.

WAC 388-853-080

Notice and finding of responsibility—Appeal procedure.

WSR 07-23-054

PROPOSED RULES

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed November 15, 2007, 3:43 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-17-112.

Title of Rule and Other Identifying Information: The department is repealing all sections in chapter 388-830 WAC, Division of developmental disabilities program option rules: WAC 388-830-005 Purpose, 388-830-010 Definitions, 388-830-015 Determination of eligibility, 388-830-020 Notification to potential applicants, 388-830-025 Application for services, 388-830-030 Individual service plan, 388-830-035 Implementation of necessary services, 388-830-040 Criteria for determining costs, and 388-830-045 Method of rate determination.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on December 27, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 28, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail schilse@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on December 27, 2007.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by December 18, 2007, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is repealing all sections of chapter 388-830 WAC.

Reasons Supporting Proposal: These sections are obsolete.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: Title 71A RCW.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Brink, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail brinksc@dshs.wa.gov, (360) 725-3416, fax (360) 404-

0955; Implementation and Enforcement: Doug Washburn, 640 Woodland Square Loop S.E., Lacey, WA 98503-1045, P.O. Box 45310, Olympia, WA 98507-5310, e-mail washbdc@dshs.wa.gov, (360) 725-3452, fax (360) 404-0955.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not impact small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These rules do not require a cost-benefit analysis as they are not "significant legislative rules" as defined in RCW 34.05.328 [(5)(c)(iii)].

November 8, 2007
Stephanie E. Schiller
Rules Coordinator

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-830-005 Purpose.
- WAC 388-830-010 Definitions.
- WAC 388-830-015 Determination of eligibility.
- WAC 388-830-020 Notification to potential applicants.
- WAC 388-830-025 Application for services.
- WAC 388-830-030 Individual service plan.
- WAC 388-830-035 Implementation of necessary services.
- WAC 388-830-040 Criteria for determining costs.
- WAC 388-830-045 Method of rate determination.

WSR 07-23-061
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION
[Filed November 16, 2007, 10:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-13-050.

Title of Rule and Other Identifying Information: Chapter 392-160 WAC, Special service program/transitional bilingual.

Hearing Location(s): Office of Superintendent of Public Instruction, 600 South Washington Street, Olympia, WA 98504-7200, on January 9, 2008, at 9:00 a.m.

Date of Intended Adoption: January 10, 2008.

Submit Written Comments to: Bob Harmon, P.O. Box 47200, Olympia, WA 98504-7200, e-mail bob.harmon@k12.wa.us, fax (360) 664-2605, by January 8, 2008.

Assistance for Persons with Disabilities: Contact Terrie Beckman by January 8, 2008, TTY (360) 664-3631 or (360) 725-6147.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule changes is to be in compliance with RCW and to effectively educate English language learners (ELLs).

Reasons Supporting Proposal: Clarification of the contents of the law as it applies to current practices, including the bilingual entrance and exit criteria.

Statutory Authority for Adoption: RCW 28A.180.060.

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

Name of Proponent: [Superintendent of public instruction], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bob Harmon, Office of Superintendent of Public Instruction, (360) 725-6147.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328.

November 14, 2007
Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending Order 84-41, filed 10/2/84)

WAC 392-160-010 School district board of directors duties. Consistent with the provisions of this chapter, every school district board of directors:

- (1) Shall make available to each eligible student a transitional bilingual (~~(instruction)~~) instructional program or, if the use of two languages is not practicable as provided in WAC 392-160-040, an alternative instructional program;
- (2) Shall communicate, whenever feasible, with parents of students in the bilingual program, or alternative instruction program in a language they can understand; and
- (3) Shall provide (~~(in-service)~~) whenever feasible professional development training for administrators, teachers, counselors, and other staff (~~(who are involved in the district's transitional bilingual program, including alternative instructional programs,)~~) on bilingual program models, and/or district's alternative instructional program, appropriate use of instructional strategies (~~(for students of culturally different backgrounds and use of curriculum materials and program models)~~) and assessment results, and curriculum and instructional materials for use with culturally and linguistically diverse students.

AMENDATORY SECTION (Amending Order 12, filed 8/12/91, effective 9/12/91)

WAC 392-160-015 Identification of eligible students.

- (1) District procedures—Identification of primary language required: Every school district board of directors shall adopt written procedures governing the identification of each student's primary language and the determination of which stu-

dents with a primary language other than English are eligible students. Such procedures shall include:

(a) ~~((Provisions for the identification of a student's primary language pursuant to an interview with or a written questionnaire directed to))~~ A home language survey, completed by the student and the student's parent(s) or guardian(s), ((or a combination of interviews and written questionnaires)) which identifies the primary language as other than English; and

(b) ~~Provisions for testing students ((as provided for in this section, WAC 392-160-020, and 392-160-035))~~ on the state-approved Washington language proficiency placement test.

(2) Deadline for determining eligibility of newly enrolled students: The primary language and eligibility of each newly enrolled student shall be established no later than the ~~((twentieth))~~ tenth school day after the date upon which the student commences attendance at a particular school district. Provided that no eligible student shall be required to participate in a transitional bilingual instructional program or an alternative instructional program, if the parent/guardian chooses to opt the student out of program services.

(3) ~~(Newly enrolled students who speak little or no English—Determination of eligibility: The eligibility of a newly enrolled student whose eligibility is reasonably apparent by reason of:~~

(a) ~~The student's ability to communicate reasonably well in his or her non-English primary language; and~~

(b) ~~The student's inability to communicate in English to any practical extent as determined by an interview with the student by appropriate school district staff. No other approved test need be administered if the professional judgment of the school personnel is that the student is eligible as defined in WAC 392-160-005(3).~~

(4) ~~All other newly enrolled students—Determination of eligibility: The eligibility of all newly enrolled students:~~

(a) ~~Who have a primary language other than English; and~~

(b) ~~Whose eligibility is not reasonably apparent by reason of the standards established by subsection (3) shall be determined pursuant to WAC 392-160-020.~~

~~(5))~~ Annual reassessment of all students is required: Each school year each school in which an eligible student is enrolled shall conduct an evaluation of the overall academic progress and English language development of the student. This evaluation must include but not be limited to the administration of a standardized test in reading, writing, listening and ((language arts)) speaking in English as set forth in WAC 392-160-035.

AMENDATORY SECTION (Amending Order 84-41, filed 10/2/84)

WAC 392-160-026 District application. Each school district that seeks an allocation of state funds for a transitional bilingual instruction program or alternative instructional program shall submit a program approval application to the superintendent of public instruction no later than August 1 of each year: Provided, That in the case of extenuating circumstances or in the case of a change in circumstances such as the unexpected enrollment of eligible students the superintendent

of public instruction may allow the belated submission of an application or the submission of a modification to a previously approved application. The application shall apply to programs to be conducted during the ensuing school year and shall provide data and information in accordance with instructions and forms now or hereafter established and published by the superintendent of public instruction in bulletins distributed to school districts.

AMENDATORY SECTION (Amending Order 84-17, filed 6/13/84)

WAC 392-160-027 Board approval. The district's ~~((annual application))~~ transitional bilingual instructional program or alternative instructional program shall be approved by formal action of the district's board of directors.

AMENDATORY SECTION (Amending Order 84-41, filed 10/2/84)

WAC 392-160-028 Content of district application. The district's annual application shall contain the following:

(1) The estimated number of eligible students to be served ~~((during the current school year and the estimated number to be served))~~ in the next school year ~~((for each non-English primary language spoken));~~

(2) A description of the ~~((approved tests to be used in the next school year to determine student eligibility))~~ bilingual instructional program and/or alternative instructional program to be implemented the next school year;

(3) ~~((The estimated number of students who will be enrolled during the next school year in a program funded pursuant to this chapter in excess of three school years (i.e., 540 school days or portions thereof). The numbers of such students shall be identified by the non-English primary language spoken and the type of program to be provided (i.e., bilingual or alternative instructional program);~~

(4) ~~The number of students who have been enrolled in a program funded pursuant to this chapter in excess of three school years who are currently served identified by the non-English primary language spoken by each student and the type of program provided each student;~~

(5) ~~A description of the bilingual instruction and alternative instructional programs planned for the next school year; and~~

(6) ~~A description of the in-service training program that is planned for the next school year.)~~ A description of the research-based professional development activities plan targeted toward second language acquisition for the next school year as provided for in this section and WAC 392-160-010; and

(4) A description of the district's plan for continuous improvement and evaluation of its program to serve English language learners.

AMENDATORY SECTION (Amending Order 84-17, filed 6/13/84)

WAC 392-160-029 Program approval. Program approval by the superintendent of public instruction shall be as follows:

(1) Each application that is submitted as required by and pursuant to this chapter shall be approved: Provided, that approval of an application may be withheld in whole or part in the event the superintendent of public instruction deems it necessary to ascertain the completeness and accuracy of the application((-));

(2) Each school district shall be notified of program approval ~~((or disapproval, in whole or part))~~ status, within thirty days after the date of receipt of the application by the superintendent of public instruction((-); and

(3) Each application that is returned to a school district with approval withheld in whole or part shall be accompanied by an explanation of the reasons ~~((therefor))~~ therefore and a statement of the corrective action necessary for approval.

AMENDATORY SECTION (Amending Order 84-41, filed 10/2/84)

WAC 392-160-035 Three-year limitation—Testing—Program exit requirements. (1) No student shall continue to be entitled to a transitional bilingual instructional program or alternative instructional program after the student has received instruction in a transitional bilingual instructional program or alternative instructional program conducted pursuant to this chapter within any one or more school districts for a period of three consecutive school years (i.e., 540 school days or portions thereof): Provided, that ~~((each such student who is unable to demonstrate an improvement in English language skills that is sufficient to overcome the student's learning impairment (i.e., unable to score above the 35th percentile on an approved test))~~ the student has not yet met exit criteria on Washington language proficiency test) as established by the office of superintendent of public instruction shall continue to be entitled to an approved bilingual instruction or alternative instructional program.

(2) The approved test for measurement of improvement in English language skills for purposes of exit from the transitional bilingual instructional program or alternative instructional programs shall be ~~((any nationally normed standardized achievement test normally administered by a school district to its students))~~ the Washington language proficiency test.

(3) No student shall be ~~((entitled to continued enrollment in a transitional bilingual))~~ eligible for continued funding in the transitional bilingual instructional program or alternative program ~~((once the student has scored above the 35th percentile on the reading and language arts portions of a nationally normed standardized test appropriate for the student's age and grade level))~~ upon meeting or exceeding the state standards as measured by the WLPT. As provided for in this section and WAC 392-160-015, the parent/guardian retains the option to refuse program services for the eligible student.

AMENDATORY SECTION (Amending Order 12, filed 8/12/91, effective 9/12/91)

WAC 392-160-040 Alternative instructional program. School districts under one or more of the following conditions may elect to provide an alternative instructional program:

(1) Necessary instructional materials in the student's primary language are unavailable and the district has made reasonable efforts to obtain necessary materials without success;

(2) The capacity of the district's bilingual ~~((instruction))~~ instructional program is temporarily exceeded by an unexpected increase in the enrollment of eligible students;

(3) Bilingual instruction cannot be provided ~~((affected))~~ to students without substantially impairing their basic education ((program)) because of their distribution throughout many grade levels or schools, or both; or

(4) Teachers who are trained in bilingual education methods and sufficiently skilled in the non-English primary language(s) are unavailable, and the district has made reasonable attempts to obtain the services of such teachers.

AMENDATORY SECTION (Amending Order 84-41, filed 10/2/84)

WAC 392-160-045 ~~((Handicapped students—No))~~ Students with disabilities—Conditions for transitional bilingual entitlement. ~~((Notwithstanding any other provision of this chapter to the contrary, any eligible student whose English language skill deficiency is caused primarily by one or more of the handicapping conditions defined in chapter 392-171 WAC, as now or hereafter amended, shall not be eligible for the entitlement established pursuant to this chapter.))~~ (1) Students identified as being eligible for both the state transitional bilingual instructional program (TBIP) and special education program will participate in the TBIP to the same degree and consideration given to every other child in the TBIP.

(2) The district, in consultation with the student's IEP team shall determine whether the child's disability is the determinant factor for the child's English language skill deficiency.

(3) If it is determined that the child's disability is the determinant factor for the English language skill deficiency, the child shall not be eligible for the TBIP.

(4) If it is determined that the child's disability is not the determinant factor for the English language skill deficiency, the child shall be eligible for the TBIP.

(5) If it cannot be determined whether or not the child's disability is the determinant factor for the child's English language skill deficiency, the child shall be eligible for TBIP and the special education program. The child's district, in consultation with the student's IEP team shall assess annually whether or not the child's disability is the determinant factor for the child's English language skill deficiency. If the district and IEP team determine that the child's disability is the determinant factor for the child's English language skill deficiency then the child shall not be eligible for the TBIP.

(6) A child who is participating in both the TBIP and the special education program under this chapter shall be subject to all conditions of participation provided in this chapter.

WSR 07-23-063
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed November 16, 2007, 12:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-05-037.

Title of Rule and Other Identifying Information: DDD no longer uses the division of developmental disabilities mini-assessment process described in chapter 388-824 WAC after May 31, 2007, and intends to repeal WAC 388-824-0001, 388-824-0010, 388-824-0015, 388-824-0020, 388-824-0025, 388-824-0030, 388-824-0040, 388-824-0050, 388-824-0055, 388-824-0060, 388-824-0065, 388-824-0070, 388-824-0080, 388-824-0090, 388-824-0100, 388-824-0120, 388-824-0140, 388-824-0170, 388-824-0190, 388-824-0210, 388-824-0220, 388-824-0230, 388-824-0240, 388-824-0260, 388-824-0280, 388-824-0290, 388-824-0310, 388-824-0320, and 388-824-0330.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on December 27, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 28, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSRULES.COORDINATOR@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on December 27, 2007.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by December 18, 2007, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In June 2003, the joint legislative and review committee (JLARC) issued its performance audit of the division and recommended that DSHS develop a standardized assessment process for developmentally disabled clients that is:

- Designed to measure the unique needs of people with developmental disabilities;
- Consistently applied to all clients in all parts of the state; and
- Administered before a determination of service is made.

As part of this new assessment process, the division developed the mini-assessment as a brief assessment to assist the division in making decisions about who is referred for a more detailed assessment. The mini-assessment was designed for interim use until the division completed development on its new comprehensive assessment tool called the DDD assessment.

Reasons Supporting Proposal: On June 1, 2007, DDD adopted chapter 388-828 WAC governing DDD's new "DDD

assessment" process in accordance with JLARC's recommendations. These new rules will govern the assessment process for all clients of the division resulting in a consistent assessment process for all clients in all parts of the state, regardless of whether they are receiving a DDD paid service or not. DDD intends to repeal the rules governing the use of the mini-assessment process since DDD is now assessing all clients using the new comprehensive DDD assessment tool.

Statutory Authority for Adoption: Title 71A RCW, RCW 71A.12.030.

Statute Being Implemented: Title 71A RCW, and chapter 518, Laws of 2005.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Debbie Roberts, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-3400; Implementation and Enforcement: Don Clintsman, 640 Woodland Square Loop S.E., Lacey, WA 98504, (360) 725-3426.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed these rules and determined that no new costs will be imposed on small businesses or nonprofits.

A cost-benefit analysis is not required under RCW 34.05.328. A "significant legislative rule" is a rule other than a procedural or interpretive rule that (a) adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty or sanction; (b) establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or (c) adopts a new, or makes significant amendments to, a policy or regulatory program.

November 16, 2007
Stephanie E. Schiller
Rules Coordinator

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-824-0001	What definitions apply to this chapter?
WAC 388-824-0010	What is the DDD mini-assessment?
WAC 388-824-0015	How do you and/or your respondent(s) obtain information about the mini-assessment?
WAC 388-824-0020	What is the purpose of the mini-assessment?
WAC 388-824-0025	What domains does the mini-assessment evaluate to identify your relative level of need?

WAC 388-824-0030	Does the mini-assessment affect other DDD assessments?	WAC 388-824-0240	How do you know the results of your mini-assessment?
WAC 388-824-0040	Who receives a mini-assessment?	WAC 388-824-0260	What is the full assessment referral data base?
WAC 388-824-0050	Who does not receive a mini-assessment?	WAC 388-824-0280	What information does DDD use in deciding whom to refer for a full assessment?
WAC 388-824-0055	Who participates in the mini-assessment?	WAC 388-824-0290	When does DDD remove my name from the full assessment referral data base?
WAC 388-824-0060	How does DDD conduct an initial mini-assessment?	WAC 388-824-0310	When DDD adjusts the mini-assessment algorithm, when does the adjustment become effective?
WAC 388-824-0065	When does DDD conduct a reassessment?	WAC 388-824-0320	Are there appeal rights to the mini-assessment?
WAC 388-824-0070	Does DDD require you to disclose financial information?	WAC 388-824-0330	If you request a hearing to review the results of your mini-assessment, which mini-assessment does the administrative law judge review in the hearing?
WAC 388-824-0080	Is the respondent required to provide verification of my family's annual gross income?		
WAC 388-824-0090	Does reporting your family's annual gross income and number of family dependents affect your eligibility for paid services?		
WAC 388-824-0100	What does DDD do if the respondent does not provide the requested family income and dependent information?		
WAC 388-824-0120	What is the difference between a mini-assessment for adults and a mini-assessment for children?		
WAC 388-824-0140	How does the mini-assessment use information that is scored during the mini-assessment interview?		
WAC 388-824-0170	What occurs when you are assigned to the "high level of need" group?		
WAC 388-824-0190	What occurs when you are assigned to the "moderate level of need" group?		
WAC 388-824-0210	What occurs when you are assigned to the "low level of need" group?		
WAC 388-824-0220	When will I be reassigned to another level of need group?		
WAC 388-824-0230	Does the mini-assessment result in paid services?		

WSR 07-23-067**PROPOSED RULES****BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS**

[Filed November 19, 2007, 9:13 a.m.]

Supplemental Notice to WSR 07-21-024.
Preproposal statement of inquiry was filed as WSR 06-23-080.

Title of Rule and Other Identifying Information: Chapter 196-23 WAC, Stamping and seals.

Hearing Location(s): Clarion Hotel, Rainier Room, 31611 20th Avenue South, Federal Way, WA 98003, on January 23, 2008, at 4:00 p.m.; and at the Davenport Hotel, Cutter Room, 10 South Post Street, Spokane WA 99201, on March 20, 2008, at 4:00 p.m.

Date of Intended Adoption: March 21, 2008.

Submit Written Comments to: George A. Twiss, PLS, Executive Director, Board of Registration for Professional Engineers and Land Surveyors, P.O. Box 9025, Olympia, WA 98507-9025, e-mail engineers@dol.wa.gov, fax (360) 664-2551, by March 17, 2008.

Assistance for Persons with Disabilities: Contact Kim King by March 17, 2008, TTY (360) 664-8885 or (360) 664-1564.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments are necessary to address the stamp/seal usage of professional engineers and/or professional land surveyors in their everyday practice. This supplemental notice is being filed, as a sentence was omitted in the first filing.

Reasons Supporting Proposal: Professional engineers and/or professional land surveyors are taking advantage of current technology by sending their work product electronically. The amendments are necessary to address the stamp/seal usage of professional engineers and/or professional land surveyors in their everyday practice.

Statutory Authority for Adoption: RCW 18.43.035.

Statute Being Implemented: Chapter 18.43 RCW.

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

Name of Proponent: Board of registration for professional engineers and land surveyors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: George A. Twiss, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-1565.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no economic impact to licensee.

A cost-benefit analysis is not required under RCW 34.05.328. There is no economic impact to licensee.

November 19, 2007

George A. Twiss

Executive Director

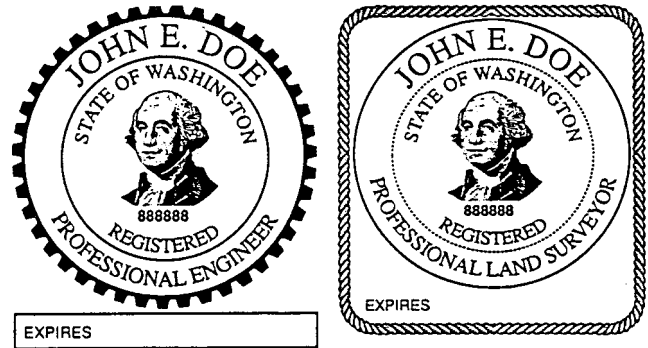
AMENDATORY SECTION (Amending WSR 06-22-036, filed 10/25/06, effective 11/25/06)

WAC 196-23-010 Seals. All individuals licensed in accordance with chapter 18.43 RCW ~~((shall procure))~~ must

utilize a seal/stamp that conforms to the design as authorized by the board. It is the responsibility of the licensee to maintain control over the use of his/her stamp/seal. The impression or image of the seal/stamp ~~((shall))~~ must conform to the below-illustrated design and be of a size that assures full legibility of the following required information:

- (1) State of Washington;
- (2) Registered professional engineer or registered professional land surveyor;
- (3) Certificate number;
- (4) Licensee's name as shown on wall certificate(~~(;~~);
- ~~(5) Date of license expiration. (Expiration date to be handwritten by licensee.))~~);

~~((STRICKEN GRAPHIC~~



~~STRICKEN GRAPHIC))~~



AMENDATORY SECTION (Amending WSR 06-22-036, filed 10/25/06, effective 11/25/06)

WAC 196-23-020 Seal/stamp usage. The use of the seal/stamp ~~((shall))~~ must be in accordance with chapter 18.43 RCW or as otherwise described herein:

(1) Final documents are those documents that are prepared and distributed for filing with public officials, use for construction, final agency approvals or use by clients. Any final document must contain the seal/stamp, ~~((handwritten license expiration date by the licensee(,))~~ signature and date of signature of the licensee who prepared or directly super-

vised the work. For the purpose of this section "document" is defined as plans, specifications, plats, surveys~~((,))~~, as-built documents prepared by the licensee~~((,))~~, and reports.

(2) Preliminary documents are those documents not considered final as defined herein, but are released or distributed by the licensee. Preliminary documents must be clearly identified as "PRELIMINARY" or contain such wording so it may be differentiated from a final document. Preliminary documents must be stamped, but need not be signed or dated by the licensee.

(3) Plan sets: Every page of a plan set must contain the seal/stamp, signature of the licensee(s) who prepared or who

had direct supervision over the preparation of the work, and date of signature.

(a) Plans/plats containing work prepared by or under the direct supervision of more than one licensee should be sealed/stamped ~~((F))~~ and dated by each licensee and shall clearly note the extent of each licensee's responsibility.

(b) As provided for in subsections (1) and (2) of this section, each page of a plan set must contain the seal/stamp of the licensee who prepared or who had direct supervision over the preparation of the work.

(c) Plan/plat sheets containing and/or depicting background and/or supporting information that is duplicated from other plans need only be sealed/stamped by the licensee(s) who prepared or was in direct supervision of the design. The origin of the background information shall be noted on the plan sheet.

(d) All design revisions to final plan/plat sheets shall ~~((shall))~~ clearly identify on each sheet; the revisions made and shall contain the name and seal of the licensee, and signature of the licensee with the date the sheet was sealed.

(4) Specifications: Specifications that are prepared by or under the direct supervision of a licensee shall contain the seal/stamp, signature of the licensee and the date of signature. If the specifications prepared by a licensee are a portion of a bound specification document that contains specifications other than that of an engineering or land surveying nature, the licensee need only seal/stamp that portion or portions of the documents for which the licensee is responsible. Nothing herein should be construed to require that each page of an engineering or land surveying specification be sealed/stamped by the licensee.

(5) Document review: When a licensee is required to review work prepared by another professional engineer or land surveyor, the reviewing licensee shall fully review those documents and shall prepare a report that discusses the findings of the review with any supporting calculations and sketches. The reviewing licensee would then seal/stamp, sign and date the report. The report would make reference to and/or be attached to the subject document(s) reviewed.

AMENDATORY SECTION (Amending WSR 06-22-036, filed 10/25/06, effective 11/25/06)

WAC 196-23-070 Signature. The terms "signature or signed," as used in chapter 18.43 RCW and/or Title 196 WAC, shall mean the following:

(1) A handwritten identification that represents the act of putting one's name on a document to attest to its validity. The handwritten identification must be:

- (a) Original and written by hand;
- (b) Permanently affixed to the document(s) being certified;
- (c) Applied to the document by the identified licensee ~~((F))~~;
- (d) Placed directly over the seal/stamp of the licensee.

(2) A digital identification that is an electronic authentication process attached to or logically associated with an electronic document. The digital identification may include a scanned or digitized signature. The digital identification must be:

- (a) Unique to the licensee using it;
- (b) Capable of independent verification;
- (c) Under the exclusive control of the licensee using it;
- (d) Linked to a document in such a manner that the digital identification is invalidated if any data in the document is changed.

WSR 07-23-069

PROPOSED RULES

ENVIRONMENTAL HEARINGS OFFICE

[Filed November 19, 2007, 10:22 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 371-08-330 Board decision making on appeals.

WAC 371-08-330 is a procedural rule which establishes which appeals the pollution control hearings board will hear as short-board appeals. Short-board appeals are appeals heard and decided by one member of the pollution control hearings board.

Hearing Location(s): Environmental Hearings Office, 4224 6th Avenue S.E., Building 2, Lacey, WA 98504-0903, on January 3, 2008, at 1:30 p.m.

Date of Intended Adoption: January 8, 2008.

Submit Written Comments to: Kay Brown, Environmental Hearings Office, 4224 6th Avenue S.E., Building 2, Lacey, WA 98504-0903, e-mail eho@eho.wa.gov, fax (360) 438-7699, by January 3, 2008.

Assistance for Persons with Disabilities: Contact Robyn Bryant by phone (360) 459-6327.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the amendment to WAC 371-08-330 is to increase, from \$5,000 to \$15,000, the maximum amount of a penalty which can be reviewed by a single board member in a short-board appeal. This increase makes the rule consistent with the authorizing statute, RCW 43.21B.305, which allows a single board member to hear and decide an appeal of a penalty of 15,000 or less.

Reasons Supporting Proposal: The statute was amended in 2005 and a rule amendment was overlooked at that time. This amendment will make the rule consistent with the statute.

Statutory Authority for Adoption: Chapters 43.21B, 34.05 RCW.

Statute Being Implemented: RCW 43.21B.310.

Name of Proponent: Environmental hearings office, governmental.

Name of Agency Personnel Responsible for Drafting: Kay Brown, Environmental Hearings Office, (360) 459-6327; Implementation and Enforcement: Kathleen D. Mix, Environmental Hearings Office, (360) 459-6327.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No statement is required for adoption of rules because this rule amendment does not impose costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required because WAC 371-08-330 is a rule dealing with procedures for an agency hearing, see RCW 34.05.328 (5)(c)(i).

November 19, 2007

Kathleen D. Mix, Chair
Pollution Control Hearings Board

AMENDATORY SECTION (Amending WSR 96-15-003, filed 7/3/96, effective 8/3/96)

WAC 371-08-330 Board decision making on appeals.

The number of board members required to make a decision on a case differs depending on the type of case.

(1) **Short-board appeals.** Pursuant to RCW 43.21B.305, ~~((eases)) an appeal~~ that involves ~~((an appeal of)) a~~ ~~((civil))~~ penalty of ~~((five))~~ fifteen thousand dollars or less imposed by the department of ecology, another state agency or an air pollution control authority may be heard by a single member of the board. Such ~~((eases))~~ appeals are called short-board appeals. The decision of that single member shall be the final decision of the entire board.

(2) **Full-board appeals.** All other types of appeals are called full-board appeals. The chairperson may assign a single member to hold the hearing in a full-board appeal; however, at least two members shall review the record and issue a decision. Two members of the board shall constitute a quorum for making a decision and may act although one position on the board is vacant or one board member is unavailable.

(3) **Administrative appeals judges.** For both full-board and short-board cases, the chairperson may appoint an administrative appeals judge from the environmental hearings office to be the presiding officer.

WSR 07-23-086

PROPOSED RULES

GAMBLING COMMISSION

[Filed November 20, 2007, 9:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-17-185.

Title of Rule and Other Identifying Information: Amending WAC 230-07-140 Minimum accounting records for class D and above bingo, 230-06-125 Renew your license in a timely manner, 230-14-080 Prize limits and percentage of winners required, 230-14-120 Permanently ~~removing~~ reserving punch boards or pull-tab series, 230-16-015 Punch board and pull-tab sales restrictions, and 230-10-350 Recording bingo winners; and new sections WAC 230-15-553 Cash equivalent defined, 230-09-007 Canceling, changing time, date, or location of fund-raising events, 230-06-106 Limited transfers of ownership allowed, 230-06-107 Ownership changes—Allowed, 230-06-108 Ownership changes—Prohibited, 230-06-007 Licensed employees must wear nametags, 230-03-018 One annual change of bingo premises allowed, 230-10-446 Defining "linked bingo prize," 230-14-266 Location of unplayed punch boards and pull-tab series,

230-16-052 Standards for flares, and 230-07-051 Accumulating excessive reserves.

Hearing Location(s): Double Tree Guest Suites, 16500 Southcenter Parkway, Seattle, WA 98188, (206) 575-8220, on January 11, 2008, at 9:30 a.m.

Date of Intended Adoption: January 11, 2008.

Submit Written Comments to: Susan Arland, P.O. Box 4240, Olympia, WA 98504-2400, e-mail Susan2@wsgc.wa.gov, fax (360) 486-3625, by January 1, 2008.

Assistance for Persons with Disabilities: Contact Gail Grate, Executive Assistant, by January 1, 2008, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The gambling commission has rewritten its rules manual using plain English techniques. We anticipate the project will be completed by January 1, 2008. The rules manual was broken into sections and rewritten a section at a time. Most chapters are codified. This clean-up package includes rules and rule interpretations that were inadvertently missed during the rewrite, or to include amendments that were made to our current rules after the rules simplification project rule was adopted or to make housekeeping changes so the rules are easier to read.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025 because there is no impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

November 20, 2007

Susan Arland

Rules Coordinator

NEW SECTION

WAC 230-03-018 One annual change of bingo premises allowed. (1) Once each license year, a bingo licensee may apply to play bingo at a different location (special property bingo).

(2) The bingo activity is limited to:

(a) Three consecutive days; and

(b) Sixteen consecutive hours each day.

(3) The application must include the following information and fee, at least fifteen days before the first date, which includes:

(a) Name and address of the proposed location and dates of activity; and

(b) Names and addresses of all persons who have an interest of any kind in those premises; and

(c) Amount of rent, if any, that would be paid for the use of the premises; and

(d) Rent calculation.

(4) The special property bingo permit must be posted on the premises during the event.

NEW SECTION

WAC 230-06-007 Licensed employees must wear nametags. (1) Licensed employees must wear a nametag when working or playing cards at their place of employment.

(2) Off-duty card room employees do not have to wear a nametag while playing if the card room operator clearly posts a sign stating, "Employees of this card room may participate in the card games while off-duty as players. Upon your request, the card room floor person will identify any employee playing cards."

(3) The nametag must:

(a) Be provided by the operator; and

(b) Be a minimum of three inches by two inches; and

(c) Display at least the employee's first name; and

(d) Display the employer's name; and

(e) Be worn on the employee's chest; and

(f) Be clear and visible to the players in the gambling activity.

(4) The employee and operator are equally responsible to ensure the nametag is properly displayed.

NEW SECTION

WAC 230-06-106 Limited transfers of ownership allowed. Gambling licenses must not be transferred to another person or entity until the licensee requesting the transfer has received written approval from us. All requests to transfer a license must be in the format we require. Licensees may request to transfer a gambling license under the following conditions:

Commercial businesses

(1) A commercial business may request to transfer their license to another business when:

(a) The ownership is exactly the same for both businesses, for example a partnership becomes a limited liability company (LLC); and

(b) The licensed gambling activity will be conducted at the same business premises.

Charitable or nonprofit organizations

(2) A bona fide charitable or nonprofit organization may request to transfer their gambling license to another bona fide charitable or nonprofit organization after a completed merger or consolidation.

Partnerships

(3) If one partner in a partnership leaves and is not replaced, the remaining partner(s) must submit a transfer application to document the transfer of ownership to the remaining partner(s).

Sole proprietorship

(4) A sole proprietor may request to transfer their license to a partnership, corporation or LLC, which is solely owned by the same person.

Death, bankruptcy and other special circumstances

(5) A licensed operator may transfer their license when proven incapacity, death, receivership, bankruptcy or assignment for benefit of creditors to a court-appointed or court-confirmed guardian, executor or administrator, receiver, trustee, or assignee for the benefit of creditors occurs. The person to whom the license is transferred may continue to operate under the license.

(a) Transfers are allowed when:

(i) A transfer fee is paid; and

(ii) The person to whom the license is transferred is qualified to hold a gambling license; and

(iii) We give prior written approval.

(b) The license is renewable based on the original expiration date of the license; and

(c) Any transferred license will be void when the person to whom the license was transferred no longer holds the court-appointed, or court-confirmed, position.

NEW SECTION

WAC 230-06-107 Ownership changes—Allowed. A licensee must report any change in ownership when the change would result in any person or organization becoming a substantial interest holder. Changes in ownership are allowed under the following conditions:

Ownership changes to be reported

(1) The following changes must be reported to us when:

(a) A person or organization becomes a substantial interest holder when they were not a substantial interest holder immediately before the transaction; or

(b) A substantial interest holder purchases any additional stock.

Reporting requirements

(2) Each notification must:

(a) Be submitted in writing on a form provided by us within thirty days of the close of a change of ownership; and

(b) Include the required fee; and

(c) Include:

(i) **For corporations**—A copy of the meeting minutes detailing the change of ownership; or

(ii) **For limited liability companies (LLC)**—An amended LLC agreement that includes the new member(s).

New owners must qualify for a license

(3) The gambling license(s) of any corporation or LLC in which a person holds or acquires a substantial interest may be revoked if the new person is not qualified to hold a gambling license.

Review and investigation

(4) An investigation of each transaction will be conducted by us to determine the details of the transaction and the qualifications of each substantial interest holder.

NEW SECTION**WAC 230-06-108 Ownership changes—Prohibited.**

All gambling licenses held by a business will become void when the following changes in ownership occur and a new license must be obtained before operating any gambling activities:

(1) A person or business becomes the owner of more than fifty percent of corporate stock or limited liability membership shares/units, when the person or business did not have at least the following substantial interest in the business immediately before the transaction:

(a) Ten or more percent ownership in a privately held corporation or limited liability company (LLC); or

(b) Five or more percent ownership in a publicly traded corporation or LLC; or

(2) The business is sold; or

(3) A sole proprietorship brings in a new person and forms a partnership, corporation or LLC; or

(4) A partnership adds another partner or changes partners; or

(5) A change in a person's ownership, together with ownership of any members of his/her immediate family, who are under the age of eighteen years of age, results in the person having more than fifty percent interest in the business when the person did not have at least the following substantial interest in the business:

(a) Ten or more percent ownership in a privately held corporation or LLC; or

(b) Five or more percent ownership in a publicly traded corporation or LLC.

AMENDATORY SECTION (Amending Order 601, filed 8/22/06, effective 1/1/08)

WAC 230-06-125 Renew your license in a timely manner. (1) Licensees must ensure a properly completed renewal application and all applicable fees are received at our ~~((headquarters))~~ administrative office in Lacey at least fifteen days before the expiration date on their license.

(2) If licensees do not submit a properly completed application and all fees ~~((;))~~ and their license expires, ~~((and))~~ they must immediately stop the gambling activity covered by their license.

(3) If your license expires, you must submit ~~((a new))~~ an application and you must not operate any gambling activity until a new license is issued.

NEW SECTION**WAC 230-07-051 Accumulating excessive reserves.**

A charitable or nonprofit organization must not accumulate excessive reserves. Organizations accumulating excessive reserves may be deemed as organized primarily for purposes of gambling. Reserves must be computed by using the finan-

cial data most recently filed with us. Funds transferred to an endowment or specifically restricted trust fund will not be treated as excessive reserves if the following restrictions are met:

(1) The endowment or dedicated trust fund is either legally irrevocable or restricted in a manner that approval is required by a majority of the membership prior to use or transfer of the endowment or dedicated trust principal; and

(2) The funds are expressly dedicated for funding new programs, capital projects, or to endow service-providing activities; and

(3) The funds are saved according to a plan that includes the amount to be reserved, the purpose for which the funds are being reserved, and the estimated time the reserves will be used; and

(4) The plan is approved by the organization's officers or board of directors and documentation for the endowment or trust fund is submitted to us for review and approval; and

(5) The total amount of net gambling income that is transferred to endowment or trust funds may exceed two million dollars only if the organization petitions the director to exceed this limitation and the director approves the petition. The director may disapprove with written comments or approve a modified level based on facts presented. The director's decision may be appealed to the commission. Appeal of this decision will be heard at a regular public meeting of the commission. The commission's decision shall be final. Petitions for relief must include:

(a) The reason for the request, including whether the increased reserves are for charitable or nonprofit purposes and planned timelines for use; and

(b) The total amount of reserves requested; and

(c) The impact on programs if the petition is denied; and

(d) Alternative sources of funding available.

AMENDATORY SECTION (Amending Order 609, filed 4/24/07, effective 1/1/08)

WAC 230-07-140 Minimum accounting records for Class D and above bingo licensees and licensees with combined activities over five hundred thousand dollars. Class D and above bingo licensees and licensees who are authorized for more than five hundred thousand dollars gross gambling receipts from combined gambling activities during any fiscal year must keep accounting records necessary to document all receipts, costs, and disbursements, including, at least, those related to gambling activities.

Requirements for accounting records

For these accounting records, licensees must:

(1) Conform to generally accepted accounting principles (GAAP) except as modified by other commission rules; and

(2) Include, at least:

(a) A cash disbursements journal and/or check register;

(b) A cash receipts and/or sales journal;

(c) A list of all assets the licensee paid for;

(d) A listing of all liabilities;

(e) A complete general ledger system; and

(f) A list of all donated items valued at more than two hundred fifty dollars; and

(g) Bank statements, related deposit slips, and canceled checks or facsimiles of canceled checks; and

Donated items

- (3) Document donated items. Licensees must:
- (a) Use the fair market value at the time of donation;
 - (b) Add items to the list no later than thirty days after receiving them;
 - (c) Remove items when they no longer have legal ownership; and
 - (d) Not remove an item from the list, even if it has become obsolete or completely depreciated, until management has completed and documented appropriate review. A depreciation schedule for all capitalized items is sufficient; and
 - (e) Add items to the list when they convert items from gambling merchandise prize inventory to licensee use. This list must include, at least:
 - (i) A description of the item;
 - (ii) The date purchased, acquired by donation, or converted from the gambling prize pool;
 - (iii) The cost at the time of purchase or, if donated, the fair market value at the time received; and
 - (iv) The date and method of disposition of the item; and

Method of accounting

- (4) Use the accrual method of accounting; and
- (5) The cash, modified cash, or tax basis accounting methods may be used only if that method accurately represents the licensee's financial position, the results of operations, and the licensee does not have substantial liabilities or expenses, such as depreciation or amortization expenses, which require a current outlay of cash; and

Expenditures for nongambling activities

- (6) Sufficiently document all expenditures relating to nongambling activities in order to provide a satisfactory audit trail and to allow us to verify that the funds were used for the licensee's stated purpose(s); and

Expenditures for gambling activities

- (7) Sufficiently document all of the licensee's expenditures relating to gambling activities. Canceled checks or facsimiles of canceled checks, and bank statements are not sufficient documentation for expenditures without additional support. Licensees must provide additional support for expenditures, including:
 - (a) Invoices or other supporting documents from commercial vendors or service agencies with at least:
 - (i) The name of the person or entity selling the goods or providing the services;
 - (ii) A complete description of goods or services purchased;
 - (iii) The amount of each product sold or services provided;
 - (iv) The price of each unit;
 - (v) The total dollar amount billed; and
 - (vi) The date of the transaction.
 - (b) Documentation, in the form of checks and other written records of disbursements in excess of twenty-five dollars

made directly to individuals who do not furnish normal, business type, invoices or statements. The written records must indicate at least:

- (i) The name of the person receiving the payment;
- (ii) The amount;
- (iii) The date; and
- (iv) The purpose; and
- (8) Document allocated expenditures that relate to more than one function to the various functions. Licensees must document their methods of allocation and make them available for our review; and

Capitalizing assets

- (9) Include a capitalization policy based on materiality and expected life of operating assets. To determine a minimum level for capitalizing assets, licensees must:
 - (a) Capitalize and depreciate, or amortize over the useful life of the asset, any assets of more than two thousand dollars that have a useful life of more than one year; and
 - (b) Capitalize and depreciate, or amortize over sixty months, beginning with the first month that bingo games are conducted, preoperating start up costs related to bingo games of more than six thousand dollars; and
 - (c) Amortize, over a period not longer than the life of the lease, any leasehold improvements related to gambling activities that are more than six thousand dollars. Licensees may extend the amortization period to include any lease option periods if the licensee's management states a reasonable expectation that they will use the lease option; and
 - (d) Charge all unamortized leasehold improvements as an expense of the gambling activities in the year that the lease expires.

NEW SECTION

WAC 230-09-007 Canceling, changing time, date, or location of fund-raising events. (1) If a fund-raising event (FRE) licensee cancels an FRE, they must:

- (a) Notify us and local law enforcement in advance; and
 - (b) Return the original license to us.
- (2) If a licensee changes the time, date, or location of an FRE, they must:
- (a) Notify us in writing at least ten days in advance. The notice must include a signed statement from the chief executive officer that the appropriate law enforcement agency has been notified of the change; and
 - (b) Pay the appropriate fee; and
 - (c) Return the original license to us.

AMENDATORY SECTION (Amending Order 610, filed 4/24/07, effective 1/1/08)

WAC 230-10-350 Recording bingo winners. Organizations conducting bingo under the provisions of RCW 9.46.0321, and bingo activities conducted at a qualified agricultural fair, and Class A and B bingo licensees do not have to follow this rule if they meet the requirements for lower volume charitable or nonprofit organizations in WAC 230-07-125. All other bingo licensees must report all prize payments for bingo games and drawings for prizes, good neigh-

bor prizes, and second element of chance prizes at bingo games and record payment on a prize receipt.

(1) Licensees must use prize receipts printed by a commercial printer. The receipts must:

(a) Be two-part, self-duplicating paper that provides for an original and a duplicate copy; and

(b) If the licensee is Class F or above, be imprinted with the name of the licensee and a consecutive ascending number that does not repeat in at least 100,000 occurrences; and

(c) If the licensee is Class E or below, the receipt is not required to be imprinted with the licensee's name and the consecutive ascending number may repeat in 1,000 occurrences; and

(d) Provide space for the licensee to record the information we require.

Prize receipt

~~(2) Licensees may receipt merchandise prizes with a cost or fair market value of fifteen dollars or less on a single merchandise prize receipt log sheet. Licensees must:~~

~~(a) Maintain a separate merchandise prize receipt log for each session; and~~

~~(b) Retain the receipt log as a part of the bingo daily records.~~

~~(3)) Operators must complete the prize receipt including, at least:~~

(a) Date; and

(b) Game number; and

(c) Complete name ~~((and address))~~ of the winner; and

(d) Complete address of the winner, if the prize is over twenty dollars; and

(e) Dollar amount of the prize or the operator's cost, if noncash prize; and

~~((e)) (f) Full description of all noncash prizes; and~~

~~((f)) (g) Check number, if any portion of the prize is paid by check; and~~

~~((g)) (h) Initials of the bingo worker making the payout; and~~

~~((h)) (i) Initials of the cashier making the payment.~~

Prize log

(3) Licensees may receipt prizes of twenty dollars or less on a single prize log. Licensees must:

(a) Maintain a separate prize log for each session; and

(b) Record the same information required on prize receipts; and

(c) Retain the prize log as a part of the bingo daily records.

Linked bingo prizes

(4) Except for linked bingo prizes, licensees may omit an address for the winner if:

(a) ~~((The prize is greater than \$300; and~~

~~((b)) The licensee pays all prizes greater than \$300 by check or a combination of cash and check; and~~

~~((e)) (b) Checks are drawn on the licensee's gambling bank account; and~~

~~((f)) (c) Checks used are of a type that provides a duplicate copy. The copies must be kept as a part of the daily bingo records; and~~

~~((e)) (d) Checks are made payable only to the winner. Licensees may make checks for prizes won by players under age eighteen payable to the guardian or immediate family member accompanying the player; and~~

~~((f)) (e) Licensees note the game number and prize receipt number on the check; and~~

~~((g)) (f) The bank returns all original checks to the licensee. Licensees must have the original checks available for our inspection on demand; and~~

~~((h)) (g) The licensee does not cash or otherwise redeem prize checks.~~

(5) Licensees must record the complete name and address of the winner of linked bingo prizes.

(6) Licensees must:

(a) Issue prize receipts ~~((sequentially))~~ consecutively in an ascending order; and

(b) Void and retain with the daily records any prize receipts bearing a lower number than the highest number issued during a session; and

(c) Give the original of each prize receipt to the winner; and

(d) Keep a duplicate copy as a part of their records for not less than three years; and

(e) Account for and document all prize receipts purchased or otherwise obtained on a vendor's invoice; and

(f) Keep the vendor's invoice, or a photocopy of it, on the premises and have it available for our inspection. The purchase invoice must document, at least:

(i) Name of the vendor;

(ii) Name of the purchasing organization;

(iii) Date of purchase;

(iv) Number of receipts purchased; and

(v) The beginning and ending receipt number.

NEW SECTION

WAC 230-10-446 Defining "linked bingo prize."

"Linked bingo prize" means a prize that is awarded to a player who is competing against players from multiple participating bingo halls. The categories of prizes are:

(1) The main prize, which is the prize paid each time the game is played to the first verified winner(s);

(2) The consolation prize, which is the prize paid at each participating licensed bingo hall after the main prize has been determined; and

(3) The bonus prize, which is a prize awarded when a player achieves the winning pattern in a predetermined number of calls or on a specific predetermined number.

AMENDATORY SECTION (Amending Order 614, filed 8/10/07, effective 1/1/08)

WAC 230-14-080 Prize limits and percentage of winners required. Punch board or pull-tab operators must not possess, display, put out for play, sell, or otherwise transfer punch boards or pull-tab series that:

(1) Have a total payout of less than sixty percent of the total gross gambling receipts of the board or series; or

(2) Offer boards or series, except for progressive series or carry-over jackpots, with a single cash prize that is more than

~~(a) Five)) twenty-five hundred dollars ((in cash for pull-tabs under a dollar; or~~

~~(b) If we have approved it before, seven hundred fifty dollars for one dollar pull-tabs)); or~~

(3) Offer a single merchandise prize that is more than ~~((seven hundred fifty))~~ twenty-five hundred dollars including markup; or

(4) Have a single pull-tab or punch with multiple winning combinations that are more than the prize limit; or

(5) Offer prizes for purchasing the last pull-tab or last punch (last sale) that are more than:

(a) One hundred dollars cash; or

(b) Merchandise that costs the licensee more than one hundred dollars; or

(c) The highest prize offered, whichever is less; or

(6) Series that have a key to any winning numbers or symbols.

AMENDATORY SECTION (Amending Order 614, filed 8/10/07, effective 1/1/08)

WAC 230-14-120 Permanently ~~((removing))~~ reserving punch boards or pull-tab series. Operators may permanently reserve a series for a player who leaves the premises, but intends to return and play the game. The operator must:

(1) Prominently post house rules that are clear in meaning and with criteria for reserving a series and the length of time players may reserve a series; and

(2) Ensure that the player meets the criteria in the house rules; and

(3) Contain all of the reserved series in a secure manner, clearly identifying it as permanently reserved, and store it in the immediate vicinity of the pull-tab area; and

(4) Not reserve a board or series for a player without play for more than seven days and not be more than a total reserve time of fourteen days; and

(5) Not have more than twenty-five boards or series permanently reserved for players at one time; and

(6) Maintain adequate accounting records showing the status of all reserved boards or series; and

(7) Not place reserved boards or series out for public play after the reserving player finishes playing them.

NEW SECTION

WAC 230-14-266 Location of unplayed punch boards and pull-tab series. (1) Punch board and pull-tab operators must retain unplayed punch board and pull-tab series:

(a) On the licensed premises; or

(b) Off premises, if the operator provides them to us when requested.

(2) Operators must make these items available on the licensed premises to those persons listed in RCW 9.46.130 and to local taxing authorities to inspect.

NEW SECTION

WAC 230-15-553 Cash equivalent defined. "Cash equivalent" means a:

(1) Treasury check; or

(2) Personal check; or

(3) Traveler's check; or

(4) Wire transfer of funds; or

(5) Money order; or

(6) Certified check; or

(7) Cashier's check; or

(8) Check drawn on the licensee's account payable to the patron or to the licensee; or

(9) Voucher recording cash drawn against a credit card or debit card.

AMENDATORY SECTION (Amending Order 615, filed 9/17/07, effective 1/1/08)

WAC 230-16-015 Punch board and pull-tab sales restrictions. (1) Manufacturers, distributors, and manufacturer and distributor representatives must sell or distribute punch boards, pull-tabs, pull-tab dispensers, or related equipment only to other distributor, distributor representative, or punch board and pull-tab licensees.

(2) Distributor and distributor representatives must buy punch boards, pull-tabs, pull-tab dispensers, or related equipment only from other licensed manufacturer, distributor, or distributor representatives.

(3) Manufacturers must not sell any punch board or pull-tab series unless the winning punches or pull-tabs are randomly distributed and mixed among all other punches or pull-tabs in that board or series.

(4) Manufacturers, distributors, and manufacturer and distributor representatives must not make sales promotion statements, demonstrations, or implications ((must not)) that imply:

(a) One portion of a pull-tab series contains more winners than other portions; or

(b) ~~((Some series sell more pull tabs before winning pull tabs are reached in the distribution.))~~ Operators can sell pull-tabs in some manner that would give the operator an advantage in selling more pull-tabs before having to pay out winners.

NEW SECTION

WAC 230-16-052 Standards for flares. Flares must clearly display the:

(1) Manufacturer of the punch board or pull-tab series. A stamp, seal or label identifying the manufacturer may be substituted if we have been informed; and

(2) Manufacturer assigned series number; and

(3) I.D. stamp; and

(4) Cost of each punch or pull-tab; and

(5) Total number of punches or pull-tabs in the series.

For any newly designed flare or any previously designed flare for pull-tab series with a ticket count over six thousand, which has not yet been packaged, the number of pull-tabs must be printed in one-half inch size lettering; and

(6) Prizes available and the winning number or symbols. For prizes over twenty dollars, the winning numbers or symbols must be printed so each can be permanently and conspicuously deleted off the flare as each prize is won. A progressive jackpot meter board, for progressive jackpot series, is a supplement to the flare.

WSR 07-23-092
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Juvenile Rehabilitation Administration)

[Filed November 20, 2007, 10:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-16-089.

Title of Rule and Other Identifying Information: The department is amending chapter 388-740 WAC, Juvenile parole revocation: WAC 388-740-0010 Definitions, 388-740-0040 Parole revocation petition, and 388-740-0070 Confinement.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6094, on December 27, 2007, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 28, 2007.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail DSHSR-PAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on December 27, 2007.

Assistance for Persons with Disabilities: Contact Jenisha Johnson, DSHS Rules Consultant, by December 18, 2007, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsj14@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending these rules to implement RCW 13.40.210 (4)(b), effective October 1, 2007, incorporating statutory language and defining behavior which may be cause for the secretary to modify parole and return a juvenile sex offender to confinement for up to twenty-four weeks.

The department is also incorporating into rule provisions of RCW 13.40.210 (4)(a)(v) and (vi). This law authorizes the secretary to return certain juvenile sex offenders and basic training camp program graduates to confinement for the remainder of his or her sentence. Incorporated into rule also are related guidelines and JRA parole standards.

Additions were made to WAC 388-740-0010 Definitions, WAC 388-740-0040 was amended to reference changes in WAC 388-740-0070 and to include privacy protections. WAC 388-740-0070 Confinement, was reorganized and expanded to include all types of parole revocation authorized in statute, and for ease of reference.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 13.40.210 (4)(b).

Statute Being Implemented: RCW 13.40.210 (4)(a)(iv), (v) and (vi), (4)(b).

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Kecia Rongen, Administrator, Sex Offender Treatment Program, Juvenile Rehabilitation, Office Building 2, Olympia, WA 98504, (360) 902-7952; Implementation: Bob Salsbury, Administrator, Parole Services, Juvenile Rehabilitation, Office Building 2, Olympia, WA 98504, (360) 902-8086; and Enforcement: Woody Hodge, Director, Community Programs, Juvenile Rehabilitation, Office Building 2, Olympia, WA 98504, (360) 902-8100.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Juvenile rehabilitation administration has analyzed the proposed rule amendments and has concluded that they will impose no new costs on small businesses. A comprehensive small business economic impact statement is not required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Lee Mosley, Administrator, Policy and Quality Assurance Program, Office Building 2, 1115 Washington Street, Olympia, WA 98504, phone (360) 902-8092, fax (360) 902-8108, e-mail moslele@dshs.wa.gov.

November 16, 2007

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-17-046, filed 8/7/00, effective 8/27/00)

WAC 388-740-0010 Definitions. "Department" means the department of social and health services.

"Active parole" means all time served by a JRA youth under JRA parole supervision except that time during which the offender is:

(1) Under a JRA warrant;

(2) Held in detention within or outside the state of Washington pending a parole revocation hearing, pending charges or pending a civil commitment hearing under chapter 71.09 RCW;

(3) Serving a term of confinement for a parole revocation;

(4) Placed on seventy-two hour hold status pursuant to RCW 13.40.050;

(5) Placed on unauthorized leave status;

(6) Committed involuntarily for mental health or chemical dependency treatment; or

(7) On temporary assignment status to a county juvenile detention center, a county jail, or to a department of corrections facility.

If no other time is concurrently tolled against active parole per (1) through (7) above, one additional day is tolled against active parole when the offender is subject to:

• A parole revocation initiated by the JRA.

• A seventy-two hour hold in a JRA facility pending a parole revocation hearing.

"Confinement" means electronic monitoring of a juvenile or physical custody of a juvenile:

• By the department of social and health services in a facility operated by or pursuant to a contract with the state of Washington;

• In a group home or inpatient substance abuse program, or juvenile basic training camp, operated by or pursuant to a contract with the state of Washington;

• In a facility operated by the department of corrections under provisions of RCW 13.40.280 or 13.40.285; or

• In a similar facility in another state under terms of the interstate compact and chapter 13.24 RCW.

"**Detention**" means physical custody in Washington state by the department of social and health services in a juvenile rehabilitation administration operated or contracted facility or a Washington state detention facility as defined in RCW 13.40.020(9).

"**Juvenile parole officer**" means a state employee, or person under contract to the state, whose responsibilities include supervising juvenile parolees.

"**Juvenile parolee**" means a person under age twenty-one released from a juvenile rehabilitation administration residential facility and placed under the supervision of a juvenile parole officer.

"**Modification of parole conditions**" means a change in the "order of parole conditions" provided by the juvenile parole officer with full knowledge of the change by the juvenile parolee.

"**Parole**" means a period of supervision following release from a juvenile rehabilitation administration residential facility, during which time certain parole conditions are to be followed.

"**Parole conditions**" mean interventions or expectations that include, but are not limited to, those listed in RCW 13.40.210, intended to facilitate the juvenile parolee's reintegration into the community and/or to reduce the likelihood of reoffending.

"**Secretary**" means secretary of the department of social and health services or his/her designee.

"**Violation**" means behavior by a juvenile parolee contrary to written parole conditions which may result in sanctions that include, but are not limited to, modification of parole conditions and/or confinement.

"**Target victim population**" means persons who, by age, sex, race, ethnicity, body conformation or coloration or other personal characteristics are consistent with those of a JRA youth's known victim(s).

AMENDATORY SECTION (Amending WSR 00-17-046, filed 8/7/00, effective 8/27/00)

WAC 388-740-0040 Parole revocation petition. (1) The juvenile parole officer:

(a) Must initiate a parole revocation petition if the juvenile parole officer has reason to believe the juvenile parolee possessed a firearm or used a deadly weapon during the parole period; or

(b) May initiate a parole revocation petition if the juvenile parole officer has reason to believe the juvenile parolee has violated a condition of parole, other than possession of a firearm or use of a deadly weapon. Criteria in WAC 388-740-0070 (2), (3), (4) and (5) are assessed by the juvenile parole officer to determine the type of revocation and duration of confinement for which to petition.

(2) The petition, on department forms, must include:

(a) A statement of the nature of the violation and the date it occurred;

(b) The relief requested by the juvenile parole officer as a result of the violation;

(c) Notice of the juvenile parolee's right to be represented by an attorney, either one of his/her own choosing or one appointed at public expense;

(d) A parole revocation hearing waiver agreement;

(e) The dated signature of the regional administrator or designee; and

(f) If the parole revocation hearing is not waived, notice of the time, date, and location of the parole revocation hearing and notice that failure to appear may result in default.

(3) An initial copy of the petition that includes the information described in subsection (2)(a) through (e) must:

(a) Be provided to the juvenile parolee or the juvenile parolee's attorney; and

(b) Be provided to the juvenile parolee's parent/guardian, if reasonably possible, and in accordance with laws and rules governing the release of confidential information. The juvenile parole officer must document the date and time he/she provided the initial copy of the petition to the juvenile parolee or the juvenile parolee's attorney.

(4) A juvenile parolee, only through an attorney, may waive the right to a parole revocation hearing and agree to the parole revocation and agreed upon relief. The decision to waive must be documented with dated signatures on the original petition.

(5) If the juvenile parolee through his/her attorney does not waive the right to a hearing, the parole revocation petition must be filed with the local office of the state office of administrative hearings within seventy-two hours (excluding Saturdays, Sundays, and holidays) of:

(a) The juvenile parolee being placed in detention for an alleged violation of parole conditions; or

(b) The juvenile parolee or his/her attorney being provided with a copy of the petition under subsection (3) of this section if the juvenile parolee is not detained.

(6) The filed petition must include notice that failure to appear may result in default, and the time, date, and location of the parole revocation hearing, as determined by the state office of administrative hearings. A copy of the filed petition must:

(a) Be served either personally or by certified mail, return receipt requested, on the juvenile parolee or the juvenile parolee's attorney; and

(b) Be provided to the juvenile parolee's parent/guardian, if reasonably possible, and in accordance with laws and rules governing the release of confidential information.

AMENDATORY SECTION (Amending WSR 00-17-046, filed 8/7/00, effective 8/27/00)

WAC 388-740-0070 Confinement. (1) ~~((A juvenile's confinement for violating one or more conditions of parole, as alleged in a parole revocation petition, may not exceed thirty days. Confinement may be continuous, or for a portion of each day, or for certain days each week with the balance of time under supervision. The department must give the juvenile credit against any period of confinement for days served~~

in detention pending a parole revocation hearing. The juvenile must serve his or her confinement in a county detention facility as defined in RCW 13.40.020, a juvenile rehabilitation administration facility, or, if the juvenile parolee is eighteen years old or older, the juvenile may serve his or her confinement in a county jail.

(2) If a juvenile's parole is revoked two or more times during one parole period, the secretary or designee must approve any period of confinement exceeding a combined total of thirty days.

(3) Instead of confinement under subsection (1) of this section, the secretary or designee may return the offender to confinement in an institution for the remainder of the sentence range if:

(a) The offense for which the offender was sentenced is rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, indecent liberties with forcible compulsion, or a sex offense that is also a serious violent offense as defined under RCW 9.94A.030; or

(b) As otherwise authorized in RCW 13.40.210.

(4)) Mandatory confinement.

A JRA youth must be confined for a minimum of thirty days for possession of a firearm or use of a deadly weapon while on parole, per RCW 13.40.210 (4)(c).

(2) Confinement for up to thirty days.

(a) A JRA youth may be confined for a period not to exceed thirty days for violating one or more conditions of parole, per RCW 13.40.210 (4)(a)(i) through (iv).

(b) Confinement may be continuous, or for a portion of each day, or for certain days each week with the balance of time under supervision.

(3) Confinement for remainder of sentence.

As provided for in RCW 13.40.210 (4)(a)(v) and (vi), certain JRA youth who are placed on parole before completing their maximum sentence may be returned to confinement for the remainder of their sentence if they violate conditions of parole.

(a) Sex Offenders: A JRA youth may be returned to confinement for the remainder of the sentence range if the offense for which the youth was sentenced is rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, indecent liberties with forcible compulsion, or a sex offense that is also a serious violent offense as defined under RCW 9.94A.030.

(i) The remainder of sentence is calculated as the maximum aggregated term of qualifying sex offenses, minus the number of days served on the aggregated sentence for the qualifying sex offense or offenses.

(ii) Previous days in confinement for a parole violation are not deducted in this calculation.

(iii) Aggregated terms are served such that any term or terms for qualifying sex offenses are considered the last served.

(b) Graduates of basic training camp: A JRA youth who has successfully completed the juvenile offender basic training camp program under RCW 13.40.320 may be returned to confinement for the remainder of their sentence range.

(i) The remainder of sentence is calculated as the maximum aggregated term or four hundred fifty-five days, which-

ever is shorter, minus the number of days served on their aggregated sentence and on active parole.

(ii) Previous days in confinement for a parole violation are not deducted in this calculation.

(4) Juvenile sex offender confinement for up to twenty-four weeks.

(a) As provided for in RCW 13.40.210 (4)(b), a JRA youth may be returned to confinement for up to twenty-four weeks if:

(i) The JRA youth was sentenced for a sex offense as defined in RCW 9A.44.130;

(ii) The JRA youth is known to have violated the terms of parole; and

(iii) In the determination of the secretary, other graduated sanctions or interventions have not been effective in controlling the youth's parole violations; or

(iv) The behavior is so egregious it warrants the use of the higher level intervention and the violation:

(A) Is a known pattern of behavior consistent with the previous sex offense that puts the JRA youth at high risk for reoffending sexually;

(B) Consists of sexual behavior that is determined to be predatory as defined in RCW 71.09.020; or

(C) Requires a review under chapter 71.09 RCW, due to a recent overt act.

(b) The total number of days of confinement under subsection (4) shall not exceed the number of days provided by the maximum sentence imposed by the disposition for the underlying sex offense or offenses pursuant to RCW 13.40.0357.

(c) The department shall not aggregate multiple parole violations that occur prior to the parole revocation hearing and impose consecutive twenty-four week periods of confinement for each parole violation under subsection (4).

(5) Criteria for juvenile sex offender confinement.

A parole revocation petition to confine a juvenile sex offender for the remainder of sentence under subsection (3) or for up to twenty-four weeks under subsection (4) will be based on, but not limited to, the following behavioral and sentence considerations:

(a) Behavioral criteria:

(i) Behavior that appears to constitute a new sex offense or a statement by the JRA youth reporting a new sex offense;

(ii) Statements by the JRA youth that he/she is at imminent risk to re-offend sexually unless confined;

(iii) Accessing, making or possessing child pornography;

(iv) Accessing, making or possessing pornography that depicts excessive physical violence, death or threats of death, torture or infliction of pain, use of a weapon, humiliation or bondage;

(v) Possession of materials which, in total, constitute a "rape kit";

(vi) Unsupervised contact with previous victim(s) or target victim populations, except for approved peer age contact (attending school, etc.);

(vii) Use, possession or providing of drugs and/or alcohol associated with the JRA youth's illegal sexualized behaviors.

(b) Available remainder of sentence range.

If the JRA youth has not served the maximum sentence imposed for the underlying offense or offenses, and confinement under WAC 388-740-0070 (3) or (4) are both available, the petition for relief will take into account whether the remainder of sentence is sufficient to accomplish the purposes of the revocation. If so, the petition will be for confinement for the remainder of the sentence range; if not, the petition will be for up to twenty-four weeks of confinement.

(6) If the JRA youth's parole is revoked, the department must give the youth credit against any period of confinement for days served in detention pending the parole revocation hearing.

(7) Confinement.

(a) The JRA youth must serve his or her confinement in a facility or detention facility as defined in WAC 388-740-0010.

(b) If the JRA youth is eighteen years old or older, confinement may be in a county jail.

(c) Confinement may be in a department of corrections facility pursuant to RCW 13.40.280 or 13.40.285.

(d) If the JRA youth is in custody in another state that is party to the interstate compact on juveniles, the confinement may be served in the receiving state when provided for in chapter 13.24 RCW, subject to provisions of the interstate compact to which the state of Washington is a party.

(8) If a juvenile's parole is revoked two or more times during one parole period, the secretary must approve any period of confinement exceeding a combined total of thirty days.

(9) Unless conditions of parole are otherwise amended, the order of parole conditions in effect at the time the parole was revoked shall be deemed reinstated immediately following any period of confinement.