

**WSR 11-12-006**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
(Division of Child Support)

[Filed May 19, 2011, 11:05 a.m., effective June 19, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The division of child support (DCS) is adopting new and amended sections in chapter 388-14A WAC in order to implement statutory changes contained in two major bills from the 2009 legislative session: (1) SHB 1845 (chapter 476, Laws of 2009) regarding medical support obligations in child support orders; and (2) ESHB 1794 (chapter 84, Laws of 2009), which makes changes to chapter 26.19 RCW, the Washington state child support schedule, based on the recommendations of the 2007 child support schedule workgroup which was convened under 2SHB 1009 (chapter 313, Laws of 2007). In addition, this rule making includes new sections and/or amendments to existing sections to clarify, streamline or otherwise increase the efficiency and cost-effectiveness of DCS processes.

Amending WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement?, 388-14A-2035 Do I assign my rights to support when I receive public assistance?, 388-14A-2036 What does assigning my rights to support mean?, 388-14A-3100 How does the division of child support establish a child support obligation when there is no child support order?, 388-14A-3115 The notice and finding of financial responsibility is used to set child support when paternity is not an issue, 388-14A-3120 The notice and finding of parental responsibility is used to set child support when the father's duty of support is based upon an affidavit of paternity which is not a conclusive presumption of paternity, 388-14A-3125 (~~The notice and finding of medical responsibility is used to set~~) DCS may establish a medical support obligation when the custodial parent receiving medical assistance declines full child support enforcement services, 388-14A-3140 What can happen at a hearing on a support establishment notice?, 388-14A-3200 How does DCS determine my support obligation?, 388-14A-3205 How does DCS calculate my income?, 388-14A-3300 How does the division of child support require me to make my support payments to the Washington state support registry when my support order says to pay someone else?, 388-14A-3310 What notice does the division of child support serve(~~s a notice of support owed~~) to establish a fixed dollar amount under an existing child support order(~~-~~)?, 388-14A-3312 The division of child support serves a notice of support owed (~~for unreimbursed medical expenses~~) to establish a fixed dollar amount owed (~~under a child support order~~) by either parent for medical support, 388-14A-3315 When DCS serves a notice of support debt or a notice of support owed (~~or notice of support owed for unreimbursed medical expenses support~~), we notify the other party to the child support order, 388-14A-3317 (~~What is an annual review of a support order under RCW 26.23.110~~) What happens if a party makes a timely request for hearing on a notice of support owed?, 388-14A-3318 (~~What is an annual review of a notice of support owed under WAC 388-14A-3312~~) What happens if a party makes an

untimely request for hearing on a notice of support owed?, 388-14A-3320 What happens at a hearing on a notice of support owed?, 388-14A-3400 Are there limitations on how much of my income is available for child support?, 388-14A-4100 How does the division of child support enforce my obligation to provide health insurance for my children?, 388-14A-4110 If my support order requires me to provide (~~health insurance~~) medical support for my children, what do I have to do?, 388-14A-4112 When does the division of child support enforce a custodial parent's obligation to provide (~~health insurance coverage~~) medical support?, 388-14A-4115 Can my support order reduce my support obligation if I pay for health insurance?, 388-14A-4120 DCS uses the National Medical Support Notice to enforce an obligation to provide health insurance coverage, 388-14A-4165 What happens when a noncustodial parent does not earn enough to pay child support plus the health insurance premium?, 388-14A-4175 (~~Is an employer~~) Who is required to notify the division of child support when insurance coverage for the children ends?, 388-14A-4180 When must the division of child support communicate with the DSHS (~~health and recovery services~~) medicaid purchasing administration?, 388-14A-5007 If the paying parent has more than one case, can DCS apply support money to only one specific case?, 388-14A-6300 Duty of the administrative law judge in a hearing to determine the amount of a support obligation and 388-14A-8130 How does DCS complete the WSCSS worksheets when setting a joint child support obligation (~~when the parents of~~) for a child in foster care (~~are married and residing together~~)?; and new sections WAC 388-14A-3127 How does DCS add a monthly financial obligation to an existing administrative order for medical support only?, 388-14A-3302 How does the division of child support decide what notice to serve when there is already an existing order for child support?, 388-14A-3311 How does DCS prepare a notice of support owed to determine amounts owed to establish a fixed dollar amount under an existing child support order?, 388-14A-3316 When can a notice of support owed become a final order?, 388-14A-3323 What happens in a hearing on a notice of support owed served under WAC 388-14A-3311?, 388-14A-3324 What happens in a hearing on a notice of support owed served under WAC 388-14A-3312?, 388-14A-3330 What are the procedures for the annual review of a notice of support owed?, 388-14A-3410 What amount does DCS use for the self-support reserve?, 388-14A-4111 When may DCS decline a request to enforce a medical support obligation?, 388-14A-4800 When does a child support order contain an undifferentiated amount of child support?, 388-14A-4810 How does DCS determine if a support order contains a differentiated or undifferentiated amount of support?, 388-14A-4820 What can I do if I don't agree with DCS' decision on whether my support order contains a differentiated or undifferentiated amount of support?, and 388-14A-4830 How does DCS divide support obligations between two or more cases when a support order does not contain a differentiated amount of support?

Citation of Existing Rules Affected by this Order: Amending WAC 388-14A-1020, 388-14A-2035, 388-14A-2036, 388-14A-3100, 388-14A-3115, 388-14A-3120, 388-14A-3125, 388-14A-3140, 388-14A-3200, 388-14A-3205,

388-14A-3300, 388-14A-3310, 388-14A-3312, 388-14A-3315, 388-14A-3317, 388-14A-3318, 388-14A-3320, 388-14A-3400, 388-14A-4100, 388-14A-4110, 388-14A-4112, 388-14A-4115, 388-14A-4120, 388-14A-4165, 388-14A-4175, 388-14A-4180, 388-14A-5007, 388-14A-6300, and 388-14A-8130.

Statutory Authority for Adoption: RCW 26.09.105(17), 26.18.170(19), 26.23.050(8), 26.23.110(14), 34.05.020, 34.05.060, 34.05.220, 74.08.090, 74.20.040, 74.20A.055(9), and 74.20A.056(11).

Adopted under notice filed as WSR 11-07-013 on March 8, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 13, Amended 29, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 13, Amended 29, Repealed 0.

Date Adopted: May 16, 2011.

Katherine I. Vasquez  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 09-02-059, filed 1/5/09, effective 1/27/09)

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

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

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

**"Accessible coverage"** means health insurance coverage which provides primary care services to the children with reasonable effort by the custodian.

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

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

(1) An order entered under chapter 34.05 RCW;

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

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

**"Agency"** means the Title IV-D provider of a state. In Washington, this is DCS.

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

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

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

**"Annual fee"** means the twenty-five dollar annual fee charged between October 1 and September 30 each year, required by the federal deficit reduction act of 2005 and RCW 74.20.040.

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

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

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

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

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

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

**"Cash medical support"** is a term used in RCW 26.09.-105 and certain federal regulations to refer to amounts paid by an obligated parent to the other parent or to the state in order to comply with the medical support obligation stated in a child support order.

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

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

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

**"Court order"** means a judgment, decree or order of a Washington state superior court, another state's court of comparable jurisdiction, or a tribal court.

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

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

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

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

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

**"Dependent child"** means a person:

(1) Seventeen years of age or younger who is not self-supporting, married, or a member of the United States armed forces;

(2) Eighteen years of age or older for whom a court order requires support payments past age eighteen;

(3) Eighteen years of age or older, but under nineteen years of age, for whom an administrative support order exists if the child is participating full-time in a secondary school program or the same level of vocational or technical training.

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

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

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

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

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

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

(1) Wages or salary;

(2) Commissions and bonuses;

(3) Periodic payments under pension plans, retirement programs, and insurance policies of any type;

(4) Disability payments under Title 51 RCW;

(5) Unemployment compensation under RCW 50.40.-020, 50.40.050 and Title 74 RCW;

(6) Gains from capital, labor, or a combination of the two; and

(7) The fair value of nonmonetary compensation received in exchange for personal services.

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

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

(1) Partnerships and associations;

(2) Trusts and estates;

(3) Joint stock companies and insurance companies;

(4) Domestic and foreign corporations;

(5) The receiver or trustee in bankruptcy; and

(6) The trustee or legal representative of a deceased person.

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

**"Family"** means the person or persons on whose behalf support is sought, which may include a custodial parent and one or more children, or a child or children in foster care placement. The family is sometimes called the assistance unit.

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

**"Family member"** means the caretaker relative, the child(ren), and any other person whose needs are considered in determining eligibility for assistance.

**"Foreign order"** means a court or administrative order entered by a tribunal other than one in the state of Washington.

**"Foster care case"** means a case referred to the Title IV-D agency by the Title IV-E agency, which is the state division of child and family services (DCFS).

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

(1) The representation of the existence or the nonexistence of a fact;

(2) The representation's materiality;

(3) The representation's falsity;

(4) The speaker's knowledge that the representation is false;

(5) The speaker's intent that the representation should be acted on by the person to whom it is made;

(6) Ignorance of the falsity on the part of the person to whom it is made;

(7) The latter's:

(a) Reliance on the truth of the representation;

(b) Right to rely on it; and

(c) Subsequent damage.

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

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

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

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

**"Health insurance"** means insurance coverage for all medical services related to an individual's general health and well being. These services include, but are not limited to: Medical/surgical (inpatient, outpatient, physician) care, medical equipment (crutches, wheel chairs, prosthesis, etc.), pharmacy products, optometric care, dental care, orthodontic care, preventive care, mental health care, and physical therapy. Health insurance coverage does not include medical assistance provided under chapter 74.09 RCW.

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

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

**"Income"** includes:

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

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

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

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

**"Medical assistance"** means medical benefits under Title XIX of the federal Social Security Act provided to families as an alternative or supplement to TANF.

**"Medical expenses"** for the purpose of establishing support obligations under RCW 26.09.105, 74.20A.055 and 74.20A.056, or for the purpose of enforcement action under chapters 26.23, 74.20 and 74.20A RCW, including the notice of support debt and the notice of support owed, means(~~:-~~

•) medical costs incurred on behalf of a child, which include:

• Medical services related to an individual's general health and well-being, including but not limited to, medi-

cal/surgical care, preventive care, mental health care and physical therapy; and

- Prescribed medical equipment and prescribed pharmacy products;
- Health care coverage, such as coverage under a health insurance plan, including the cost of premiums for coverage of a child;
- Dental and optometrical costs incurred on behalf of a child; and
- Copayments and/or deductibles incurred on behalf of a child.

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

**"Medical support"** means (~~either or both~~) any combination of the following:

- (1) (~~Medical expenses; and~~
- (2)) Health insurance coverage for a dependent child;
- (2) Amounts owed by one parent to the other parent as a monthly payment toward the premium paid by the other parent for health insurance coverage for a dependent child;
- (3) Amounts owed by a noncustodial parent to the state as a monthly payment toward the cost of managed care coverage for the child by the state, if the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment; and
- (4) Amounts owed by one parent to the other parent as his or her proportionate share of uninsured medical expenses for a dependent child.

**"Monthly payment toward the premium"** means a parent's contribution toward:

- Premiums paid by the other parent for insurance coverage for the child; or
- Amounts paid for managed care coverage for the child by the state, if the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment.

This contribution is based on the obligated parent's proportionate share of the premium paid, but may not exceed twenty-five percent of the obligated parent's basic support obligation.

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

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

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

**"Obligated parent"** means a parent who is required under a child support order to provide health insurance coverage or to reimburse the other parent for his or her share of

medical expenses for a dependent child. The obligated parent could be either the NCP or the CP.

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

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

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

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

**"Past support"** means support arrear.

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

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

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

**"Physical custodian"** means custodial parent (CP).

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

**"Private insurance"** means accessible health insurance for a child provided by a parent without the need for service of a national medical support notice, and does not include health insurance provided by the state without a contribution from either parent.

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

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

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

- (1) Mailing a support establishment notice to the noncustodial parent in the manner described in WAC 388-14A-3105;
- (2) Referral to a sheriff or other server of process, or to a locate service or department employee for locate activities;
- (3) Tracing activity such as:
  - (a) Checking local telephone directories and attempts by telephone or mail to contact the custodial parent, relatives of the noncustodial parent, past or present employers, or the post office;
  - (b) Contacting state agencies, unions, financial institutions or fraternal organizations;

(c) Searching periodically for identification information recorded by other state agencies, federal agencies, credit bureaus, or other record-keeping agencies or entities; or

(d) Maintaining a case in the division of child support's automated locate program, which is a continuous search process.

(4) Referral to the state or federal parent locator service;

(5) Referral to the attorney general, prosecuting attorney, the IV-D agency of another state, or the Department of the Treasury for specific legal or collection action;

(6) Attempting to confirm the existence of and to obtain a copy of a paternity acknowledgment; or

(7) Conducting other actions reasonably calculated to produce information regarding the NCP's whereabouts.

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

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

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

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

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

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

**"Retained support"** means a debt owed to the division of child support by anyone other than a noncustodial parent.

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

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

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

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

**"Superior court order"** means a judgment, decree or order of a Washington state superior court, or of another state's court of comparable jurisdiction.

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

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

awarded in an action under Title IV-D to establish or enforce a support obligation.

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

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

**"Support money"** means money paid to satisfy a support obligation, whether it is called child support, spousal support, alimony, maintenance, enforcement of medical expenses, health insurance, or birth costs.

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

**"Support order"** means a court order, administrative order or tribal court order which contains a determination, finding, decree or order that sets a child support obligation (including medical support) and orders either the payment of a set or determinable amount of money for current support and/or a support debt, or the provision of medical support, or both.

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

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

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

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

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

**"Title IV-D agency"** or **"IV-D agency"** means the division of child support, which is the agency responsible for carrying out the Title IV-D plan in the state of Washington. Also refers to the Washington state support registry (WSSR).

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

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

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

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

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

**"Tribunal"** means a state court, tribal court, administrative agency, or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage.

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

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

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

**"Uninsured medical expenses":**

~~((+))~~ For the purpose of establishing or enforcing support obligations ~~((under RCW 26.23.110;))~~ means:

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

~~((+))~~ (2) Premiums, copayments, or deductibles incurred on behalf of a child~~((; and~~

~~((+))~~ (2) Includes health insurance premiums that represent the only health insurance covering a dependent child when either:

~~((+))~~ (a) Health insurance for the child is not required by a support order or cannot be enforced by the division of child support (DCS); or

~~((+))~~ (b) The premium for covering the child exceeds the maximum limit provided in the support order).

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

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

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

**"WSSR"** is the Washington state support registry.

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

**AMENDATORY SECTION** (Amending WSR 06-03-120, filed 1/17/06, effective 2/17/06)

**WAC 388-14A-2035 Do I assign my rights to support when I receive public assistance?** (1) When you receive public assistance you assign your rights to support to the

state. This section applies to all applicants and recipients of cash assistance under the state program funded under Title IV-A of the federal Social Security Act.

(2) As a condition of eligibility for assistance, a family member must assign to the state the right to collect and keep, subject to the limitation in subsection (3), any support owing to the family member or to any other person for whom the family member has applied for or is receiving assistance.

(3) Amounts assigned under this section may not exceed the lesser of the total amount of assistance paid to the family or the total amount of the assigned support obligation.

(4) When you receive medicaid or medical benefits, you assign your rights to medical support to the state. This applies to all recipients of medical assistance under the state program funded under Title XIX of the federal Social Security Act;

(a) If your children receive medicaid or other state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment and if your order provides for the payment of a monthly payment toward the premium when the obligated parent does not provide coverage, the division of child support (DCS) may serve a notice of support owed to establish the amount owed by the noncustodial parent as a monthly payment toward the premium paid for coverage by the state, as provided in WAC 388-14A-3312.

(b) Any amounts established under WAC 388-14A-3312 for periods while your children receive medicaid or other state-financed medical coverage are assigned to the state and are distributed as provided in WAC 388-14A-5001 through 388-14A-5050.

(c) Amounts assigned under this section may not exceed the lesser of the total amount of premiums paid by the state for your children or the total amount of the assigned monthly payment toward the premium.

(5) In addition to the assignment described in this section, there is an assignment of support rights under Title IV-E of the social security act when a child receives foster care services.

(a) The state provides foster care programs which may be federally-funded or state funded, or may place a child with a relative.

(b) As part of its state plan under Title IV-D of the social security act and 45 CFR 302.52, DCS provides child support enforcement services for foster care cases as required by 45 CFR 302.33, RCW 74.20.330 and 74.20A.030.

AMENDATORY SECTION (Amending WSR 09-02-059, filed 1/5/09, effective 1/27/09)

**WAC 388-14A-2036 What does assigning my rights to support mean?** (1) As a condition of eligibility for assistance, a family member must assign to the state the right to collect and keep, subject to the limitation in WAC 388-14A-2035(3):

(a) Any support owing to the family member or to any other person for whom the family member has applied for or is receiving assistance if the family applied for cash public assistance before October 1, 2008.

(b) Support owing to the family member, or to any other person for whom the family member has applied for or is

receiving cash public assistance, for any month during which the family receives assistance.

(2) While your family receives assistance, support is distributed and disbursed in accordance with WAC 388-14A-5000 through 388-14A-5015.

(3) After your family terminates from assistance, certain accrued arrears remain assigned to the state in accordance with the following rules:

(a) For assistance applications dated prior to October 1, 1997, you permanently assigned to the state all rights to support which accrued before the application date until the date your family terminated from assistance.

(b) For assistance applications dated on or after October 1, 1997, and before October 1, 2000:

(i) You permanently assigned to the state all rights to support which accrued while your family receives assistance; and

(ii) You temporarily assigned to the state all rights to support which accrued before the application date, until October 1, 2000, or when your family terminated from assistance, whichever date is later.

(c) For assistance applications dated on or after October 1, 2000, and before October 1, 2008:

(i) You permanently assigned to the state all rights to support which accrued while the family received assistance; and

(ii) You temporarily assigned to the state all rights to support which accrued before the application date, until the date your family terminated from assistance.

(d) For assistance applications dated on or after October 1, 2008, you permanently assign to the state all rights to support which accrue while the family receives assistance.

(4) When you assign your medical support rights to the state, you authorize the state on behalf of yourself and the children in your care to enforce the noncustodial parent's full duty to provide medical support.

(a) When you begin receiving medicaid or medical assistance, you do not assign to the state any accrued medical support arrears that may be owed to you by the noncustodial parent (NCP).

(b) If your support order provides for the payment of a monthly payment toward the premium when the obligated parent does not provide coverage, the division of child support (DCS) may serve a notice of support owed to establish the amount owed by the NCP as a monthly payment toward the premium paid for coverage by the state, as provided in WAC 388-14A-3312.

(c) After you terminate medicaid or medical assistance, any assigned medical arrears remain assigned to the state.

AMENDATORY SECTION (Amending WSR 03-17-013, filed 8/12/03, effective 9/12/03)

**WAC 388-14A-3100 How does the division of child support establish a child support obligation when there is no child support order?** (1) When there is no order setting the amount of child support a noncustodial parent (NCP) should pay, the division of child support (DCS) serves a support establishment notice on the NCP and the custodial parent (CP). A support establishment notice is an administrative

notice that can become an enforceable order for support if nobody requests a hearing on the notice.

(2) DCS may serve a support establishment notice when there is no order that:

(a) Establishes the ~~((noncustodial parent's))~~ NCP's support obligation for the child(ren) named in the notice; or

(b) Specifically relieves the ~~((noncustodial parent))~~ NCP of a support obligation for the child(ren) named in the notice.

(3) Whether support is based upon an administrative order or a court order, DCS may serve a support establishment notice when the parties to a paternity order subsequently marry each other and then separate, or parties to a decree of dissolution remarry each other and then separate. The remaining provisions of the paternity order or the decree of dissolution, including provisions establishing paternity, remain in effect.

(4) Depending on the legal relationship between the NCP and the child for whom support is being set, DCS serves one of the following support establishment notices:

(a) Notice and finding of financial responsibility (NFFR), see WAC 388-14A-3115. This notice is used when the NCP is either the mother or the legal father of the child. WAC 388-14A-3102 describes when DCS uses a NFFR to set the support obligation of a father who has signed an acknowledgment or affidavit of paternity.

(b) Notice and finding of parental responsibility (NFPR), see WAC 388-14A-3120. This notice is used when the NCP was not married to the mother but has filed an affidavit or acknowledgment of paternity. WAC 388-14A-3102 describes when DCS uses a NFPR to set the support obligation of a father who has signed an acknowledgment or affidavit of paternity.

(c) "Medical support only" NFFR or NFPR, which as of October 1, 2009, replaced the notice and finding of medical responsibility (NFMR), see WAC 388-14A-3125. ((This notice)) A medical support only NFFR or NFPR, whichever is appropriate. is used when DCS seeks to set only a medical support obligation instead of a monetary child support obligation.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

**WAC 388-14A-3115 The notice and finding of financial responsibility is used to set child support when paternity is not an issue.** (1) A notice and finding of financial responsibility (NFFR) is an administrative notice served by the division of child support (DCS) that can become an enforceable order for support, pursuant to RCW 74.20A.055.

(2) The NFFR:

(a) Advises the noncustodial parent and the custodial parent (who can be either a parent or the physical custodian of the child) of the support obligation for the child or children named in the notice. The NFFR fully and fairly advises the parents of their rights and responsibilities under the NFFR.

(b) Includes the information required by RCW 26.23.050 and 74.20A.055.

(c) Includes a provision that both parents are obligated to provide medical support, as required by RCW 26.09.105, 26.18.170 and 26.23.050. This requirement does not apply to

the custodial parent when the custodial parent is not one of the parents of the child covered by the order.

(d) Includes a provision that apportions the share of uninsured medical expenses to both the mother and the father, pursuant to RCW 26.09.105, 26.18.170 and 26.23.050.

(e) May include an obligation for the noncustodial parent to ((provide support for)) contribute his or her proportionate share of the cost of day care or ((special child-rearing expenses)) childcare, ((pursuant to chapter 26.19 RCW)) which may be stated either as a sum certain amount per month, or as a proportion of the expenses incurred by the custodial parent.

(f) Warns the noncustodial parent (NCP) and the custodial parent (CP) that at an administrative hearing, the administrative law judge (ALJ) may set the support obligation in an amount higher or lower than, or different from, the amount stated in the NFFR, if necessary for an accurate support order.

(3) As provided in WAC 388-14A-3125, DCS may serve a notice and finding of financial responsibility that can become an enforceable order for support to establish and enforce a health insurance obligation. This type of NFFR is called "medical support only" NFFR.

(4) DCS uses a medical support only NFFR when the custodial parent has requested medical support enforcement services only and has asked DCS in writing not to collect monetary child support.

(5) A medical support only NFFR does not include a monthly financial support obligation, but may include:

(a) An obligation to pay a monthly payment toward the premium paid by the CP or the state for health insurance coverage for the child(ren); and

(b) An obligation to pay a proportionate share of the child(ren)'s uninsured medical expenses.

(6) An administrative order resulting from a medical support only NFFR may later be modified to include a monthly financial support obligation, as provided in WAC 388-14A-3925(2).

(7) After service of the NFFR, the NCP and the CP must notify DCS of any change of address, or of any changes that may affect the support obligation.

~~((4))~~ (8) The NCP must make all support payments to the Washington state support registry after service of the NFFR. DCS does not give the NCP credit for payments made to any other party after service of a NFFR, except as provided by WAC 388-14A-3375.

~~((5))~~ (9) DCS may take immediate wage withholding action and enforcement action without further notice under chapters 26.18, 26.23, and 74.20A RCW when the NFFR is a final order. WAC 388-14A-3110 describes when the notice becomes a final order.

~~((6))~~ (10) In most cases, a child support obligation continues until the child reaches the age of eighteen. WAC 388-14A-3810 describes when the obligation under the NFFR can end sooner or later than age eighteen.

~~((7))~~ (11) If paternity has been established by an affidavit or acknowledgment of paternity, DCS attaches a copy of the acknowledgment, affidavit, or certificate of birth record information to the notice. A party wishing to challenge the

acknowledgment or denial of paternity may only bring an action in court to rescind or challenge the acknowledgment or denial of paternity under RCW 26.26.330 and 26.26.335.

~~((8))~~ (12) If the parents filed a paternity affidavit or acknowledgment of paternity in another state, and by that state's law paternity is therefore conclusively established, DCS may serve a NFFR to establish a support obligation.

~~((9))~~ (13) A hearing on a NFFR is for the limited purpose of resolving the NCP's accrued support debt and current support obligation. The hearing is not for the purpose of setting a payment schedule on the support debt. The NCP has the burden of proving any defenses to liability.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

**WAC 388-14A-3120 The notice and finding of parental responsibility is used to set child support when the father's duty of support is based upon an affidavit of paternity which is not a conclusive presumption of paternity.** (1) A notice and finding of parental responsibility (NFPR) is an administrative notice served by the division of child support (DCS) that can become an enforceable order for support, pursuant to RCW 74.20A.056.

(2) The NFPR differs from a notice and finding of financial responsibility (NFFR) (see WAC 388-14A-3115) because the parties may request genetic testing to contest paternity after being served with a NFPR.

(3) DCS serves a NFPR when:

(a) An affidavit acknowledging paternity is on file with the center for health statistics and was filed before July 1, 1997; or

(b) An affidavit acknowledging paternity is on file with the vital records agency of another state and the laws of that state allow the parents to withdraw the affidavit or challenge paternity.

(4) DCS attaches a copy of the acknowledgment of paternity or certification of birth record information to the NFPR.

(5) The NFPR advises the noncustodial parent (NCP) and the custodial parent (who is either the mother or the physical custodian of the child) of the support obligation for the child or children named in the notice. The NFPR fully and fairly advises the parents of their rights and responsibilities under the NFPR. The NFPR warns the NCP and the custodial parent (CP) that at an administrative hearing on the notice, the administrative law judge (ALJ) may set the support obligation in an amount higher or lower than, or different from, the amount stated in the NFPR, if necessary for an accurate support order.

(6) The NFPR includes the information required by RCW 26.23.050, 74.20A.055, and 74.20A.056.

(7) The NFPR includes a provision that both parents are obligated to provide medical support, pursuant to RCW 26.09.105, 26.18.170 and 26.23.050. This requirement does not apply to the custodial parent when the custodial parent is not one of the parents of the child covered by the order.

(8) The NFPR includes a provision that apportions the share of uninsured medical expenses to both the mother and

the father, pursuant to RCW 26.09.105, 26.18.170 and 26.23.050.

~~(9)~~ (9) The NFPR may include an obligation for the noncustodial parent to ((provide support for)) contribute his or her proportionate share of the cost of day care expenses or ((special child-rearing expenses)) childcare, ((pursuant to chapter 26.19 RCW)) which may be stated either as a sum certain amount per month, or as a proportion of the expenses incurred by the custodial parent.

(10) DCS may not assess an accrued support debt for a period longer than five years before the NFPR is served. This limitation does not apply to the extent that the NCP hid or left the state of Washington for the purpose of avoiding service.

(11) As provided in WAC 388-14A-3125, DCS may serve a notice and finding of parental responsibility that can become an enforceable order for support to establish and enforce a health insurance obligation. This type of NFPR is called a "medical support only" NFPR.

(12) DCS uses a medical support only NFPR when the custodial parent has requested medical support enforcement services only and has asked DCS in writing not to collect monetary child support.

(13) A medical support only NFPR does not include a monthly financial support obligation, but may include:

(a) An obligation to pay a monthly payment toward the premium paid by the CP or the state for health insurance coverage for the child(ren); and

(b) An obligation to pay a proportionate share of the child(ren)'s uninsured medical expenses.

(14) An administrative order resulting from a medical support only NFPR may later be modified to include a monthly financial support obligation, as provided in WAC 388-14A-3925(2).

(15) After service of the NFPR, the NCP and the CP must notify DCS of any change of address, or of any changes that may affect the support obligation.

~~((12))~~ (16) The NCP must make all support payments to the Washington state support registry after service of the NFPR. DCS does not give the NCP credit for payments made to any other party after service of the NFPR, except as provided by 388-14A-3375.

~~((13))~~ (17) DCS may take immediate wage withhold action and enforcement action without further notice under chapters 26.18, 26.23, and 74.20A RCW when the NFPR is a final order. See WAC 388-14A-3110 for when the notice becomes a final order.

~~((14))~~ (18) In most cases, a child support obligation continues until the child reaches the age of eighteen. WAC 388-14A-3810 describes when the obligation under the NFPR can end sooner or later than age eighteen.

~~((15))~~ (19) Either the NCP, or the mother, if she is also the CP, may request genetic tests. A mother who is not the CP may at any time request that DCS refer the case for paternity establishment in the superior court.

~~((16))~~ (20) DCS does not stop enforcement of the order unless DCS receives a timely request for hearing or a timely request for genetic tests. See WAC 388-14A-3110 for time limits. DCS does not refund any money collected under the notice if the NCP is later:

(a) Excluded from being the father by genetic tests; or

(b) Found not to be the father by a court of competent jurisdiction.

~~((17))~~ (21) If the NCP requested genetic tests and was not excluded as the father, he may request within twenty days from the date of service of the genetic tests in Washington, or sixty days from the date of service of the genetic tests outside of Washington:

(a) A hearing on the NFPR.

(b) That DCS initiate a parentage action in superior court under chapter 26.26 RCW.

~~((18))~~ (22) If the NCP was not excluded as the father, the CP (or the mother, if she is also the CP), may within twenty days of the date of service of the genetic tests request:

(a) A hearing on the NFPR; or

(b) That DCS initiate a parentage action in superior court under chapter 26.26 RCW.

~~((19))~~ (23) If the NCP is excluded by genetic testing, DCS may refer the case for paternity establishment in the superior court.

~~((20))~~ (24) A hearing on a NFPR is for the limited purpose of resolving the NCP's current support obligation, accrued support debt and amount of reimbursement to DCS for paternity-related costs. The hearing is not for the purpose of setting a payment schedule on the support debt. The NCP has the burden of proving any defenses to liability.

**AMENDATORY SECTION** (Amending WSR 03-20-072, filed 9/29/03, effective 10/30/03)

**WAC 388-14A-3125** ~~((The notice and finding of medical responsibility is used to set))~~ **DCS may establish a medical support obligation when the custodial parent receiving medical assistance declines full child support enforcement services.** (1) ~~((A notice and finding of medical responsibility (NFMR) is an administrative notice served by the division of child support (DCS) that can become an enforceable order for support pursuant to chapter 74.20A RCW to establish and enforce a health insurance obligation))~~ When a custodial parent (CP) has requested medical support enforcement services only and has asked in writing that the department not collect monetary child support, the division of child support (DCS) serves either a notice and finding of financial responsibility (NFFR) under RCW 74.20A.055, or a notice and finding of parental responsibility (NFPR) under RCW 74.20A.056, as appropriate, on the noncustodial parent (NCP) to establish an administrative support order that can become an enforceable order for support to establish and enforce a health insurance obligation.

(a) A NFFR or NFPR served to establish an administrative support order that can become an enforceable order for support to establish and enforce a health insurance obligation is called a "medical support only" NFFR or NFPR.

(b) Prior to October 1, 2009, DCS used another notice, called the notice and finding of medical responsibility (NFMR), for this purpose.

(c) DCS uses the medical support only NFFR or NFPR as of October 1, 2009.

(2) DCS may serve a ~~((NFMR))~~ medical support only NFFR or a medical support only NFPR when:

(a) The custodial parent (who is either a parent or the physical custodian of the child) or a dependent child receives or is certified eligible to receive medical assistance and is not receiving cash grant public assistance under 74.12 RCW; and

(b) The custodial parent has requested medical support enforcement services only and has asked DCS in writing not to collect monetary child support.

(3) The ~~((NFMR))~~ medical support only NFFR or medical support only NFPR advises the noncustodial parent (NCP) and the CP (when appropriate) of ((the)) their respective medical support obligations for the children named in the notice. The ~~((NFMR))~~ medical support only NFFR or medical support only NFPR fully and fairly advises the parties of their rights and responsibilities under the ~~((NFMR))~~ medical support only NFFR or medical support only NFPR.

(4) The ~~((NFMR))~~ medical support only NFFR or medical support only NFPR warns the ~~((noneustodial parent and the custodial parent))~~ NCP and the CP that at an administrative hearing on the notice, the administrative law judge (ALJ) may set the support obligation in an amount higher or lower than, or different from, the amount stated in the ~~((NFMR))~~ notice, if necessary for an accurate support order.

(5) The ~~((NFMR))~~ medical support only NFFR or medical support only NFPR includes:

(a) The information required by RCW 26.23.050;

(b) The ~~((noneustodial parent's health insurance))~~ medical support obligation of both parents, pursuant to RCW 26.18.170;

(c) The maximum premium amount ~~((the noneustodial parent))~~ each obligated parent must pay; and

(d) The income basis used to calculate the maximum premium amount, pursuant to WAC 388-14A-3200.

(6) The income basis for an obligation established by DCS for a ~~((NFMR))~~ medical support only NFFR or medical support only NFPR is not binding on any party in any later action to establish a ~~((cash))~~ monthly financial child support obligation.

(7) After service of the ~~((NFMR))~~ medical support only NFFR or medical support only NFPR, both the ((noneustodial parent (NCP) and the custodial parent)) NCP and CP must notify DCS of any change of address, or of any changes that may affect the support obligation.

(8) DCS may take enforcement action under RCW 26.18.170 and chapter 388-14A WAC without further notice when the ~~((NFMR))~~ medical support only NFFR or medical support only NFPR is a final order. See WAC 388-14A-3110 for how a notice becomes a final order.

(9) In most cases, a child support obligation continues until the child reaches the age of eighteen. WAC 388-14A-3810 describes when the obligation under the ~~((NFMR))~~ medical support only NFFR or medical support only NFPR can end sooner or later than age eighteen.

(10) If the ~~((custodial parent))~~ CP applies for full enforcement services or if a TANF grant opens while a hearing on a ~~((NFMR))~~ medical support only NFFR or medical support only NFPR is pending, DCS may, at any time before the hearing record is closed, convert the hearing to a hearing on a notice and finding of financial responsibility (NFFR) under WAC 388-14A-3115 or a notice and finding of parental responsibility (NFPR) under WAC 388-14A-3120. To

convert the hearing, DCS serves a NFFR or NFPR on the parents and files a copy with the administrative law judge (ALJ). The ALJ may grant a continuance if a party requests additional time to respond to the claim for monetary child support.

(11) In a ~~((NFMR))~~ hearing on a medical support only NFFR or medical support only NFPR, the ALJ must determine the:

(a) Basic support obligation, without deviations; and

(b) Maximum premium amount for both parents under chapter 26.19 RCW.

(12) A hearing on a ~~((NFMR))~~ medical support only NFFR or medical support only NFPR is for the limited purpose of resolving the ~~((NCP's))~~ parents' medical support responsibility. The ~~((NCP has))~~ parties each have the burden of proving defenses to their own liability.

(13) If the CP later applies for full enforcement services or if a child covered by the order receives public assistance, DCS may add a monthly financial support obligation to an administrative child support order for medical support only. The procedure required to add the monthly financial support obligation depends on whether DCS serve a medical support only NFFR or medical support only NFPR to establish the administrative support order. See WAC 388-14A-3127.

#### NEW SECTION

**WAC 388-14A-3127 How does DCS ask to add a monthly financial obligation to an existing administrative order for medical support only?** (1) The division of child support (DCS) may ask to add a monthly financial support obligation to an administrative child support order for medical support only, if:

(a) The custodial parent who previously requested medical support only services, files an application for full support enforcement services; or

(b) A child covered by the order receives public assistance.

(2) The procedure required to add the monthly financial support obligation depends on whether DCS served a notice and finding of medical responsibility (NFMR), medical support only notice and finding of financial responsibility (NFFR) or medical support only notice and finding of parental responsibility (NFPR) to establish the administrative support order:

(a) If the medical support obligation was established through service of a NFMR, DCS serves a NFFR under WAC 388-14A-3115 or a NFPR under WAC 388-14A-3120 which requests a monthly financial obligation.

(b) If the medical support obligation was established through service of a NFFR or a NFPR, DCS files a petition to modify the previous administrative order under WAC 388-14A-3925.

AMENDATORY SECTION (Amending WSR 06-09-015, filed 4/10/06, effective 5/11/06)

**WAC 388-14A-3140 What can happen at a hearing on a support establishment notice?** (1) When a ~~((parent))~~ party requests a hearing on a notice and finding of financial responsibility (NFFR), notice and finding of parental respon-

sibility (NFPR), or notice and finding of medical responsibility (NFMR), the hearing is limited to:

(a) Resolving the ~~((NCP's))~~ current and future support obligation and the accrued support debt of the noncustodial parent (NCP); and

(b) Establishing the medical support obligations of both the NCP and the custodial parent (CP), if the CP is the legal or biological parent of the child(ren).

(2) The hearing is not for the purpose of setting a payment schedule on the support debt.

~~((2))~~ (3) The ~~((noncustodial parent (NCP) has))~~ NCP and the CP each have the burden of proving any defenses to their own liability. See WAC 388-14A-3370.

~~((3))~~ (4) ~~((Both))~~ The NCP and/or the ~~((custodial parent))~~ CP ~~((+))~~ must show cause why the terms in the NFFR, NFPR, or NFMR are incorrect.

~~((4))~~ (5) The administrative law judge (ALJ) has authority to enter a support obligation that may be higher or lower than the amounts set forth in the NFFR, NFPR, or NFMR, including the support debt, current support, and the future support obligation.

(a) The ALJ may enter an order that differs from the terms stated in the notice, including different debt periods, if the obligation is supported by credible evidence presented by any party at the hearing, without further notice to any nonappearing party, if the ALJ finds that due process requirements have been met.

(b) Any support order entered by the ALJ must comply with the requirements of WAC 388-14A-6300.

~~((5))~~ (6) The ALJ has no authority to determine custody or visitation issues, or to set a payment schedule for the arrears debt.

~~((6))~~ (7) When a party has advised the ALJ that they will participate by telephone, the ALJ attempts to contact that party on the record before beginning the proceeding or rules on a motion. The ALJ may not disclose to the other parties the telephone number of the location of the party appearing by phone.

~~((7))~~ (8) In support establishment hearings, both the NCP and CP may participate in the hearing. However, in certain cases, there is no "custodial parent" because the child or children are in foster care.

(a) If the NCP ~~((fails))~~ and CP both fail to appear for hearing, see WAC 388-14A-3131.

(b) If only one of the parties appears for the hearing, see WAC 388-14A-3132.

(c) If the NCP ~~((appears))~~ and CP both appear for hearing, see WAC 388-14A-3133.

~~((8))~~ (9) In ~~((ertain))~~ some cases, there can be two NCPs, called "joint NCPs." This happens when DCS serves a joint support establishment notice on the marital community made up of a husband and wife ~~((are jointly served a support establishment notice))~~ who reside together, or on the domestic partnership community made up of two registered domestic partners who reside together, seeking to establish a support obligation for a ~~((common))~~ child in common who is not residing in their home.

(a) If both of the joint NCPs fail to appear for hearing, see WAC 388-14A-3131;

(b) If both of the joint NCPs appear for hearing, see WAC 388-14A-3133; or

(c) One joint NCP may appear and represent the other joint NCP.

~~((9))~~ (10) When ~~((the))~~ a CP ~~((asserts))~~ is granted good cause level B (see WAC 388-422-0020), DCS notifies the CP that ~~((they))~~ the CP will ~~((continue to))~~ receive documents, notices and orders. The CP may choose to participate at any time. Failure to appear at hearing results in a default order but does not result in a sanction for noncooperation under WAC 388-14A-2041.

~~((10))~~ (11) If any party appears for the hearing and elects to proceed, ~~((absent the granting of a continuance))~~ the ALJ hears the matter and enters ~~((an initial decision and))~~ a final order based on the evidence presented, unless the ALJ grants a continuance. The ALJ includes a party's failure to appear in the initial decision and order as an order of default against that party. The direct appeal rights of the party who failed to appear ~~((shall be))~~ are limited to an appeal on the record made at the hearing.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

**WAC 388-14A-3200 How does DCS determine my support obligation?** (1) The division of child support (DCS) determines support obligations using the Washington state child support schedule (the WSCSS), ~~((which is found in))~~ chapter 26.19 RCW, for the establishment and modification of support orders.

(2) When calculating child support obligations, DCS must use the WSCSS worksheets developed by the administrative office of the courts (AOC).

(3) RCW 26.23.050 provides that every child support order must state the monthly child support obligation as a sum certain amount, but does not require that the support obligation be stated in a "per month per child" amount when more than one child is covered by the order. DCS sets support obligations in a per month per child amount whenever possible.

(4) When DCS is calculating a support obligation for more than one child in an administrative support establishment notice, DCS may set the monthly support obligation as an undifferentiated amount, as defined in WAC 388-14A-4800. DCS may do this if one or more of the following are true:

(a) The calculation involves a deviation from the standard calculation based on the existence of children from other relationships;

(b) The support obligation is subject to the "forty-five percent limitation" provided in RCW 26.19.065(1) and described in WAC 388-14A-3400 (1)(a);

(c) The support obligation is subject to the self-support reserve limitation, and the monthly support obligation is greater than the presumptive minimum obligation of fifty dollars per month per child; or

(d) Part III of the worksheets includes health care or day care expenses.

(5) See WAC 388-14A-8100 for rules on completing the worksheets under the WSCSS for cases where DCS is determining support for a child in foster care.

~~((3))~~ (6) DCS does not have statutory authority to set the child support obligations of both the noncustodial parent (NCP) and custodial parent (CP) in the same administrative proceeding, except that RCW 26.09.105, 26.18.170 and 26.23.050 provide that an administrative order that sets the NCP's child support obligation can also determine the CP's medical support obligation.

(a) DCS orders can not set off the support obligation of one parent against the other.

(b) Therefore, the method set forth in Marriage of Arvey, 77 Wn. App 817, 894 P.2d 1346 (1995), must not be applied when DCS determines a support obligation.

~~((4))~~ (7) The limitations in this section apply to DCS staff and to administrative law judges (ALJs) who are setting child support obligations.

(8) See WAC 388-14A-4800 through 388-14A-4830 for more information on differentiated and undifferentiated support amounts.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

**WAC 388-14A-3205 How does DCS calculate my income?** (1) The division of child support (DCS) calculates a parent's income using the best available information~~((;))~~. In the absence of records of a parent's actual earnings, DCS and/or the administrative law judge (ALJ) may impute a parent's income under RCW 26.19.071(6) in the following order of priority:

(a) ~~((Actual income))~~ Full-time earnings at the current rate of pay;

(b) ~~((Estimated income, if DCS has:~~

(i) ~~incomplete information;~~

(ii) ~~Information based on the prevailing wage in the parent's trade or profession; or~~

(iii) ~~Information that is not current.~~

(c) ~~Imputed income under RCW 26.19.071(6))~~ Full-time earnings at the historical rate of pay based on reliable information, such as employment security department data:

(c) Full-time earnings at a past rate of pay where information is incomplete or sporadic;

(d) Full-time earnings at minimum wage in the jurisdiction where the parent resides if the parent has a recent history of minimum wage earnings, is recently coming off public assistance, disability lifeline benefits, supplemental security income, or disability, has recently been released from incarceration, or is a high school student or recent high school graduate; or

(e) Median net monthly income of year-round full-time workers as derived from the United States bureau of census, current population reports.

(2) DCS and the ALJ impute full time earnings at the minimum wage to a TANF recipient in the absence of actual income information~~((; DCS imputes full time earnings at the minimum wage to a TANF recipient))~~. You may rebut the imputation of income if you are excused from being required to work while receiving TANF, because:

(a) You are either engaged in other qualifying WorkFirst activities which do not generate income, such as job search; or

(b) You are excused or exempt from being required to work in order to receive TANF, because of other barriers such as family violence or mental health issues.

AMENDATORY SECTION (Amending WSR 03-20-072, filed 9/29/03, effective 10/30/03)

**WAC 388-14A-3300 How does the division of child support require me to make my support payments to the Washington state support registry when my support order says to pay someone else?** (1) If a support order requires the noncustodial parent (NCP) to pay support to anywhere other than the Washington state support registry (WSSR), the division of child support (DCS) may serve a notice on the NCP telling the NCP to make all future payments to the WSSR.

(2) ~~(DCS may serve a notice of support debt on a non-custodial parent (NCP) as provided in RCW 74.20A.040. See WAC 388-14A-3304.~~

~~(3) DCS may serve a notice of support owed on an NCP as provided in RCW 26.23.110. See WAC 388-14A-3310.~~

~~(4) When DCS serves a notice of support debt or a notice of support owed, DCS sends a notice to the payee under the order. See WAC 388-14A-3315.) DCS determines which notice to serve on the NCP as provided in WAC 388-14A-3302 and elsewhere in this chapter.~~

(3) When DCS serves a notice of support debt under RCW 74.20A.040 or a notice of support owed under RCW 26.23.110, DCS notifies the other party to the order. See WAC 388-14A-3315.

#### NEW SECTION

**WAC 388-14A-3302 How does the division of child support decide what notice to serve when there is already an existing order for child support?** (1) When the division of child support (DCS) serves a notice under WAC 388-14A-3300 to advise a noncustodial parent (NCP) that DCS is enforcing a support order, DCS may serve a notice of support debt, a notice of support debt and registration, a notice of support owed, or any other appropriate notice as provided in this chapter.

(2) If the support order sets the amount of the support obligation in a sum certain amount, DCS may serve a notice of support debt on the NCP as provided in RCW 74.20A.040 and WAC 388-14A-3304.

(3) If DCS is registering a support order or income-withholding order issued in another state, DCS may serve a notice of support debt and registration on the NCP, as provided in RCW 26.21A.500, RCW 26.21A.540 and WAC 388-14A-7100.

(4) Under RCW 26.23.110, DCS may serve a notice of support owed on an NCP or a custodial parent (CP), as appropriate, if the underlying support order:

(a) Does not state the monthly support obligation as a fixed dollar amount;

(b) Contains an escalation clause or adjustment provision for which additional information not contained in the

support order is needed to determine the fixed dollar amount of the support debt or the fixed dollar amount of the current and future support obligation, or both;

(c) Provides that the NCP is responsible for a portion of nonmedical expenses incurred on behalf of the child, but does not reduce the amount owed to a fixed dollar amount; or

(d) Provides that either the NCP or the custodial parent (CP) must provide medical support as provided under either RCW 26.19.105 or 74.20A.300, but does not reduce the medical support obligation to a fixed dollar amount.

(5) As of the effective date of this section, DCS does not serve a notice of support owed under RCW 26.23.110 to determine the NCP's proportionate share of any nonmedical expenses other than daycare or child care expenses incurred on behalf of the child(ren) covered by the order.

(6) The fact that an NCP or CP's request that DCS act on his or her claim for unreimbursed nonmedical expenses is rejected by DCS does not mean that the NCP or CP cannot pursue reimbursement of those expenses by proceeding in court.

(a) If a CP obtains a judgment for unreimbursed non-medical expenses, DCS may enforce the judgment if the CP qualifies for services under WAC 388-14A-2000.

(b) If DCS served a notice of support owed to determine the NCP's proportionate share of nonmedical expenses at some time before the effective date of this section and either NCP or CP requests an annual review under RCW 26.23.110, DCS may continue to provide annual reviews for the support order which was the subject of the prior notice of support owed but only for the same nonmedical expenses addressed in the prior notice of support owed.

(7) See WAC 388-14A-3310 for the general rules for a notice of support owed.

(a) WAC 388-14A-3311 describes the procedures for service of a notice of support owed to:

(i) Determine the fixed dollar amount of the support debt or the fixed dollar amount of the current and future support obligation;

(ii) Implement an escalation clause or adjustment provision;

(iii) Convert a support order set in foreign currency using the current rate of exchange to fix the amount of support in U.S. dollars; or

(iv) Determine as a sum certain the NCP's proportionate share of daycare or child care expenses paid by the NCP.

(b) WAC 388-14A-3312 describes the procedures for service of a notice of support owed to establish a parent's share of medical expenses and/or medical support owed for the child or children covered by a support order.

(8) WAC 388-14A-3307 discusses how DCS proceeds when DCS decides that a determination of controlling order under chapter 26.21A RCW is required. Under that section, DCS may serve a notice of support debt and registration as provided in WAC 388-14A-7100.

(9) WAC 388-14A-3315 provides that:

(a) When DCS serves a notice of support debt or a notice of support owed on the NCP, DCS notifies the CP and the payee under the order, if the CP is not the payee under the order; and

(b) When DCS serves a notice of support owed under WAC 388-14A-3312 on the CP, DCS notifies the NCP.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

**WAC 388-14A-3310 What notice does the division of child support serve((s a notice of support owed)) to establish a fixed dollar amount under an existing child support order((s))?** (1) The division of child support (DCS) may serve a notice of support owed under RCW 26.23.110 on ((a)) either the noncustodial parent (NCP) ((under RCW 26.23.110)) or the custodial parent (CP) whenever it is necessary to establish a fixed dollar amount ((of monthly support and accrued support debt:

(a) If the support obligation under an order is not a fixed dollar amount; or

(b) To implement an adjustment or escalation provision of a court order.

(2) The notice of support owed may include day care costs and medical support if the court order provides for such costs. WAC 388-14A-3312 describes the use of a notice of support owed to collect unreimbursed medical expenses from either of the parties to a support order, no matter which one has custody of the child.

(3) DCS serves a notice of support owed on an NCP like a summons in a civil action or by certified mail, return receipt requested.

(4) Following service on the NCP, DCS mails a notice to payee under WAC 388-14A-3315.

(5) In a notice of support owed, DCS includes the information required by RCW 26.23.110, and:

(a) The factors stated in the order to calculate monthly support;

(b) Any other information not contained in the order that was used to calculate monthly support and the support debt; and

(c) Notice of the right to request an annual review of the order or a review on the date, if any, given in the order for an annual review.

(6) The NCP must make all support payments after service of a notice of support owed to the Washington state support registry. DCS does not credit payments made to any other party after service of a notice of support owed except as provided in WAC 388-14A-3375.

(7) A notice of support owed becomes final and subject to immediate income withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW unless the NCP, within twenty days of service of the notice in Washington:

(a) Contacts DCS, and signs an agreed settlement;

(i) Files a request with DCS for a hearing under this section; or

(ii) Obtains a stay from the superior court.

(b) A notice of support owed served in another state becomes final according to WAC 388-14A-7200.

(8) DCS may enforce at any time:

(a) A fixed or minimum dollar amount for monthly support stated in the court order or by prior administrative order entered under this section;

~~(b) Any part of a support debt that has been reduced to a fixed dollar amount by a court or administrative order; and~~

~~(c) Any part of a support debt that neither party claims is incorrect.~~

~~(9) For the rules on a hearing on a notice of support owed, see WAC 388-14A-3320.~~

~~(10) A notice of support owed or a final administrative order issued under WAC 388-14A-3320 must inform the parties of the right to request an annual review of the order.~~

~~(11) If an NCP or custodial parent (CP) requests a late hearing, the party must show good cause for filing the late hearing request if it is filed more than one year after service of the notice of support owed.~~

~~(12) A notice of support owed fully and fairly informs the NCP of the rights and responsibilities in this section.~~

~~(13) For the purposes of this section, WAC 388-14A-3312, 388-14A-3315 and 388-14A-3320, the term "payee" includes "physical custodian," "custodial parent," or "party seeking reimbursement.") owed under a child support order that was entered in Washington or by any other tribunal. This section provides general information regarding the notice of support owed.~~

(a) WAC 388-14A-3311 describes the procedures for service of a notice of support owed on the NCP to determine the fixed dollar amount of the support debt or the fixed dollar amount of the current and future support obligation, including the NCP's proportionate share of daycare or child care expenses incurred on behalf of the child(ren); and

(b) WAC 388-14A-3312 describes the procedures for service of a notice of support owed on either parent to establish that parent's share of medical expenses and/or medical support owed for the child or children covered by a support order.

(2) The notice of support owed contains an initial finding, showing DCS' calculation of the fixed dollar amount of:

(a) The current and future support obligation;

(b) Any support debt owed; or

(c) Both amounts.

(3) The notice of support owed facilitates enforcement of the underlying support order by implementing the terms of the order, but it cannot modify the terms of the order.

(4) The reasons that DCS may serve a notice of support owed include, but are not limited to:

(a) The support order sets a support obligation but does not state the monthly support obligation as a fixed dollar amount;

(b) DCS is implementing the adjustment or escalation provision of a court order;

(c) The support order provides that the NCP is responsible for paying for a portion of daycare or child care expenses incurred on behalf of the child(ren), but does not reduce the amount owed to a fixed dollar amount. DCS serves the notice of support owed to determine the NCP's proportionate share of those expenses; or

(d) The support order provides that either the NCP or the CP must provide medical support as required under either RCW 26.19.105 or 74.20A.300, but does not reduce the medical support obligation to a fixed dollar amount.

(5) Because of the different purposes for which DCS may serve a notice of support owed under RCW 26.23.110,

DCS has developed two separate forms to use for the notice of support owed:

(a) The basic form used by DCS to establish a fixed dollar amount owed by an NCP under an existing child support order is called the notice of support owed.

(b) DCS developed a special form called the "notice of support owed - medical support" which is used only for the following purposes:

(i) To notify an obligated parent of the obligation to pay a portion of the premium for health insurance provided by the other parent or state of Washington; or

(ii) To determine a fixed dollar amount for uninsured medical expenses incurred on behalf of the children and to demand payment of the obligated parent's proportionate share when a support order requires the obligated parent to pay a specific percentage of uninsured medical expenses.

(6) For the purposes of this chapter, the term "notice of support owed" includes "notice of support owed" and "notice of support owed - medical support."

(7) DCS serves a notice of support owed on the NCP or the CP, as appropriate, like a summons in a civil action or by certified mail, return receipt requested.

(8) WAC 388-14A-3315 provides that, when DCS serves a notice of support owed on one party, DCS notifies the other party to the support order by sending a form called the notice to payee, and encloses a copy of the notice that was served.

(a) After service on the NCP, DCS mails a notice to payee to the CP and to the payee under the order, if the CP is not the payee under the order.

(b) After service on the CP, DCS mails a notice to payee to the NCP.

(9) In a notice of support owed, DCS includes:

(a) The information required by RCW 26.23.110;

(b) Any provision or factors contained in the underlying order regarding how to calculate the monthly support or the amounts claimed for medical support;

(c) Any other information not contained in the order that DCS used to calculate the amounts in the notice; and

(d) Notice of the right to request an annual review of the order or a review on the date given in the order for an annual review, if any. WAC 388-14A-3330 describes the procedures for the annual review of a notice of support owed.

(10) A notice of support owed fully and fairly informs the parties of the rights and responsibilities in this section.

(11) After service of a notice of support owed, the recipient of the notice (which could be either the CP or the NCP, as appropriate,) must make all support payments required by the notice to the Washington state support registry (WSSR). DCS does not credit payments made to any other party after service of a notice of support owed except as provided in WAC 388-14A-3375.

(12) The need to serve a notice of support owed does not require DCS to cease all enforcement actions on a case. At any time, DCS may enforce:

(a) A fixed or minimum dollar amount for monthly support stated in the court order or a prior administrative order entered under this section;

(b) Any part of a support debt that has been reduced to a fixed dollar amount by a court or administrative order; and

(c) Any part of a support debt that neither party claims is incorrect.

(13) A notice of support owed becomes final and subject to immediate income withholding and enforcement as provided in WAC 388-14A-3316.

(14) An objection or request for hearing on a notice of support owed may be timely or untimely:

(a) WAC 388-14A-3317 discusses what happens if a parent makes a timely request for hearing; and

(b) WAC 388-14A-3318 discusses what happens if a parent makes an untimely request for hearing.

(15) WAC 388-14A-3320 provides general information regarding an administrative hearing on a notice of support owed.

(16) WAC 388-14A-3330 provides information regarding the annual review of a notice of support owed.

(17) For the purposes of this section and WAC 388-14A-3311 through 388-14A-3330, the term "payee" includes "physical custodian," "custodial parent," or "party seeking reimbursement."

#### NEW SECTION

**WAC 388-14A-3311 How does DCS prepare a notice of support owed to determine amounts owed to establish a fixed dollar amount under an existing child support order?** (1) The division of child support (DCS) serves a notice of support owed under RCW 26.23.110, WAC 388-14A-3310 and this section on the noncustodial parent (NCP) to determine the fixed dollar amount of the support debt, the fixed dollar amount of the current and future support obligation, or both.

(2) DCS may serve a notice of support owed on the NCP to determine the fixed dollar amount of the current and future support obligation when a support order provides that the NCP's support obligation is:

(a) A certain percentage of the NCP's gross or net earnings;

(b) Set as a sum-certain amount, but the amount is to be paid other than monthly; or

(c) To be determined by some other formula or method requiring the use of information that is not contained in the order, including currency conversion when DCS is enforcing a support order which sets the support amount in a foreign currency.

(3) DCS may serve a notice of support owed on the NCP to determine the amount of the NCP's share of daycare or child care expenses for the children when the support order sets the NCP's obligation as a percentage or proportion of those expenses. A custodial parent (CP) seeking reimbursement for daycare or childcare expenses for the child(ren) must:

(a) Apply for full collection services at the time of the request, unless the CP already has an open full collection case with DCS;

(b) Have paid the daycare or child care expenses before seeking reimbursement through DCS;

(c) Provide proof of payment of those expenses;

(d) Complete the forms provided by DCS for the claim, or at a minimum present the required information and documentation in a format similar to that in the DCS forms; and

(e) Declare under penalty of perjury that he or she has asked the NCP to pay his or her share of the daycare or child care expenses or provide good cause for not asking the NCP for payment.

(4) DCS' denial of a request from either the CP or the NCP to serve a notice of support owed under this section does not affect either party's ability to bring an action in another tribunal to enforce a claim for the other party's proportionate share of expenses paid for the children. Either party may file an action in court to:

(a) Make a claim for reimbursement of daycare or child-care expenses;

(b) Make a claim for reimbursement of any other child rearing expenses; or

(c) Seek any other kind of relief against the other party.

(5) DCS may serve a notice of support owed under this section on the NCP to implement an escalation clause or adjustment provision for which additional information not contained in the support order is needed to determine the fixed dollar amount of the support debt or the fixed dollar amount of the current and future support obligation.

(6) Whenever DCS serves a notice of support owed on the NCP under subsections (2), (3) or (5) above, that notice may also include a determination of the fixed dollar amount of:

(a) Any support debt owing;

(b) Any amount paid by the NCP that exceeds his or her actual current and future support obligation; and

(c) Any amount paid by the NCP that exceeds his or her actual share of day care or child care expenses.

(7) If DCS is preparing a notice of support owed as part of an annual review, the notice may also include a determination of the fixed dollar amount of:

(a) Any support debt owed by the NCP; and

(b) Any amounts calculated under an order resulting from a previous notice of support owed that exceed the NCP's actual obligation after actual income or expenses are considered.

(8) If the notice of support owed contains a determination that the amount owed by the NCP under the previous notice of support owed (if any) is more than his or her actual current and future support obligation or his or her actual share of expenses, the notice addresses how the difference may be credited or repaid, in the absence of an agreement between the parties.

(a) Any overpayment may be applied as an offset to non-assistance child support arrears owed by the NCP on that case only.

(b) If there is no nonassistance debt owed on the case, the reimbursement must be in the form of a credit against the NCP's future child support obligation:

(i) Spread equally over a twelve-month period starting the month after the administrative order becomes final; or

(ii) In a case where the underlying order provides that the NCP's support obligation will end in less than twelve months, spread equally over the remaining life of the order.

(9) In a notice of support owed under this section, DCS includes:

(a) The information required by RCW 26.23.110 and WAC 388-14A-3110;

(b) A description of any provisions or factors contained in the underlying order regarding how to calculate the monthly support obligation or the amounts claimed for non-medical expenses; and

(c) Any other information not contained in the order that DCS used to calculate the amounts in the notice.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

**WAC 388-14A-3312** ~~The division of child support serves a notice of support owed ((for unreimbursed medical expenses)) to establish a fixed dollar amount owed ((under a child support order)) by either parent for medical support.~~ (1) ~~((The division of child support (DCS) may serve a notice of support owed for unreimbursed medical expenses under RCW 26.23.110 on either the noncustodial parent (NCP) or the custodial parent (CP) in order to collect the obligated parent's share of uninsured medical expenses owed to the party seeking reimbursement.~~

~~(2) Either the NCP or CP (if the CP is a party to the support order) may ask DCS to serve a notice of support owed for unreimbursed medical expenses on the other party to the support order, if that party is an obligated party under the support order.~~

~~(a) If the CP is not a party to the support order, DCS can not assist the CP in making a claim for unreimbursed medical expenses, but the CP may seek to recover such expenses by filing an action in court.~~

~~(b) DCS serves the notice if the party seeking reimbursement provides proof of payment of at least five hundred dollars in uninsured medical expenses.~~

~~(3) A notice of support owed for unreimbursed medical expenses:~~

~~(a) May be for a period of up to twenty four consecutive months.~~

~~(b) May include only medical services provided after July 21, 2007.~~

~~(c) May not include months which were included in a prior notice of support owed for unreimbursed medical expenses or a prior judgment.~~

~~(d) Need not be for the twenty four month period immediately following the period included in the prior notice of support owed for unreimbursed medical expenses.~~

~~(4) The party seeking reimbursement must ask DCS to serve a notice of support owed for unreimbursed medical expenses within two years of the expense being incurred.~~

~~(a) The fact that a claim for unreimbursed medical expenses is rejected by DCS does not mean that the parent cannot pursue reimbursement of those expenses by proceeding in court.~~

~~(b) If a parent obtains a judgment for unreimbursed medical expenses, DCS enforces the judgment.~~

~~(5) DCS does not serve a notice of support owed for unreimbursed medical expenses unless the party seeking reimbursement declares under penalty of perjury that he or~~

she has asked the obligated party to pay his or her share of the medical expenses, or provides good cause for not asking the obligated party.

(a) If the medical expenses have been incurred within the last twelve months, this requirement is waived.

(b) If the obligated party denies having received notice that the other party was seeking reimbursement for medical expenses, the service of the notice of support owed for unreimbursed medical expenses constitutes the required notice.

(6) The NCP must apply for full child support enforcement services before the NCP may ask DCS to enforce the CP's medical support obligation.

(a) DCS opens a separate case to enforce a CP's medical support obligation.

(b) The case where DCS is enforcing the support order and collecting from the NCP is called the main case.

(c) The case where DCS is acting on NCP's request to enforce CP's medical support obligation is called the medical support case.

(7) DCS serves a notice of support owed on the obligated parent like a summons in a civil action or by certified mail, return receipt requested.

(8) Following service on the obligated parent, DCS mails a notice to the party seeking reimbursement under WAC 388-14A-3315.

(9) In a notice of support owed for unreimbursed medical expenses, DCS includes the information required by RCW 26.23.110, and:

(a) The factors stated in the order regarding medical support;

(b) A statement of uninsured medical expenses and a declaration by the parent seeking reimbursement; and

(c) Notice of the right to request an annual review of the order, as provided in WAC 388-14A-3318.

(10) A notice of support owed for unreimbursed medical expenses becomes final and subject to immediate income withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW unless the obligated parent, within twenty days of service of the notice in Washington:

(a) Contacts DCS, and signs an agreed settlement;

(b) Files a request with DCS for a hearing under this section; or

(c) Obtains a stay from the superior court.

(11) A notice of support owed for unreimbursed medical expenses served in another state becomes final according to WAC 388-14A-7200.

(12) For the rules on a hearing on a notice of support owed for unreimbursed medical expenses, see WAC 388-14A-3320.

(13) A notice of support owed for unreimbursed medical expenses or a final administrative order issued under WAC 388-14A-3320 must inform the parties of the right to request an annual review of the order.

(14) Depending on the specific requirements of the child support order, and only if the case meets the criteria set out in WAC 388-14A-4111, the division of child support (DCS) may serve a notice of support owed under RCW 26.23.110, WAC 388-14A-3310 and this section:

(a) On either the noncustodial parent (NCP) or the custodial parent (CP), as appropriate, in order to:

(i) Establish as a sum certain and collect the obligated parent's proportionate share of uninsured medical expenses owed to the parent seeking reimbursement. This process is called reimbursement of uninsured medical expenses;

(ii) Establish as a sum certain and collect the obligated parent's monthly payment toward the premium currently being paid by the other parent for insurance coverage for the child; or

(iii) Establish and collect amounts owed under both subsections (a)(i) and (a)(ii) of this section.

(b) On the NCP in order to establish as a sum certain and collect the NCP's monthly payment toward the premium paid by the state for managed care coverage for the child, if the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment.

(2) Unless otherwise specified in the order, each parent's proportionate share of uninsured medical expenses and medical insurance premiums is the same as the proportionate share of income shown on the Washington state child support schedule worksheet that was completed as part of the support order.

(a) On occasion, a tribunal may specify that medical support obligations are to be shared between the parents at a different percentage than the one on the worksheet.

(b) DCS follows the terms of the underlying order when serving a notice of support owed under this section.

(3) WAC 388-14A-4111 and 388-14A-4112 set out some of the reasons why DCS may decline a party's request to enforce a medical support obligation.

(4) Only a CP who is both a parent and a party to the support order may ask DCS to serve a notice of support owed on the NCP under subsection (1)(a) of this section. If the CP is not both a parent and a party to the support order, DCS' denial of the request does not affect the CP's ability to bring an action in another tribunal to enforce the CP's claim against the NCP for medical support. The CP may file an action in court to:

(a) Make a claim for reimbursement of uninsured medical expenses;

(b) Make a claim for a monthly contribution toward any insurance coverage provided by the CP; or

(c) Seek both kinds of relief against the NCP.

(5) DCS may serve a notice of support owed on the NCP under subsection (1)(b) of this section without regard to the CP's status as a parent or party to the order, if the child receives state financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment.

(6) Except as limited in subsection (4) above, either the NCP or the CP may ask DCS to serve a notice of support owed on the other party to the support order in order to establish the obligated parent's proportionate share of uninsured medical expenses as a sum certain amount if the support order establishes such an obligation. The parent seeking reimbursement for uninsured medical expenses must:

(a) Apply for full collection services at the time of the request, unless the parent already has an open full collection case with DCS;

(b) Have paid the uninsured medical expenses before seeking reimbursement through DCS;

(c) Provide proof of payment of at least five hundred dollars in uninsured medical expenses;

(d) Complete the forms provided by DCS for the claim, or at a minimum present the required information and documentation in a format similar to that in the DCS forms; and

(e) Declare under penalty of perjury that he or she has asked the obligated parent to pay his or her share of the uninsured medical expenses or provide good cause for not asking the obligated parent.

(i) If the uninsured medical expenses have been incurred within the last twelve months, this requirement is waived; and

(ii) If the obligated party denies having received notice that the other party was seeking reimbursement for uninsured medical expenses or support, the service of the notice of support owed constitutes the required notice.

(7) A party's request that DCS serve a notice of support owed to establish the other parent's obligation for medical support, including reimbursement for uninsured medical expenses:

(a) May be for a period of up to twenty-four consecutive months;

(b) May include only medical services provided after July 21, 2007;

(c) May not include months which were included in a prior notice of support owed for medical support or a prior judgment;

(d) Need not be for the twenty-four month period immediately following the period included in the prior notice of support owed for medical support;

(e) May include a claim for the obligated parent's proportionate share of any health insurance premiums paid by the requesting parent after July 21, 2007, but this type of claim is limited as provided in subsections (11) and (12) of this section; and

(f) May include a request that DCS establish a monthly payment toward the premium representing the obligated parent's proportionate share of the premium paid by the requesting parent only for premiums paid for health insurance coverage provided after September 30, 2009.

(8) The party seeking reimbursement must ask DCS to serve a notice of support owed for medical support within two years of the date that the uninsured medical expense or premium was incurred.

(a) The fact that a request that DCS serve a notice of support owed for medical support is denied, either in whole or in part, does not mean that the party cannot pursue reimbursement of those uninsured medical expenses by proceeding in court.

(b) If a party obtains a judgment for reimbursement of uninsured medical expenses or other type of medical support, DCS enforces the judgment.

(9) When either party asks DCS to serve a notice of support owed under this section to establish the other party's proportionate share of uninsured medical expenses as a sum cer-

tain amount and the medical expenses include premiums for health insurance for the child(ren) covered by the order, DCS reviews the order to determine whether it provides for a monthly payment toward the premium when the obligated parent does not have insurance available through his or her employer or union.

(a) If the order does not have such a requirement, DCS includes the health insurance premiums in the claim for reimbursement of uninsured medical expenses, but limits the obligated parent's obligation as provided in subsections (11) and (12) of this section.

(b) If the order does have such a requirement, DCS serves a notice of support owed which:

(i) Includes the health insurance premiums in the claim for reimbursement of uninsured medical expenses; and

(ii) If appropriate, includes the provisions necessary to establish a monthly contribution which represents the obligated parent's proportionate share of the premium paid by the other parent (not to exceed twenty-five percent of the obligated parent's basic support obligation), if the obligated parent is not already providing health insurance coverage for the child(ren).

(10) There are two circumstances under which DCS may serve a notice of support owed to establish the amount owed by an obligated parent as a monthly payment toward the premium paid for coverage by the other parent or the state. DCS may serve the notice of support owed when the support order:

(a) Specifically provides that the obligated parent's medical support obligation under RCW 26.09.105 (1)(c) is to pay a monthly payment toward the premium instead of providing health insurance coverage, but does not set that obligation as a sum certain; or

(b) Provides that, if health insurance is not available through the obligated parent's employer or union at a cost not to exceed twenty-five percent of the obligated parent's basic support obligation, the obligated parent must pay a monthly payment toward the premium but does not set that obligation as a sum certain. In this situation, DCS serves the notice of support owed to establish a monthly payment toward the premium paid only if the obligated parent is not already providing coverage for the children.

(11) DCS may collect a maximum of twenty-five percent of the obligated parent's basic support obligation for medical premium costs claimed by the requesting party.

(12) DCS may not collect for medical premium costs claimed by the requesting party through either the monthly payment toward the premium or the reimbursement of uninsured medical expenses if the obligated parent is providing accessible health insurance coverage for the child. The obligated parent is only required to pay those costs if he or she is not providing accessible health insurance coverage for the child.

(13) Once DCS serves a notice of support owed under this section that establishes a medical support obligation representing the obligated parent's proportionate share of the premium paid by the other parent, the obligated parent is not required to reimburse the other parent for any amounts of that proportionate share of the premium which are not paid because those amounts exceed twenty-five percent of the obligated parent's basic support obligation.

(a) That portion of the obligated parent's proportionate share of the premium for a month that is not included in the obligated parent's monthly payment toward the premium may not be recovered by a later claim for unreimbursed medical expenses; and

(b) The obligation to contribute a proportionate share of other uninsured medical expenses is not affected by the establishment of a medical support obligation for medical premiums paid by the requesting parent under this section.

(14) Once DCS serves a notice of support owed under this section that establishes a monthly payment toward the premium which represents the NCP's proportionate share of the premium paid by the state, the NCP is not required to reimburse the state for any amounts of that proportionate share of the premium which are not paid because those amounts exceed twenty-five percent of the NCP's basic support obligation.

(15) An NCP who wants DCS to enforce the CP's medical support obligation must first apply for full child support enforcement services.

(a) DCS enforces a CP's medical support obligation only as provided under WAC 388-14A-4112.

(b) If the parties already have an open full enforcement case with DCS, DCS opens up a new case which is called the medical support case, and the previously-existing case is called the main case.

(c) If the parties do not already have an open full enforcement case with DCS, DCS opens two cases:

(i) The case where DCS is acting on NCP's request to enforce CP's medical support obligation is called the medical support case; and

(ii) The case where DCS is enforcing the underlying support order and collecting from the NCP is called the main case.

(16) In a notice of support owed under this section, DCS includes the information required by RCW 26.23.110, and:

(a) The factors stated in the order regarding medical support;

(b) A statement of uninsured medical expenses and a declaration by the parent seeking reimbursement; and

(c) Any other information not contained in the order that DCS used to calculate the amounts in the notice.

(17) Whenever DCS serves a notice of support owed under this section, that notice may also include a determination of the fixed dollar amount of:

(a) Any medical support debt owed by the obligated parent;

(b) Any amounts owed by the obligated parent under a previous notice of support owed that exceed the obligated parent's actual monthly obligation to pay a proportionate share of the premium after actual expenses or updated proportionate shares owed are considered, but not to exceed twenty-five percent of the obligated parent's basic support obligation; and

(c) Any amounts owed by the obligated parent under a previous notice of support owed that are less than the obligated parent's actual monthly obligation to pay a proportionate share of the premium after actual expenses or updated proportionate shares owed are considered, but not to exceed

twenty-five percent of the obligated parent's basic support obligation.

(18) If the notice of support owed contains a determination that the order resulting from a previous notice of support owed calculated a medical support obligation that differed from the obligated parent's actual obligation after actual expenses or updated proportionate shares owed are considered, the notice may address how any difference may be credited or repaid in the absence of any agreement between the parties.

(19) If the obligated parent is the NCP, any amounts (~~owing determined by~~) owed under a previous notice of support owed exceeding the actual obligation after actual expenses or updated proportionate shares owed are considered in the final administrative order are added to the NCP's support debt (~~on the main case~~).

(~~(15)~~) (a) Amounts owed to the CP are added to the unassigned arrears on the case.

(b) Amounts owed to reimburse the state for medicaid or other state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment are added to the main case as permanently assigned arrears.

(20) If the obligated parent is the CP, any amounts (~~owing determined by~~) owed under a previous notice of support owed exceeding the actual obligation after actual expenses are considered in the final administrative order are paid in the following order:

(a) Any amount owed by the CP to the NCP is applied as an offset to any nonassistance child support arrears owed by the NCP on the main case only; or

(b) If there is no debt owed to the CP on the main case, payment of the amount owed by the CP is in the form of a credit against the NCP's future child support obligation:

(i) Spread equally over a twelve-month period starting the month after the administrative order becomes final (~~but not to exceed ten percent of the current support amount~~); or

(ii) When the future support obligation will end under the terms of the order in less than twelve months, spread equally over the life of the order (~~but not to exceed ten percent of the current support amount~~).

(c) If the amount owed by the CP exceeds the amount that can be paid off using the methods specified in subsections (a) and (b) of this section, DCS uses the medical support case to collect the remaining amounts owed using the remedies available to DCS for collecting child support debts.

(~~(16)~~) If either the obligated parent or the parent seeking reimbursement requests a late hearing, that party must show good cause for filing the late hearing request if it is filed more than one year after service of the notice of support owed for unreimbursed medical expenses.

(17) A notice of support owed for unreimbursed medical expenses fully and fairly informs the obligated parent of the rights and responsibilities in this section.

(18) A notice of support owed for unreimbursed medical expenses under this section is subject to annual review as provided in WAC 388-14A-3318.)

(~~(19)~~) (21) If both the CP and the NCP request that DCS serve a notice of support owed (~~for unreimbursed med-~~

ical expenses)) under this section on the other party, those notices remain separate and may not be combined.

(a) The office of administrative hearings (OAH) may schedule consecutive hearings but may not combine the matters under the same docket number.

(b) The administrative law judge (ALJ) must issue two separate administrative orders, one for each obligated parent.

~~((20))~~ (22) DCS does not serve a second or subsequent notice of support owed ~~((for unreimbursed medical expenses))~~ under this section on an obligated parent until the party seeking reimbursement once again meets the conditions set forth in WAC ~~((388-14A-3318))~~ 388-14A-3330.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

**WAC 388-14A-3315** When DCS serves a notice of support debt or a notice of support owed ~~((or notice of support owed for unreimbursed medical expenses)), we notify the other party to the child support order.~~ (1) ~~((The division of child support (DCS) sends a notice to the payee under a Washington child support order or a foreign child support order when DCS receives proof of service on the noncustodial parent (NCP) of:~~

~~(a) A notice of support owed under WAC 388-14A-3310; or~~

~~(b) A notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312; or~~

~~(c) A notice of support debt under WAC 388-14A-3304))~~ When the division of child support (DCS) needs to notify the parties that DCS is enforcing a previously-entered support order, DCS serves the appropriate notice under WAC 388-14A-3302. DCS may serve a notice of support owed on either the noncustodial parent (NCP) or the custodial parent (CP), as provided in WAC 388-14A-3310.

(2) After DCS serves a notice of support debt or a notice of support owed, DCS notifies the other party to the order by sending a form called the notice to payee, with a copy of the notice that was served, when DCS receives proof of service.

(3) DCS serves a notice of support debt or a notice of support owed on the NCP when DCS is enforcing an order that sets the NCP's support obligation. After service of the notice on the NCP:

(a) DCS sends the notice to payee to the CP, if the CP is the payee under the order; and

(b) DCS sends the notice to payee to the CP and to the payee under the order, if the CP is not also the payee under the order.

(4) DCS serves a notice of support owed on the CP when DCS is enforcing an order that sets the CP's medical support obligation. After service of the notice on the CP, DCS sends the notice to payee to the NCP.

(5) DCS sends the notice to payee by first class mail to the last known address ~~((of the payee))~~ DCS has on file, and encloses a copy of the notice that was served ~~((on the NCP)).~~

~~((3))~~ (a) In a notice to payee, DCS informs the payee of the right to file a request with DCS for a hearing on ~~((a))~~ the notice of support owed ~~((under WAC 388-14A-3310, a notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312,))~~ or ~~((a))~~ the notice of support debt

~~((under WAC 388-14A-3304))~~ within twenty days of the date of a notice to payee that was mailed to a Washington address.

~~((4))~~ (b) If the notice to payee was mailed to an out-of-state address, the payee may request a hearing within sixty days of the date of the notice to payee.

~~((5))~~ (6) The effective date of a hearing request is the date DCS receives the request.

~~((6) When DCS serves a notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312, DCS mails the notice to payee to the parent seeking reimbursement.)~~

#### NEW SECTION

**WAC 388-14A-3316** **When can a notice of support owed become a final order?** (1) The division of child support (DCS) may serve a notice of support owed on either the noncustodial parent (NCP) or the custodial parent (CP), as described in WAC 388-14A-3310.

(2) The notice of support owed becomes a final administrative order subject to immediate income withholding and enforcement without further notice under chapters 26.18, 26.23, 74.20, and 74.20A RCW unless one of the parties, no matter which one was served with the notice, contacts DCS within the time limits provided in this section and:

(a) Objects to the notice;

(b) Requests a hearing;

(c) Negotiates and signs an agreed settlement as provided in WAC 388-14A-3600; or

(d) Obtains a stay from the superior court.

(3) DCS treats any objection to the notice of support owed as a request for hearing on the notice.

(4) If a timely objection is filed, DCS cannot enforce the contested amounts claimed in the notice of support owed until a final order as defined in this section is entered.

(a) WAC 388-14A-3317 discusses what happens if a party makes a timely objection or request for hearing on a notice of support owed.

(b) Even after a timely objection, DCS may still enforce those parts of the support obligation listed in WAC 388-14A-3310(10).

(5) To be timely, the party must object within the following time limits:

(a) Within twenty days of service, if the notice was served in Washington state.

(b) Within sixty days of service, if the notice was served outside of Washington state.

(6) The effective date of an objection or hearing request is the date that DCS receives the objection or request for hearing.

(7) After a timely request for hearing, the final order is one of the following, whichever occurs latest:

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

(b) A final order as defined in WAC 388-14A-6105 and further described in WAC 388-14A-6115.

(8) WAC 388-14A-3318 describes what happens when a party makes an untimely request for hearing on a notice of support owed.

(9) RCW 26.23.110 provides that if a party who receives a notice of support owed does not initiate an action in superior court and serve notice on DCS and on the other party to the support order within twenty days after service of the notice, that party is considered to have made an election of remedies. This means that the party (either the CP or the NCP) must exhaust the administrative remedies under chapter 26.23 RCW before bringing a court action to challenge the notice.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

**WAC 388-14A-3317 ((~~What is an annual review of a support order under RCW 26.23.110~~)) What happens if a party makes a timely request for hearing on a notice of support owed?** (1) ((~~RCW 26.23.110 provides for an annual review of the support order which was previously the subject of a notice of support owed under that statute if the division of child support (DCS), the noncustodial parent (NCP), or the custodial parent (CP) requests a review.~~)

(a) ~~This type of annual review concerns the annual review that takes place after service of a notice of support owed under WAC 388-14A-3310.~~

(b) ~~For the definition of an annual review of a support order under RCW 26.23.110 that takes place after service of a notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312, see WAC 388-14A-3318.~~

(2) ~~For purposes of chapter 388-14A WAC, an "annual review of a support order" is defined as:~~

(a) ~~The collection by DCS of necessary information from CP and NCP;~~

(b) ~~The service of a notice of support owed under WAC 388-14A-3310; and~~

(c) ~~The determination of arrears and current support amount with an effective date which is at least twelve months after the date the last notice of support owed, or the last administrative order or decision based on a notice of support owed, became a final administrative order.~~

(3) ~~A notice of support owed may be prepared and served sooner than twelve months after the date the last notice of support owed, or the last administrative order or decision based on a notice of support owed, became a final administrative order, but the amounts determined under the notice of support owed may not be effective sooner than twelve months after that date.~~

(4) ~~Either CP or NCP may request an annual review of the support order, even though the statute mentions only the NCP.~~

(5) ~~DCS may request an annual review of the support order but has no duty to do so.~~

(6) ~~For the purpose of this section, the terms "payee" and "CP" are interchangeable, and can mean either the payee under the order or the person with whom the child resides the majority of the time.~~

(7) ~~The twelve-month requirement for an annual review under this section runs separately from the twelve-month requirement for an annual review under WAC 388-14A-3318.)~~ A party who has been served with a notice of support owed may make a timely or untimely objection to the notice.

(a) A timely request for hearing on a notice of support owed is an objection made within the time limits of WAC 388-14A-3316.

(b) WAC 388-14A-3318 describes what happens when the party files an untimely objection.

(2) When the division of child support (DCS) serves a notice of support owed, DCS sends a notice to payee as provided in WAC 388-14A-3115. The party who receives the notice to payee has the right to object to the notice of support owed.

(3) If either party makes a timely request for hearing, DCS submits the hearing request to the office of administrative hearings (OAH) for scheduling.

(4) OAH sends a notice of hearing by first class mail to all parties at their addresses last known to DCS, notifying each party of the date, time and place of the hearing.

(5) DCS, the noncustodial parent (NCP) and the custodial parent (CP) are all parties to a hearing on a notice of support owed.

(6) A timely request for hearing stops the notice from becoming a final order, but DCS may still enforce those parts of the support obligation listed in WAC 388-14A-3310(12). In addition, any party may request that the administrative law judge (ALJ) enter a temporary support order under WAC 388-14A-3850.

(7) See WAC 388-14A-3320 for general information regarding a hearing on a notice of support owed.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

**WAC 388-14A-3318 ((~~What is an annual review of a notice of support owed under WAC 388-14A-3312~~)) What happens if a party makes an untimely request for hearing on a notice of support owed?** (1) ((~~RCW 26.23.110 provides for an annual review of the support order which was previously the subject of a notice of support owed under that statute if the noncustodial parent (NCP) or the custodial parent (CP) requests a review.~~)

(2) ~~For purposes of chapter 388-14A WAC, the following rules apply to an "annual review of a support order" for a notice of support owed for unreimbursed medical expenses served under WAC 388-14A-3312:~~

(a) ~~Either the CP or the NCP may be the party seeking reimbursement.~~

(b) ~~The party seeking reimbursement must provide proof of payment of at least five hundred dollars in uninsured medical expenses for services provided in the last twenty-four months.~~

(c) ~~At least twelve months must have passed since:~~

(i) ~~The date the last notice of support owed for unreimbursed medical expenses on behalf of the party seeking reimbursement became a final order; or~~

(ii) ~~The last administrative order or decision based on a notice of support owed for unreimbursed medical expenses on behalf of that party became a final administrative order.~~

(3) ~~In the event that DCS has served both a notice of support owed under WAC 388-14A-3310 and a notice of support owed for unreimbursed medical expenses under WAC 388-~~

14A-3312 on the same case, each type of notice of support owed has its own twelve-month cycle for annual review.

(4) For purposes of this section, the twelve-month cycle for annual review runs separately for the NCP and for the CP, depending on which one is the party seeking reimbursement)) A party who has been served with a notice of support owed may make a timely or untimely objection to the notice.

(a) WAC 388-14A-3117 describes what happens when the party files a timely objection.

(b) An objection which is not made within the time limits of WAC 388-14A-3116 is an untimely objection.

(2) The division of child support (DCS) continues to enforce the administrative order that resulted from the notice of support owed even if one of the parties files a late request for hearing.

(3) If DCS receives the late hearing request within one year of the date of service of the notice, the party requesting the hearing is not required to show good cause to have a hearing on the merits of the notice.

(4) If the party who has been served with a notice of support owed files an untimely request for hearing, he or she must show good cause for filing the late hearing request if the request is filed more than one year after service of the notice. See WAC 388-14A-3500 regarding good cause for filing a late request for hearing.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

**WAC 388-14A-3320 What happens at a hearing on a notice of support owed?** (1) ((A hearing on a notice of support owed is only for interpreting the order for support and any modifying orders and not for changing or deferring the support provisions of the order.

(2) A hearing on a notice of support owed served under WAC 388-14A-3310 is only to determine:

(a) The amount of monthly support as a fixed dollar amount;

(b) Any accrued arrears through the date of hearing; and

(c) If a condition precedent in the order to begin or adjust the support obligation was met.

(3) A hearing on a notice of support owed for unreimbursed medical expenses served under WAC 388-14A-3312 is only to determine:

(a) Whether the parent on whom the notice was served is obligated under the support order to pay for uninsured medical expenses for the children covered by the order;

(b) The total amount of uninsured medical expenses paid by the party seeking reimbursement;

(c) The obligated parent's share of the uninsured medical expenses;

(d) The amount, if any, the obligated parent has already paid to the party seeking reimbursement; and

(e) The amount owed by the obligated parent to the party seeking reimbursement for unreimbursed medical expenses.

(4) If the administrative law judge (ALJ) determines that the uninsured medical expenses claimed by the parent seeking reimbursement do not amount to at least five hundred dollars, the ALJ:

(a) May not dismiss the notice on this basis;

(b) Must make the determination listed in subsection (3) above.

(5) The hearing is not for the purpose of setting a payment schedule on the support debt.

(6) Either the noncustodial parent (NCP) or payee may request a hearing on a notice of support owed served under WAC 388-14A-3310.

(7) Either the obligated parent or the party seeking reimbursement may request a hearing on a notice of support owed for unreimbursed medical expenses served under WAC 388-14A-3312.

(8)) This section provides general information regarding hearings on a notice of support owed.

(2) Either the noncustodial parent (NCP) or the custodial parent (CP) may request a hearing on a notice of support owed.

(3) The division of child support (DCS) serves two basic types of notice of support owed:

(a) The initial notice of support owed served to establish a sum certain amount for a support obligation under an existing order, as described in WAC 388-14A-3310; and

(b) A notice of support owed served as part of the annual review under RCW 26.23.110, as described in WAC 388-14A-3330.

(4) WAC 388-14A-3310(5) describes the two different forms created by DCS which are used for different types of notice of support owed:

(a) The specialized "notice of support owed - medical support" is used only for specific purposes related to the medical support obligations of either parent; and

(b) The notice of support owed is served on the NCP for all other purposes under RCW 26.23.110 and WAC 388-14A-3311.

(5) DCS and the parties may enter a consent order or agreed settlement instead of proceeding to hearing any time a parent has requested a hearing on a notice of support owed served by DCS. See WAC 388-14A-3600 for the rules regarding consent orders and agreed settlements.

(6) A hearing on a notice of support owed is only for:

(a) Interpreting the underlying order for support and any modifying orders;

(b) Determining whether a condition precedent set in the underlying order was met;

(c) Determining the amount of monthly support as a fixed dollar amount;

(d) Determining the difference between the obligation calculated in the order resulting from the previous notice of support owed and the actual amount owed for the period covered by the previous notice of support owed; and

(e) Determining the amount of accrued arrears or overpayment for daycare expenses or medical support through the last day of the month before the hearing, or of the month in which the hearing was held; this date is determined at the discretion of the administrative law judge (ALJ) if not agreed upon by the parties.

(7) A hearing on an initial notice of support owed is not for:

(a) Changing or deferring the support provisions of the underlying order; or

(b) Setting a payment schedule on any support amount or support debt that was not covered by the notice which is the subject of the hearing.

(8) A hearing on the annual review of a notice of support owed must comply with this section, but in addition must determine:

(a) Whether there is a difference between the obligation calculated in the order resulting from the previous notice of support owed and the actual obligation for that period after actual expenses or income are considered; and

(b) How that difference should be resolved.

(9) The party who requested the hearing has the burden of proving any defenses to liability that apply under WAC 388-14A-3370 or that the amounts stated in the notice of support owed are incorrect.

~~((9))~~ (10) The office of administrative hearings (OAH) sends a notice of hearing to DCS, the NCP (~~(-to the division of child support (DCS);~~) and (~~(to) the (custodial parent (CP))~~)). The NCP and the CP each may participate in the hearing as an independent party.

~~((10))~~ (11) If only one party appears (~~(and wishes to proceed with)~~) for the hearing, the (~~(administrative law judge (ALJ))~~) ALJ may entertain requests for a continuance, and if there is no continuance granted, the ALJ holds a hearing and issues an order based on the evidence presented (~~(or continues the hearing)~~). (~~(See)~~) The provisions of WAC 388-14A-6110 and 388-14A-6115 (~~(to)~~) determine if the ALJ enters an initial order or a final order.

~~((11))~~ An order issued under this subsection includes an order of default against the nonappearing party and limits the appeal rights of the nonappearing party to the record made at the hearing.

~~((12))~~ (12) If neither the NCP nor the CP appears or wishes to proceed with the hearing, the ALJ issues an order of default against both parties.

~~((13))~~ (13) If either party requests a late hearing on a notice of support owed, that party must show good cause for filing the late hearing request, as provided in WAC 388-14A-3500.

~~((14))~~ (14) For purposes of this section, the terms "payee" and "CP" are used interchangeably and can mean either the CP, the payee under the order or both, except that a CP who is not also the payee under the support order may not ask DCS to serve a notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312.

(15) This section, WAC 388-14A-3323, 388-14A-3324, 388-14A-3325 and 388-14A-6300 describe the duties of the ALJ in a hearing on a notice of support owed.

(16) Additional information regarding hearings on the notice of support owed can be found in the following sections:

(a) WAC 388-14A-3323 describes a hearing on a notice of support owed served under WAC 388-14A-3311; and

(b) WAC 388-14A-3324 describes a hearing on a notice of support owed served under WAC 388-14A-3312.

(17) WAC 388-14A-3330 describes the annual review of a notice of support owed.

## NEW SECTION

**WAC 388-14A-3323 What happens in a hearing on a notice of support owed served under WAC 388-14A-3311?** (1) A hearing on a notice of support owed served under WAC 388-14A-3311 is subject to WAC 388-14A-3320 and this section.

(2) A hearing on a notice of support owed served under WAC 388-14A-3311 is only for the purpose of determining the amounts owed by the noncustodial parent (NCP) that are not stated as a fixed dollar amount in the underlying support order, either as part of the monthly support obligation or for nonmedical expenses of the children. See WAC 388-14A-3324 for the rules concerning a hearing on a notice of support owed for medical support.

(3) The administrative law judge (ALJ) must determine some or all of the following, depending on what was requested in the notice of support owed:

(a) The amount of monthly support as a fixed dollar amount;

(b) Any accrued arrears;

(c) Any difference between the NCP's obligation under a previous notice of support owed and his or her actual obligation after actual income or expenses are considered; and

(d) The amount of the NCP's share of nonmedical expenses for the children, including:

(i) The amount that the NCP must pay each month as his or her ongoing share of daycare and child care expenses for the children; and

(ii) Whether the custodial parent (CP) has provided sufficient proof of payment of daycare and child care expenses for the children; and

(iii) The amount of NCP's accrued debt for daycare and child care expenses.

(4) If the ALJ determines that the NCP's obligation under a previous notice of support owed is more than his or her actual obligation under the order after actual expenses or income are considered, the ALJ may not set a payment schedule on the support debt.

(5) If the ALJ determines that the NCP's obligation under a previous notice of support owed is less than his or her actual obligation under the order after actual expenses or income are considered, and the parties cannot agree on how the overpayment may be credited or repaid, the ALJ must enter an order providing that any difference may be:

(a) Applied as an offset to any nonassistance child support arrears owed by the NCP to the CP.

(b) In the form of a credit against the NCP's future child support obligation:

(i) Spread equally over a twelve-month period starting the month after the administrative order becomes final; or

(ii) When the future support obligation will end under the terms of the order in less than twelve months, spread equally over the life of the order.

(c) Paid in the form of a direct reimbursement by the CP to the NCP, but only with the consent of the CP, unless support has been assigned to the state.

NEW SECTION

**WAC 388-14A-3324 What happens in a hearing on a notice of support owed served under WAC 388-14A-3312?** (1) A hearing on a notice of support owed for medical support served under WAC 388-14A-3312 is subject to WAC 388-14A-3320 and this section. See WAC 388-14A-3323 for the rules concerning a hearing on a notice of support owed under WAC 388-14A-3311.

(2) A hearing on a notice of support owed served under WAC 388-14A-3312 is only for the purpose of determining:

(a) Issues regarding the reimbursement of uninsured medical expenses, such as:

(i) Whether the party on whom the notice was served is obligated under a support order to pay for uninsured medical expenses for the children covered by the order;

(ii) Whether the party seeking reimbursement has provided sufficient proof of payment for uninsured medical expenses for the children;

(iii) The total amount of uninsured medical expenses paid by the party seeking reimbursement;

(iv) The obligated parent's share of the uninsured medical expenses;

(v) The amount, if any, the obligated parent has already paid to the party seeking reimbursement;

(vi) Whether the obligated parent provided coverage during the time in question if reimbursement of medical premium costs is requested; and

(vii) The amount owed by the obligated parent to the party seeking reimbursement for unreimbursed medical expenses.

(b) Issues regarding a monthly payment toward the premium paid for coverage for the children, such as:

(i) Whether the support order requires the obligated parent to pay when the obligated parent does not provide coverage;

(ii) Whether the obligated parent is currently providing coverage, or did so during the time period in question;

(iii) The amount of the premium paid by the other parent or by the state to cover the child(ren);

(iv) The obligated parent's proportionate share of the premium;

(v) The amount, if any, the obligated parent has already contributed toward health insurance premiums paid by the other parent or the state for the time period in question; and

(vi) The monthly amount to be paid by the obligated parent as his or her proportionate share of the health insurance premium.

(3) If the administrative law judge (ALJ) determines that the uninsured medical expenses claimed by the party seeking reimbursement do not amount to at least five hundred dollars, the ALJ:

(a) May not dismiss the notice on this basis;

(b) Must make the determinations listed in subsection (2)(a) above.

(4) In an annual review hearing under WAC 388-14A-3330, the ALJ may not set a payment schedule on the support debt other than as provided in WAC 388-14A-3312 if the ALJ determines that the obligated parent has paid less than his or her actual obligation for medical support under the

order after actual expenses or updated proportionate shares owed are considered.

(a) If the obligated parent is the noncustodial parent (NCP), any amounts owed are added to the NCP's support debt.

(i) Any amounts owed to the custodial parent (CP) are added to the nonassistance child support arrears owed by the NCP to the CP.

(ii) Any amounts owed to the state are added to the assigned child support arrears owed by the NCP.

(b) If the obligated parent is the CP, any amounts owed are paid as provided in WAC 388-14A-3312(17).

(5) If, in an annual review hearing under WAC 388-14A-3330, the ALJ determines that the NCP's obligation calculated in a previous notice of support owed is more than his or her actual obligation for medical support under the order after actual expenses or updated proportionate shares owed are considered, and the parties cannot agree on how the difference may be credited or repaid, the ALJ must enter an order providing that any difference may be:

(a) Applied as an offset to any nonassistance child support arrears owed by the NCP to the CP.

(b) In the form of a credit against the NCP's future child support obligation, if there is no nonassistance debt owed to the CP:

(i) Spread equally over a twelve-month period starting the month after the administrative order becomes final; or

(ii) When the future support obligation will end under the terms of the order in less than twelve months, spread equally over the life of the order.

(c) Paid in the form of a direct reimbursement by the CP to the NCP, but only with the consent of the CP.

(6) If the ALJ determines that the CP's obligation under a previous notice of support owed is more than his or her actual obligation for medical support under the order after actual expenses and updated proportionate share amounts are considered, and the parties cannot agree on how the difference may be credited or repaid, the ALJ must enter an order providing that any difference must be added to the nonassistance child support arrears owed by the NCP.

(7) The ALJ must determine either or both of the following, depending on what was requested in the notice of support owed:

(a) The amount owed by the obligated parent to the other for reimbursement of uninsured medical expenses; and

(b) The monthly amount to be paid by the obligated parent as his or her proportionate share of the health insurance premium paid by the other parent or the state.

NEW SECTION

**WAC 388-14A-3330 What are the procedures for the annual review of a notice of support owed?** (1) RCW 26.23.110 provides for an annual review of the support order which was previously the subject of a notice of support owed under that statute if the division of child support (DCS), the noncustodial parent (NCP), or the custodial parent (CP) requests a review.

(a) Either the CP or the NCP may request an annual review of the support order, even though RCW 26.23.110 mentions only the NCP.

(b) DCS may request an annual review of the support order but has no duty to do so.

(2) For purposes of chapter 388-14A WAC, an "annual review of a support order" is defined as:

(a) The collection by DCS of necessary information from CP and NCP;

(b) The service of a notice of support owed under WAC 388-14A-3310; and

(c) The determination of arrears and current support amount with an effective date which is at least twelve months after the date the last notice of support owed, or the last administrative order or decision based on a notice of support owed, became a final administrative order.

(3) A notice of support owed may be prepared and served sooner than twelve months after the date the last notice of support owed, or the last administrative order or decision based on a notice of support owed, became a final administrative order, but the amounts determined under the notice of support owed may not be effective sooner than twelve months after that date.

(4) For the purpose of this section, the terms "payee" and "CP" are interchangeable, and can mean either the payee under the order or the person with whom the child resides the majority of the time.

(5) For purposes of chapter 388-14A WAC, the following rules apply to an "annual review of a support order" for a notice of support owed served under WAC 388-14A-3312:

(a) Either the CP or the NCP may be the party seeking reimbursement, so long as the CP is both a party to the order and a parent of the child(ren) for whom the expenses were incurred.

(b) The party seeking reimbursement must provide proof of payment of at least five hundred dollars in uninsured medical expenses for services provided in the last twenty-four months.

(c) At least twelve months must have passed since:

(i) The date the last notice of support owed for unreimbursed medical expenses on behalf of the party seeking reimbursement became a final order; or

(ii) The last administrative order or decision based on a notice of support owed for unreimbursed medical expenses on behalf of that party became a final administrative order.

(6) WAC 388-14A-3310(1) describes the different types of notice of support owed which are served by DCS. In the event that DCS has served more than one type of notice of support owed on the same case, each notice of support owed has its own twelve-month cycle for annual review.

(7) For purposes of this section, the twelve-month cycle for annual review runs separately for the NCP and for the CP, depending on which one is the party seeking reimbursement.

**AMENDATORY SECTION** (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

**WAC 388-14A-3400 Are there limitations on how much of my income is available for child support?** (1) ~~(There are)~~ The Washington State child support schedule

(WSCSS) provides two ((kinds of)) limitations based on ((your)) income ((when we set your child support obligation)), the forty-five percent limitation and the self-support reserve. The division of child support (DCS) applies these limitations when we calculate your child support obligation. These limitations do not apply to child support arrears, or to the enforcement of your child support obligation.

(a) ~~((The monthly))~~ Your basic child support ((amount)) obligation for all of your biological or legal children cannot exceed forty-five percent of your monthly net income, unless there are special circumstances as provided in chapter 26.19 RCW((-and)).

(i) RCW 26.19.065 provides that all of the children are entitled to a "pro rata" share of the income;

(ii) When the forty-five percent limitation applies, DCS calculates your support obligation in a way that gives each child an equal share of the income;

(iii) Either party may argue to the administrative law judge (ALJ) that "pro rata" does not mean the same as "equal," and may propose a different method of calculation or a different amount for the support obligation for the children in the case.

(b) The monthly basic child support ((amount)) obligation cannot reduce your net monthly income below ~~((the one person need standard (WAC 388-478-0015)))~~ the self-support reserve of one hundred twenty-five percent of the federal poverty guideline, unless there are special circumstances as provided in chapter 26.19 RCW.

(2) See WAC 388-14A-3405 for information on how to find information about, and how to calculate the self-support reserve.

(3) See WAC 388-14A-3405 for information on how DCS calculates and applies the self-support reserve.

(4) No matter what your monthly child support obligation may be, RCW 26.23.060 and 74.20A.090 limit((s)) the amount that can be withheld from your wages for child support to fifty percent of your ((net monthly)) disposable earnings.

#### NEW SECTION

**WAC 388-14A-3410 What amount does DCS use for the self-support reserve?** (1) When the division of child support (DCS) calculates and applies the self-support reserve, DCS:

(a) Uses the amount shown for a one-person family in the federal poverty guideline for the current year; and

(b) Multiplies that amount by one hundred twenty-five percent.

(2) The self-support reserve does not vary depending on whether or not the parent is responsible for shelter costs.

(3) An administrative law judge (ALJ) must calculate and apply the self-support reserve using the one-person family amount.

(4) The provisions of the Washington Administrative Code (WAC) are not binding on the superior courts or tribal courts. Those tribunals may use different methods for calculating and applying the self-support reserve.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

**WAC 388-14A-4100 How does the division of child support enforce my obligation to provide health insurance for my children?** (1) If a child support order requires ~~((the noncustodial parent (NCP)))~~ a parent to provide health insurance for the children, the division of child support (DCS) attempts to enforce that requirement according to the terms of the order. ~~((The following subsections describe the different types of premium limitations that could apply to a support order))~~

(2) A parent required to provide medical support or health insurance coverage for a child is called the obligated parent, and can be either the custodial parent (CP) or the non-custodial parent (NCP).

~~((2))~~ (3) WAC 388-14A-4111 and 388-14A-4112 describe when DCS may accept or decline a request to enforce a medical support obligation.

(4) When DCS is enforcing a support order which contains a specific dollar limit for the cost of health insurance premiums or provides for coverage which is available at no cost to the ~~((NCP))~~ obligated parent, DCS does not require the ~~((NCP))~~ obligated parent to provide health insurance if coverage is not available within the limitations of the order.

~~((3))~~ (5) When DCS is enforcing a support order entered in Washington on or after October 1, 2009, providing that either or both parents must provide coverage and/or a proportionate share of uninsured medical expenses as part of the medical support obligation under RCW 26.09.105, the rules in this subsection apply unless the support order specifies differently:

(a) The obligated parent must provide health insurance for the dependent child(ren) covered by the order if coverage is:

(i) Available or becomes available through accessible private insurance which is not provided through the obligated parent's employer or union; or

(ii) Available or becomes available through the obligated parent's employment or union at a cost that is not more than twenty-five percent of the obligated parent's basic support obligation.

(b) If the obligated parent does not provide proof of coverage or if coverage is not available, DCS may serve a notice of support owed under WAC 388-14A-3312 to determine the monthly amount that the obligated parent must pay as his or her proportionate share of any premium paid by the other parent or by the state on behalf of the child(ren).

(6) When DCS is enforcing a support order entered ~~((on or after))~~ in Washington between May 13, 1989 and September 30, 2009, unless the support order specifies differently, the ~~((NCP))~~ obligated parent must provide health insurance for dependent children if coverage is:

(a) Available or becomes available through the ~~((NCP's))~~ obligated parent's employment or union; and

(b) Available at a cost of not greater than twenty-five percent of the ~~((NCP's))~~ obligated parent's basic support obligation.

~~((4))~~ (7) When DCS is enforcing a Washington support order entered prior to May 13, 1989, unless the support order specifies differently, the ~~((NCP))~~ obligated parent must pro-

vide health insurance for the dependent ~~((children))~~ child(ren) if coverage is available or becomes available through the ~~((NCP's))~~ obligated parent's employment or union:

(a) For a maximum of twenty-five dollars per month, if the order specifies that the ~~((NCP))~~ obligated parent must provide coverage only if it is available at a reasonable cost; or

(b) For any premium amount whatsoever, if the order does not specify reasonable cost.

~~((5))~~ (8) DCS serves a notice of intent to enforce a health insurance obligation if the support order:

(a) Requires the ~~((NCP))~~ obligated parent either to provide health insurance coverage or prove that coverage is not available; and

(b) Does not inform the ~~((NCP))~~ obligated parent that failure to provide health insurance or prove it is not available may result in enforcement of the order without notice to the ~~((NCP))~~ obligated parent.

~~((6))~~ (9) DCS serves the notice of intent to enforce a health insurance obligation on the ~~((NCP))~~ obligated parent by certified mail, return receipt requested, or by personal service.

~~((7))~~ (10) The notice advises the ~~((NCP))~~ obligated parent that ~~((the NCP))~~ he or she must submit proof of coverage, proof that coverage is not available, or proof that the ~~((NCP))~~ obligated parent has applied for coverage, within twenty days of the date of service of the notice.

~~((8))~~ (11) The notice advises the ~~((NCP))~~ obligated parent that, if health insurance is not yet available, the ~~((NCP))~~ obligated parent must immediately notify DCS if health insurance coverage becomes available through the ~~((NCP's))~~ obligated parent's employer or union.

~~((9))~~ (12) When DCS enforces an ~~((NCP's))~~ obligated parent's health insurance obligation, such enforcement may include asking the employer and the plan administrator to enroll the ~~((NCP))~~ obligated parent in a health insurance plan available through the employer.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

**WAC 388-14A-4110 If my support order requires me to provide ~~((health insurance))~~ medical support for my children, what do I have to do?** (1) Once a support order is entered requiring ~~((health insurance))~~ medical support, the obligated parent must take the following actions within twenty days:

(a) Provide health insurance coverage; and

(b) Provide proof of coverage to the other parent and to the division of child support (DCS), such as:

(i) The name of the insurer providing the health insurance coverage;

(ii) The names of the beneficiaries covered;

(iii) The policy number;

(iv) That coverage is current; and

(v) The name and address of the obligated parent's employer.

(2) If private, union or employer-provided health insurance coverage that is accessible to the children named in the order is available, the obligated parent must:

(a) Provide for coverage for the children without waiting for an open enrollment period, as provided under RCW 48.01.235 (4)(a); and

(b) Submit proof of coverage as outlined in subsection (1)(b) above.

(3) If health insurance is not immediately available to the obligated parent, as soon as health insurance becomes available, the obligated parent must:

(a) Provide for coverage for the children named in the order; and

(b) Submit proof of coverage as outlined in subsection (1)(b) above.

(4) Medical assistance provided by the department under chapter 74.09 RCW does not substitute for health insurance.

(5) DCS may serve a notice of support owed for medical support under WAC 388-14A-3312 to establish either or both of the following:

(a) Either parent's share of uninsured medical expenses owed to the other parent; or

(b) Either parent's monthly payment toward the premium paid for coverage by the other parent or the state, if:

(i) Health insurance coverage is not available through the parent's employer or union or is not otherwise provided; and

(ii) The support order provides for the payment of a monthly payment toward the premium when the obligated parent does not provide coverage.

(6) See WAC 388-14A-4165 for a description of what happens when the combined total of a noncustodial parent's current support obligation, arrears payment and health insurance premiums to be withheld by the employer exceeds the fifty per cent limitation for withholding.

(7) Both parents must notify DCS any time there is a change to the health insurance coverage for the children named in the order.

(8) WAC 388-14A-4111 and 388-14A-4112 describe when DCS may accept or decline a request to enforce a medical support obligation.

#### NEW SECTION

**WAC 388-14A-4111 When may DCS decline a request to enforce a medical support obligation?** The division of child support (DCS) may decline to enforce a medical support obligation using the remedies available under RCW 26.09.105, 26.18.170 and 26.23.110 if one or more of the following apply:

(1) The medical support obligation is imposed by a child support order that was not entered in a court or administrative forum of the state of Washington;

(2) The department of social and health services is not paying public assistance or providing foster care services;

(3) The party requesting enforcement of the medical support obligation does not have an open IV-D case with DCS for the child;

(4) The party requesting enforcement of the medical support obligation is not a parent of the child for whom the medical support obligation was established;

(5) The party is requesting reimbursement of the obligated parent's proportionate share of medical premium costs,

and the obligated parent is providing accessible health insurance coverage for the child;

(6) The party requesting enforcement of the medical support obligation is not a former recipient of public assistance as described in WAC 388-14A-2000 (2)(d);

(7) DCS has not received a request for services from a child support agency in another state or a child support agency of an Indian tribe or foreign country;

(8) The party requesting enforcement of the medical support obligation has not applied for full support enforcement services;

(9) The party requesting enforcement of the medical support obligation does not qualify as a party who can receive child support enforcement services from DCS under WAC 388-14A-2000;

(10) The case does not meet the requirements for provision of support enforcement services from DCS under WAC 388-14A-2010;

(11) DCS denies the application under WAC 388-14A-2020;

(12) The party requesting enforcement of the medical support obligation does not provide proof of payment, any required forms, and/or the declaration under penalty of perjury required under WAC 388-14A-3312;

(13) The case meets one or more of the reasons set out in WAC 388-14A-4112(2) that DCS does not enforce a custodial parent's obligation to provide medical support.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

**WAC 388-14A-4112 When does the division of child support enforce a custodial parent's obligation to provide ((health insurance coverage)) medical support?** (1) A non-custodial parent (NCP) may file an application for full child support enforcement services and specifically request that the division of child support (DCS) enforce the ((health insurance)) medical support obligation of the custodial parent (CP). WAC 388-14A-4111 describes when DCS may accept or decline a request to enforce a medical support obligation.

(2) DCS does not enforce the CP's medical support obligation unless the NCP files an application for nonassistance support enforcement services under WAC 388-14A-2000 (2)(c). The NCP must specify whether he or she is requesting that DCS enforce the CP's obligation to provide:

(a) The CP's proportionate share of uninsured medical expenses;

(b) Health insurance coverage (including the possibility of a monthly payment toward the premium paid by the NCP for coverage of the children when appropriate); or

(c) Both.

(3) A medical support obligation includes providing health insurance coverage or contributing a monthly payment toward the premium paid for coverage when appropriate, and paying a proportionate share of any uninsured medical expenses for the children.

(a) DCS may enforce the CP's obligation to pay a proportionate share of any uninsured medical expenses for the children under WAC 388-14A-3312.

(b) DCS may decide whether it is appropriate to enforce the CP's obligation to provide health insurance coverage or contribute a monthly payment toward the premium paid for coverage under subsection (4) of this section.

(4) DCS does not enforce a custodial parent's obligation to provide health insurance coverage or pay a monthly payment toward the premium paid for coverage when:

(a) The support order does not include a medical support obligation which includes providing health insurance ((obligation)) or paying monthly payment toward the premium paid for coverage for the CP.

(b) The NCP is already providing health insurance coverage for the children covered by the order.

(c) The amount that the CP would have to pay for the premium for health insurance exceeds the NCP's monthly support obligation for the children.

(d) The children are covered by health insurance provided by someone else.

(e) The children are receiving medicaid.

(f) The children are receiving TANF.

(g) The CP does not reside in Washington state.

(h) The CP is a tribal member living on or near the reservation.

(i) The CP is receiving child support enforcement services through a tribal IV-D program.

((3)) (5) DCS does not enforce a CP's obligation to pay a proportionate share of medical expenses incurred by an NCP when:

(a) The support order does not include an obligation for the CP to pay a proportionate share of uninsured medical expenses; or

(b) The NCP is already providing health insurance coverage for the children covered by the order.

(6) If none of the conditions under subsection ((2)) (4) exist, DCS may enforce the CP's obligation to provide health insurance coverage when the CP has health insurance available at a reasonable cost through the CP's employer or union.

((4)) (7) A "reasonable cost" for health insurance coverage is defined as twenty-five percent of the basic support obligation for the children covered by the order, unless the support order provides a different limitation.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

**WAC 388-14A-4115 Can my support order reduce my support obligation if I pay for health insurance?** (1) Some support orders reduce the noncustodial parent's ~~((support obligation))~~ transfer payment based on health insurance premiums paid by the noncustodial parent (NCP).

(2) An NCP is entitled to the reduction for premiums paid only if(=

~~((a))~~ the NCP submits proof of the cost of coverage ((as provided in WAC 388-14A-4110(1)(b); and

~~((b) NCP actually pays the required premium))~~ which is actually being provided at the time the support order is entered, so that the amounts can be included in the worksheet calculation.

(3) ~~((If the NCP fails to submit proof or pay the premium, the division of child support (DCS) collects the NCP's~~

~~adjusted basic support obligation without a reduction for health insurance premium payments))~~ If health insurance coverage terminates or if the amount of the premium changes, this does not mean that the transfer payment is automatically increased or decreased. However, such a change may constitute the basis for a petition to modify the support order.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

**WAC 388-14A-4120 DCS uses the National Medical Support Notice to enforce an obligation to provide health insurance coverage.** (1) The division of child support (DCS) uses a notice of enrollment called the National Medical Support Notice (NMSN) to enforce an obligated parent's obligation to provide health insurance coverage under chapter 26.18 RCW.

(2) DCS sends the NMSN to the obligated parent's employer in one of the following ways:

(a) In the same manner as a summons in a civil action,

(b) By certified mail, return receipt requested,

(c) By regular mail, or

(d) By electronic means as provided in WAC 388-14A-4040 (1)(d).

(3) DCS sends the NMSN without notice to the obligated parent, who could be either the noncustodial parent (NCP) or the custodial parent (CP) when:

(a) A court or administrative order requires the obligated parent to provide insurance coverage for a dependent child;

(b) The obligated parent fails to provide health insurance (either by not covering the child or by letting the coverage lapse) or fails to provide proof of coverage;

(c) The requirements of RCW 26.23.050 are met; and

(d) DCS has reason to believe that coverage is available through the obligated parent's employer or union.

(4) If sending the NMSN does not result in coverage for the child, DCS may seek to enforce the obligated parent's medical support obligation by other means, as provided in RCW 26.18.170 and WAC 388-14A-4100.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

**WAC 388-14A-4165 What happens when a noncustodial parent does not earn enough to pay child support plus the health insurance premium?** (1) Under RCW 26.23.060(3), a payroll deduction may not exceed fifty percent of the noncustodial parent's disposable earnings in each pay period.

(2) When the division of child support (DCS) enforces a child support obligation through an income withholding action and also enforces a health insurance obligation, the noncustodial parent's employer often must withhold amounts for:

(a) Current child support;

(b) Child support arrearages; and

(c) Health insurance premiums.

(3) When the employer or plan administrator must enroll the noncustodial parent (NCP) in a health insurance plan in order to enroll the children (see WAC 388-14A-4140), the

premium amount for the NCP's coverage is included in the amounts to withhold under subsection (2) above. If the NCP is already enrolled in a plan, the premium amount for the NCP's coverage is not included the amounts to withhold under that subsection.

(4) If the combined amounts for current support, support arrears and health insurance premiums are more than fifty percent of the noncustodial parent's disposable earnings, the employer must notify DCS immediately.

(5) In certain circumstances, DCS may adjust the amount to be withheld for support arrears so that the total amount withheld does not exceed fifty percent of the noncustodial parent's disposable earnings.

(6) If the noncustodial parent's current support obligation plus health insurance premiums exceeds fifty percent of the noncustodial parent's disposable earnings, DCS:

(a) Enforces the child support obligation through income withholding; but

(b) Is not able to enforce the noncustodial parent's health insurance obligation at that time.

(7) In the situation described in subsection (6), DCS may establish a monthly payment toward the premium, as described in WAC 388-14A-3312, even if the combined amount for the current support obligation and the monthly payment toward the premium exceeds fifty percent of the NCP's disposable earnings.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

**WAC 388-14A-4175 (~~Is an employer~~) Who is required to notify the division of child support when insurance coverage for the children ends?** (1) Once the division of child support (DCS) has notified an employer that a parent is obligated by a support order to provide health insurance coverage for the children named in the order, the National Medical Support Notice (NMSN) or other notice of enrollment remains in effect as specified in WAC 388-14A-4170.

(2) If coverage for the children is terminated, the employer must notify DCS within thirty days of the date coverage ends.

(3) A parent who is required by a child support order to provide health insurance coverage for his or her children must notify DCS and the other parent within thirty days of the date coverage for the children ends. This requirement applies whether the obligated parent is the custodial parent or the noncustodial parent.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

**WAC 388-14A-4180 When must the division of child support communicate with the DSHS (~~health and recovery services~~) medicaid purchasing administration?** (1) The division of child support (DCS) must inform the DSHS (~~health and recovery services~~) medicaid purchasing administration (~~(HRSA)~~) (MPA) of the existence of a new or modified court or administrative order for child support when the order includes a requirement for medical support. (~~HRSA~~) MPA is the part of DSHS which provides services

for the state of Washington under Title XIX of the federal Social Security Act.

(2) DCS must provide (~~HRSA~~) MPA with the following information:

(a) Title IV-A case number, Title IV-E foster care case number, medicaid number or the individual's Social Security number;

(b) Name of the obligated parent;

(c) Social Security number of the obligated parent;

(d) Name and Social Security number of the child(ren) named in the order;

(e) Home address of the obligated parent;

(f) Name and address of the obligated parent's employer;

(g) Information regarding the obligated parent's health insurance policy; and

(h) Whether the child(ren) named in the order are covered by the policy.

(3) DCS must periodically communicate with (~~HRSA~~) MPA to determine if there have been any lapses (stops and starts) in the obligated parent's health insurance coverage for medicaid applicants.

(4) Before DCS may serve a notice of support owed under WAC 388-14A-3312 (1)(b) to establish an obligated parent's monthly payment toward the premium paid by the state for coverage, MPA must provide information regarding the premium paid for each child covered by the notice.

(a) DCS distributes to MPA any collections based on the obligation established under WAC 388-14A-3312 (1)(b) when the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment.

(b) Such collections are retained by the department to reimburse the state, subject to the limitations in WAC 388-14A-2035(4).

#### NEW SECTION

**WAC 388-14A-4800 When does a child support order contain an undifferentiated amount of child support?** (1) RCW 26.23.050 (5)(d) provides that every child support order must state the monthly child support obligation as a sum certain amount, but does not require that the support obligation be stated in a "per month per child" amount when more than one child is covered by the order.

(2) A support order which provides a monthly amount of child support for two or more children, but does not provide a specific support obligation for each child, may be a differentiated support order or an undifferentiated support order.

(a) To determine whether a support order is differentiated or undifferentiated, the division of child support (DCS) reviews the information contained in the support order, and, if necessary to interpret the intent of the order, may consider the worksheets associated with the order.

(b) When the order may justifiably be divided into per child amounts for each child, the division of child support (DCS) calls it a "differentiated support order."

(c) When the order does not contain enough information in either the order or the worksheets to justify dividing the monthly amount into per child amounts for each child, DCS calls it an "undifferentiated support order."

(d) The support amounts set by these orders are called either "differentiated support amounts" or "undifferentiated support amounts," respectively.

(3) When DCS is calculating a support obligation for more than one child in an administrative support obligation notice, DCS may set the monthly support obligation as an undifferentiated amount for the reasons listed in WAC 388-14A-3200(4).

(4) When DCS is enforcing a support order, WAC 388-14A-4810 through 388-14A-4830 address how DCS:

(a) Determines whether a support order which does not state a per month per child amount may justifiably be divided into a per child amount for each child covered by the support order; and

(b) Deals with a support order which does not contain enough information in either the order or the worksheets associated with the order to justify dividing the monthly amount into "per child" amounts for each child covered by the support order.

#### NEW SECTION

**WAC 388-14A-4810 How does DCS determine if a support order contains a differentiated or undifferentiated amount of support?** (1) When a child support order does not contain a per month per child amount, the division of child support (DCS) reviews the support order and other documents filed with the order in order to determine the amount of support due for each child. "Other documents" may include but are not limited to:

(a) The child support schedule worksheets which RCW 26.19.035(4) requires to be attached to or filed with the support order;

(b) Any residential schedule or parenting plan filed in the case where the support order was entered;

(c) Any findings of fact and conclusions of law filed in the case where the support order was entered; or

(d) Any other documents signed or approved by the tribunal which entered the child support order.

(2) DCS may consider the support amounts to be differentiated and determine a per-child amount to be paid by the noncustodial parent (NCP) if:

(a) The order or documents filed with the order reflect a per-child calculation and indicate the court intended to enter a per-child order, unless:

(i) There are expenses included in Part III of the child support schedule worksheet; or

(ii) The self-support reserve was applied, resulting in a monthly support obligation which is higher than the presumptive minimum support obligation; or

(iii) The forty-five percent limitation was applied in calculating the monthly support obligation; or

(iv) A deviation was granted because of children from other relationships; and

(b) The NCP's proportional share of all the per-child amounts equals the whole transfer payment amount.

(3) If DCS can determine a per-child amount of support, DCS determines the NCP's differentiated transfer payment by applying the NCP's proportional share of income (line six on the worksheet) to the basic support obligation for each

child (line five on the worksheet). **Example.** Assume the support order states that NCP's transfer payment for three children is four hundred twenty dollars, but the order does not provide per-child support amounts. However, line six of the worksheet shows that the NCP's proportional share of income is .6 or sixty percent, and line five shows a basic support obligation of three hundred dollars for child number one, two hundred dollars for child number two and two hundred dollars for child number three. DCS can determine the NCP's support obligation to be one hundred eighty dollars (.6 x three hundred dollars) for child number one, and one hundred twenty dollars (.6 x two hundred dollars) each for child number two and child number three.

(4) When the NCP's support obligation for one or more, but not all, of the children covered by an undifferentiated support order is terminated for any reason, DCS determines whether the amount to be enforced for NCP's monthly support obligation under the order should change:

(a) If DCS is able to determine a per-month amount for each child, DCS may reduce the amount of the NCP's monthly obligation to be enforced by the per-month amount for each child who is no longer covered by the order.

(b) If DCS is unable to determine a per-month amount for each child, DCS continues to enforce the undifferentiated amount of support until there is no longer any child covered by the support order.

#### NEW SECTION

**WAC 388-14A-4820 What can I do if I don't agree with DCS' decision on whether my support order contains a differentiated or undifferentiated amount of support?** (1) If the noncustodial parent (NCP) or custodial parent (CP) claim that the NCP's support obligation for one or more, but not all, of the children covered by an undifferentiated support order is terminated for any reason, either party may ask the division of child support (DCS) to determine whether to adjust the amount enforced as the NCP's monthly support obligation.

(2) DCS reviews the order as provided in WAC 388-14A-4810 and then advises the parties of its decision.

(3) If either the NCP or the CP disagrees with DCS' interpretation of the order, the aggrieved party may request a conference board under WAC 388-14A-6400.

(4) Either the NCP or the CP may proceed in superior court to seek:

(a) An order clarifying the NCP's monthly support obligation;

(b) An order modifying the support order; or

(c) Any other appropriate relief.

#### NEW SECTION

**WAC 388-14A-4830 How does DCS divide support obligations between two or more cases when a support order does not contain a differentiated amount of support?** (1) If two or more children covered by the same child support order change residences so that more than one custodial parent (CP) is eligible to receive child support paid by the noncustodial parent (NCP):

(a) As long as the NCP's support obligation for all of the children has not been terminated, the NCP continues to owe the total amount of child support stated in the support order;

(b) The division of child support (DCS) allocates the NCP's support obligation between the various cases based on which children reside with each CP.

(c) DCS distributes support collections among the cases as provided in WAC 388-14A-5001 through 388-14A-5050.

(2) To allocate the child support amounts between cases, DCS determines whether the support order states a per-child amount for each child covered by the order. If the support order contains an undifferentiated amount of support, DCS reviews the order under WAC 388-14A-4810.

(3) If DCS determines a per-child amount for each child, DCS allocates the per-child amounts to the appropriate cases.

(4) If DCS is unable to determine a per-child amount for each child because the order is undifferentiated, DCS divides the NCP's total monthly support obligation by the number of children and allocates each child's fractional share of the total support obligation to that child's case.

(a) DCS divides the undifferentiated support amount for administrative efficiency, and so that support can be disbursed to each CP.

(b) The fact that DCS allocates fractional shares between cases does not convert the undifferentiated order into a differentiated order.

(5) If either the NCP or the CP disagrees with DCS' decision, the aggrieved party may request a conference board under WAC 388-14A-6400.

(6) Either the NCP or one or more CPs may proceed in superior court to seek:

(a) An order clarifying the NCP's monthly support obligation;

(b) An order modifying the support order; or

(c) Any other appropriate relief.

AMENDATORY SECTION (Amending WSR 01-24-078, filed 12/3/01, effective 1/3/02)

**WAC 388-14A-5007 If the paying parent has more than one case, can DCS apply support money to only one specific case?** (1) The division of child support (DCS) applies amounts to a support debt owed for one family or household and distributes the amounts accordingly, rather than make a proportionate distribution between support debts (~~owned~~) owed to different families, when:

(a) Proportionate distribution is administratively inefficient; or

(b) The collection resulted from the sale or disposition of a specific piece of property against which a court awarded the custodial parent (CP) a judgment lien for child support; or

(c) The collection is the result of a contempt order which provides that DCS must distribute the amounts to a particular case.

(2) If the collection is the result of an automated enforcement of interstate (AEI) transaction under RCW 74.20A.188, DCS applies the payment as provided in WAC 388-14A-5006, even if the requesting state wants the payment applied to a specific case.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

**WAC 388-14A-6300 Duty of the administrative law judge in a hearing to determine the amount of a support obligation.** (1) A support order entered under this chapter must conform to the requirements set forth in RCW 26.09.105 (~~and~~), 26.18.170, and (~~the~~) RCW 26.23.050 (~~(3) and (5)~~). The administrative law judge (ALJ) must comply with the DSHS rules on child support and include a Washington state child support schedule worksheet when entering a support order.

(2) In hearings held under this chapter to contest a notice and finding of financial responsibility or a notice and finding of parental responsibility or other notice or petition, the ALJ must determine:

(a) The noncustodial parent's obligation to provide support under RCW 74.20A.057;

(b) The names and dates of birth of the children covered by the support order;

(c) The net monthly income of the noncustodial parent (NCP) and (~~any custodial~~) the other parent ((CP)) of the child;

(d) The NCP's share of the basic support obligation and any adjustments to that share, according to his or her circumstances;

(e) Each parent's proportionate share of costs such as health care, day care and special child rearing expenses;

(f) If requested by a party, the NCP's proportionate share of ((any special child rearing)) costs such as health care or day care expenses in a sum certain amount per month;

(~~(f)~~) (g) A statement that either or both parents are obligated to provide medical support under RCW 26.09.105 and 26.18.170, as provided in subsection (3) of this section, including but not limited to ((the following:

(i) ~~A requirement that either or both parents are obligated to provide health insurance coverage for the child covered by the support order if coverage that can be extended to cover the child is or becomes available through the parent's employment or union;~~

(ii) notice that if proof of health insurance coverage or proof that the coverage is unavailable is not provided to DCS within twenty days, DCS may seek direct enforcement through the obligated parent's employer or union without further notice to the parent((and

(iii) ~~The reasons for not ordering health insurance coverage if the order fails to require such coverage;~~

(g) ~~A provision which determines the mother and the father's proportionate share of uninsured medical expenses));~~

(h) The NCP's accrued debt and order payments toward the debt in a monthly amount to be determined by the division of child support (DCS);

(i) The NCP's current and future monthly support obligation as a sum certain amount per month, and also as a "per month per child" amount (~~and order payments in that amount;~~) if appropriate under WAC 388-14A-3200(4) and 388-14A-4800, and

(~~(j)~~) ~~The NCP's total current and future support obligation as a sum certain and~~) order payments in that amount.

(3) In determining the medical support obligation of the parents, the ALJ must:

(a) Require both parents to provide medical support for the children covered by the order. Medical support includes both:

(i) The obligation to provide health insurance coverage for the children if coverage that can be extended to cover the children is or becomes available through the obligated parent's employer or union, or to make a monthly contribution toward the premium paid for coverage by the other parent or the state when coverage is not available; and

(ii) The obligation to pay his or her proportionate share of uninsured medical expenses.

(b) Determine whether one (but not both) of the parents should be excused from the obligation to provide coverage or contribute to a premium.

(i) The ALJ must state the reasons for excusing a parent from the coverage obligation.

(ii) The ALJ may not excuse that parent from the obligation to contribute his or her proportionate share of uninsured medical expenses.

(4) Having made the determinations required in subsection (2) above, the ALJ must order the NCP to make payments to the Washington state support registry (WSSR).

~~((4))~~ (5) The ALJ must allow DCS to orally amend the notice at the hearing to conform to the evidence. The ALJ may grant a continuance, when necessary, to allow the NCP or the CP additional time to present rebutting evidence or argument as to the amendment.

~~((5))~~ (6) The ALJ may not require DCS to produce or obtain information, documents, or witnesses to assist the NCP or CP in proof of defenses to liability. However, this rule does not apply to relevant, nonconfidential information or documents that DCS has in its possession.

~~((6))~~ (7) In a hearing held on a notice of support owed served on the NCP under WAC 388-14A-3310 or 388-14A-3311, the ALJ must comply with WAC 388-14A-3323 and 388-14A-3325 to determine, depending on what was requested in the notice:

(a) Whether a condition precedent in the order to begin or adjust the support obligation was met;

(b) The amount of monthly support as a fixed dollar amount;

(c) Any accrued arrears;

(d) Any difference between the amount calculated in the order resulting from a previous notice of support owed and the actual amount of the NCP's obligation for the period covered by the order; and

(e) The amount of the NCP's share of daycare or child care expenses for the children, including:

(i) The amount that the NCP must pay each month as his or her ongoing share of daycare or child care expenses for the children; and

(ii) The amount of NCP's accrued debt for daycare or child care expenses.

(8) In a hearing held on a notice of support owed served on either the NCP or the CP issued under WAC 388-14A-3312, the ALJ must determine either or both of the following, depending on what was requested in the notice:

(a) The amount owed by the obligated parent to the other for unreimbursed medical expenses;

(b) The monthly amount to be paid by the obligated parent as his or her proportionate share of the health insurance premium paid by the other parent or the state.

~~((8))~~ (9) Except as provided in WAC 388-14A-3324, the ALJ does not specify how the amounts owed by the obligated parent should be paid.

~~((9))~~ (10) In the event that DCS has served a notice of support owed under WAC 388-14A-3312 on both the NCP and the CP, the ALJ must issue a separate administrative order for each notice issued, and may not set off the debts against each other.

AMENDATORY SECTION (Amending WSR 06-16-073, filed 7/28/06, effective 8/28/06)

**WAC 388-14A-8130 How does DCS complete the WSCSS worksheets when setting a joint child support obligation (~~(when the parents of)~~ **for a child in foster care (~~(are married and residing together)~~)**?)** (1) When the division of child support (DCS) is (~~(setting)~~) preparing an administrative support notice to establish a joint support obligation for (~~(married)~~) the parents (~~(who reside together)~~) of a child in foster care, DCS follows the steps set out in this section for completing the worksheets under the Washington state child support schedule (WSCSS).

(2) DCS establishes a joint support obligation when the parents reside together and are either married or in a registered domestic partnership, unless a child support order covering current support for that child has already been established for one of the parents.

(3) DCS calculates each parent's income under the rules set out in WAC 388-14A-3205, and then calculates the income of the marital or domestic partnership community by combining both parents' income in (~~(the "Father")~~) one column of the worksheet and does not put any income or other information in the (~~(the "Mother")~~) other column.

~~((3))~~ (4) DCS calculates the joint support obligation using the limitations contained in RCW 26.19.065:

(a) The joint child support obligation may not exceed forty-five percent of the net income of the (~~(marital)~~) community except for good cause.

(b) (~~(Even with the need standard)~~) DCS follows WAC 388-14A-3410 when calculating and applying the self-support reserve limitation.

(c) Even though there are two parents involved, and despite the application of any limitations, (~~(there is a)~~) the presumptive minimum obligation of (~~(twenty-five)~~) fifty dollars per month per child applies when DCS sets a joint child support obligation.

~~((c))~~ (d) DCS or the administrative law judge (ALJ) may find reasons for deviation and must support those reasons with appropriate findings of fact in the support order.

~~((4))~~ (5) As described in subsection (3) of this section, the support obligation in the (~~(the "Father")~~) column of the WSCSS worksheet which contains information regarding both parents is the joint support obligation of the parents. (~~(The support obligation in the "Mother" column of the WSCSS worksheet is irrelevant for purposes of this particular support calculation.)~~)

~~((5))~~ (6) DCS determines the joint support obligation of the parents without regard to the cost of foster care placement, as provided in WAC 388-14A-8105.

**WSR 11-12-078  
PERMANENT RULES  
DEPARTMENT OF  
EARLY LEARNING**

[Filed May 31, 2011, 2:43 p.m., effective July 1, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Revising sections of chapter 170-290 WAC for the seasonal child care (SCC) subsidy program.

The department of early learning (DEL) is revising rules in chapter 170-290 WAC regarding implementation of the SCC subsidy program. Two sections of Part I are amended, and all sections of Part III of this chapter are revised (amended or repealed). The rules:

1. Will allow DEL to limit consumer entry into SCC if needed to keep the program within available funds;
2. Note that responsibility for processing applications for SCC and determining family eligibility for subsidy benefits has been transferred from contracted local agencies to the department of social and health services (DSHS); and
3. Where appropriate, align SCC eligibility standards, eligibility determination, and appeal rights with those for the working connections child care (WCCC) subsidy program to streamline program administration.

SCC helps eligible parents pay for child care while the parents work in season [seasonal] agricultural harvesting or processing. The program was suspended in January 2011, when it ran out of funds for state fiscal year (SFY) 2011. DEL plans to reopen to SCC applications to families in July

2011, with SFY 2012 funding. To avoid running short of SCC funds, DEL or DSHS may limit program enrollment, create priority lists or create waiting lists. Shifting SCC administration to DSHS was done in response to Executive Order 10-04 requiring DEL and other state agencies to reduce state general fund expenditures on an emergency basis to avoid a [an] SFY 2011 budget deficit. This change saved an estimated \$250,000 in SFY 2011 and will save about \$1 million per year in future fiscal years.

Citation of Existing Rules Affected by this Order: Repealing WAC 170-290-3510, 170-290-3670, 170-290-3820 and 170-290-3830; and amending WAC 170-290-0002, 170-290-0003, 170-290-3501, 170-290-3520, 170-290-3530, 170-290-3540, 170-290-3550, 170-290-3555, 170-290-3560, 170-290-3565, 170-290-3570, 170-290-3580, 170-290-3590, 170-290-3610, 170-290-3620, 170-290-3630, 170-290-3640, 170-290-3650, 170-290-3660, 170-290-3665, 170-290-3690, 170-290-3730, 170-290-3750, 170-290-3760, 170-290-3770, 170-290-3790, 170-290-3840, 170-290-3850, 170-290-3855, 170-290-3860, and 170-290-3865.

Statutory Authority for Adoption: RCW 43.215.060, 43.215.070, chapter 43.215 RCW.

Adopted under notice filed as WSR 11-08-009 on March 29, 2011.

Changes Other than Editing from Proposed to Adopted Version: This section compares the changes made from the proposed rules to the final rules, and reasons for the changes, as required by RCW 34.05.380. The first column is the proposed rule as it would appear if adopted with changes proposed in WSR 11-08-009. In the middle column, wording added at the final rule is underlined, and wording deleted at the final rule is lined through, except sections that are noted as completely repealed.

Seasonal Child Care WAC as Proposed as WSR 11-08-009, March 29, 2011	Final Seasonal Child Care WAC as Adopted	Reason for this Change
The following WAC sections were adopted as proposed in WSR 11-08-009 without additional changes: WAC 170-290-0002, 170-290-3501, 170-290-3540, 170-290-3555, 170-290-3560, 170-290-3570, 170-290-3580, 170-290-3630, 170-290-3650, 170-290-3660, 170-290-3690, 170-290-3720, 170-290-3750, 170-290-3760, 170-290-3770, 170-290-3790, 170-290-3820, 170-290-3850, 170-290-3855, 170-290-3860, and 170-290-3865.	Not applicable.	Not applicable.
<p><b>WAC 170-290-0003 Definitions.</b> The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.</p> <p>(1) <b>"Collective bargaining agreement" or "CBA"</b> means the most recent agreement that has been negotiated and entered into between the exclusive bargaining representative for all licensed and license-exempt family child care providers as defined in chapter 41.56 RCW.</p> <p>(2) <b>"Consumer" or "eligible consumer"</b> means the person applying for or receiving:</p> <p>(a) WCCC benefits as described in part II of this chapter; or</p> <p>(b) SCC benefits as described in part III of this chapter.</p> <p>(3) <b>"Copayment"</b> means the amount of money the consumer is responsible to pay the child care provider toward the cost of child care each month.</p> <p>(4) <b>"DEL"</b> means the department of early learning.</p>	<p><b>WAC 170-290-0003 Definitions.</b> The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.</p> <p>(1) <u>"Able" means being physically and mentally capable of caring for a child in a responsible manner.</u></p> <p>(2) <u>"Available" means being free to provide care when not participating in an approved work activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or 170-290-0055 during the time child care is needed.</u></p> <p>(3) <u>"Authorization" means the documentation that DSHS gives to providers specifying units of full-day, half-day or hourly child care a family may receive during their eligibility period, which may be adjusted based on the family's need for care or changes in eligibility.</u></p> <p>(4) <u>"Calendar year" means those dates between and including January 1 and December 31.</u></p>	<p>Subsections (1) and (2) (definitions of "able" and "available"): Two-parent reporting requirements for special circumstances in this definition are retained in WAC 170-290-0020 (4)(b); splitting up "able" and "available" into two separate definitions allows for a broader usage in determining eligibility.</p> <p>Subsection (3) (definition of "authorization" and "calendar year") are added to clarify their meaning as used in WCCC and SCC.</p> <p>Subsection (6) (definition of "consumer" or "eligible consumer"):</p>

Seasonal Child Care WAC as Proposed as WSR 11-08-009, March 29, 2011	Final Seasonal Child Care WAC as Adopted	Reason for this Change
<p>(5) "DSHS" means the department of social and health services.</p> <p>(6) "Days" means calendar days unless otherwise specified.</p> <p>(7) "In-home/relative provider," referred to in the collective bargaining agreement as "license-exempt provider," means those providers who meet the requirements in WAC 170-290-0130 through 170-290-0167.</p> <p>(8) "In loco parentis" means the adult caring for an eligible child in the absence of the biological, adoptive, or step-parents, and who is not a relative, court-ordered guardian, or custodian.</p> <p>(9) "SCC" means the seasonal child care program, which is a child care subsidy program described in part III of this chapter that assists eligible families who are seasonally employed in agriculturally related work to pay for licensed or certified child care.</p> <p>(10) "WCCC" means the working connections child care program, which is a child care subsidy program described in part II of this chapter that assists eligible families in obtaining child care subsidies for approvable activities that enable them to work, attend training, or enroll in educational programs.</p>	<p><del>(5)</del> "Collective bargaining agreement" or "CBA" means the most recent agreement that has been negotiated and entered into between the exclusive bargaining representative for all licensed and license-exempt family child care providers as defined in chapter 41.56 RCW.</p> <p>(6) "Consumer" <del>or "eligible consumer"</del> means the person applying for or receiving:</p> <p>(a) WCCC benefits as described in part II of this chapter; or</p> <p>(b) SCC benefits as described in part III of this chapter.</p> <p>(7) "Copayment" means the amount of money the consumer is responsible to pay the child care provider toward the cost of child care each month.</p> <p>(8) "DEL" means the department of early learning.</p> <p>(9) "DSHS" means the department of social and health services.</p> <p>(10) "Days" means calendar days unless otherwise specified.</p> <p><u>(11) "Eligibility" means that a consumer has met all of the requirements of:</u></p> <p><u>(a) Part II of this chapter to receive WCCC program subsidies; or</u></p> <p><u>(b) Part III of this chapter to receive SCC program subsidies.</u></p> <p><u>(12) "Employment" or "work" means engaging in any legal, income generating activity that is taxable under the United States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States. This includes unsubsidized employment, as verified by an employee's pay stubs or DSHS employer verification form, and subsidized employment, such as:</u></p> <p><u>(a) Working in a federal or state paid work study program; or</u></p> <p><u>(b) VISTA volunteers, AmeriCorps, JobCorps, and Washington Service Corps (WSC) if the income is taxed.</u></p> <p>(13) "In-home/relative provider," referred to in the collective bargaining agreement as "license-exempt provider," means those providers who meet the requirements in WAC 170-290-0130 through 170-290-0167.</p> <p>(14) "In loco parentis" means the adult caring for an eligible child in the absence of the biological, adoptive, or step-parents, and who is not a relative, court-ordered guardian, or custodian, <u>and is responsible for exercising day-to-day care and control of the child.</u></p> <p>(15) "SCC" means the seasonal child care program, which is a child care subsidy program described in part III of this chapter that assists eligible families who are seasonally employed in agriculturally related work <u>outside of the consumer's home</u> to pay for licensed or certified child care.</p> <p><u>(16) "Seasonally available labor" or "seasonally available agricultural related work" means work that is available only in a specific season during part of the calendar year. The work is directly related to the cultivation, production, harvesting or processing of fruit trees or crops.</u></p>	<p>Defining consumer as a person either applying for or receiving benefits has caused problems in fair hearings. This amendment clarifies the application process to determine eligibility vs. the on-going requirements for a person found eligible and receiving benefits.</p> <p>Subsection (11) (definition of "eligibility"): The definition of this term for SCC was added in the proposed rule and is moved from WAC 170-290-3510 and WCCC eligibility is added.</p> <p>Subsection (12) (definition of "employment" or "work"): (a) and (b) are from WAC 170-290-0045 (1)(a) and (b). DSHS currently uses the following employer verification form: <a href="http://www.dshs.wa.gov/pdf/ms/forms/14_252.pdf">http://www.dshs.wa.gov/pdf/ms/forms/14_252.pdf</a>. Separating employment from self-employment and placing them in the definitions section address on-going fraud, eligibility, and authorization issues.</p> <p>Subsection (14) (definition of "in loco parentis"): Clearly defining in loco parentis is both required by federal CCDF and will streamline eligibility determinations for child care subsidy. The definition dovetails with the WorkFirst definition of in loco parentis.</p> <p>Subsection (15) definition of "SCC": "Or certified" is added from WSR 11-08-009; language is added to ensure that approved activities must occur outside of the consumer's home to address issues of fraud and misuse of child care subsidy benefits.</p> <p>Subsection (16) (definition of "seasonally available labor" or "seasonally available agricultural related work"): Are moved from WAC 170-290-3510, which is repealed.</p> <p>Subsection (17) (definition of "self-employment"): Amendments are intended to address on-going fraud and eligibility/authorization issues by including WA business licenses and UBI verification, stating that self-employment activities must take place outside of the home, and addressing incorporations, which are not considered self-employment enterprises. Additional information on</p>

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	<p><u>(17) "Self-employment" means engaging in any legal, income generating activity that is taxable under the United States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States, as verified by Washington state business license, or a tribal, county, or city business or occupation license, as applicable, and a uniform business identification (UBI) number for approved self-employment activities that occur outside of the home. Incorporated businesses are not considered self-employment enterprises.</u></p> <p><u>(18) "Waiting list" means a list of families who are currently working and waiting for child care subsidies when funding is not available to meet the requests from all eligible families.</u></p> <p><u>(19) "WCCC" means the working connections child care program, which is a child care subsidy program described in part II of this chapter that assists eligible families in obtaining child care subsidies for approvable activities that enable them to work, attend training, or enroll in educational programs outside the consumer's home.</u></p>	<p>Washington and IRS requirements can be found in the following web sites: <a href="http://access.wa.gov/business/checklist/checklist4.aspx">http://access.wa.gov/business/checklist/checklist4.aspx</a> and <a href="http://www.irs.gov/businesses/small/selfemployed/index.html">http://www.irs.gov/businesses/small/selfemployed/index.html</a>.</p> <p>Subsection (18) (definition of "waiting list"): Was included in the proposed rule and is moved from WAC 170-290-3510 (SCC definitions), which is repealed.</p> <p>Subsection (19) (definition of WCCC): Addresses issues of fraud and misuse of child care subsidy benefits.</p>
<p><b>WAC 170-290-3510 SCC definitions.</b> The following definitions apply only to part III of this chapter relating to seasonal child care (SCC):</p> <p>(1) ("Application interview date" means the first date a consumer, as defined in WAC 170-290-0003, meets with the SCC contractor to see if the consumer is eligible for subsidy benefits:</p> <p>(2)) "Child care plan" means ((a state form)) an enhanced award letter filled out by ((the SCC contractor)) DSHS that ((tells)) states for the consumer and provider:</p> <p>(a) When benefits start and end;</p> <p>(b) The amount of the copayment; ((and))</p> <p>(c) The approved hours of care; and</p> <p>(d) Each consumer's eligibility for SCC program subsidies.</p> <p>((3)) "SCC contractor" means the agency that DEL has contracted with to meet with families to see if they are eligible for the seasonal child care program. SCC contractors are located in several communities across the state. SCC contractors are responsible to follow the SCC rules that DEL has established.</p> <p>(4)) (2) "Eligibility" means that a consumer has met all of the requirements of part III of this chapter to receive SCC program subsidies.</p> <p>(3) "Seasonally available labor" or "seasonally available agricultural related work" means ((labor)) work that is available only in a specific season during part of the calendar year. The ((labor)) work is directly related to the cultivation, production, harvesting or processing of fruit trees or crops.</p> <p>((5)) "Waiting list" means a list of families who are currently working and waiting for seasonal child care subsidies when funding is not available to meet the requests from all eligible families.)) (4) "Waiting list" means a list of families who are currently working and waiting for seasonal child care subsidies when funding is not available to meet the requests from all eligible families.</p>	<p><b>WAC 170-290-3510 Definitions</b> is repealed.</p> <p>Proposed definitions, except the definition of "child care plan" are moved to <b>WAC 170-290-0003 Definitions</b>.</p> <p>The definition of "child care plan" is deleted.</p>	<p>Repealing WAC 170-290-3510 and consolidating definitions into WAC 170-290-0003 helps reduce confusion about where words or terms are defined.</p> <p>The term "child care plan" is not [no] longer used in the SCC or WCCC rules.</p>

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<p><b>WAC 170-290-3520 Eligible consumers.</b> (1) In SCC, an eligible consumer;</p> <p>(a) Is not currently receiving temporary aid for needy families (TANF)(:);</p> <p>(b) Lives in <del>((the state of))</del> <u>one of the following Washington(,) state counties: Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Okanogan, Skagit, Walla Walla, Whatcom, or Yakima;</u></p> <p>(c) Has parental control of one or more children(:); and</p> <p>(d) Is the child's:</p> <p><del>((a))</del> (i) Parent, either biological or adopted;</p> <p><del>((b))</del> (ii) Stepparent;</p> <p><del>((c))</del> (iii) Legal guardian as verified by a legal or court document;</p> <p><del>((d))</del> (iv) Adult sibling or step-sibling;</p> <p><del>((e))</del> (v) Aunt;</p> <p><del>((f))</del> (vi) Uncle;</p> <p><del>((g))</del> (vii) Niece or nephew;</p> <p><del>((h))</del> (viii) Grandparent; or</p> <p><del>((i))</del> (ix) Any of the above relatives in <del>((e), (f), or (h))</del> (v), (vi), or (viii) of this subsection, with the prefix "great," such as great-aunt.</p> <p>(2) Consumers may be eligible for SCC <del>((benefits))</del> <u>program subsidies</u> if they:</p> <p>(a) Meet eligibility requirements in this chapter;</p> <p>(b) Participate in an approved activity under WAC 170-290-3555; and</p> <p>(c) Have countable income at or below <del>((two hundred percent of the federal poverty guidelines (FPG)))</del> <u>the maximum eligibility limit described in WAC ((170-290-3640)) 170-290-0005 (2)(d) and (3).</u></p> <p>(3) Consumers are not eligible for SCC <del>((benefits))</del> <u>program subsidies</u> if they:</p> <p>(a) Have a copayment, under WAC 170-290-0075, that is higher than the maximum monthly state <u>child care</u> rate for all of the consumer's children in care;</p> <p>(b) Were employed with one employer more than eleven months in the previous twelve months <u>for a single-parent household;</u></p> <p>(c) Are receiving TANF benefits; or</p> <p>(d) Are the only parent in the household and will be away from the home for more than thirty days in a row.</p>	<p><b>WAC 170-290-3520 <del>Eligible consumers</del> Eligibility [Eligibility].</b> (1) <b>Parents.</b> To be eligible for <del>in</del> SCC, <del>an eligible consumer</del> <u>the person applying for benefits:</u></p> <p>(a) Is not currently receiving temporary aid for needy families (TANF):</p> <p>(b) Lives in one of the following Washington state counties: Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Okanogan, Skagit, Walla Walla, Whatcom, or Yakima;</p> <p>(c) Has parental control of one or more children; and</p> <p>(d) Is the child's:</p> <p>(i) Parent, either biological or adopted;</p> <p>(ii) Stepparent;</p> <p>(iii) Legal guardian as verified by a legal or court document;</p> <p>(iv) Adult sibling or step-sibling;</p> <p>(v) Aunt;</p> <p>(vi) Uncle;</p> <p>(vii) Niece or nephew;</p> <p>(viii) Grandparent; or</p> <p>(ix) Any of the above relatives in (v), (vi), or (viii) of this subsection, with the prefix "great," such as great-aunt.</p> <p><del>(2) Consumers may be eligible for SCC program subsidies if they:</del></p> <p><del>(a) Meet eligibility requirements in this chapter;</del></p> <p><del>(b) Participates in an approved activity under WAC 170-290-3555;</del></p> <p><del>(c) Has have countable income at or below the maximum eligibility limit described in WAC 170-290-0005 (2)(d) and (3);</del></p> <p><del>(g) Completes the SCC application and DSHS verification process regardless of other program benefits or services received; and</del></p> <p><del>(h) Meets eligibility requirements for SCC described under part III of this chapter.</del></p> <p><b>(2) Children.</b> To be eligible for SCC, the child receiving SCC must:</p> <p>(a) <u>Belong to one of the following groups as defined in WAC 388-424-0001:</u></p> <p>(i) <u>A U.S. citizen;</u></p> <p>(ii) <u>A U.S. national;</u></p> <p>(iii) <u>A qualified alien; or</u></p> <p>(iv) <u>A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005:</u></p> <p>(b) <u>Live in Washington state, and be:</u></p> <p>(i) <u>Less than age thirteen; or</u></p> <p>(ii) <u>Less than age nineteen, and:</u></p> <p>(A) <u>Have a verified special need, according to WAC 170-290-0220; or</u></p> <p>(B) <u>Be under court supervision.</u></p> <p>(3) Consumers are not eligible for SCC program subsidies if they:</p> <p>(a) Have a copayment, under WAC 170-290-0075, that is higher than the maximum monthly state child care rate for all of the consumer's children in care;</p> <p><del>(b) Were employed with one employer more than eleven months in the previous twelve months;</del></p> <p>(c) Are receiving TANF benefits; or</p> <p>(d) Are the only parent in the household and will be away from the home for more than thirty days in a row.</p>	<p>Subsection (1) is amended to clarify that the person who is applying for benefits is the applicant and not the consumer at this point in the process.</p> <p>Subsection (1)(a) is moved to (1)(h).</p> <p>Subsection (1)(g) is added to clarify the application process to determine eligibility vs. the on-going requirements for a person found eligible and receiving benefits. Complete applications and the verification process are part of eligibility determinations to address concerns by administrative law judges in fair hearings involving what constitutes a complete WCCC application and verification, and whether this is the same for TANF and non-TANF, as well as to address audit findings and overpayments that DSHS cannot process because they do not have completed applications on file for TANF clients.</p> <p>A new subsection (2) is derived from WAC 170-290-3550(1) and 170-290-0020(1), and clarifies how DSHS will determine if the child is eligible for SCC benefits based on: United States citizen or legal resident status, age, special needs, and/or dependency status. WCCC WAC 170-290-0012 generally describes the citizenship and legal status requirement, but does not describe specific requirements.</p> <p>DEL plans to amend WCCC rules with similar wording as subsection (2) of WAC 170-290-3520.</p> <p>Subsection (3)(b) is deleted to streamline SCC and align it with WCCC to assist in DSHS's implementation of the SCC program.</p>

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<p><b>WAC 170-290-3530 Verifying consumers' information.</b> (1) A consumer must provide information to <del>((the SCC contractor))</del> DSHS to determine eligibility when:</p> <ul style="list-style-type: none"> <li>(a) The consumer initially applies for benefits;</li> <li>(b) The consumer reapplies for benefits; or</li> <li>(c) A change of circumstances occurs.</li> </ul> <p>(2) <del>((The SCC contractor))</del> <u>A consumer's eligibility may change if:</u></p> <ul style="list-style-type: none"> <li><u>(a) DSHS finds out that the consumer's circumstances may have changed; or</u></li> <li><u>(b) The information DSHS has is inconsistent, conflicting, or outdated.</u></li> </ul> <p>(3) DSHS may accept any verification that the consumer can easily obtain when it reasonably supports the consumer's statement of his or her circumstances. The verification that the consumer gives to <del>((the SCC contractor))</del> DSHS must:</p> <ul style="list-style-type: none"> <li>(a) Clearly relate to information <del>((the SCC contractor))</del> DSHS is requesting;</li> <li>(b) Be from a reliable source; and</li> <li>(c) Be accurate, complete, current and consistent.</li> </ul> <p><del>((3))</del> (4) DSHS will accept a variety of forms of verification to show the consumer is eligible. <del>((For example, any of the following documents are accepted to show the child is in the home: School records, immunization records or birth certificates, or other type of documents))</del> <u>If DSHS requires verification from a consumer that costs money, DSHS must pay for the consumer's reasonable costs.</u></p> <p><del>((4))</del> (5) If the verification that a consumer <del>((gives to the SCC contractor))</del> provides to DSHS is inconsistent, conflicting, or outdated <del>((or confusing, the SCC contractor))</del>, DSHS may:</p> <ul style="list-style-type: none"> <li>(a) Ask <del>((a))</del> <u>the</u> consumer to provide <del>((the SCC contractor))</del> DSHS with more <del>((information or documentation))</del> <u>verification</u> or provide a collateral contact (a "collateral contact" is a statement from someone outside of the consumer's residence that knows the consumer's situation); or</li> <li>(b) <del>((Ask for))</del> <u>Send</u> an investigator from the DSHS division of fraud investigations (DFI) to make an unannounced visit to the consumer's home to verify the consumer's circumstances. <u>See WAC 170-290-0025(9).</u></li> </ul> <p><del>((5))</del> (6) If a consumer does not provide <del>((the SCC contractor with))</del> all of the verification <del>((that the SCC contractor has))</del> requested, <del>((the SCC contractor))</del> DSHS will determine if <del>((the))</del> a consumer is eligible based on the information already available to <del>((the SCC contractor))</del> DSHS.</p> <p>(7) <u>DSHS staff verify if the consumer received TANF income during the previous twelve months.</u></p>	<p><b>WAC 170-290-3530 Verifying consumers' information.</b> <u>DSHS staff verify a consumer's information as provided in WAC 170-290-0012.</u></p>	<p>As proposed, this WAC section nearly duplicated the wording of WCCC WAC 170-290-0012. WAC 170-290-3530 was revised to avoid duplication and to match WCCC verification language and process for DSHS eligibility workers.</p>
<p><b>WAC 170-290-3550 Eligibility—Special circumstances.</b> (1) A consumer may be eligible for the SCC program when he or she:</p> <ul style="list-style-type: none"> <li>(a) Has children living with them in Washington state who are: <ul style="list-style-type: none"> <li>(i) Younger than age thirteen; or</li> <li>(ii) Thirteen to nineteen years old and under court supervision; or</li> <li>(iii) Less than nineteen years old and have a verified special need according to WAC 170-290-0220; <u>and</u></li> </ul> </li> <li>(b) Is a parent in a two-parent family <del>((in which))</del> <u>and</u> both parents <u>currently</u> work in seasonally available agricultural related work.</li> </ul> <p>(2) If both parents are not <u>currently</u> employed in</p>	<p><b>WAC 170-290-3550 Eligibility—Special circumstances for two-parent families.</b> (1) A consumer may be eligible for the SCC program when he or she:</p> <ul style="list-style-type: none"> <li><del>((a))</del> <u>Has children living with them in Washington state who are:</u> <ul style="list-style-type: none"> <li><del>((i))</del> <u>Younger than age thirteen; or</u></li> <li><del>((ii))</del> <u>Thirteen to nineteen years old and under court supervision; or</u></li> <li><del>((iii))</del> <u>Less than nineteen years old and have a verified special need according to WAC 170-290-0220; and</u></li> </ul> </li> <li><del>((b))</del> <u>is</u> a parent in a two-parent family and both parents currently work in seasonally available agricultural related work.</li> </ul> <p>(2) If both parents are not <u>currently</u> employed in</p>	<p>Subsection (1)(a) through (b) are moved to WAC 170-290-3520.</p> <p>Subsection (2) is revised to clarify that one of the two parents must be working or in an approved activity, and to match WCCC language on special circumstances in WAC 170-290-0020 as closely as possible within the constraints of SCC.</p>

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<p>seasonally agricultural related work, the consumer may be eligible for SCC only when the other parent is "unable" to provide care for the children because of physical or mental restrictions. If a consumer claims one parent is unable to care for the children, the consumer must provide written documentation from a licensed medical or mental health professional that states the:</p> <p>(a) Reason the parent is unable to care for the children; and</p> <p>(b) Expected duration and severity of the condition that keeps the parent from caring for the children.</p> <p>(3) <del>((For the previous twelve months before applying for SCC benefits.))</del> Fifty percent or more of the family's earned income must have come from seasonally available agricultural related work, <u>during the twelve months prior to the SCC application for benefits.</u></p>	<p><del>seasonally agricultural related work, the consumer may be eligible for SCC only when the other parent is "unable" to provide care for the children because of physical or mental restrictions. A consumer may be eligible for SCC if he or she is a parent in a two-parent family and one parent is not able or available as defined in WAC 170-290-0003 to provide care for the children while the other parent is currently working or participating in approved seasonally agricultural related work.</del></p> <p>(3) If a consumer claims one parent is <del>unable</del> <u>not</u> able to care for the children, the consumer must provide written documentation from a licensed medical or mental health professional (see WAC 388-448-0020) that states the:</p> <p>(a) Reason the parent is <del>unable</del> <u>not</u> able to care for the children; and</p> <p>(b) Expected duration and severity of the condition that keeps the parent from caring for the children.</p> <p>(3) <del>Fifty percent or more of the family's earned income must have come from seasonally available agricultural related work, during the twelve months prior to the SCC application for benefits.</del></p>	<p>Subsection (3) is deleted. Parents who apply do not need to have earned fifty percent of their previous year's income from seasonal agricultural work. They may have worked in any type of employment, as long as they meet other SCC eligibility requirements.</p>
<p><b>WAC 170-290-3565 Consumers' responsibilities.</b> When a consumer applies for or receives SCC <del>((benefits))</del> <u>program subsidies</u>, he or she must:</p> <p>(1) Give <del>((the SCC contractor))</del> <u>DSHS</u> correct and current information so that <del>((the SCC contractor))</del> <u>DSHS</u> can determine the consumer's eligibility and authorize child care payments correctly;</p> <p>(2) Choose a <u>licensed or certified child care provider</u> who meets requirements of WAC 170-292-3750;</p> <p>(3) Leave the consumer's children with his or her provider while the consumer is in SCC approved activities. If the consumer is not in an approved activity and wants to use the provider, he or she must pay the provider if the provider wants payment;</p> <p>(4) Pay for additional child care that exceeds the authorization based on the same fees that are charged to other families;</p> <p>(5) Pay, or make arrangements for someone to pay, the consumer's SCC copayment directly to the child care provider;</p> <p>(6) Pay the provider the same late fees that are charged to other families, if the consumer pays a copayment late or picks up the child late;</p> <p>(7) Sign his or her children in and out of child care as provided in WAC 170-295-7030, 170-296-0520, or 170-151-460, as applicable, for that type of provider; and</p> <p>(8) Provide the information requested by the <del>((SCC contractor or the department of social and health services))</del> <u>DSHS</u> fraud early detection (FRED) investigator. If the consumer refuses to provide the information requested within fourteen days, it could affect his or her <del>((benefits))</del> <u>SCC program subsidies</u>. If <del>((the SCC contractor))</del> <u>DSHS</u> determines <del>((that))</del> a consumer is not cooperating by supplying the requested information, the consumer will not be eligible for SCC <del>((benefits))</del> <u>program subsidies</u>. The consumer may become eligible again when he or she meets SCC <u>program</u> requirements in part III of this chapter.</p>	<p><b>WAC 170-290-3565 Consumers' responsibilities.</b> When a consumer applies for or receives SCC program subsidies, he or she must:</p> <p>(1) Give DSHS correct and current information so that DSHS can determine the consumer's eligibility and authorize child care payments correctly;</p> <p>(2) Choose a licensed or certified child care provider who meets requirements of WAC 170-292-3750;</p> <p>(3) Leave the consumer's children with his or her provider while the consumer is in SCC approved activities <del>outside of the consumer's home. If the consumer is not in an approved activity and wants to use the provider, he or she must pay the provider if the provider wants payment;</del></p> <p>(4) Pay <u>for the provider for child care services</u> when the consumer requests additional child care <del>that exceeds the authorization based on the same fees that are charged to other families for personal reasons other than working or participating in SCC approved activities that have been authorized by DSHS;</del></p> <p>(5) <u>Pay the provider for optional child care programs for the child that the consumer requests. The provider must have a written policy in place charging all families for these optional child care programs;</u></p> <p>(6) Pay, or make arrangements for someone to pay, the consumer's SCC copayment directly to the child care provider;</p> <p>(7) Pay the provider the same late fees that are charged to other families, if the consumer pays a copayment late or picks up the child late;</p> <p>(8) Sign his or her children in and out of child care as provided in WAC 170-295-7030, 170-296-0520, or 170-151-460, as applicable, for that type of provider; and</p> <p>(9) Provide the information requested by the DSHS fraud early detection (FRED) investigator. If the consumer refuses to provide the information requested within fourteen days, it could affect his or her SCC pro</p>	<p>Portions of subsection (3) are moved to subsections (4) and (5) and are clarified:</p> <ul style="list-style-type: none"> <li>Subsection (4) means additional child care when the parent is not working or in approved SCC activities.</li> <li>Subsection (5) refers to optional activities not covered in the monthly child care fee. The provider must have a written policy to charge all parents for these activities, including children who are not receiving SCC benefits.</li> </ul> <p>The new language is intended to move towards matching WAC and subsidy billing booklet language in appropriate places to streamline the SCC program and further align it with WCCC to assist in DSHS's implementation of SCC.</p>

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	<p>gram subsidies. If DSHS determines a consumer is not cooperating by supplying the requested information, the consumer will not be eligible for SCC program subsidies. The consumer may become eligible again when he or she meets SCC program requirements in part III of this chapter.</p>	
<p><b>WAC 170-290-3590 ((<del>SCC contractor's</del>) DSHS's responsibilities to consumers.</b> ((<del>SCC contractors are community agencies that contract with DEL to perform SCC program authorizations. The SCC contractors and their</del>) DSHS staff must:</p> <p>(1) Treat consumers in accordance with all applicable federal and state nondiscrimination laws, regulations and policies;</p> <p>(2) ((<del>Authorize SCC program subsidies for a consumer's children based on eligibility criteria established by DEL, as defined in this chapter;</del></p> <p>(<del>3</del>)) Ask if a consumer has received, or is currently receiving, child care services from another subsidy program; ((<del>and if he or she has received a copy of his or her termination letter from that program;</del></p> <p>(<del>4</del>) Ask if a consumer has applied, and been denied, for working connections child care (WCCC); and if he or she has, verify his or her denial from that program;</p> <p>(<del>5</del>)) <del>(3)</del> Complete ((<del>intake documents in a consumer's presence,</del>) applications for SCC program subsidies based on information ((<del>he or she</del>) <u>the consumer provides, and determine a consumer's eligibility within thirty days from the date the consumer applied;</u></p> <p>((<del>6</del>)) <del>(4)</del> Accept a variety of forms of verification and may not specify the type of documentation required;</p> <p>((<del>7</del>)) <del>(5)</del> Authorize payments only to a <u>licensed or certified</u> child care provider ((<del>of a consumer's choice</del>) <u>the consumer chooses</u> who meets the requirements in WAC 170-290-3750;</p> <p>((<del>8</del>)) <del>(6)</del> Authorize payments only when no adult in a consumer's family (under WAC 170-290-3540) is able or available to care for the consumer's children as defined in WAC 170-290-3550;</p> <p>((<del>9</del>)) <del>(7)</del> Give a consumer a SCC program approved child care plan in order to enroll his or her children in licensed or certified child care;</p> <p>((<del>10</del>)) <del>(8)</del> Inform a consumer of:</p> <p>(a) The consumer's copayment amount as determined in WAC 170-290-3620 and defined in WAC 170-290-0075;</p> <p>(b) The consumer's rights and responsibilities under the SCC program when he or she applies or reapplies;</p> <p>(c) The types of child care providers the SCC program will pay;</p> <p>(d) The community resources that can help the consumer select child care when needed;</p> <p>(e) Other options for child care subsidies, if the consumer does not qualify for SCC program subsidies; and</p> <p>(f) The consumer's rights to an administrative hearing ((<del>under the SCC program</del>));</p> <p>((<del>11</del>)) <del>(9)</del> Provide prompt child care authorizations to a consumer's child care provider;</p> <p>((<del>12</del>)) <del>(10)</del> Respond to a consumer within ten days if the consumer reports a change of circumstance that affects the consumer's</p> <p>(a) SCC eligibility;</p> <p>(b) Copayment; or</p> <p>(c) Providers; and</p>	<p><b>WAC 170-290-3590 DSHS's responsibilities to consumers.</b> DSHS staff must:</p> <p>(1) Treat consumers in accordance with all applicable federal and state nondiscrimination laws, regulations and policies;</p> <p>(2) <del>Ask if a consumer has received, or is currently receiving, child care services from another subsidy program;</del> Complete applications for SCC program subsidies based on information ((he or she)) <del>[(he or she)]</del> the consumer provides, and determine a consumer's eligibility within thirty days from the date the consumer applied;</p> <p>(3) Accept a variety of forms of verification and may not specify the type of documentation required;</p> <p>(4) Authorize payments only to a licensed or certified child care provider the consumer chooses who meets the requirements in WAC 170-290-3750;</p> <p>(5) Authorize payments only when no adult in a consumer's family (under WAC 170-290-3540) is able or available to care for the consumer's children as defined in WAC 170-290-3550;</p> <p><del>(7) Give a consumer a SCC program approved child care plan in order to enroll his or her children in licensed or certified child care;</del></p> <p>(6) Inform a consumer of:</p> <p>(a) The consumer's copayment amount as determined in WAC 170-290-3620 and defined in WAC 170-290-0075;</p> <p>(b) The consumer's rights and responsibilities under the SCC program when he or she applies or reapplies;</p> <p>(c) The types of child care providers the SCC program will pay;</p> <p>(d) The community resources that can help the consumer select child care when needed;</p> <p>(e) Other options for child care subsidies, if the consumer does not qualify for SCC program subsidies; and</p> <p>(f) The consumer's rights to an administrative hearing ((under the SCC program)) <del>[(under the SCC program)]</del>;</p> <p>(7) Provide prompt child care authorizations to a consumer's child care provider;</p> <p>(8) Respond to a consumer within ten days if the consumer reports a change of circumstance that affects the consumer's:</p> <p>(a) SCC eligibility;</p> <p>(b) Copayment; or</p> <p>(c) Providers; and</p> <p><del>(13)</del> <del>(9)</del> <del>[(9)]</del> Provide an interpreter or translator service at no cost to the consumer to explain information related to the SCC program.</p>	<p>The first sentence in proposed subsection (2) no longer applies and is deleted. DSHS will already know if the parents receive WCCC, and they will not ask if the parent is receiving other child care subsidies.</p> <p>Subsection (7) in the proposed rule is deleted. DSHS sends parents who have been approved for SCC an authorization letter.</p> <p>Other sections are renumbered.</p>

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<p><del>((13))</del> (11) Provide an interpreter or translator service at no cost to the consumer to explain information related to the SCC program.</p>		
<p><b>WAC 170-290-3610 Countable income.</b> <del>((DEL))</del> DSHS counts income as money a consumer earns or receives from:</p> <ul style="list-style-type: none"> <li>(1) Wages and commissions earned from employment;</li> <li>(2) Unemployment compensation;</li> <li>(3) A TANF or other welfare grant;</li> <li>(4) Child support payments received;</li> <li>(5) Supplemental Security Income (SSI);</li> <li>(6) Other Social Security payments, such as Social Security Administration (SSA) and Social Security disability insurance (SSDI);</li> <li>(7) Refugee assistance payments;</li> <li>(8) Payments from the Veterans' Administration;</li> <li>(9) Pensions or retirement income;</li> <li>(10) Payments from labor and industries (L&amp;I), or disability payments;</li> <li>(11) <del>(Inheritance;</del></li> <li><del>(12) Reportable gambling winnings; and</del></li> <li><del>(13)) Lump sums as money a consumer receives from a one-time payment such as back child support, an inheritance, or gambling winnings;</del></li> <li>(12) Other types of income not listed in WAC 170-290-3630; and</li> <li>(13) Gross wages from employment or self-employment income. "Employment" or "work" has the same meaning as defined in WAC 170-290-0040(2). "Self-employment income" means a consumer's gross income from self-employment minus allowable business expenses in WAC 388-450-0085.</li> </ul>	<p><b>WAC 170-290-3610 Countable income.</b> DSHS counts income as money a consumer earns or receives from:</p> <ul style="list-style-type: none"> <li>(1) Wages and commissions earned from employment;</li> <li>(2) Unemployment compensation;</li> <li>(3) A TANF or other welfare grant;</li> <li>(4) Child support payments received;</li> <li>(5) Supplemental Security Income (SSI);</li> <li>(6) Other Social Security payments, such as Social Security Administration (SSA) and Social Security disability insurance (SSDI);</li> <li>(7) Refugee assistance payments;</li> <li>(8) Payments from the Veterans' Administration;</li> <li>(9) Pensions or retirement income;</li> <li>(10) Payments from labor and industries (L&amp;I), or disability payments;</li> <li>(11) Lump sums as money a consumer receives from a one-time payment such as back child support, an inheritance, or gambling winnings;</li> <li>(12) Other types of income not listed in WAC 170-290-3630; and</li> <li>(13) Gross wages from employment or self-employment income "Employment" or "work" has the same meaning as defined in WAC 170-290-0003. "Self-employment income" means a consumer's gross income from self-employment minus allowable business expenses in WAC 388-450-0085. Gross wages includes any wages that are taxable.</li> </ul>	<p>Definitions of "employment" and "self-employment" in subsection (13) are moved to WAC 170-290-0003 Definitions; additional language is from WAC 170-290-0060(10).</p>
<p><b>WAC 170-290-3620 Calculation of income.</b> (1) For the SCC program, <del>((DEL))</del> DSHS uses a consumer's average countable income when determining his or her income eligibility and copayment. <del>((DEL determines))</del> A consumer's average monthly income is determined by totaling all income earned and received in the past twelve months, as listed in WAC 170-290-3610, and dividing by twelve. The last month of income that is counted is the month before the consumer applies for SCC.</p> <p>(2) If a consumer receives a lump sum payment (such as money from back child support payment) in the month of application or during his or her SCC eligibility:</p> <ul style="list-style-type: none"> <li>(a) DSHS divides the lump sum payment by twelve to come up with a monthly amount;</li> <li>(b) DSHS adds the monthly amount to the month it was received and each subsequent month of the twelve month review period; and</li> <li>(c) The consumer must meet income guidelines for SCC after the lump sum payment is added to remain eligible for SCC.</li> </ul>	<p><b>WAC 170-290-3620 Calculation of income.</b> For the SCC program, DSHS calculates a consumer's income in the same manner as provided in WAC 170-290-0065.</p>	<p>DEL is making the calculation of income for SCC the same as WCCC. DEL is proposing changes to WAC 170-290-0065 so that DSHS staff will calculate income based on the total number of months (up to twelve months) it took for the family to earn their stated income, and then divide the income by the number of months the parent reported. This is expected to help account for high and low fluctuations experienced by seasonal workers of all types, including agricultural workers.</p>
<p><b>WAC 170-290-3640 Determining income eligibility and copayment.</b> (1) For the SCC program, <del>((DEL))</del> DSHS determines a consumer's family's income eligibility and copayment by:</p> <ul style="list-style-type: none"> <li>(a) The consumer's family size as defined under WAC 170-290-3540;</li> <li>(b) The consumer's average monthly income as calculated under WAC 170-290-3620;</li> <li>(c) The consumer's family's average monthly income as compared to the federal poverty guidelines (FPG); and</li> </ul>	<p><b>WAC 170-290-3640 Determining income eligibility and copayment.</b> (1) For the SCC program, DSHS determines a consumer's family's income eligibility and copayment by:</p> <ul style="list-style-type: none"> <li>(a) The consumer's family size as defined under WAC 170-290-3540;</li> <li>(b) The consumer's average monthly income as calculated under WAC 170-290-3620;</li> <li>(c) The consumer's family's average monthly income as compared to the federal poverty guidelines (FPG); and</li> </ul>	<p>The second sentence in subsection (4) is deleted. DSHS sends the parent an authorization letter that has similar information as the previous SCC child care plan.</p>

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<p>(d) The consumer's family's average monthly income as compared to the copayment chart defined in WAC 170-290-0075.</p> <p>(2) If a consumer's family's income is above <del>((two hundred percent of the FPG as defined in WAC 170-290-0075))</del> the maximum eligibility limit as provided in WAC 170-290-0005 (2)(d) and (3), his or her family is not eligible for the SCC program.</p> <p>(3) <del>((SCC does not prorate the copayment when a consumer uses care for part of a month.</del></p> <p>(4)) The FPG is updated every year on April 1. The SCC eligibility level is updated at the same time every year to remain current with the FPG.</p> <p><del>((§))</del> (4) SCC shall assign a copayment amount based on the family's countable income. The copayment amount will be on the consumer's child care plan. The consumer pays the copayment directly to the provider.</p> <p>(5) SCC does not prorate the copayment when a consumer uses care for part of a month.</p>	<p>(d) The consumer's family's average monthly income as compared to the copayment chart defined in WAC 170-290-0075.</p> <p>(2) If a consumer's family's income is above the maximum eligibility limit as provided in WAC 170-290-0005 <del>(2)(d) and (3)</del>, his or her family is not eligible for the SCC program.</p> <p>(3) The FPG is updated every year on April 1. The SCC eligibility level is updated at the same time every year to remain current with the FPG.</p> <p>(4) SCC shall assign a copayment amount based on the family's countable income. <del>The copayment amount will be on the consumer's child care plan.</del> The consumer pays the copayment directly to the provider.</p> <p>(5) SCC does not prorate the copayment when a consumer uses care for part of a month.</p>	
<p><b>WAC 170-290-3665 When SCC <del>((benefits))</del> program subsidies start.</b> <del>((The consumer's child care plan will tell the consumer when the benefits start and end.))</del></p> <p>(1) <del>((The SCC contractor))</del> DSHS authorizes <del>((child care))</del> SCC program subsidies <del>((when))</del> to begin on the date the consumer applies for SCC and the following requirements are met:</p> <p>(a) The consumer turns in all of his or her eligibility paperwork <del>((to the SCC contractor))</del> and provider information to DSHS within thirty calendar days of his or her application date;</p> <p>(b) The <del>((SCC contractor determines that the))</del> consumer is determined eligible for the program; and</p> <p>(c) The consumer starts his or her children in care with an approved child care provider.</p> <p>(2) <del>((After the SCC contractor decides that a consumer is eligible, the date the subsidy begins depends upon when the consumer applied and when the consumer turned in all of the paperwork needed as follows:</del></p> <p>(table deleted)</p> <p>The consumer's application date is whichever is earlier:</p> <p>(a) The date the consumer's application is entered into DSHS's automated system; or</p> <p>(b) The date the consumer's application is date stamped as received.</p> <p>(3) If a consumer fails to turn in all information within thirty calendar days from his or her application date, the consumer must restart the application process. The consumer's begin date for benefits is described in subsection (2) of this section.</p>	<p><b>WAC 170-290-3665 When SCC <del>((benefits))</del> program subsidies start.</b> (1) SCC benefits for an eligible consumer may begin when the following conditions are met:</p> <p>(a) <u>The consumer has completed the required SCC application and verification process as described under WAC 170-290-0012 within thirty days of the date DSHS received the consumer's application or reapplication for SCC benefits;</u></p> <p>(b) <u>The consumer is working or participating in an approved activity under WAC 170-290-3555;</u></p> <p>(c) <u>The consumer needs child care for work or approved activities within at least thirty days of the date of application for SCC benefits; and</u></p> <p>(d) <u>The consumer's eligible licensed or certified provider is caring for his or her children.</u></p> <p>(2) <u>If a consumer fails to turn in all information within thirty days from his or her application date, the consumer must restart the application process.</u></p> <p>(3) <u>The consumer's application date is whichever is earlier:</u></p> <p>(a) <u>The date the consumer's application is entered into DSHS's automated system; or</u></p> <p>(b) <u>The date the consumer's application is date stamped as received.</u></p>	<p>This entire section is rearranged and reworded for clarity, but the requirements are the same as in the proposed rule.</p>
<p><b>REPEALED: WAC 170-290-3670 Preauthorization for the SCC program.</b></p>	<p>No change. This WAC section is repealed.</p>	
<p><b>WAC 170-290-3730 <u>When notice of payment changes is not required.</u></b> <del>((The SCC contractor))</del> DSHS does not give a consumer notice if the consumer:</p> <p>(1) Tells <del>((the SCC contractor))</del> DSHS that he or she no longer wants SCC;</p> <p>(2) Has moved and his or her whereabouts are unknown to <del>((the SCC contractor))</del> DSHS;</p> <p>(3) Is receiving duplicate child care benefits;</p> <p>(4) Has a current <del>((eligibility period))</del> authorization that is scheduled to end;</p>	<p><b>WAC 170-290-3730 <u>When notice of payment changes is not required.</u></b> DSHS does not give a consumer notice if the consumer:</p> <p>(1) Tells DSHS that he or she no longer wants SCC; or</p> <p>(2) Has moved and has not informed DSHS of his or her new mailing address <del>his or her whereabouts are unknown to DSHS;</del></p> <p><del>(3) Is receiving duplicate child care benefits;</del></p> <p>(4) <u>Has a current <del>((eligibility period))</del> authorization that is scheduled to end;</u></p>	<p>The amendment to subsection (2) will help DSHS in maintaining the waiting list to contact SCC applicants when they are being notified. Notification is by mail, so DSHS must have updated mailing information.</p> <p>DSHS currently sends out notices to consumers of the information contained in subsections (3) to (6); deleting these subsections aligns the WAC</p>

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<p>(5) Has a new eligibility period that results in a change in child care benefits; or</p> <p>(6) Is receiving child care at a location that does not meet requirements under WAC 170-290-3750.</p>	<p><del>(5) Has a new eligibility period that results in a change in child care benefits; or</del></p> <p><del>(6) Is receiving child care at a location that does not meet requirements under WAC 170-290-3750.</del></p>	<p>with current DSHS practice.</p>
<p><b>WAC 170-290-3830 Redetermination of SCC ((benefits)) program subsidies.</b> (1) At least every six months, <del>((the SCC contractor))</del> DSHS reviews a consumer's information to determine if he or she <del>((may keep receiving subsidies. A consumer may receive subsidy benefits for less than six months when:</del></p> <p>(a) <del>The consumer's employer says that the consumer might be working less than six months; or</del></p> <p>(b) <del>The consumer's child or children may not be eligible for the next six months because of their age))</del> is still eligible for SCC program subsidies.</p> <p>(2) <del>((The SCC contractor))</del> DSHS will:</p> <p>(a) Review the consumer's updated information to include the last six months of earned and unearned income and add it to the most current six months of the previous income information; and</p> <p>(b) Redetermine the consumer's eligibility.</p>	<p>This entire WAC section is repealed in the final rule.</p>	<p>See the changes to proposed WAC 170-290-3840.</p>
<p><b>WAC 170-290-3840 New eligibility period.</b> (1) If a consumer wants to receive <del>((child care benefits))</del> SCC program subsidies for another eligibility period, he or she must reapply for SCC benefits before the end of the current eligibility period listed on the child care plan. To determine if a consumer is eligible, the consumer calls <del>((or comes into the SCC contractor's office))</del> DSHS on or before the end date of the consumer's current SCC eligibility period to request <del>((an application interview date))</del> SCC program subsidies.</p> <p>(2) A consumer may be eligible for SCC <del>((benefits))</del> program subsidies for a new eligibility period with no break in <del>((child care))</del> SCC program subsidies if:</p> <p>(a) The consumer calls <del>((or comes into the SCC contractor's office))</del> DSHS on or before the end date of the consumer's current SCC eligibility period to request <del>((an application interview date))</del> SCC program subsidies;</p> <p>(b) The consumer's provider is eligible for payment under WAC 170-290-3750; and</p> <p>(c) The consumer meets all SCC eligibility requirements.</p> <p>(3) If <del>((the SCC contractor))</del> DSHS determines that a consumer is eligible for SCC <del>((benefits))</del> program subsidies based on his or her application information, <del>((the SCC contractor))</del> DSHS notifies the consumer of the new eligibility period and copayment.</p> <p>(4) If a consumer fails to <del>((call or come into a SCC contractor's office))</del> contact DSHS on or before the end date of the consumer's current SCC eligibility period to request <del>((an application interview date))</del> SCC program subsidies, he or she must reapply according to WAC 170-290-3665.</p>	<p><b>WAC 170-290-3840 New eligibility period.</b> (1) If a consumer wants to receive SCC program subsidies for another eligibility period, he or she must reapply for SCC benefits before the end of the current eligibility period listed on the child care plan. To determine if a consumer is eligible, <del>the consumer calls DSHS: on or before the end date of the consumer's current SCC eligibility period to request SCC program subsidies:</del></p> <p>(a) <u>Requests reapplication information before the end date of the consumer's current SCC eligibility period; and</u></p> <p>(b) <u>Verifies the requested information for completeness and accuracy.</u></p> <p>(2) A consumer may be eligible for SCC program subsidies for a new eligibility period <del>with no break in SCC program subsidies if:</del></p> <p>(a) <del>The consumer calls DSHS on or before the end date of the consumer's current SCC eligibility period to request SCC program subsidies DSHS receives the consumer's reapplication information no later than the last day of the current eligibility period;</del></p> <p>(b) The consumer's provider is eligible for payment under WAC 170-290-3750; and</p> <p>(c) The consumer meets all SCC eligibility requirements.</p> <p>(3) If DSHS determines that a consumer is eligible for SCC program subsidies based on his or her <del>reapplication information, DSHS notifies the consumer of the new eligibility period and copayment.</del></p> <p>(4) If a consumer fails to contact DSHS on or before the end date of the consumer's current SCC eligibility period to request SCC program subsidies, he or she must reapply according to WAC 170-290-3665.</p>	<p>This section combines [a] portion of repealed WAC 170-290-3832. DSHS is responsible for letting the parent know when their eligibility period is ending, and that the parents must reapply for SCC before their current eligibility period ends to avoid a lapse (break) in benefits.</p>

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 31, Repealed 4.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 31, Repealed 4.

Date Adopted: May 31, 2011.

Elizabeth M. Hyde  
Director

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-0002 Scope of agency responsibilities.**

(1) The responsibilities of the department of early learning (DEL) include, but are not limited to:

(a) Determining child care subsidy policy for the WCCC and SCC programs, including determining thresholds for eligibility and copayment amounts and establishing rights and responsibilities. DEL is also designated as the lead agency for child care and development funds (CCDF) and oversees expenditure of CCDF funds; and

~~(b) ((Contracting with community organizations to meet with families to see if they are eligible for the SCC program. SCC contractors are located in several communities across the state, and must follow the rules that DEL has established for the SCC program; and~~

~~(e))~~ Serving as the designated representative for the state to implement the collective bargaining agreement under RCW 41.56.028 for in-home/relative providers as defined in WAC 170-290-0003(7), and for all licensed family child care providers.

(2) The responsibilities of the department of social and health services (DSHS) include, but are not limited to, service delivery for the ~~((working connections child care~~ ~~(-))~~ WCCC ~~((+))~~ and SCC programs, including determining who is eligible for WCCC and SCC benefits, authorizing payments for these programs, and managing payments made to providers that receive WCCC and SCC subsidies.

(3) This allocation between DEL and DSHS is pursuant to section 501(2), chapter 265, Laws of 2006 (2SHB 2964), in which the legislature transferred all of the powers, duties, and functions relating to the WCCC program from DSHS to DEL, except for eligibility staffing and eligibility payment functions, which remain in DSHS.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-0003 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Able" means being physically and mentally capable of caring for a child in a responsible manner.

(2) "Authorization" means the documentation that DSHS gives to providers specifying units of full-day, half-day or hourly child care a family may receive during their eligibility period, which may be adjusted based on the family's need for care or changes in eligibility.

(3) "Available" means being free to provide care when not participating in an approved work activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or 170-290-0055 during the time child care is needed.

(4) "Calendar year" means those dates between and including January 1st and December 31st.

(5) "Collective bargaining agreement" or "CBA" means the most recent agreement that has been negotiated and entered into between the exclusive bargaining representative for all licensed and license-exempt family child care providers as defined in chapter 41.56 RCW.

~~((2))~~ (6) "Consumer" ~~((or "eligible consumer"))~~ means the person ~~((applying for or))~~ receiving:

(a) WCCC benefits as described in part II of this chapter; or

(b) SCC benefits as described in part III of this chapter.

~~((3))~~ (7) "Copayment" means the amount of money the consumer is responsible to pay the child care provider toward the cost of child care each month.

~~((4))~~ (8) "DEL" means the department of early learning.

~~((5))~~ (9) "DSHS" means the department of social and health services.

~~((6))~~ (10) "Days" means calendar days unless otherwise specified.

~~((7))~~ (11) "Employment" or "work" means engaging in any legal, income generating activity that is taxable under the United States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States. This includes unsubsidized employment, as verified by an employee's pay stubs or DSHS employer verification form, and subsidized employment, such as:

(a) Working in a federal or state paid work study program; or

(b) VISTA volunteers, AmeriCorps, JobCorps, and Washington Service Corps (WSC) if the income is taxed.

(12) "Eligibility" means that a consumer has met all of the requirements of:

(a) Part II of this chapter to receive WCCC program subsidies; or

(b) Part III of this chapter to receive SCC program subsidies.

(13) "In-home/relative provider," referred to in the collective bargaining agreement as "license-exempt provider," means those providers who meet the requirements in WAC 170-290-0130 through 170-290-0167.

~~((8))~~ (14) "In loco parentis" means the adult caring for an eligible child in the absence of the biological, adoptive, or step-parents, and who is not a relative, court-ordered guardian, or custodian, and is responsible for exercising day-to-day care and control of the child.

~~((9))~~ (15) "SCC" means the seasonal child care program, which is a child care subsidy program described in part III of this chapter that assists eligible families who are seasonally employed in agriculturally related work outside of the consumer's home to pay for licensed or certified child care.

~~((10))~~ (16) "Seasonally available labor" or "seasonally available agricultural related work" means work that is available only in a specific season during part of the calendar year. The work is directly related to the cultivation, production, harvesting or processing of fruit trees or crops.

(17) "Self-employment" means engaging in any legal income generating activity that is taxable under the United States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States, as verified by Washington state business license, or a tribal, county,

or city business or occupation license, as applicable, and a uniform business identification (UBI) number for approved self-employment activities that occur outside of the home. Incorporated businesses are not considered self-employment enterprises.

(18) **"Waiting list"** means a list of families who are currently working and waiting for child care subsidies when funding is not available to meet the requests from all eligible families.

(19) **"WCCC"** means the working connections child care program, which is a child care subsidy program described in part II of this chapter that assists eligible families in obtaining child care subsidies for approvable activities that enable them to work, attend training, or enroll in educational programs outside the consumer's home.

**AMENDATORY SECTION** (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3501 Program funding**~~((—Waiting lists))~~. The seasonal child care (SCC) program is subject to available funds ~~((and creates waiting lists when budget limits occur))~~. As used in this chapter, "subject to available funds" includes one or more of the following:

- (1) Limiting or closing enrollment;
- (2) Establishing a priority list for new enrollees subject to applicable state and federal law; or
- (3) Creating and maintaining a waiting list.

**AMENDATORY SECTION** (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3520 ((Eligible consumers.)) Eligibility.** (1) ~~((In))~~ **Parents.** To be eligible for SCC, ~~((an eligible consumer))~~ the person applying for benefits:

- (a) Is not currently receiving temporary aid for needy families (TANF)~~((:))~~;
- (b) Lives in ~~((the state of))~~ one of the following Washington~~((:))~~ state counties: Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Okanogan, Skagit, Walla Walla, Whatcom, or Yakima;
- (c) Has parental control of one or more children~~((:))~~; and
- (d) Is the child's:
  - ~~((a))~~ (i) Parent, either biological or adopted;
  - ~~((b))~~ (ii) Stepparent;
  - ~~((c))~~ (iii) Legal guardian as verified by a legal or court document;
  - ~~((d))~~ (iv) Adult sibling or step-sibling;
  - ~~((e))~~ (v) Aunt;
  - ~~((f))~~ (vi) Uncle;
  - ~~((g))~~ (vii) Niece or nephew;
  - ~~((h))~~ (viii) Grandparent; or
  - ~~((i))~~ (ix) Any of the above relatives in ~~((e), (f), or (h))~~ (v), (vi), or (viii) of this subsection, with the prefix "great," such as great-aunt.

~~((2))~~ Consumers may be eligible for SCC benefits if they:

- (a) Meet eligibility requirements in this chapter;
- ~~((b))~~ (e) Participates in an approved activity under WAC 170-290-3555; ~~((and~~

~~((e) Have))~~ (f) Has countable income at or below ~~((two hundred percent of the federal poverty guidelines (FPG)))~~ the maximum eligibility limit described in WAC ~~((170-290-3640.))~~ 170-290-0005;

(g) Completes the SCC application and DSHS verification process regardless of other program benefits or services received; and

(h) Meets eligibility requirements for SCC described under part III of this chapter.

(2) **Children.** To be eligible for SCC, the child receiving SCC must:

(a) Belong to one of the following groups as defined in WAC 388-424-0001:

- (i) A U.S. citizen;
- (ii) A U.S. national;
- (iii) A qualified alien; or
- (iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005.

(b) Live in Washington state, and be:

- (i) Less than age thirteen; or
- (ii) Less than age nineteen, and:
  - (A) Have a verified special need, according to WAC 170-290-0220; or
  - (B) Be under court supervision.

(3) Consumers are not eligible for SCC ~~((benefits))~~ program subsidies if they:

- (a) Have a copayment, under WAC 170-290-0075, that is higher than the maximum monthly state child care rate for all of the consumer's children in care;
- (b) ~~((Were employed with one employer more than eleven months in the previous twelve months;~~
- ~~((c))~~ Are receiving TANF benefits; or
- ~~((d))~~ (c) Are the only parent in the household and will be away from the home for more than thirty days in a row.

**AMENDATORY SECTION** (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3530 Verifying consumers' information.** ~~((1))~~ A consumer must provide information to the SCC contractor to determine eligibility when:

- (a) The consumer initially applies for benefits;
  - (b) The consumer reapplies for benefits; or
  - (c) A change of circumstances occurs.
- (2) The SCC contractor may accept any verification that the consumer can easily obtain when it reasonably supports the consumer's statement of his or her circumstances. The verification that the consumer gives to the SCC contractor must:

- (a) Clearly relate to information the SCC contractor is requesting;
  - (b) Be from a reliable source; and
  - (c) Be accurate, complete, current and consistent.
- (3) The SCC contractor will accept a variety of forms of verification to show the consumer is eligible. For example, any of the following documents are accepted to show the child is in the home: School records, immunization records or birth certificates, or other type of documents.

(4) If the verification that a consumer gives to the SCC contractor is inconsistent, conflicting, outdated or confusing, the SCC contractor may:

(a) Ask a consumer to provide the SCC contractor with more information or documentation or provide a collateral contact (a "collateral contact" is a statement from someone outside of the consumer's residence that knows the consumer's situation); or

(b) Ask for an investigator from the DSHS division of fraud investigations (DFI) to make an unannounced visit to the consumer's home to verify the consumer's circumstances.

(5) If a consumer does not provide the SCC contractor with all of the verification that the SCC contractor has requested, the SCC contractor will determine if the consumer is eligible based on the information already available to the SCC contractor.) DSHS staff verify a consumer's information as provided in WAC 170-290-0012.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3540 Eligibility—Family size.** ((DEL)) DSHS determines a consumer's family size as ((follows:)) provided in WAC 170-290-0015.

<del>((1)) If a consumer's family includes:</del>	<del>Then DEL counts the following individuals as part of the family for SCC program eligibility:</del>
(a) A single parent, including a minor parent, living independently or residing in her/his parent's home with her/his children.	The consumer and the consumer's children.
(b) Unmarried parents living together who have at least one mutual child.	Both parents and all their children living in the household.
(c) Unmarried parents living together with no mutual children.	Each parent and their own children, as separate families.
(d) Married parents living together.	Both parents and all their children living in the household.
(e) A legal guardian verified by a legal or court document; adult sibling or step-sibling; nephew or niece; aunt; uncle; grandparent; or great-aunt, great-uncle, or great-grandparent.	Only the children and their income.
(f) A parent who is voluntarily out of the household for reasons other than employment, such as visiting a family member.	The consumer, the absent parent and the children.

(g) A parent who is out of the household because of employer requirements, such as working in a different community, and is expected to return to the household.	The consumer, the absent parent, and the children.— Subsection (1)(b) and (d) of this section apply.
(h) An incarcerated parent.	The incarcerated person is not part of the household count in determining income and eligibility. DEL counts all remaining household members. All other family rules in this section apply.
<del>(2) If the consumer's household includes:</del>	<del>Then in addition, DEL counts the sibling as part of the family for SCC program eligibility as follows:</del>
(a) Eighteen year old siblings of the children who require care and are enrolled in secondary education or general equivalency diploma (GED) program.	The eighteen year olds (unless they are a parent themselves), until they turn nineteen or complete high school/GED, whichever comes first. All other family rules in this section apply.
(b) Siblings of the children requiring care who are up to twenty one years old who are participating in a program through the school district's special education department under RCW 28A.155.020.	The person participating in the approved program through RCW 28A.155.020 up to twenty one years of age (unless they are a parent themselves). All other family rules in this section apply.)

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3550 Eligibility—Special circumstances for two-parent families.** (1) A consumer may be eligible for the SCC program when he or she((:

(a) Has children living with them in Washington state who are:

(i) Younger than age thirteen; or

(ii) Thirteen to nineteen years old and under court supervision; or

(iii) Less than nineteen years old and have a verified special need according to WAC 170-290-0220;

(b)) is a parent in a two-parent family ((in which)) and both parents currently work in seasonally available agricultural related work.

(2) ((If both parents are not employed in seasonally agricultural related work, the consumer may be eligible for SCC only when the other parent is "unable" to provide care for the children because of physical or mental restrictions.)) A consumer may be eligible for SCC if he or she is a parent in a

two-parent family and one parent is not able or available as defined in WAC 170-290-0003 to provide care for the children while the other parent is currently working or participating in approved seasonally agricultural related work.

(3) If a consumer claims one parent is ~~((unable))~~ not able to care for the children, the consumer must provide written documentation from a licensed ~~((medical or mental health))~~ professional (see WAC 388-448-0020) that states the:

(a) Reason the parent is ~~((unable))~~ not able to care for the children; and

(b) Expected duration and severity of the condition that keeps the parent from caring for the children.

~~((3) For the previous twelve months before applying for SCC benefits, fifty percent or more of the family's earned income must have come from seasonally available agricultural related work.))~~

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3555 Eligibility—Approved activities.**

(1) A consumer may be eligible for SCC ~~((benefits))~~ program subsidies for up to sixteen hours per day for the time he or she is involved in seasonally available agricultural related work in(~~(=~~

(a) ~~Washington state; or~~

(b) ~~A bordering state within forty miles of))~~ Washington state.

(2) When the consumer is part of a two-parent family, both parents must be employed as described in subsection (1) of this section;

(3) ~~((The SCC contractor))~~ DSHS may authorize care for:

(a) Travel time only between the child care location and the employment location ~~((only));~~

(b) Job search, of no more than five days per month, if the consumer's seasonally available agricultural related work ends and he or she is still eligible and continues to need child care; or

(c) Sleep time, up to eight hours per day when needed, if the consumer works nights and sleeps days.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3560 Consumers' rights.** When a consumer applies for or receives SCC ~~((benefits))~~ program subsidies, he or she has the right to:

(1) Be free from discrimination in accordance with all applicable federal and state nondiscrimination laws, regulations and policies;

(2) Have the consumer's application accepted and acted upon within thirty days;

(3) Be informed, in writing, of the consumer's legal rights and responsibilities related to the SCC ((benefits)) subsidy program;

(4) Have the consumer's information shared with other agencies only when required by federal or state regulations;

(5) Be allowed to choose a licensed or certified child care provider as long as the provider meets requirements in WAC 170-290-3750;

(6) Receive a written notice at least ten days before changes are made to lower or stop benefits except as stated in WAC 170-290-3730;

(7) Ask for an administrative hearing if the consumer does not agree with a decision per WAC 170-290-3860;

(8) Ask to speak to ~~((the SCC contractor's))~~ a supervisor or administrator at DSHS to review a decision or action affecting the consumer's benefits without affecting the consumer's right to an administrative hearing;

(9) Have interpreter or translator services provided by ~~((the SCC contractor))~~ DSHS within a reasonable amount of time and at no cost to the consumer;

(10) Refuse to speak to a fraud early detection (FRED) investigator from the ~~((department of social and health services))~~ DSHS division of fraud investigations (DFI) when they ask to come into your home. This request will not affect eligibility for SCC program subsidies. If the consumer refuses to cooperate with the investigator at a later date, it could affect his or her ~~((benefits))~~ SCC program subsidies;

(11) Access his or her child at all times while the child is in child care;

(12) Terminate child care without cause and without notice to the provider. Notice must be given to ~~((the SCC contractor))~~ DSHS within five days of termination; and

(13) Not be charged by the consumer's licensed or certified provider, or be made to pay, for:

(a) The difference between ~~((their))~~ the child care provider's private rate and the state maximum child care subsidy rate, when their private rate for child care or the registration fee is higher;

(b) Any day when the consumer's child is absent;

(c) Vacation days when the provider chooses to close;

(d) A higher amount than the state allows for field trips;

(e) A preschool tuition fee in addition to regular child care services; or

(f) Child care services after the final day of care, when the provider chooses to stop caring for the consumer's children.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3565 Consumers' responsibilities.**

When a consumer applies for or receives SCC ~~((benefits))~~ program subsidies, he or she must:

(1) Give ~~((the SCC contractor))~~ DSHS correct and current information so that ~~((the SCC contractor))~~ DSHS can determine the consumer's eligibility and authorize child care payments correctly;

(2) Choose a licensed or certified child care provider who meets requirements of WAC 170-292-3750;

(3) Leave the consumer's children with his or her provider while the consumer is in SCC approved activities~~((If the consumer is not in an approved activity and wants to use the provider, he or she must pay the provider if the provider wants payment))~~ outside of the consumer's home;

(4) Pay ~~((for))~~ the provider for child care services when the consumer requests additional child care ~~((that exceeds the authorization based on the same fees that are charged to other families))~~ for personal reasons other than working or partici-

rating in SCC approved activities that have been authorized by DSHS:

~~((5))~~ (5) Pay the provider for optional child care programs for the child that the consumer requests. The provider must have a written policy in place charging all families for these optional child care programs;

~~((6))~~ (6) Pay, or make arrangements for someone to pay, the consumer's SCC copayment directly to the child care provider;

~~((7))~~ (7) Pay the provider the same late fees that are charged to other families, if the consumer pays a copayment late or picks up the child late;

~~((8))~~ (8) Sign his or her children in and out of child care as provided in WAC 170-295-7030, 170-296-0520, or 170-151-460, as applicable, for that type of provider; and

~~((9))~~ (9) Provide the information requested by the ((SCC contractor or the department of social and health services)) DSHS fraud early detection (FRED) investigator. If the consumer refuses to provide the information requested within fourteen days, it could affect his or her ((benefits)) SCC program subsidies. If ((the SCC contractor)) DSHS determines ((that)) a consumer is not cooperating by supplying the requested information, the consumer will not be eligible for SCC ((benefits)) program subsidies. The consumer may become eligible again when he or she meets SCC program requirements in part III of this chapter.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3570 Notification of changes.** When a consumer applies for or receives SCC ((benefits)) program subsidies, he or she must:

(1) Notify ((the SCC contractor)) DSHS, within five days, of any change in providers;

(2) Notify his or her provider within ten days when ((the SCC contractor)) DSHS changes his or her child care authorization;

(3) Notify ((the SCC contractor)) DSHS within ten days of any change in the consumer's:

(a) Number of child care hours needed (more or less hours);

(b) ((Child becoming eligible)) Child's eligibility for migrant Head Start or another child care program;

(c) Household income, including any new receipt of a TANF grant or child support increases or decreases;

(d) Household size such as any family member moving in or out of his or her home;

(e) Employment hours such as starting, stopping or changing employers;

(f) Home address and telephone number; or

(g) Child support payments made by the consumer.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3580 Failure to report changes.** (1) If a consumer fails to report any changes as required in WAC 170-290-3570 within the stated time frames, ((DEL)) DSHS may establish an overpayment to the consumer per WAC

170-290-3850 or the consumer may have to pay additional costs, such as a higher copayment.

(2) The consumer may receive an overpayment for what the provider is allowed to bill to include billing for absent days (see publication *Child Care Subsidies, A Booklet for Licensed and Certified Child Care Providers*, DEL 22-877, revised ((2009)) 2010).

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3590 ((SCC contractor's)) DSHS's responsibilities to consumers.** ((SCC contractors are community agencies that contract with DEL to perform SCC program authorizations. The SCC contractors and their)) DSHS staff must:

(1) Treat consumers in accordance with all applicable federal and state nondiscrimination laws, regulations and policies;

(2) ((Authorize SCC program subsidies for a consumer's children based on eligibility criteria established by DEL, as defined in this chapter;

(3) ~~Ask if a consumer has received, or is currently receiving, child care services from another subsidy program; and if he or she has received a copy of his or her termination letter from that program;~~

(4) ~~Ask if a consumer has applied, and been denied, for working connections child care (WCCC); and if he or she has, verify his or her denial from that program;~~

~~((5))~~ Complete ((intake documents in a consumer's presence;)) applications for SCC program subsidies based on information ((he or she)) the consumer provides, and determine a consumer's eligibility within thirty days from the date the consumer applied;

~~((6))~~ (3) Accept a variety of forms of verification and may not specify the type of documentation required;

~~((7))~~ (4) Authorize payments only to a licensed or certified child care provider ((of a consumer's choice)) the consumer chooses who meets the requirements in WAC 170-290-3750;

~~((8))~~ (5) Authorize payments only when no adult in a consumer's family (under WAC 170-290-3540) is able or available to care for the consumer's children as defined in WAC 170-290-3550;

~~((9))~~ ~~Give a consumer a SCC program approved child care plan in order to enroll his or her children in licensed or certified child care;~~

~~((10))~~ (6) Inform a consumer of:

(a) The consumer's copayment amount as determined in WAC 170-290-3620 and defined in WAC 170-290-0075;

(b) The consumer's rights and responsibilities under the SCC program when he or she applies or reapplies;

(c) The types of child care providers the SCC program will pay;

(d) The community resources that can help the consumer select child care when needed;

(e) Other options for child care subsidies, if the consumer does not qualify for SCC program subsidies; and

(f) The consumer's rights to an administrative hearing ((under the SCC program));

~~((H))~~ (7) Provide prompt child care authorizations to a consumer's child care provider;

~~((I))~~ (8) Respond to a consumer within ten days if the consumer reports a change of circumstance that affects the consumer's:

- (a) SCC eligibility;
- (b) Copayment; or
- (c) Providers; and

~~((J))~~ (9) Provide an interpreter or translator service at no cost to the consumer to explain information related to the SCC program.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3610 Countable income.** ~~((DEL))~~ DSHS counts income as money a consumer earns or receives from:

- (1) Wages and commissions earned from employment;
- (2) Unemployment compensation;
- (3) A TANF or other welfare grant;
- (4) Child support payments received;
- (5) Supplemental Security Income (SSI);
- (6) Other Social Security payments, such as Social Security Administration (SSA) and Social Security disability insurance (SSDI);
- (7) Refugee assistance payments;
- (8) Payments from the Veterans' Administration;
- (9) Pensions or retirement income;
- (10) Payments from labor and industries (L&I), or disability payments;
- (11) ~~((Inheritance; and~~
- ~~((Reportable gambling winnings; and~~
- ~~((Lump sums as money a consumer receives from a one-time payment such as back child support, an inheritance, or gambling winnings;~~
- (12) Other types of income not listed in WAC 170-290-3630; and
- (13) Gross wages from employment or self-employment income as defined in WAC 170-290-0003. Gross wages include any wages that are taxable.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3620 Calculation of income.** For the SCC program, ~~((DEL uses a consumer's countable income when determining his or her income eligibility and copayment))~~ DSHS calculates a consumer's income in the same manner as provided in WAC 170-290-0065. ((DEL determines a consumer's average monthly income by totaling all income earned in the past twelve months, as listed in WAC 170-290-3610, and dividing by twelve. The last month of income that is counted is the month before the consumer applies for SCC.))

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3630 Excluded income and deductions.** (1) The SCC program does not count the following

income types when determining a consumer's income eligibility and copayment:

(a) Income types as defined in WAC 388-450-0035, 388-450-0040, and 388-450-0055;

~~((b))~~ Savings accounts;

~~((c))~~ Money received from sale of real property, such as a house, or personal property, such as a car;

~~((d))~~ Reimbursements, such as tax refunds;

~~((e))~~ Earned income credits;

~~((f))~~ One-time insurance settlement payments;))

(f) Diversion cash assistance;

(g) Compensatory awards, such as an insurance settlement or court-ordered payment for personal injury, damage, or loss of property;

(h) Capital gains;

~~((g))~~ (i) Basic Food program;

~~((h))~~ (j) Income earned by children as described in WAC 170-290-3540;

~~((i))~~ (k) Benefits received by children of Vietnam War veterans who are diagnosed with any form or manifestation of spina bifida except spina bifida occulta;

(l) Adoption support assistance and foster care payments; and

~~((j))~~ (m) Government economic stimulus payments.

(2) SCC deducts the amount a consumer pays for child support from his or her countable income when figuring his or her eligibility and copayment for the SCC.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3640 Determining income eligibility and copayment.** (1) For the SCC program, ~~((DEL))~~ DSHS determines a consumer's family's income eligibility and copayment by:

(a) The consumer's family size as defined under WAC 170-290-3540;

(b) The consumer's average monthly income as calculated under WAC 170-290-3620;

(c) The consumer's family's average monthly income as compared to the federal poverty guidelines (FPG); and

(d) The consumer's family's average monthly income as compared to the copayment chart defined in WAC 170-290-0075.

(2) If a consumer's family's income is above ~~((two hundred percent of the FPG as defined in WAC 170-290-0075))~~ the maximum eligibility limit as provided in WAC 170-290-0005, his or her family is not eligible for the SCC program.

(3) ~~((SCC does not prorate the copayment when a consumer uses care for part of a month.~~

~~((4))~~ The FPG is updated every year on April 1. The SCC eligibility level is updated at the same time every year to remain current with the FPG.

~~((5))~~ (4) SCC shall assign a copayment amount based on the family's countable income. ~~((The copayment amount will be on the consumer's child care plan.))~~ The consumer pays the copayment directly to the provider.

(5) SCC does not prorate the copayment when a consumer uses care for part of a month.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3650 Change in copayment.** (1) A consumer's SCC program copayment could change when:

- (a) DEL makes a mass change in subsidy benefits due to a change in law or program funding;
- (b) The consumer's family size increases;
- (c) ~~((The SCC contractor))~~ DSHS makes an error in the consumer's copayment computation;
- (d) The consumer did not report all income, activity and household information at the time of eligibility determination or application/reapplication; or
- (e) The consumer is approved for a new eligibility period.

(2) If a consumer's copayment changes during his or her eligibility period, the change is effective:

- (a) On the first day of the month following the change, when:
  - (i) The report is made to ~~((the SCC contractor))~~ DSHS or the information is learned by ~~((the contractor))~~ DSHS within ten or more days after the change as provided in WAC 170-290-3570;
  - (ii) The consumer receives ten days written notice; and
  - (iii) The copayment is increasing; or
- (b) On the first day of the month that the change occurred when:
  - (i) The report is made to ~~((the SCC contractor))~~ DSHS or the information is learned by ~~((the contractor))~~ DSHS within ten days or less after the change as provided in WAC 170-290-3570; and
  - (ii) The copayment is decreasing.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3660 Eligibility period.** ~~((The SCC contractor may approve a consumer for a period up to six months. The first month of eligibility is the same month that child care begins.))~~ (1) A consumer who meets all of the requirements of part III of this chapter is eligible for SCC subsidies for six months.

- (2) A consumer's eligibility may be for less than six months if requested by the consumer.
- (3) A consumer's eligibility may end ((before his or her end date)) sooner than six months if:
  - (a) The consumer no longer wishes to participate in SCC; or
  - (b) DSHS terminates the consumer's eligibility as stated in WAC 170-290-3855.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3665 When SCC ~~((benefits))~~ program subsidies start.** ~~((The consumer's child care plan will tell the consumer when the benefits start and end.~~

- ~~(1) The SCC contractor authorizes child care subsidies when:~~
  - ~~(a) The consumer turns in all of his or her eligibility paperwork to the SCC contractor;~~

~~(b) The SCC contractor determines that the consumer is eligible for the program; and~~

~~(c) The consumer starts his or her children in care with an approved child care provider.~~

~~(2) After the SCC contractor decides that a consumer is eligible, the date the subsidy begins depends upon when the consumer applied and when the consumer turned in all of the paperwork needed as follows:~~

<del>If at the time of application the consumer:</del>	<del>And the consumer turns all paperwork in:</del>	<del>Then the child care benefits begin:</del>
<del>(a) Has not begun work yet;</del>	<del>Within 14 days of the job starting;</del>	<del>The first day of the job.</del>
<del>(b) Has not begun work yet;</del>	<del>15-29 days after the job starts;</del>	<del>The day after the paperwork is turned in.</del>
<del>(c) Has not begun work yet;</del>	<del>30 days after the job starts;</del>	<del>The application is denied and the consumer must reapply.</del>
<del>(d) Is working;</del>	<del>Within 14 days of the application interview date;</del>	<del>The day the consumer either calls or comes into the SCC contractor's office to apply for SCC benefits.</del>
<del>(e) Is working;</del>	<del>15-29 days after the application interview date;</del>	<del>The day after the paperwork is turned in.</del>
<del>(f) Is working;</del>	<del>30 days after the application interview date;</del>	<del>The application is denied and the consumer must reapply.))</del>

(1) SCC benefits for an eligible consumer may begin when the following conditions are met:

- (a) The consumer has completed the required SCC application and verification process as described under WAC 170-290-0012 within thirty days of the date DSHS received the consumer's application or reapplication for SCC benefits;
  - (b) The consumer is working or participating in an approved activity under WAC 170-290-3555;
  - (c) The consumer needs child care for work or approved activities within at least thirty days of the date of application for SCC benefits; and
  - (d) The consumer's eligible licensed or certified provider is caring for his or her children.
- (2) If a consumer fails to turn in all information within thirty days from his or her application date, the consumer must restart the application process.
- (3) The consumer's application date is whichever is earlier:
- (a) The date the consumer's application is entered into DSHS's automated system; or

(b) The date the consumer's application is date stamped as received.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3690 Denial of benefits—Date of re-determining eligibility.** (1) ~~((The SCC contractor))~~ DSHS sends a consumer a denial letter when the consumer has applied for child care and the consumer:

(a) Is not eligible due to the consumer's:

- (i) Family composition;
- (ii) Income; or
- (iii) Activity; or

(b) Did not provide information required to determine the consumer's eligibility according to WAC 170-290-3530.

(2) If a consumer turns in information or otherwise meets eligibility requirements after the denial letter is sent, the consumer's benefits begin according to WAC 170-290-3665.

(3) WCCC eligibility will be determined when a consumer is denied for SCC program subsidies.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3720 Notice of payment changes.** ~~((The SCC contractor))~~ DSHS provides SCC consumers with at least ten days written notice of changes to payments related to the suspension, reduction, or termination of benefits, in child care arrangements, except as noted in WAC 170-290-3730.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3730 When notice of payment changes is not required.** ~~((The SCC contractor))~~ DSHS does not give a consumer notice if the consumer:

(1) Tells ~~((the SCC contractor))~~ DSHS that he or she no longer wants SCC; or

(2) Has ~~((moved and his or her whereabouts are unknown to the SCC contractor;~~

~~(3) Is receiving duplicate child care benefits;~~

~~(4) Has a current eligibility period that is scheduled to end;~~

~~(5) Has a new eligibility period that results in a change in child care benefits; or~~

~~(6) Is receiving child care at a location that does not meet requirements under WAC 170-290-3750))~~ not informed DSHS of his or her new mailing address.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3750 Eligible child care providers.** To receive payment under the SCC program, a consumer's child care provider must be:

(1) Currently licensed as required by chapter 43.215 RCW and chapters 170-295, 170-296, or 170-151 WAC;

(2) Meeting their state's licensing regulations, for providers who care for children in states bordering Washington.

The SCC program pays the lesser of the following to qualified child care facilities in bordering states:

(a) The provider's private pay rate for that child; or

(b) The state maximum child care subsidy rate for the DSHS region where the child resides; or

(3) Exempt from licensing but certified by DEL, such as:

(a) Tribal child care facilities that meet the requirements of tribal law;

(b) Child care facilities on a military installation; and

(c) Child care facilities operated on public school property by a school district(=

~~(4) Seasonal day camps that have a contract with DEL to provide subsidized child care)).~~

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3760 SCC subsidy rates—Effective date.** ~~((DEL))~~ State child care subsidy rates in this part are effective as of the date stated in WAC 170-290-0180.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3770 Authorized SCC payments.** The SCC program may authorize payments to licensed(~~(#)~~) or certified child care providers for:

(1) Basic child care either full-day or half-day, at rates listed in the chart in WAC 170-290-0200 and 170-290-0205(~~(, including on Saturdays and Sundays))~~:

(a) A full day of child care when care is needed for five to ten hours per day;

(b) A half day of child care when care is needed for less than five hours per day;

(2) A registration fee, according to WAC 170-290-0245;

(3) Subsidy rates for five-year old children according to WAC 170-290-0185;

(4) The field trip fees in WAC 170-290-0247;

(5) The nonstandard hours bonus in WAC 170-290-0249; and

(6) Special needs care when the child has a documented special need and a documented need for a higher level of care, according to WAC 170-290-0220, 170-290-0225, and 170-290-0230.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3790 When additional SCC subsidy payments are authorized.** ~~((The SCC contractor))~~ DSHS may authorize additional child care when:

(1) Needed to accommodate a family's work schedule;

(2) Employer verification of work schedule is presented; and

(3) More than ten hours of care is ~~((provided))~~ needed per day for the consumer to participate in an approved activity (up to a maximum of sixteen hours a day) and the provider's policy is to charge all families for these extra hours.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3840 New eligibility period.** (1) If a consumer wants to receive ~~((child care benefits))~~ SCC program subsidies for another eligibility period, he or she must reapply for SCC benefits before the end of the current eligibility period ~~((listed on the child care plan))~~. To determine if a consumer is eligible, ~~((the consumer calls or comes into the SCC contractor's office on or before the end date of the consumer's current SCC eligibility period to request an application interview date.))~~ DSHS:

(a) Requests reapplication information before the end date of the consumer's current SCC eligibility period; and

(b) Verifies the requested information for completeness and accuracy.

(2) A consumer may be eligible for SCC ~~((benefits))~~ program subsidies for a new eligibility period ~~((with no break in child care subsidies.))~~ if:

~~((a) ((The consumer calls or comes into the SCC contractor's office on or before the end date of the consumer's current SCC eligibility period to request an application interview date.))~~ DSHS receives the consumer's reapplication information no later than the last day of the current eligibility period;

~~((b) The consumer's provider is eligible for payment under WAC 170-290-3750; and~~

~~((c) The consumer meets all SCC eligibility requirements.~~

(3) If ~~((the SCC contractor))~~ DSHS determines that a consumer is eligible for SCC ~~((benefits))~~ program subsidies based on his or her ~~((application))~~ reapplication information, ~~((the SCC contractor))~~ DSHS notifies the consumer of the new eligibility period and copayment.

(4) If a consumer fails to ~~((call or come into a SCC contractor's office))~~ contact DSHS on or before the end date of the consumer's current SCC eligibility period to request ~~((an application interview date))~~ SCC program subsidies, he or she must reapply according to WAC 170-290-3665.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3850 Payment discrepancies generally.** ~~((DEL))~~ Child care subsidy payment discrepancies are described in WAC 170-290-0266 through 170-290-0275, with the exception of underpayments requested by licensed child care centers, which will only be considered for twelve months after the date of services.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3855 Termination of and redetermining eligibility for ~~((benefits))~~ SCC program subsidies.** (1) A consumer's continued eligibility for SCC program subsidies stops when:

(a) The consumer's monthly copayment is equal to or higher than the state maximum monthly child care rate for all of the consumer's children in care; or

(b) The consumer:

(i) Is not participating in an approved activity as defined in WAC 170-290-3555;

(ii) Does not meet other SCC eligibility requirements related to family size, income and approved activities;

(iii) Does not pay the copayment fees to the consumer's child care provider or does not make mutually acceptable arrangements with the consumer's child care provider for ~~((their))~~ payment; or

(iv) Refuses to cooperate with investigations conducted by quality assurance staff or the division of fraud investigations.

(2) A consumer might be eligible for SCC program subsidies again when:

(a) The consumer meets all SCC program eligibility requirements;

(b) The consumer ~~((paid))~~ pays back copayment fees or made mutually acceptable payment arrangements with his or her child care provider; or

(c) The consumer cooperated with the quality assurance review process or with the DSHS division of fraud investigations.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3860 Right to request an administrative hearing.** ~~((+))~~ SCC consumers ~~((;))~~ and licensed or certified child care providers ~~((; and DEL contracted seasonal day camps))~~ must follow ~~((chapter 170-03))~~ WAC 170-290-0280 to request a hearing.

~~((2))~~ SCC consumers have a right to request a hearing on any action affecting SCC benefits except for mass changes resulting from a change in policy or law.

~~((3))~~ Under this part, licensed or certified child care providers, or DEL contracted seasonal day camps have a right to request a hearing only for SCC overpayments.

~~((4))~~ An SCC consumer, licensed or certified child care provider, or DEL contracted seasonal day camp must make a request for a hearing as required by WAC 170-03-0050 and 170-03-0060.

~~((a))~~ An SCC consumer must request a hearing within ninety days of the date a decision is received.

~~((b))~~ A licensed or certified child care provider or DEL contracted seasonal day camp must request a hearing within twenty-eight days of the date a decision is received.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

**WAC 170-290-3865 Receipt of SCC ~~((benefits))~~ program subsidies pending the outcome of an administrative hearing.** ~~((+))~~ A consumer may receive SCC ~~((benefits))~~ program subsidies while waiting for the outcome of a hearing ~~((; if he or she is currently authorized for the SCC program and:~~

~~((a))~~ The consumer requests a hearing:

~~((i))~~ On or before the effective date of an action; or

~~((ii))~~ No more than ten days after the consumer receives a notice of adverse action ("adverse action" for the purposes of this section means an action to reduce or terminate the consumer's SCC subsidies); or

~~((b))~~ The consumer requests payments for child care payable to an eligible provider according to WAC 170-290-3750.

~~(2) If a consumer loses a hearing, any SCC program benefit that a consumer uses between the date of the adverse action and the date of the hearing decision (final order) is an overpayment to the consumer)) as provided in WAC 170-290-0285.~~

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 170-290-3510	SCC definitions.
WAC 170-290-3670	Preauthorization for the SCC program.
WAC 170-290-3820	Review of eligibility and copayment information.
WAC 170-290-3830	Redetermination of SCC benefits.

#### **WSR 11-13-009**

#### **PERMANENT RULES DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed June 3, 2011, 11:14 a.m., effective July 4, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is adding new WAC 388-71-06020 through 388-71-06420. As a result of the 2009-2011 supplemental operating budget (ESSB 6444), the home care quality authority is no longer funded, and the home care referral registry program has moved to the aging and disability services administration's home and community services division effective July 1, 2010. Rules pertaining to the referral registry must be adopted by DSHS prior to the repeal of the home care quality's rules in Title 257 WAC. Emergency rule was filed to meet the July 1, 2010, implementation date.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: Washington state 2009-2011 supplemental operating budget (ESSB 6444).

Adopted under notice filed as WSR 11-07-084 on March 22, 2011.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 23, Amended 0, Repealed 0.

Date Adopted: May 24, 2011.

Katherine I. Vasquez  
Rules Coordinator

#### **Referral registry**

#### NEW SECTION

**WAC 388-71-06020 What is the purpose of WAC 388-71-06020 through 388-71-06420?** The purpose of this chapter is to describe the operation of the home care referral registry.

#### NEW SECTION

**WAC 388-71-06040 What definitions apply to WAC 388-71-06020 through 388-71-06420?** The following definitions apply to WAC 388-71-06020 through 388-71-06420:

"AAA" means the local area agency on aging.

"ALJ" means administrative law judge.

"Consumer/employer" means an adult or child with functional or developmental disabilities who qualifies for and uses personal care or respite care paid for through medicaid or state-only funds.

"Consumer representative" means an individual who is acting on behalf of the consumer/employer.

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

"Emergency provider" means an individual provider who is employed as a back-up for a provider who did not show up or who was unable to work due to unexpected circumstances.

"Employer" means the consumer.

"HCRR" means the home care referral registry.

"Home care referral registry operations" or "referral registry operations" means the activities carried out at the local level to recruit and register individual providers or prospective individual providers for the referral registry and assist consumers to utilize the referral registry to find qualified individual providers.

"Individual provider" means a person, regardless of relationship, including a personal aide working for a consumer under self-directed care, who has a contract with the department of social and health services to provide personal care or respite care services to adults or children with functional or developmental disabilities and is reimbursed for those services through medicaid or state-only funding.

"IP" means an individual provider.

"Malfeasance" means any unlawful act committed by the provider, whether in the course of employment or otherwise.

"Mandatory reporter" is an employee of DSHS; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or med-

ical examiner; Christian science practitioner; or health care provider subject to chapter 18.130 RCW.

**"Misfeasance"** means performance of a workplace duty in an improper manner; including events which jeopardize the health and safety of persons, unresolved pattern of performance, issues related to truth or dishonesty, including failure to report a criminal conviction.

**"OAH"** means the office of administrative hearings.

**"Prospective individual provider"** means someone who is seeking employment with a consumer/employer.

**"Provider"** means an individual provider.

**"Referral registry"** is a data base that is designed to assist consumers with finding individual providers and to assist individual providers to find employment.

**"Respite provider"** means an individual provider who is employed on a prearranged short-term basis to fill in for a routine caregiver.

**"Routine provider"** means an individual provider who is employed on a regularly scheduled basis.

#### NEW SECTION

**WAC 388-71-06060 What is the purpose of the referral registry?** To increase consumer/employer choice while providing assistance in finding individual providers and prospective individual providers. In addition, the referral registry:

- (1) Takes into account the consumer/employer needs and preferences when identifying potential individual providers;
- (2) Provides for reasonable standards of accountability for providers and prospective individual providers listed on the registry;
- (3) Is voluntary for individual providers and prospective individual providers and consumers/employers;
- (4) Promotes job opportunities for individual providers and prospective individual providers;
- (5) Provides access to the data base for consumer/employers who want to query a referral independently; and
- (6) Increases a consumer/employer's choice of individual providers and prospective individual providers via an established pool of available individual providers and prospective individual providers on the registry.

#### NEW SECTION

**WAC 388-71-06080 Who is eligible to request a referral from the referral registry?** The following categories of persons are eligible to request a referral from the referral registry:

- (1) Consumer/employers who are adults or children with functional or developmental disabilities who qualify for and use or will use personal care or respite care paid for through medicaid or state-only funds.
- (2) Persons who are authorized to request a referral on behalf of a consumer including family members, area agency on aging case managers, department social workers and/or a consumer representative.

#### NEW SECTION

**WAC 388-71-06100 What is the difference between an individual provider and a prospective individual provider?** The difference between an individual provider and a prospective individual provider is

- (1) An individual provider is someone who has a current individual provider contract with the department.
- (2) A prospective individual provider is someone who is seeking employment with a consumer/employer and who does not have a current individual provider contract with the department.

#### NEW SECTION

**WAC 388-71-06120 What qualifies an individual provider or prospective individual provider to be listed on the referral registry?** An individual provider or prospective individual provider is qualified to be on the referral registry if he or she:

- (1) Prior to January 1, 2012 satisfactorily completes a Washington state patrol background check and has not been convicted of a disqualifying crime or negative action based on the applicable department list of disqualifying crimes and negative actions; and
- (2) Has completed an FBI fingerprint based background check if the person has lived in the state of Washington less than three consecutive years immediately before the background check. An individual provider or prospective individual provider who has lived in Washington state less than three consecutive years immediately before the background check may be included on the referral registry for a one hundred twenty-day provisional period as allowed by law or program rules when:
  - (a) A fingerprint based background check is pending; and
  - (b) The individual provider or prospective individual provider is not disqualified based on the immediate result of the Washington state patrol background check.
- (3) Is not listed on any long-term care abuse and neglect registry used by the department;
- (4) Is eighteen years of age or older;
- (5) Provides a valid Washington state driver's license or other valid picture identification;
- (6) Has a Social Security card or proof of authorization to work in the United States; and
- (7) Complies with requirements listed in WAC 388-71-06180 and other applicable requirements in chapter 388-71 WAC.
- (8) Effective January 1, 2012, has been screened through the department's fingerprint based background check, as required by RCW 74.39A.055.

#### NEW SECTION

**WAC 388-71-06130 When will an individual provider or prospective individual provider be denied placement on the referral registry?** When:

- (1) A background check reveals that he or she has been convicted of a disqualifying crime or reveals the existence of

a negative action listed on an applicable department list of disqualifying crimes and/or negative actions;

(2) He or she is listed on any state abuse or neglect registry;

(3) He or she is subject to a current and valid protective order that was issued in the state of Washington barring or restricting contact with children, vulnerable adults or persons with disabilities;

(4) The department has denied or revoked his or her individual provider contract; or

(5) He or she is ineligible to be paid as an individual provider pursuant to WAC 388-71-0540.

#### NEW SECTION

**WAC 388-71-06135** **When may an individual provider or prospective individual provider be denied placement on the referral registry?** An individual provider or prospective individual provider may be denied placement on the referral registry when:

(1) He or she has failed to disclose pending charges, or criminal convictions, or negative actions on a background authorization form;

(2) The department has a reasonable, good faith belief that he or she is unable to meet the care needs of consumers;

(3) A background check reveals that he or she has committed an offense or pattern of offenses, not listed on the applicable list of disqualifying crimes, that the department determines may put consumers at risk; or

(4) He or she is subject to denial of payment as an individual provider pursuant to WAC 388-71-0543.

#### NEW SECTION

**WAC 388-71-06140** **How does an individual provider or prospective individual provider apply to be placed on the referral registry?** To apply to be placed on the registry an individual provider must:

(1) Contact the local referral registry operations office; and

(2) Request and complete an application packet.

#### NEW SECTION

**WAC 388-71-06160** **Does an individual provider or prospective individual provider have any ongoing responsibilities in order to continue to be listed on the referral registry?** (1) Yes, he or she must:

(a) Verify their information is accurate and up-to-date whenever contact or availability information changes by contacting the local referral registry operations office or updating directly through the website; and

(b) Successfully complete the criminal history background check process as described in WAC 388-71-06130 and 388-71-0513.

(2) Failure to comply with these ongoing responsibilities will result in placing the individual provider or prospective individual provider in an "inactive" status. The provider will not be referred to a consumer/employer when in "inactive" status. An individual provider or prospective individual pro-

vider will be taken off inactive status when he or she meets the requirements of subsections (1) and (2).

#### NEW SECTION

**WAC 388-71-06180** **Are there training requirements for being placed on the referral registry?** Yes, an individual provider must complete the "Becoming a Professional IP" unless the person has already worked as an individual provider for more than three months. All other mandatory training requirements for long-term care workers set forth in chapter 388-71 WAC are applicable.

#### NEW SECTION

**WAC 388-71-06200** **When will an individual provider or prospective individual provider be removed from the referral registry?** When he or she:

(1) Fails to meet the qualifications set forth in WAC 388-71-06120 and 388-71-06180;

(2) Has committed misfeasance in the performance of his or her duties as an individual provider;

(3) Has committed malfeasance in the performance of his or her duties as an individual provider;

(4) Requests that his or her name be removed from the referral registry;

(5) Has his or her individual provider contract terminated;

(6) Is subject to being denied placement on the referral registry pursuant to WAC 388-71-06130, exists; or

(7) Fails to meet qualifications set forth in WAC 388-71-0510 and 388-71-0540.

#### NEW SECTION

**WAC 388-71-06220** **What is the procedure for removing an individual provider or prospective individual provider from the referral registry?** The department and/or its designee, will review all incidents of which it becomes aware that may warrant removal from the referral registry and:

(1) For those incidents that fall under the legal jurisdiction of law enforcement, adult protective services (APS) or child protective services (CPS), an immediate referral will be made to the appropriate agency or agencies.

(a) The department may initiate an emergency proceeding to inactivate the individual provider or prospective individual provider on the registry pending the investigation.

(b) If APS, CPS, and/or law enforcement declines to take action in response to the referral, the matter will proceed to internal review pursuant to subsection (2) of this section.

(c) If APS, CPS, and/or law enforcement accepts the matter, then action process per RCW 34.05.479 will be stayed pending APS, CPS, and/or law enforcement action.

(2) For those incidents not forwarded to APS, CPS, or law enforcement, the department will conduct an internal review. After the internal review is completed, a decision will be made whether or not to remove the individual provider or prospective individual provider from the referral registry. If the decision is to remove the individual provider or prospective individual provider from the referral registry,

written notification will be served on the individual provider or prospective individual provider.

(3) An individual provider or prospective individual provider has the right to appeal a decision to remove him or her from the referral registry.

(a) The appeal must be received in writing by the office of administrative hearings (OAH) as designated on the written notice within twenty-eight days of the date the written notice was mailed by the department.

(b) OAH will send the parties a notice containing the hearing date, time and place.

(c) Before the hearing is held:

(i) The department may contact you and try to resolve your dispute; and

(ii) You are encouraged to contact the department and try to resolve your dispute.

(d) An administrative law judge (ALJ) from OAH will act as presiding officer for the adjudicative proceeding.

(e) The ALJ will render an initial decision that will include all matters required by RCW 34.05.461(3). If no party seeks review of the ALJ's initial decision within the time limits set forth in chapter 388-02 WAC, the initial decision will become the final order.

(f) The board of appeals will issue a written order announcing its decision to either adopt, modify, or reverse the initial decision. The board of appeals' order will include, or incorporate by reference to the initial order, all matters required by RCW 34.05.461(3). The board of appeals' decision is the final order.

(g) The final order is the final department action and will be provided to all interested parties and to the individual provider or prospective individual provider along with information regarding the right to seek judicial review in superior court when applicable.

#### NEW SECTION

**WAC 388-71-06240 By what procedures will the department deny an individual provider or prospective individual provider's application to be placed on the referral registry?** Upon receipt of an application to be on the referral registry, the department will utilize the following procedure to determine whether the individual provider or prospective individual provider meets the minimum qualifications, and whether he or she will be able to appropriately meet the care needs of consumers:

(1) An internal review will be conducted and a decision will be made whether to accept or deny the individual provider or prospective individual provider's application to be listed on the referral registry. If the decision is to deny the individual provider or prospective individual provider's application to be listed on the referral registry, written notice will be served on the individual provider or prospective individual provider.

(2) The individual provider or prospective individual provider has the right to appeal a decision to deny his or her application to be listed on the referral registry.

(a) The appeal must be received in writing by the office of administrative hearings (OAH) as designated on the writ-

ten notice within twenty-eight days of the date the written notice was mailed by DSHS.

(b) OAH will send the parties a notice containing the hearing date, time and place.

(c) Before the hearing is held:

(i) The department may contact you and try to resolve your dispute; and

(ii) You are encouraged to contact the department and try to resolve your dispute.

(d) An administrative law judge from OAH will act as presiding officer for the adjudicative proceeding.

(e) The ALJ will render an initial decision that will include all matters required by RCW 34.05.461(3). If no party seeks review of the ALJ's initial decision within the time limits set forth in chapter 388-02 WAC, the initial decision will become the final order.

(f) The board of appeals will issue a written order announcing its decision to either adopt, modify, or reverse the initial decision. The board of appeals' order will include, or incorporate by reference to the initial order, all matters required by RCW 34.05.461(3). The board of appeals' decision is the final order.

(g) The final order is the final department action and will be provided to all interested parties and to the individual provider or prospective individual provider along with information regarding the right to seek judicial review in superior court when applicable.

#### NEW SECTION

**WAC 388-71-06260 Who must be notified if a complaint is received about an individual provider?** If, in the course of carrying out its duties, the department or its designee, identifies concerns regarding the services being provided by an individual provider, including, but not limited to, when it receives a complaint, the department, or its designee, must notify the appropriate area agency on aging case manager or DSHS social worker regarding such concerns.

#### NEW SECTION

**WAC 388-71-06280 Are referral registry staff considered mandatory reporters?** Any department staff, or subcontracted staff working for the referral registry are considered mandatory reporters.

#### NEW SECTION

**WAC 388-71-06300 What is reasonable cause for mandatory reporting?** RCW 74.34.035 sets forth reasonable cause for mandatory reporting.

#### NEW SECTION

**WAC 388-71-06340 How does a consumer/employer apply to use the referral registry services?** In order to use the referral registry, a consumer/employer or consumer representative must complete the registration process. The registration process conducted by the local referral registry operations office must confirm that the consumer/employer is

qualified to receive personal care or respite care paid for through medicaid or state-only funds.

#### NEW SECTION

**WAC 388-71-06360 How does a consumer/employer obtain a list of names from the referral registry?** He or she must complete and submit a request application to the local referral registry operations office. The completed application may indicate the days and times an individual provider is needed, the personal care tasks that need to be performed, and any preferences the consumer/employer may have. Upon completion of the application, a registry coordinator will conduct a query that will generate a list of names that best match the consumer/employer's specific criteria. The list will be given to the consumer/employer via mail, phone, fax, or email, depending on the consumer/employer's preference, within a reasonable time.

Upon successful submission of a request application, a consumer/employer or consumer representative may request a user name and password to access the registry independently to generate a list of names.

#### NEW SECTION

**WAC 388-71-06380 Who hires an individual provider or prospective individual provider?** It is the consumer/employer or consumer representative's responsibility to interview, screen, hire, supervise, and terminate an individual provider or prospective individual provider.

#### NEW SECTION

**WAC 388-71-06400 Does a consumer/employer who is eligible to have his or her individual provider paid through medicaid or state-only funds from DSHS need to gain approval from his/her case manager, social worker or nurse?** Yes, they must receive approval from his/her case manager, social worker or nurse. Pursuant to WAC 388-71-0540 through 388-71-0551, the department or the AAA may deny payment to the client's choice of an individual provider or prospective individual provider when:

- (1) The individual provider or prospective individual does not meet the requirements to contract with DSHS; or
- (2) The case manager has a reasonable, good faith belief that the person will be unable to appropriately meet the consumer/employer needs.

#### NEW SECTION

**WAC 388-71-06420 How can a consumer/employer use the referral registry to get an individual provider in an emergency or as a critical personal care back-up?** A consumer/employer must complete an application with the local referral registry operations office. Registry applications can be completed by contacting the local referral registry operations office. Although a consumer/employer must complete the application process, he/she is not required to have previously used the registry prior to requesting a back-up referral.

#### **WSR 11-13-028**

#### **PERMANENT RULES DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed June 7, 2011, 1:15 p.m., effective July 1, 2011]

Effective Date of Rule: July 1, 2011.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The earlier effective date is necessary because of imminent peril to the public welfare. Washington state combined application project (WASHCAP) project benefits are based on a full calendar month. Any other date in July would cause effective date to be pushed to August 1. State agency made agreement with United States Department of Agriculture (USDA) to have new standards in effect by July 1, 2011, to achieve cost neutrality in the project as soon as possible.

Purpose: As required by the WASHCAP demonstration project waiver with the USDA Food and Nutrition Service, the department conducted its periodic caseload review to evaluate the cost neutrality between WASHCAP and the supplemental nutrition assistance program (SNAP) administered as the Washington Basic Food program or Basic Food. Based on the findings of this review, the department is amending its rules to increase WASHCAP shelter standards.

Citation of Existing Rules Affected by this Order: Amending WAC 388-492-0070.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Other Authority: 7 C.F.R. § 273.23.

Adopted under notice filed as WSR 11-09-052 on April 18, 2011.

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

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

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

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

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

Date Adopted: June 2, 2011.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-23-115, filed 11/17/10, effective 12/18/10)

**WAC 388-492-0070 How are my WASHCAP food benefits calculated?** We calculate your food benefits as follows:

- (1) We begin with your gross income.

(2) We subtract the current standard deduction for one person under WAC 388-450-0185 from your gross income to get your countable income.

(3) We figure your shelter cost based on information we receive from the Social Security Administration (SSA), unless you report a change as described under WAC 388-492-0080. If you pay:

(a) Three hundred dollars or more a month for shelter, we use three hundred (~~(seventy-nine)~~) eighty dollars as your shelter cost; or

(b) Less than three hundred dollars for shelter, we use one hundred (~~(eighty-two)~~) ninety-five dollars as your shelter cost; and

(c) We add the current standard utility allowance under WAC 388-450-0195 to determine your total shelter cost.

(4) We figure your shelter deduction by subtracting one half of your countable income from your shelter cost.

(5) We figure your net income by subtracting your shelter deduction from your countable income and rounding the resulting figure up from fifty cents and down from forty-nine cents to the nearest whole dollar.

(6) We figure your WASHCAP food benefits (allotment) by:

(a) Multiplying your net income by thirty percent and rounding up to the next whole dollar; and

(b) Subtracting the result from the maximum allotment under WAC 388-478-0060.

(c) If you are eligible for WASHCAP, you will get at least the minimum monthly benefit for Basic Food under WAC 388-412-0015.

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

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

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

Date Adopted: June 7, 2011.

Mike Kreidler  
Insurance Commissioner

**AMENDATORY SECTION** (Amending Matter No. R 2007-08, filed 5/20/09, effective 8/21/09)

**WAC 284-30-393 Insurer must include an insured's deductible in its subrogation demands.** The insurer must include the insured's deductible, if any, in its subrogation demands. (~~(Subrogation)~~) Any recoveries must be allocated first to the insured for any deductible(s) incurred in the loss, less applicable comparable fault. Deductions for expenses must not be made from the deductible recovery unless an outside attorney is retained to collect the recovery. The deduction may then be made only as a pro rata share of the allocated loss adjustment expense. The insurer must keep its insured regularly informed of its efforts related to the progress of subrogation claims. "Regularly informed" means that the insurer must contact its insured within sixty days after the start of the subrogation process, and no less frequently than every one hundred eighty days until the insured's interest is resolved.

### WSR 11-13-029

#### PERMANENT RULES

#### OFFICE OF

#### INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2010-15—Filed June 7, 2011, 2:02 p.m., effective July 8, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This new rule provides clarity and improves the efficiency of claims handling in Washington for consumers and insurers.

Citation of Existing Rules Affected by this Order: Amending WAC 284-30-393.

Statutory Authority for Adoption: RCW 48.02.060.

Adopted under notice filed as WSR 11-09-027 on April 14, 2011.

A final cost-benefit analysis is available by contacting Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7041, fax (360) 586-3109, e-mail kacys@oic.wa.gov.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

### WSR 11-13-030

#### PERMANENT RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Medicaid Purchasing Administration)

[Filed June 7, 2011, 2:14 p.m., effective July 8, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending the rule to require only one signature on applications for medical assistance.

Citation of Existing Rules Affected by this Order: Amending WAC 388-406-0010.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, and 74.04.090.

Adopted under notice filed as WSR 11-09-058 on April 18, 2011.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: June 2, 2011.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-15-059, filed 7/14/08, effective 8/14/08)

**WAC 388-406-0010 How do I apply for benefits? (1)**

You can apply for cash assistance, medical assistance, or Basic Food by giving us an application form in person, by mail, by fax, or by completing an online application.

(2) If your entire assistance unit (AU) gets or is applying for Supplemental Security Income (SSI), your AU can file an application for Basic Food at the local Social Security administration district office (SSADO).

(3) If you are incapacitated, a dependent child, or cannot apply for benefits on your own for some other reason, a legal guardian, caretaker, or authorized representative can apply for you.

(4) You can apply for cash assistance, medical assistance, or Basic Food with just one application form.

(5) If you apply for benefits at a local office, we accept your application on the same day you come in. If you apply at an office that does not serve the area where you live, we send your application to the appropriate office by the next business day so that office receives your application on the same day we send it.

(6) We accept your application for benefits if it has at least:

(a) For cash and medical assistance combined, the name, address, and signatures of the responsible adult AU members or person applying for you. A minor child may sign if there is no adult in the AU. Signatures must be handwritten, electronic or digital as defined by the department, or a mark if witnessed by another person.

(b) For medical assistance only, the name, address, and signature of the applicant ~~((and applicant's spouse or other responsible adult person in the household, if any. In the case of an application for children's medical with caretaker adults in the household, the signature of a caretaker adult member of the household)).~~ If the application is for a child, it may be signed by an adult caretaker in the absence of a parent, or by the child in the absence of a parent or adult caretaker.

(c) For Basic Food, the name, address, and signature of a responsible member of your AU or person applying for you as an authorized representative under WAC 388-460-0005.

(7) As a part of the application process, we may require you to:

(a) Complete an interview if one is required under WAC 388-452-0005;

(b) Meet WorkFirst participation requirements for four weeks in a row if required under WAC 388-310-1600(12);

(c) Give us the information we need to decide if you are eligible as required under WAC 388-406-0030; and

(d) Give us proof of information as required under WAC 388-490-0005 so we can determine if you are eligible.

(8) If you are eligible for necessary supplemental accommodation (NSA) services under chapter 388-472 WAC, we help you meet the requirements of this section.

**WSR 11-13-031**

**PERMANENT RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Medicaid Purchasing Administration)

[Filed June 7, 2011, 2:21 p.m., effective July 8, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This is not a policy change. Prior to February 1, 2011, the rule cross referenced to WAC 388-478-0020 because the income standards for both family medical programs and the temporary assistance for needy families (TANF) grant program were the same. Beginning February 1, 2011, the TANF income standard was reduced so the family medical programs income standard had to be listed out in WAC 388-478-0065, which in turn requires WAC 388-505-0220 to be amended.

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0065 and 388-505-0220.

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

Adopted under notice filed as WSR 11-09-055 on April 18, 2011.

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

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

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

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

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

Date Adopted: June 2, 2011.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-15-080, filed 7/14/05, effective 8/14/05)

**WAC 388-478-0065 Income and resource standards for family medical programs.** (1) The categorically needy income level (CNIL) standards for family medical ~~((is the~~

same as the grant payment standards for the TANF cash program as stated in WAC 388-478-0020.) are:

(a) For assistance units with obligations to pay shelter costs:

<u>Assistance Unit Size</u>	<u>Payment Standard</u>
<u>1</u>	<u>\$359</u>
<u>2</u>	<u>453</u>
<u>3</u>	<u>562</u>
<u>4</u>	<u>661</u>
<u>5</u>	<u>762</u>
<u>6</u>	<u>866</u>
<u>7</u>	<u>1,000</u>
<u>8</u>	<u>1,107</u>
<u>9</u>	<u>1,215</u>
<u>10 or more</u>	<u>1,321</u>

(b) For assistance units with shelter provided at no cost:

<u>Assistance Unit Size</u>	<u>Payment Standard</u>
<u>1</u>	<u>\$218</u>
<u>2</u>	<u>276</u>
<u>3</u>	<u>341</u>
<u>4</u>	<u>402</u>
<u>5</u>	<u>464</u>
<u>6</u>	<u>526</u>
<u>7</u>	<u>608</u>
<u>8</u>	<u>673</u>
<u>9</u>	<u>739</u>
<u>10 or more</u>	<u>803</u>

(2) The countable resource standards for family medical are the same as those of the TANF/SFA cash program as stated in WAC 388-470-0005.

(3) Each unborn child is counted as a household member when determining household size for:

- (a) Family medical;
- (b) Pregnancy medical; and
- (c) Children's medical.

**AMENDATORY SECTION** (Amending WSR 08-19-099 and 08-20-014, filed 9/17/08 and 9/18/08, effective 10/18/08 and 10/19/08)

**WAC 388-505-0220 Family medical eligibility.** (1) A person is eligible for categorically needy (CN) medical assistance when they are:

- (a) Receiving temporary assistance for needy families (TANF) cash benefits;
- (b) Receiving Tribal TANF;
- (c) Receiving cash diversion assistance, except SFA relatable families, described in WAC 388-400-0010(2);
- (d) Eligible for TANF cash benefits but choose not to receive; ((or))
- (e) Over the TANF cash payment standard but under the family medical payment standard as described in WAC 388-478-0065; or

(f) Not eligible for or receiving TANF cash assistance, but meet the eligibility criteria for aid to families with dependent children (AFDC) in effect on July 16, 1996 except that:

- (i) Earned income is treated as described in WAC 388-450-0210; and
  - (ii) Resources are treated as described in WAC 388-470-0005 for applicants and 388-470-0026 for recipients.
- (2) An adult cannot receive a family medicaid program unless the household includes a child who is eligible for:

- (a) Family medicaid;
  - (b) SSI; or
  - (c) Children's medicaid.
- (3) A person is eligible for CN family medical coverage when the person is not eligible for or receiving cash benefits solely because the person:
- (a) Received sixty months of TANF cash benefits or is a member of an assistance unit which has received sixty months of TANF cash benefits;
  - (b) Failed to meet the school attendance requirement in chapter 388-400 WAC;
  - (c) Is an unmarried minor parent who is not in a department-approved living situation;
  - (d) Is a parent or caretaker relative who fails to notify the department within five days of the date the child leaves the home and the child's absence will exceed one hundred eighty days;
  - (e) Is a fleeing felon or fleeing to avoid prosecution for a felony charge, or is a probation and parole violator;
  - (f) Was convicted of a drug related felony;
  - (g) Was convicted of receiving benefits unlawfully;
  - (h) Was convicted of misrepresenting residence to obtain assistance in two or more states;
  - (i) Has gross earnings exceeding the TANF gross income level; or
  - (j) Is not cooperating with WorkFirst requirements.
- (4) An adult must cooperate with the division of child support in the identification, use, and collection of medical support from responsible third parties, unless the person meets the medical exemption criteria described in WAC 388-505-0540 or the medical good cause criteria described in chapter 388-422 WAC.

(5) Except for a client described in WAC 388-505-0210(6), a person who is an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for CN or MN medical coverage.

**WSR 11-13-036**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**  
 (Securities Division)

[Filed June 8, 2011, 9:31 a.m., effective July 9, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The Washington securities division uses guidelines and policies adopted by the North American Securities Administrators Association (NASAA) as the basis for regulating certain offerings and licensees. NASAA periodi-

cally amends these guidelines and policies. This amendment will update Washington's regulations to reflect the latest versions of all previously adopted guidelines and policies. This amendment will create greater uniformity with the many other states that rely on the NASAA guidelines and policies and therefore will be beneficial to the businesses regulated by the securities division.

Citation of Existing Rules Affected by this Order: Amending WAC 460-16A-205.

Statutory Authority for Adoption: RCW 21.20.450.

Adopted under notice filed as WSR 11-09-078 on April 19, 2011.

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

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

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

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

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

Date Adopted: June 8, 2011.

Scott Jarvis  
Director

AMENDATORY SECTION (Amending WSR 08-05-003, filed 2/6/08, effective 3/8/08)

**WAC 460-16A-205 Adoption of NASAA statements of policy.** (1) In order to promote uniform regulation, the administrator adopts the following North American Securities Administrators Association (NASAA) statements of policy for offerings registering pursuant to RCW 21.20.180 or 21.20.210:

(a) Registration of publicly offered cattle feeding programs, as adopted September 17, 1980;

(b) Registration of commodity pool programs, as adopted with amendments through May 7, 2007;

(c) Equipment programs, as adopted with amendments through May 7, 2007;

(d) Registration of oil and gas programs, as adopted with amendments through May 7, 2007;

(e) Real estate investment trusts, as adopted with amendments through May 7, 2007;

(f) Real estate programs, as adopted with amendments through May 7, 2007;

(g) Loans and other material affiliated transactions, as adopted with amendments through ~~((November 18, 1997))~~ March 31, 2008;

(h) Options and warrants, as adopted with amendments through ~~((September 28, 1999))~~ March 31, 2008;

(i) Registration of direct participation programs - omnibus guidelines, as adopted with amendments through May 7, 2007;

(j) Mortgage program guidelines, as adopted with amendments through May 7, 2007;

(k) Church bonds, as adopted April 14, 2002;

(l) Health care facility offerings, pertaining to the offering of nonprofit health care facility bonds, as adopted April 5, 1985;

(m) Corporate securities definitions, as adopted ~~((September 28, 1999))~~ with amendments through March 31, 2008;

(n) Impoundment of proceeds, as adopted with amendments through ~~((September 28, 1999))~~ March 31, 2008;

(o) Preferred stock, as adopted with amendments through ~~((April 27, 1997))~~ March 31, 2008;

(p) Promotional shares, as adopted ~~((September 28, 1999))~~ with amendments through March 31, 2008, except that the term promotional shares shall be limited to those equity securities which were issued within the last three years and that all promotional shares in excess of twenty-five percent of the shares to be outstanding upon completion of the offering may be required to be deposited in escrow absent adequate justification that escrow of such shares is not in the public interest and not necessary for the protection of investors;

(q) Registration of asset-backed securities, as adopted with amendments through May 7, 2007, except for offerings registering or required to register pursuant to chapter 460-33A WAC or RCW 21.20.705 through 21.20.855;

(r) Promoters' equity investment, as adopted with amendments through ~~((April 27, 1997))~~ March 31, 2008;

(s) Specificity in use of proceeds, as adopted ~~((September 28, 1999))~~ with amendments through March 31, 2008;

(t) Underwriting expenses, underwriter's warrants, selling expenses, and selling security holders, as adopted with amendments through ~~((September 28, 1999))~~ March 31, 2008;

(u) Unsound financial condition, as adopted ~~((September 28, 1999))~~ with amendments through March 31, 2008;

(v) Unequal voting rights, as adopted ~~((October 24, 1994))~~ with amendments through March 31, 2008;

(w) Guidelines for general obligation financing by religious denominations, as adopted April 17, 1994;

(x) Risk disclosure guidelines, as adopted September 9, 2001;

(y) Church extension fund securities, as adopted with amendments through April 18, 2004; and

(z) Guidelines for cover legends, as adopted October 2, 2004.

(2) An offering registering pursuant to RCW 21.20.180 or 21.20.210 that falls within one or more of the statements of policy listed in subsection (1) of this section must comply with the requirements of said statement of policy or policies.

(3) The statements of policy referred to in subsection (1) of this section are found in *CCH NASAA Reports* published by Commerce Clearing House. Copies are also available at the office of the securities administrator.

**WSR 11-13-039**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Aging and Disability Services Administration)  
 (Division of Developmental Disabilities)  
 [Filed June 8, 2011, 2:42 p.m., effective July 9, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of these proposed rules to provide information to clients, families, providers, stakeholders, and the general public with information regarding the process DDD uses to determine an individual's employment support level. This information is essential in developing a consistent process to govern outcome-based vendor contracts.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.020(3), and 71A.12.040(4).

Other Authority: The 2009-11 operating budget (ESHB 1244, sections 103(7) and 205(c)).

Adopted under notice filed as WSR 11-07-080 on March 22, 2011.

A final cost-benefit analysis is available by contacting Mark Eliason, P.O. Box 45310, Olympia, WA 98504, phone (360) 725-2517, fax (360) 407-0955, e-mail mark.eliason@dshs.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 17, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 17, Amended 0, Repealed 0.

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

Date Adopted: June 8, 2011.

Susan N. Dreyfus  
Secretary

**DDD EMPLOYMENT ACUITY SCALE**

NEW SECTION

**WAC 388-828-9200 What is the DDD employment acuity scale?** The DDD employment acuity scale is an algorithm that determines your employment acuity score and employment support level.

NEW SECTION

**WAC 388-828-9205 How does DDD determine your employment support level?** DDD determines your employment support level using the following table:

If your employment acuity score in WAC 388-828-9210 is:	Your employment support level is:
0 or less	None
Greater than 0 and less than 1.5	Low
1.5 to less than 2.5	Medium
2.5 or greater	High

NEW SECTION

**WAC 388-828-9210 How does DDD determine your employment acuity score?** DDD determines your employment acuity support score by combining your employment support scores for:

- (1) Activities of daily living (see WAC 388-828-9215);
- (2) Behavioral support (see WAC 388-828-9220);
- (3) Interpersonal support (see WAC 388-828-9225);
- (4) Environmental support (see WAC 388-828-9230);
- (5) Level of monitoring (see WAC 388-828-9240);
- (6) Employment support (see WAC 388-828-9245);
- (7) Completing tasks with acceptable speed (see WAC 388-828-9255);
- (8) Completing tasks with acceptable quality (see WAC 388-828-9260);
- (9) Medical support (see WAC 388-828-9265); and
- (10) Seizure support (see WAC 388-828-9270).

Example:

Acuity scales and questions used in determining employment acuity score:	If employment support scores are:
Activities of daily living	0.20607
Behavioral support	0.08372
Interpersonal support	0.47326
	0.13596
Level of monitoring	0.7311
Employment support	0.43562
Completing tasks with acceptable speed	0.18855
Completing tasks with acceptable quality	0.10836
Medical support	0.135
Seizure support	-0.15393
Your employment acuity score is:	2.34371

NEW SECTION

**WAC 388-828-9215 How does DDD determine your employment acuity scale score for activities of daily living?** DDD determines your employment acuity score for activities of daily living by multiplying your ADL support needs level score by 0.06869.

<b>If your ADL support needs level in WAC 388-828-5480 is:</b>	<b>Then your ADL support needs level score is:</b>
None	0
Low	1
Medium	2
High	3

Example: An ADL support needs level score of 3 is multiplied by 0.06869 resulting in an employment acuity scale score for activities of daily living of 0.20607.

NEW SECTION

**WAC 388-828-9220 How does DDD determine your employment acuity scale score for behavioral support?** DDD determines your employment acuity scale score for behavioral support by multiplying your behavioral acuity level score (see WAC 388-828-5640) by 0.04186.

<b>If your behavioral acuity level in WAC 388-828-5640 is:</b>	<b>Then your behavioral acuity level score is:</b>
None	0
Low	1
Medium	2
High	3

Example: A behavioral acuity level score of 2 is multiplied by 0.04186 resulting in an employment acuity scale score for behavioral support of 0.08372.

NEW SECTION

**WAC 388-828-9225 How does DDD determine your employment acuity scale score for interpersonal support?** DDD determines your employment acuity scale score for interpersonal support by multiplying your interpersonal support needs level score (see WAC 388-828-5820) by 0.23663.

<b>If your interpersonal support needs level in WAC 388-828-5820 is:</b>	<b>Then your interpersonal support needs level score is:</b>
None	0
Low	1
Medium	2
High	3

Example: An interpersonal support needs level score of 2 is multiplied by 0.23663 resulting in an employment acuity scale score for interpersonal support of 0.47326.

NEW SECTION

**WAC 388-828-9230 How does DDD determine your employment acuity scale score for environmental support?** DDD determines your employment acuity scale score for environmental support by multiplying your environmental support level by 0.06798.

<b>If your environmental support score from WAC 388-828-9235 is:</b>	<b>Then your environmental support level is:</b>	
0	0	None
1 or 2	1	Low
3 or 4	2	Medium
5 or more	3	High

Example: An environmental support score of 3 equals an environmental support level of 2. The environmental support level of 2 is then multiplied by 0.06798 resulting in an employment acuity scale score for environmental support of 0.13596.

NEW SECTION

**WAC 388-828-9235 How does DDD determine your environmental support score?** DDD determines your environmental support score by adding the sum of your assessment responses to employment support limitations in the following table:

Response	Employment Support/Limitations	Score
1	Behaviors impact workplace	1
2	Employment goals too specific	1
3	Fearful/scared of new situations	0
4	Frequent job changes	1
5	High turnover of natural supports	1
6	Hygiene issues unresolved	1
7	Lacks social skills	1
8	Little work history	1
9	Narrow scope of job requirements	1
10	Needs support arranging childcare	1
11	Others not supportive of employment goals	1
12	Others unable to support employment goals	1
13	Transportation	1
14	Unable to regularly get to work on time	1
15	Uncertain about work	0
16	Uncooperative/lacks motivation	0
<b>Maximum employment support limitation score is:</b>		<b>13</b>

Example: If you have selected responses 1, 3, 8, 13, and 15, the sum of your scores for employment support limitations would be 3, resulting in an environmental support score of 3 for WAC 388-828-9230.

NEW SECTION

**WAC 388-828-9240 How does DDD determine your employment support score for level of monitoring?** DDD determines your employment support score for level of monitoring by multiplying your level of monitoring score in WAC 388-828-5060(1) by 0.14622.

Example: If you level of monitoring is "onsite (e.g., on property) your level of monitoring score is 5. Multiplying a "level of monitoring score" of 5 by 0.14622 results in an employment support score for level of monitoring of 0.7311.

NEW SECTION

**WAC 388-828-9245 How does DDD determine your employment acuity scale score for employment support?** DDD determines your employment acuity score for employment support by multiplying your DDD employment support score in WAC 388-828-9250 by 0.21781.

Example: A DDD employment support score of 2 is multiplied by 0.21781 resulting in an employment acuity scale score for employment support of 0.43562.

NEW SECTION

**WAC 388-828-9250 How does DDD determine your DDD employment support score?** DDD determines your DDD employment support score using the following table:

If your total raw score for the SIS employment activities subscale in WAC 388-828-4260 is:	Then your DDD employment level is:	And your DDD employment support score is:
0	None	0
1 through 35	Low	1
36 through 59	Medium	2
60 or more	High	3

NEW SECTION

**WAC 388-828-9255 How does DDD determine your employment acuity score for completing tasks with acceptable speed?** DDD determines your employment acuity score for completing tasks with acceptable speed by using your "type of support" score for question "D5" in WAC 388-828-4260 and multiplying it by 0.06285.

Example: A "type of support" score of 3 (partial physical assistance) is multiplied by 0.06285 resulting in an employment acuity score for completing tasks with acceptable speed of 0.18855.

NEW SECTION

**WAC 388-828-9260 How does DDD determine your employment acuity score for completing tasks with acceptable quality?** DDD determines your employment acuity score for completing tasks with acceptable quality by using your "type of support" score for question "D6" in WAC 388-828-4260 and multiplying it by 0.05418.

Example: A "type of support" score of 2 (verbal/gestural prompting) is multiplied by 0.05418 resulting in an employment acuity score for completing tasks with acceptable quality of 0.10836.

NEW SECTION

**WAC 388-828-9265 How does DDD determine your employment acuity scale score for medical support?** DDD determines your employment acuity scale score for medical support by multiplying your medical support needs level score (see WAC 388-828-5700) by 0.06750.

If your medical support needs level in WAC 388-828-5700 is:	Then your medical support needs level score is:
None	0
Low	1
Medium	2
High	3

Example: A medical support needs level score of 2 is multiplied by 0.06750 resulting in an employment acuity scale score for medical support of 0.135.

NEW SECTION

**WAC 388-828-9270 How does DDD determine your employment acuity scale score for seizure support?** DDD determines your employment acuity scale score for seizure support by multiplying your seizure support score in WAC 388-828-9275 by negative 0.05131.

Example: A seizure support score of 3 is multiplied by -0.05131 resulting in an employment acuity scale score for seizure support of -0.15393.

NEW SECTION

**WAC 388-828-9275 How does DDD determine your seizure support score?** DDD determines your seizure support score using the following table:

If your assessment indicates the following:	Your seizure support level is:	And your seizure support score is:
(1) Does the client have a history of seizures equals "no"	None	0
(2) Does the client have a history of seizures equals "yes"; and (3) Client does not meet requirements for seizure support level of "medium" or "high"	Low	1
(4) Client has convulsive seizures (tonic-clonic or atonic); and (5) Frequency is quarterly, monthly, weekly or multiple times per week; and (6) Seizure duration is 5 minutes or less	Medium	2
(7) Two or more emergency room visits/911 calls in past year; or (8) Has convulsive seizures (tonic-clonic or atonic); and (9) Frequency is quarterly, monthly, weekly or multiple times per week; and (10) Seizure duration is greater than 5 minutes or requires medical intervention to stop	High	3

NEW SECTION

**WAC 388-828-9280 Why does DDD multiply your seizure support score by a negative factor?** DDD multiplies your seizure support score by a negative factor because the DDD employment acuity scale tends to over-predict employment support needs for persons with seizures. This is because seizures can often be controlled with medication and the relationship between a person's seizure acuity and employment support needs may have already been partially taken into account by other variables in the algorithm, such as the medical acuity scale.

**WSR 11-13-046**  
**PERMANENT RULES**  
**NORTHWEST CLEAN**  
**AIR AGENCY**

[Filed June 9, 2011, 2:44 p.m., effective July 10, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To update agency adoptions of external regulations by reference; readopt specific rule sections to refer to most recent version of chapter 173-401 WAC.

Citation of Existing Rules Affected by this Order: Amending Sections 104, 300, 305, 320, 321, and 322 of the Regulation of the Northwest Clean Air Agency.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 11-09-071 on May 18 [April 19], 2011.

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

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

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

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

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

Date Adopted: June 9, 2011.

Mark Buford  
Assistant Director

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 11-14 issue of the Register.

**WSR 11-13-048**  
**PERMANENT RULES**  
**ENERGY FACILITY SITE**  
**EVALUATION COUNCIL**

[Filed June 9, 2011, 3:44 p.m., effective July 10, 2011]

Effective Date of Rule: Thirty-one days after filing.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: SEPA DNS issued.

Purpose: The proposal will adopt, as directed in chapter 70.94 RCW, a mandatory greenhouse gas reporting rule for facilities licensed and regulated by energy facility site evaluation council (EFSEC).

Citation of Existing Rules Affected by this Order: Amended sections of chapter 173-441 WAC will be adopted by reference into existing EFSEC rule, chapter 463-78 WAC, General and operating permit regulations for air pollution sources, as WAC 463-78-005(5).

Statutory Authority for Adoption: Chapters 70.94 and 70.235 RCW.

Adopted under notice filed as WSR 11-08-075 on April 6, 2011.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 16, Amended 0, Repealed 0.

Date Adopted: June 7, 2011.

Al Wright  
Manager

AMENDATORY SECTION (Amending WSR 09-01-046, filed 12/10/08, effective 1/10/09)

**WAC 463-78-005 Adoption by reference.** (1) The energy facility site evaluation council adopts the following provisions of chapter 173-400 WAC, in effect on November 1, 2008, by reference. WAC 173-400-110(8) and 173-400-730(4) are not adopted by reference.

WAC 173-400-030: Definitions.

WAC 173-400-035: Portable and temporary sources.

WAC 173-400-040: General standards for maximum emissions.

WAC 173-400-050: Emission standards for combustion and incineration units.

WAC 173-400-060: Emission standards for general process units.

- WAC 173-400-075: Emission standards for sources emitting hazardous air pollutants.
- WAC 173-400-081: Startup and shutdown.
- WAC 173-400-091: Voluntary limits on emissions.
- WAC 173-400-105: Records, monitoring, and reporting.
- WAC 173-400-107: Excess emissions.
- WAC 173-400-110: New source review (NSR).
- WAC 173-400-112: Requirements for new sources in nonattainment areas.
- WAC 173-400-113: Requirements for new sources in attainment or unclassifiable areas.
- WAC 173-400-114: Requirements for replacement or substantial alteration of emission control technology at an existing stationary source.
- WAC 173-400-117: Special protection requirements for federal Class I areas.
- WAC 173-400-120: Bubble rules.
- WAC 173-400-131: Issuance of emission reduction credits.
- WAC 173-400-136: Use of emission reduction credits.
- WAC 173-400-151: Retrofit requirements for visibility protection.
- WAC 173-400-161: Compliance schedules.
- WAC 173-400-171: Public involvement.
- WAC 173-400-175: Public information.
- WAC 173-400-180: Variance.
- WAC 173-400-190: Requirements for nonattainment areas.
- WAC 173-400-200: Creditable stack height and dispersion techniques.
- WAC 173-400-205: Adjustment for atmospheric conditions.
- WAC 173-400-700: Review of major stationary sources of air pollution.
- WAC 173-400-710: Definitions.
- WAC 173-400-720: Prevention of significant deterioration (PSD).
- WAC 173-400-730: Prevention of significant deterioration application processing procedures.
- WAC 173-400-740: PSD permitting public involvement requirements.
- WAC 173-400-750: Revisions to PSD permits.
- WAC 173-401-300: Applicability.
- WAC 173-401-500: Permit applications.
- WAC 173-401-510: Permit application form.
- WAC 173-401-520: Certification.
- WAC 173-401-530: Insignificant emission units.
- WAC 173-401-531: Thresholds for hazardous air pollutants.
- WAC 173-401-532: Categorically exempt insignificant emission units.
- WAC 173-401-533: Units and activities defined as insignificant on the basis of size or production rate.
- WAC 173-401-600: Permit content.
- WAC 173-401-605: Emission standards and limitations.
- WAC 173-401-610: Permit duration.
- WAC 173-401-615: Monitoring and related record-keeping and reporting requirements.
- WAC 173-401-620: Standard terms and conditions. Except (2)(i).
- WAC 173-401-625: Federally enforceable requirements.
- WAC 173-401-630: Compliance requirements.
- WAC 173-401-635: Temporary sources.
- WAC 173-401-640: Permit shield.
- WAC 173-401-645: Emergency provision.
- WAC 173-401-650: Operational flexibility.
- WAC 173-401-700: Action on application.
- WAC 173-401-705: Requirement for a permit.
- WAC 173-401-710: Permit renewal, revocation and expiration.
- WAC 173-401-720: Administrative permit amendments.
- WAC 173-401-722: Changes not requiring permit revisions.
- WAC 173-401-725: Permit modifications.
- WAC 173-401-730: Reopening for cause.
- WAC 173-401-750: General permits.
- WAC 173-401-800: Public involvement.
- WAC 173-401-810: EPA Review.
- WAC 173-401-820: Review by affected states.

(2) The energy facility site evaluation council adopts the following provisions of chapter 173-401 WAC, in effect on March 1, 2005, by reference.

- WAC 173-401-100: Program overview.
- WAC 173-401-200: Definitions.

(3) The energy facility site evaluation council adopts the following provisions of chapter 173-406 WAC, in effect on March 1, 2005, by reference.

Part I - GENERAL PROVISIONS

- WAC 173-406-100: Acid rain program general provisions.
- WAC 173-406-101: Definitions.

## Part I - GENERAL PROVISIONS

- WAC 173-406-102: Measurements, abbreviations, and acronyms.
- WAC 173-406-103: Applicability.
- WAC 173-406-104: New units exemption.
- WAC 173-406-105: Retired units exemption.
- WAC 173-406-106: Standard requirements.

## Part II - DESIGNATED REPRESENTATIVE

- WAC 173-406-200: Designated representative.
- WAC 173-406-201: Submissions.
- WAC 173-406-202: Objections.

## Part III - APPLICATIONS

- WAC 173-406-300: Acid rain permit applications.
- WAC 173-406-301: Requirement to apply.
- WAC 173-406-302: Information requirements for acid rain permit applications.
- WAC 173-406-303: Permit application shield and binding effect of permit application.

## Part IV - COMPLIANCE PLAN

- WAC 173-406-400: Acid rain compliance plan and compliance options.
- WAC 173-406-401: General.
- WAC 173-406-402: Repowering extensions.

## Part V - PERMIT CONTENTS

- WAC 173-406-500: Acid rain permit.
- WAC 173-406-501: Contents.
- WAC 173-406-502: Permit shield.

## Part VI - PERMIT ISSUANCE

- WAC 173-406-600: Acid rain permit issuance procedures.
- WAC 173-406-601: General.
- WAC 173-406-602: Completeness.
- WAC 173-406-603: Statement of basis.
- WAC 173-406-604: Issuance of acid rain permits.

## Part VII - PERMIT REVISIONS

- WAC 173-406-700: Permit revisions.
- WAC 173-406-701: General.
- WAC 173-406-702: Permit modifications.
- WAC 173-406-703: Fast-track modifications.
- WAC 173-406-704: Administrative permit amendment.
- WAC 173-406-705: Automatic permit amendment.

## Part VII - PERMIT REVISIONS

- WAC 173-406-706: Permit reopenings.

## Part VIII - COMPLIANCE CERTIFICATION

- WAC 173-406-800: Compliance certification.
- WAC 173-406-801: Annual compliance certification report.
- WAC 173-406-802: Units with repowering extension plans.

## Part IX - NITROGEN OXIDES

- WAC 173-406-900: Nitrogen oxides emission reduction program.

## Part X - SULFUR DIOXIDE OPT-IN

- WAC 173-406-950: Sulfur dioxide opt-ins.

(4) The energy facility site evaluation council adopts the following provisions of chapter 173-460 WAC, in effect on March 1, 2005, by reference.

- WAC 173-460-010: Purpose.
- WAC 173-460-020: Definitions.
- WAC 173-460-030: Requirements, applicability and exemptions.
- WAC 173-460-040: New source review.
- WAC 173-460-050: Requirement to quantify emissions.
- WAC 173-460-060: Control technology requirements.
- WAC 173-460-070: Ambient impact requirement.
- WAC 173-460-080: Demonstrating ambient impact compliance.
- WAC 173-460-090: Second tier analysis.
- WAC 173-460-100: Request for risk management decision.
- WAC 173-460-110: Acceptable source impact levels.
- WAC 173-460-120: Scientific review and amendment of acceptable source impact levels and lists.
- WAC 173-460-130: Fees.
- WAC 173-460-140: Remedies.
- WAC 173-460-150: Class A toxic air pollutants: Known, probable and potential human carcinogens and acceptable source impact levels.
- WAC 173-460-160: Class B toxic air pollutants and acceptable source impact levels.

(5) The energy facility site evaluation council adopts the following provisions of chapter 173-441 WAC, in effect on January 1, 2011, by reference.

- WAC 173-441-010: Scope.
- WAC 173-441-020: Definitions.

- WAC 173-441-030: Applicability.
- WAC 173-441-040: Greenhouse gases.
- WAC 173-441-050: General monitoring, reporting, recordkeeping and verification requirements.
- WAC 173-441-060: Authorization and responsibilities of the designated representative.
- WAC 173-441-070: Report submittal.
- WAC 173-441-080: Standardized methods and conversion factors incorporated by reference.
- WAC 173-441-090: Compliance and enforcement.
- WAC 173-441-100: Addresses.
- WAC 173-441-110: Fees.
- WAC 173-441-120: Calculation methods incorporated by reference from 40 C.F.R. Part 98 for facilities.
- WAC 173-441-140: Petitioning ecology to use an alternative calculation method to calculate greenhouse gas emissions.
- WAC 173-441-150: Confidentiality.
- WAC 173-441-160: Ecology to share information with local air authorities and with the energy facility site evaluation council.
- WAC 173-441-170: Severability.

**WSR 11-13-053****PERMANENT RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Medicaid Purchasing Administration)

[Filed June 10, 2011, 1:35 p.m., effective July 11, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department opted-in to the new electronic health records (EHR) incentive program. Rules are needed to administer this new federal program.

Statutory Authority for Adoption: RCW 74.08.090.

Adopted under notice filed as WSR 11-09-053 on April 18, 2011.

Changes Other than Editing from Proposed to Adopted Version: In subsection (5), the department replaced the three options for appealing an identified overpayment with one option for appealing any disputed matter; that option refers to the Administrative Procedure Act, chapter 34.05 RCW.

A final cost-benefit analysis is available by contacting Martin Thies, Ph.D., C.I.A., Health IT Program Integrity Manager, DSHS, EHR Incentive Program, P.O. Box 45528, phone (360) 725-1150, e-mail thiesmj@dshs.wa.gov.

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

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

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

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

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

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

Date Adopted: June 2, 2011.

Susan N. Dreyfus

Secretary

**NEW SECTION**

**WAC 388-502-0025 Electronic health records (EHR) incentive program.** The purpose of this section is to establish the medicaid electronic health records (EHR) incentive program in accordance with the American Recovery and Reinvestment Act of 2009 (ARRA). The medicaid EHR incentive program promotes the adoption and meaningful use of certified EHR technology by offering financial incentives to eligible professionals and hospitals. This program is administered by the department.

(1) The department provides incentive payments to eligible providers and hospitals that adopt and meaningfully use certified EHR technology in accordance with the provisions of 42 CFR Parts 412, 413, 422, and any other federal regulations that apply.

(2) Providers and hospitals eligible to participate in EHR incentive program are identified in 42 CFR Part 495.304 and other applicable rules.

(3) As authorized by 42 CFR Parts 412, 413, 422, chapters 43.20B and 74.09 RCW, and any other federal or state rules that apply, the department monitors and reviews all providers and hospitals participating in the EHR incentive program. By the same authority, the department reviews all practices, documentation, and/or data related to EHR technology to determine whether professionals and hospitals participating in the EHR incentive program are eligible and complying with state and federal rules and regulations.

(4) The department may determine that a participating professional or hospital has not met the eligibility or performance requirements to receive an EHR incentive payment, or should receive an incentive payment in an amount less than the amount anticipated by the provider or hospital. Areas of possible dispute in the EHR incentive program include, at a minimum, any of the following:

(a) Patient volume thresholds and calculations, as outlined in 42 CFR Part 495.304 and 495.306.

(b) Eligibility criteria and payment limitations, as outlined in 42 CFR Part 495.10, 495.304, 495.306, and 495.310.

(c) Attestations and compliance demonstrations including, at a minimum:

(i) Attestations that certified EHR technology has been adopted, implemented, or upgraded; and

(ii) Demonstrations of meaningful use, as outlined in 42 CFR Part 495.6, 495.8, 495.306, 495.310, and in any future published federal regulations and requirements, as applicable.

(d) The payment process and incentive payment amounts, as outlined in 42 CFR Part 495.310, 495.312, and 495.314.

(e) Additional issues regarding EHR incentive program eligibility, participation, documentation, and compliance as outlined in 42 CFR Parts 412, 413, 422 et. al. and in any future published federal regulations and requirements, as applicable.

(5) All matters of dispute are subject to the administrative procedure act (APA) appeal process per chapter 34.05 RCW. A provider who disagrees with a department action under this section may request a hearing. The hearing request must:

(a) Be in writing;

(b) Be received by the agency, at the address identified in the notice of action, within twenty-eight days of the date of the notice of action by certified mail (return receipt); and

(c) State the reason(s) why the provider thinks the action is incorrect.

**WSR 11-13-054**  
**PERMANENT RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed June 13, 2011, 11:11 a.m., effective July 14, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: In developing rules to implement chapter 28A.642 RCW, the office of superintendent of public instruction (OSPI) has incorporated the substantive portions of chapter 392-200 WAC regarding employment discrimination and affirmative action into chapter 392-190 WAC. The inclusion of employment discrimination and affirmative action provisions into chapter 392-190 WAC has been vetted through the public hearing and public input process. Because these provisions are now located in chapter 392-190 WAC, OSPI is repealing chapter 392-200 WAC to eliminate the duplication of these rules. Repealing these rules does not materially change the responsibilities of OSPI or school districts.

Citation of Existing Rules Affected by this Order: Repealing WAC 392-200-003, 392-200-005, 392-200-010, 392-200-015, and 392-200-020.

Statutory Authority for Adoption: RCW 28A.640.020 and 28A.642.020.

Adopted under notice filed as WSR 11-08-039 on April 4, 2011.

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

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

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

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

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

Date Adopted: June 7, 2011.

Randy Dorn  
Superintendent of  
Public Instruction

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

WAC 392-200-003	Authority.
WAC 392-200-005	Purpose.
WAC 392-200-010	Public school employment and contract practices—Sex discrimination.
WAC 392-200-015	Public school employment—Affirmative action program.
WAC 392-200-020	Public school employment—Affirmative action program—General.

**WSR 11-13-058**  
**PERMANENT RULES**  
**UNIVERSITY OF WASHINGTON**

[Filed June 14, 2011, 9:35 a.m., effective August 8, 2011]

Effective Date of Rule: August 8, 2011.

Purpose: The rule revisions to chapter 478-116 WAC, Parking and traffic rules for the University of Washington, Seattle, move the administrative oversight of parking enforcement from the university police department to the commuter services unit within the UW transportation services department. These changes consolidate and improve the administration of all parking-related matters within one campus department including: Providing more cost effective management of limited parking resources, streamlining the citation and appeal adjudication processes, providing greater alignment of enforcement regulations with the current transportation environment, and making housekeeping changes to update unit names.

Citation of Existing Rules Affected by this Order: Repealing WAC 478-116-044, 478-116-051, 478-116-101, 478-116-116, 478-116-121, 478-116-125, 478-116-141, 478-116-145, 478-116-147, 478-116-151, 478-116-161, 478-116-163, 478-116-165, 478-116-167, 478-116-171, 478-116-181, 478-116-184, 478-116-186, 478-116-201, 478-116-211, 478-116-223, 478-116-225, 478-116-227, 478-116-231, 478-116-

241, 478-116-245, 478-116-251, 478-116-253, 478-116-255, 478-116-261, 478-116-271, 478-116-281, 478-116-291, 478-116-311, 478-116-401, 478-116-411, 478-116-421, 478-116-431, 478-116-501, 478-116-520, 478-116-531, 478-116-541, 478-116-551, 478-116-561, 478-116-605, 478-116-611, 478-116-620, 478-116-630, 478-116-640, 478-116-650, 478-116-660 and 478-116-670; and amending WAC 478-116-010, 478-116-020, 478-116-030, 478-116-061, 478-116-111, 478-116-114, 478-116-131, 478-116-191, 478-116-221, and 478-116-301.

Statutory Authority for Adoption: RCW 28B.10.560 and 28B.20.130.

Adopted under notice filed as WSR 11-07-104 on March 23, 2011.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 31, Amended 10, Repealed 52.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 31, Amended 10, Repealed 52.

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

Date Adopted: June 9, 2011.

Rebecca Goodwin Deardorff  
UW Director  
of Rules Coordination

## PART I

### PREAMBLE, GENERAL INFORMATION, AND DEFINITIONS

AMENDATORY SECTION (Amending WSR 01-20-030, filed 9/26/01, effective 10/27/01)

**WAC 478-116-010 Preamble.** Pursuant to the authority granted by RCW 28B.10.560 and 28B.20.130, the board of regents of the University of Washington establishes the following rules to govern motorized and nonmotorized vehicle traffic and parking upon ~~((public))~~ lands and facilities of the University of Washington in Seattle, Washington.

AMENDATORY SECTION (Amending WSR 97-14-005, filed 6/19/97, effective 9/15/97)

**WAC 478-116-020 Objectives of parking and traffic rules.** ~~((+))~~ The objectives of these rules are:

- ~~((+))~~ (1) To protect and control pedestrian and vehicular traffic ~~((and parking))~~ on the campus ~~((of the university))~~;
- (2) To assure access at all times for emergency vehicles and equipment ~~((of the university))~~;

(3) To minimize traffic disturbances ~~((during class hours))~~;

~~((+))~~;

(4) To facilitate the ~~((work))~~ operations of the university by assuring access to its vehicles ~~((and by assigning the limited parking space and hours of operation for the most efficient use))~~;

~~((+))~~;

(5) To allocate limited parking space in order to promote its most efficient use;

(6) To protect state property; and

(7) To encourage and support travel to the ~~((university))~~ campus by means other than single occupancy vehicle (SOV).

~~((2) Permission to park or operate a vehicle at the University of Washington is a privilege granted by the board of regents of the University of Washington.))~~

### NEW SECTION

**WAC 478-116-022 Knowledge of parking and traffic rules.** It is the responsibility of all individuals parking or operating a vehicle on the campus to comply with these rules. Lack of knowledge of these rules shall not be grounds for the dismissal of any citation for a violation of the parking or traffic rules.

### NEW SECTION

**WAC 478-116-024 Definitions.** (1) **Authorized agent.** An entity or individual authorized by the director of transportation services to facilitate services provided by the department.

(2) **Bicycle.** Any device defined as a bicycle in chapter 46.04 RCW.

(3) **Campus.** The University of Washington, Seattle, and those lands and leased facilities of the university within UWPD jurisdiction and where parking is managed by transportation services.

(4) **Fee.** A charge for the use of services provided and facilities managed by transportation services.

(5) **Impoundment.** The removal of the vehicle to a storage facility either by an authorized agent of transportation services or UWPD.

(6) **Immobilization.** The attachment of a metal device to a wheel of a parked car so that the vehicle cannot be moved.

(7) **Meter.** A single fixed device that registers and collects payment for the length of time a vehicle occupies a single parking space. A meter does not produce a receipt, physical permit, or virtual permit. A meter is not a permit-issuance machine.

(8) **Motorcycles and scooters.** Motor vehicles designed to travel with not more than three wheels in contact with the ground, on which the driver rides astride the motor unit or power train and which is designed to be steered with a handle bar. For the purposes of these rules, motorcycles, motorized bicycles excluding pedal assisted electric bicycles, and scooters are considered motor vehicles and are subject to all traffic and parking rules controlling other motor vehicles.

(9) **Motor vehicle.** An automobile, truck, motorcycle, scooter, or bicycle that is assisted by an engine or other mechanism, or vehicle without motor power designed to be drawn or used in conjunction with the aforementioned vehicles including, but not limited to, trailers, travel trailers, and campers. In addition, any bicycle with an electric motor that is disengaged will be considered a bicycle and not a motor vehicle under this chapter.

(10) **Nonmotorized vehicle.** A device other than a motor vehicle used to transport persons, including, but not limited to, bicycles, skateboards, in-line skates, and roller skates.

(11) **Operator or driver.** Every person who drives or is in actual physical control of a motor vehicle or nonmotorized vehicle.

(12) **Overtime parking.** The occupation by a vehicle of a time-limited space beyond the posted time limit or time provided on a permit, meter, or permit-issuance machine.

(13) **Parking product.** A product issued by transportation services to manage motorized and nonmotorized access to the university. Parking products include, but are not limited to, permits, access to bicycle lockers and other bicycle parking facilities, and parking access cards.

(14) **Parking space.** A space for parking one motor vehicle designated by lines painted on either side of the space, a wheel stop positioned in the front of the space, a sign or signs, or other markings.

(15) **Permit.** A document approved by and/or issued by transportation services that when properly displayed authorizes a person to park.

(16) **Permit-issuance machine.** A transportation services deployed and managed machine that issues physical or virtual permits for designated spaces. A permit-issuance machine is not a meter.

(17) **Registered owner.** The person who has the lawful right of possession of a vehicle most recently recorded with any state department of licensing.

(18) **Roller skate/in-line skate.** A device used to attach wheels to the foot or feet of a person.

(19) **Skateboard.** Any oblong board of whatever composition, with a pair of wheels at each end, which may be ridden by a person.

(20) **Traffic.** The movement of motorized vehicles, non-motorized vehicles and pedestrians in an area or along a street as is defined in chapter 46.04 RCW.

(21) **Transportation services.** The university department that manages and maintains parking facilities, issues parking products, issues citations, processes citation appeals, and collects fees and fines.

(22) **University.** The University of Washington, Seattle, and collectively those responsible for its control and operation.

(23) **UWPD.** University of Washington police department.

(24) **Vehicle.** Any motorized or nonmotorized vehicle.

(25) **Visitor.** A person who is neither an employee nor a student of the university.

(26) **Virtual permit.** A permit stored within a permit-issuance machine that authorizes a person to park in a design-

ated space. Virtual permits are valid for a space through the date or time stored in the machine.

AMENDATORY SECTION (Amending WSR 97-14-005, filed 6/19/97, effective 9/15/97)

**WAC 478-116-030 Applicable parking and traffic rules.** The following laws and rules apply upon ~~((state lands devoted mainly to the activities of the University of Washington))~~ campus:

(1) Vehicle and other traffic laws of the state of Washington, Title 46 RCW.

(2) University ~~((of Washington))~~ parking and traffic rules.

#### NEW SECTION

**WAC 478-116-035 Enforcement of parking and traffic rules.** The university has full control of parking and traffic management on campus. Authorized agents of transportation services enforce parking rules and may conduct traffic control on campus. UWPD officers are authorized to enforce traffic and parking rules on campus. The university may impose additional traffic and parking restrictions to achieve the specified objectives of this chapter during special events and during emergencies.

AMENDATORY SECTION (Amending WSR 04-13-086, filed 6/17/04, effective 8/16/04)

**WAC 478-116-061 Liability of the university.** Except for vehicles that the university owns and operates, the university assumes no liability under any circumstance for vehicles ((parked on university properties)) on the campus. No bailment, but only a license, is created by the purchase and/or issuance of a permit.

## PART II

### PARKING ((SERVICES)) RULES

AMENDATORY SECTION (Amending WSR 04-13-086, filed 6/17/04, effective 8/16/04)

**WAC 478-116-111 ((Valid)) Permit required for all motorized vehicles parked on campus.** Except as provided in WAC 478-116-112 and 478-116-155, no person shall park or leave any motorized vehicle, whether attended or unattended, upon the campus unless the person first purchases a valid permit from transportation services or a transportation services permit-issuance machine. Permission to park on campus will be shown by display of a valid permit in accordance with WAC 478-116-122.

(1) A valid permit is ~~((one of the following))~~:

~~((1) An unexpired and unrecalled vehicle permit with an area designator that is properly registered and displayed on a vehicle in accordance with WAC 478-116-223.~~

~~((2)) (a) A current, physical vehicle permit issued by an authorized agent or permit-issuance machine designated by transportation services and displayed in accordance with WAC 478-116-122;~~

~~(b) A temporary physical permit ~~((authorized))~~ issued by ~~((parking services and displayed in accordance with instructions on the permit.~~~~

~~(3) A parking permit issued by a gate attendant which is displayed face up on the vehicle dashboard and is fully visible from the exterior of the motor vehicle)) an authorized agent or permit-issuance machine designated by transportation services. Temporary permits are valid through the date or time of the permit; or~~

~~(c) A virtual permit that is stored within a permit-issuance machine for designated spaces. Virtual permits are valid for a specific space through the date or time stored in the machine and, if applicable, listed on the customer receipt.~~

~~(2) Parking permits are not transferable, except as provided in WAC 478-116-114.~~

~~(3) Transportation services reserves the right to refuse to issue parking permits.~~

~~(4) The university may allow persons without permits to drive through the campus without parking.~~

#### NEW SECTION

**WAC 478-116-112 Visitor parking for motorized vehicles.** (1) No permit or payment shall be required for public safety and emergency vehicles while performing emergency services.

(2) Permits and payment of fees are required for all visitors parking on campus, unless exempted by transportation services' policy or state and local law.

(3) University departments may pay for all or part of the permit fee for their official visitors and guests.

AMENDATORY SECTION (Amending WSR 04-13-086, filed 6/17/04, effective 8/16/04)

**WAC 478-116-114 ~~((Transferable))~~ Transfer of permits limited.** (1) Permits ~~((holders))~~ may ~~((transfer one valid permit))~~ be transferred between motor vehicles~~((. Improper transfer of a permit shall include, but not be limited by, the wrongful sale, lending, or bad faith transfer of a parking permit))~~ registered with transportation services for that individual permit, but may not be transferred to a third party to be used in an unregistered vehicle. The transfer of a permit by any unauthorized means including, but not limited to, resale or lending is prohibited.

(2) Permits ~~((displaying license plate numbers shall only be valid in the vehicles whose license number matches the number written on the permit))~~ are not transferrable between parking areas, unless authorized by transportation services.

#### NEW SECTION

**WAC 478-116-118 Responsibility of person to whom the permit is issued.** (1) The person(s) to whom a permit is issued is responsible for paying for the permit until the permit expires or is returned to transportation services, unless stated otherwise in these rules. All associated outstanding fees must be satisfactorily settled before a parking permit may be issued, reissued, or renewed.

(2) Permit holders shall provide transportation services with the license plate numbers of any vehicles they intend to use with a permit.

(3) The person(s) to whom a permit is issued is responsible for any violations of this chapter associated with a vehicle to which the permit is affixed and/or registered pursuant to WAC 478-116-341 up to the date and time the permit expires or is reported lost or stolen.

#### NEW SECTION

**WAC 478-116-122 Display of permits.** (1) Permits shall be prominently displayed and be fully visible from the exterior of the vehicle or recorded in a permit-issuance machine as required by transportation services.

(2) Instructions on how to properly display permits will be provided by transportation services at the time of sale and on the transportation services' web site.

#### NEW SECTION

**WAC 478-116-124 Parking fees.** Fees for parking and the effective date thereof shall be submitted to the board of regents for approval by motion. Prior to approval by the board of regents, the university shall, after notice, hold a hearing on the proposed schedule. The hearing shall be open to the public, and shall be presided over by a presiding officer who shall prepare a memorandum for consideration by the university, summarizing the contents of the presentations made at the hearing. Approved fee schedules shall be available in the lobby of the university transportation center and on the University of Washington web site.

AMENDATORY SECTION (Amending WSR 04-13-086, filed 6/17/04, effective 8/16/04)

**WAC 478-116-131 ~~((Parking for))~~ Special events ~~((and other university functions))~~ parking and lot closures.** ~~((1) Parking for attendees to events that may displace regular parking customers or that may require added parking services staffing shall be accommodated only if parking services can find suitable alternatives for regular parking customers. Parking fees will be charged as follows:~~

~~((a) Parking for attendees at freshman convocation will be complimentary. Parking services will charge the cost of staff and services used expressly for the event to the sponsoring department;~~

~~((b) An event rate will be charged to attendees of events that require staffing to collect fees; and~~

~~((c) The cost of prepurchased parking and alternative transportation for Husky football games shall be negotiated with the department of intercollegiate athletics.~~

~~((2) Parking services may rent available parking facilities to sponsors of events or to university departments that require parking areas to conduct their business who shall pay in advance and be charged at a per space fee for the particular rented facility.~~

~~((3) Parking services may extend its hours of operations to encompass the hours of an event. The following conditions shall require a parking fee for events scheduled outside the normal hours of operation:~~

~~(a) Any activity which in the judgment of parking services is expected to attract over five hundred vehicles to campus; or~~

~~(b) Any event requiring a city of Seattle special event permit.~~

~~(4) University departments which sponsor functions such as athletic events, conferences, seminars and dinners may arrange parking for their guests on a space available basis. Departments have the option of paying for guest parking; otherwise, their guests will be responsible for the parking fee. Departments may also collect parking fees to facilitate prepaid parking with the prior approval of parking services.~~

~~(5) Parking services may displace permit holders from their regularly assigned areas during special events. Permit holders shall be provided an alternate area assignment during special events at no extra charge.)) (1) During special events causing additional or heavy traffic, the university may impose additional traffic and parking restrictions per WAC 478-116-035.~~

~~(2) The university reserves the right to close any campus parking area it deems necessary for maintenance, safety, events, construction or to meet special needs. Transportation services will, to the extent practical, provide notice to users and suitable alternatives for affected permit holders.~~

#### NEW SECTION

##### **WAC 478-116-135 Parking within designated spaces.**

(1) No motor vehicle shall be parked on the campus except in areas designated as parking areas, unless authorized by transportation services, or in emergency situations, by UWPB.

(2) No person shall stop, stand, or park any motor vehicle so as to create a safety hazard, obstruct traffic along or upon any street, or obstruct pedestrian movement along any plaza, path, or sidewalk.

(3) No motor vehicle shall be parked so as to occupy any portion of more than one parking space as designated within the parking area, unless authorized by transportation services. The fact that other motor vehicles may have been so parked as to require the vehicle to occupy a portion of more than one space or stall shall not excuse a violation of this section.

#### NEW SECTION

**WAC 478-116-155 Parking regulated by meter or permit-issuance machine.** (1) Notwithstanding display of a valid permit to park in other parking areas/lots on campus, any motor vehicle which occupies a metered space is subject to payment of the meter fee and subject to the posted time limits. Motor vehicles displaying a disability permit or license plate issued by the state department of licensing shall not be subject to payment of fees when parked in a space which is restricted as to the length of time parking is permitted.

(2) Notwithstanding the display of a valid permit to park in other parking area/lots on campus, any motor vehicle which occupies a space requiring a space-specific permit administered by a permit-issuance machine is subject to payment of a permit fee and the posted time limits. Vehicles displaying a disability permit or license plate issued by the state department of licensing shall not be subject to payment of

fees when parked in a space which is restricted as to the length of time parking is permitted.

#### NEW SECTION

##### **WAC 478-116-175 Overtime parking violations.**

After a motor vehicle has been cited for parking beyond the time posted, the vehicle may be cited a frequency of one additional citation for each period of time equal to the maximum time limit posted for the space.

#### NEW SECTION

**WAC 478-116-185 Operator's responsibility.** No person driving or in charge of a motor vehicle shall permit it to stand unattended without first:

- (1) Stopping the engine and locking the ignition; and
- (2) Effectively setting the brake and transmission to prevent movement of the vehicle.

AMENDATORY SECTION (Amending WSR 04-13-086, filed 6/17/04, effective 8/16/04)

**WAC 478-116-191 Regulatory signs, (~~barricades, and~~) markings, barricades, etc.** (1) (~~Signs, barricades, markings and directions shall be so made and placed to best meet the objectives stated in WAC 478-116-020 of these rules.)) The university may erect permanent or temporary signs, barricades, paint marks, and other structures or directions upon the streets, curbs, and parking areas within the campus. Drivers of motorized and nonmotorized vehicles shall obey the signs, barricades, structures, markings, and directions. Drivers of motorized and nonmotorized vehicles shall comply with directions given to them by authorized agents of transportation services and UWPB in the control and regulation of traffic, in the assignment of parking spaces, and in the collection of parking fees.~~

(2) No (~~unauthorized person~~) one without authorization from transportation services or UWPB shall ((remove;)) move, deface, or in any way change a sign, barricade, structure, marking, or direction ((so placed, or previously placed, for the purpose of regulating)) that regulates traffic or parking. ((Authority to make temporary changes of this nature with respect to streets or roadways must be obtained from the university police department.))

#### NEW SECTION

**WAC 478-116-193 Prohibited parking area(s).** (1) No motor vehicle shall be parked at any place where official signs prohibit parking such as, but not limited to, "tow zone," "fire zone," "prohibited," or "no parking."

(2) No motor vehicle shall be parked within fifteen feet of a fire hydrant.

#### NEW SECTION

**WAC 478-116-195 Prohibited parking—Space designated as disability or wheelchair.** No motor vehicle shall be parked in a disability or wheelchair space or lot without an appropriate permit.

NEW SECTION

**WAC 478-116-197 Motorcycle, moped, scooter, and motorized bicycle parking.** (1) Motorcycles, scooters, mopeds, and motorized bicycles powered or assisted by combustible engines are considered motor vehicles and subject to all parking rules. These vehicles shall not be permitted to park on pathways, sidewalks, authorized bicycle racks or storage facilities, pedestrian areas, or in buildings.

(2) Motorcycles, scooters, mopeds, and motorized bicycles powered or assisted by combustible engines may only be parked in designated cycle areas and require a permit.

NEW SECTION

**WAC 478-116-199 Bicycle parking.** (1) Bicycles and bicycles assisted by electric motors shall be parked only in bicycle racks or designated bicycle parking facilities. All bicycle owners are encouraged to secure their bicycles with a secure lock. At no time shall a bicycle be parked:

(a) In a building, except where bicycle storage rooms are provided;

(b) Near a building exit;

(c) On a path or sidewalk unless attached to a university bike rack;

(d) In planted areas; or

(e) Chained or otherwise secured to trees, lamp standards, railings, garbage receptacles, fencing, or sign posts.

(2) Bicycle racks in campus areas are for parking and shall not be used for overnight storage, except for those racks adjacent to residence halls which may be used for storage when the owner/operator is a current resident of that hall. Bicycle lockers in campus are to be used for bicycle parking and may be used for overnight storage of a bicycle.

**PART III****((PARKING VIOLATIONS)) USE OF MOTORIZED AND NONMOTORIZED VEHICLES**

AMENDATORY SECTION (Amending WSR 97-14-005, filed 6/19/97, effective 9/15/97)

**WAC 478-116-221 ((Parking)) Use of motorcycles ((and), mopeds, scooters, and motorized bicycles.** (1) ~~Motorcycles, scooters, mopeds, and motorized bicycles (and scooters must only be parked in designated cycle areas. Motorcycles, motorized bicycles, and scooters are))~~ powered or assisted by combustible engines or engaged electric motors are considered motor vehicles and subject to all traffic rules. These vehicles shall not be permitted ((to drive or park)) on paths, ((on)) sidewalks, ((on planted areas, in buildings, or in)) authorized bicycle or pedestrian areas, or in buildings.

(2) Bicycles assisted by electric motors are permitted on campus paths and sidewalks where bicycles are permitted to travel if the motor is disengaged and the bicycle is powered solely through human pedaling.

NEW SECTION

**WAC 478-116-232 Use of bicycles.** (1) The primary aim of the bicycle control program is safety. All bicycle owners are encouraged to register their bicycles at UWPD.

(2) Bicycles may be ridden any place where vehicles are permitted. They may be ridden on most sidewalks, though pedestrians always have the right of way. It shall be a violation of this section for any bicycle rider to fail to yield to pedestrians, or to ride a bicycle on paths, sidewalks, or streets where signs indicate it is prohibited. An audible signal or warning must be given by the bicyclist whenever there is any appreciable risk of injury to a pedestrian not otherwise aware of the presence of the bicycle.

(3) Bicycles operated on paths, sidewalks, and roadways shall be subject to all relevant state statutes regulating bicycle use. Violation of those statutes shall be considered a violation of this section.

(4) Bicycles shall be operated in a safe manner at all times. Riding at speeds too fast for conditions, weaving in and out of vehicular or pedestrian traffic, or similar unsafe actions shall be considered "negligent riding." Negligent riding shall be a violation of this section.

(5) Moving or riding a bicycle into any unauthorized area such as a building or construction zone is prohibited.

NEW SECTION

**WAC 478-116-242 Use of skateboards.** Skateboard use in pedestrian areas including, but not limited to, walkways, ramps, concourses, and plazas (such as "Red Square"), and on internal university streets and loading areas on the campus, is restricted solely to transporting an individual from one campus destination to another. Any recreational, athletic, or other exhibitional use of skateboards unrelated to transportation is strictly prohibited, unless expressly approved in advance by the appropriate committee on the use of university facilities, pursuant to chapter 478-136 WAC. The use of skateboards for any purpose within parking lots or parking garages is strictly prohibited.

**PART IV****((MOTOR VEHICLE CITATION ISSUANCE)) FINES, CITATIONS, IMMOBILIZATION, AND IMPOUNDMENT**

AMENDATORY SECTION (Amending WSR 04-13-086, filed 6/17/04, effective 8/16/04)

**WAC 478-116-301 Issuance of parking and traffic citations ((for motor vehicle violations)).** (1) ~~((The university police department)) Upon probable cause to believe that a violation of this chapter related to motorized vehicle parking has occurred, an authorized agent of transportation services may issue a parking citation ((for a violation of these rules. The citation shall set)) setting forth the date, approximate time, locality, ((and)) nature of the violation((-The citation shall be served upon the person charged with the violation by delivery, mail, or placement upon the vehicle involved)), identifiable characteristics of the vehicle if applicable, and the amount of the fine(s).~~

(2) Upon probable cause to believe that a violation related to parking, traffic, or nonmotorized vehicles has occurred, UWPD may issue a citation setting forth the date, approximate time, locality, nature of violation, identifiable characteristics of the vehicle if applicable, and amount of the fine(s).

(3) The following information shall accompany and/or be printed on the (~~(parking)~~) citation:

- (a) The violation fine and instructions for payment; and
- (b) Instruction for contesting the citation, including where to obtain and submit petitions(~~(; and~~
- (~~e) Notice that~~).

(4) The citation shall be served on the person responsible for the violation by:

(a) Attaching a copy of the citation to the vehicle allegedly involved in the violation;

(b) Mailing a copy of the citation to the registered owner;  
or

(c) Serving a copy of the citation personally to the person responsible.

(5) Failure to pay fines or contest the citation within the time specified in these rules can result in (~~(the sanctions)~~) a late payment fee as set forth in WAC ((478-116-564)) 478-116-335.

NEW SECTION

**WAC 478-116-305 Immobilization or impoundment of motor vehicles.** Any motor vehicle may be subject to immobilization or impoundment for cause as specified under WAC 478-116-351. The university and its officers, employees, and agents shall not be liable for loss or damage of any kind resulting from such immobilization or impoundment. The permit holder and/or registered owner of a vehicle that has been immobilized shall be fully liable for any loss or damage to immobilization equipment.

NEW SECTION

**WAC 478-116-325 Motor vehicle fine schedule.** The following schedule of fines for violations of the rules listed below is hereby established.

Offense Category	Maximum Citation Fine	Fine if Citation is Paid Within 20 Calendar Days	Applicable Violations
Minor	\$20.00	\$15.00	<ul style="list-style-type: none"> <li>• Permit not registered to vehicle, see WAC 478-116-114;</li> <li>• Parking outside of area assigned by permit, see WAC 478-116-114;</li> <li>• Improper display of permit, see WAC 478-116-122.</li> </ul>
General	\$40.00	\$35.00	<ul style="list-style-type: none"> <li>• No valid permit displayed, no valid permit for space or parking without making payment, see WAC 478-116-111, 478-116-112, and 478-116-155;</li> <li>• Occupying more than one space, see WAC 478-116-135;</li> <li>• Parking at expired meter, see WAC 478-116-155;</li> </ul>

NEW SECTION

**WAC 478-116-315 Parking product revocations.** Parking products issued by the university are the property of the university, and may be recalled or revoked by the university for any of the following reasons:

- (1) When the purposes for which the parking product was issued changes or no longer exists;
- (2) When an unauthorized individual uses the parking product;
- (3) Falsification on a parking product application;
- (4) Nonpayment of fees and/or fines;
- (5) Receiving over eight citations within a calendar year;
- (6) Counterfeiting or altering of parking products; or
- (7) Failure to comply with a final adjudicated decision of transportation services.

NEW SECTION

**WAC 478-116-321 Use of recalled, revoked, lost, stolen, or forged/altered permits prohibited.** (1) Vehicles displaying parking products that have been recalled, revoked, forged, altered, or reported lost or stolen will be subject to a citation and immobilization or impoundment on sight. Parking products that have been revoked, recalled, or reported lost or stolen must be returned to transportation services or an authorized agent of transportation services before the vehicle will be released.

(2) Purchasing a parking product from a party other than transportation services or a lawful designee, shall not constitute an excuse or defense for violating this section.

(3) Parties using parking products that have been recalled, revoked, forged, altered, or reported lost or stolen shall be subject to a serious violation per WAC 478-116-325 and, in addition, will be responsible for paying the cost of an equivalent permit fee from the date the permit was revoked, recalled, or reported lost or stolen to the date the permit expired or was returned to transportation services.

(4) Any unpaid fines for a violation of the rules in chapter 478-116 WAC will be deducted from any refunds resulting from the revocation of parking products.

Offense Category	Maximum Citation Fine	Fine if Citation is Paid Within 20 Calendar Days	Applicable Violations
			<ul style="list-style-type: none"> <li>Overtime parking, see WAC 478-116-175;</li> <li>All other violations of this chapter.</li> </ul>
Major	\$60.00	\$50.00	<ul style="list-style-type: none"> <li>Obstructing traffic or pedestrian movements, see WAC 478-116-135;</li> <li>Parking in restricted, prohibited, or nonparking areas, see WAC 478-116-135, 478-116-191, and 478-116-193.</li> </ul>
Serious	\$300.00	\$250.00	<ul style="list-style-type: none"> <li>Disability/wheelchair space violations, see WAC 478-116-195;</li> <li>Use of revoked, stolen, forged, or altered parking products, see WAC 478-116-315.</li> </ul>
Late Payment Fee	Maximum Citation Fine + \$25.00	N/A	Penalty for failure to pay fine, respond, or comply with final decision of the citation hearing office within time limits, see WAC 478-116-301.

**NEW SECTION**

**WAC 478-116-331 Nonmotorized vehicle fine schedule.** The following schedule of fines for violations of the rules listed below is hereby established.

Offense Category	Maximum Citation Fine	Applicable Violations
General	\$10.00	Failure to yield to pedestrians, riding in restricted/prohibited areas, violation of state bicycle codes, see WAC 478-116-232.
Major	\$25.00	Negligent riding, see WAC 478-116-232.
Impoundment Fee	\$10.00	Bicycle impoundment, skateboard impoundment, see WAC 478-116-365 and 478-116-371.
Skateboard Violations	\$10.00 - \$30.00	Fines based on number of violations within a set time period, see WAC 478-116-371.
Late Payment Fee	Maximum Citation Fine + \$25.00	Penalty for failure to pay fine, respond, or comply with the final decision of the citation hearing office within time limits, see WAC 478-116-301.

**NEW SECTION**

**WAC 478-116-335 Payment of citation fines.** (1) All fines must be paid as designated on the citation within twenty calendar days from the date of the citation. If a parking citation is paid within twenty calendar days, the citation fine shall be discounted according to the amounts listed in WAC 478-116-325.

(2) Fines for parking citations must be delivered in person to the transportation services' office, paid on-line, or mailed and postmarked on or before the due date specified in these rules to avoid additional penalties.

(3) Fines for traffic citations associated with violations of this chapter must be delivered in person to the UWPD office, or mailed and postmarked on or before the due date specified in these rules to avoid additional penalties.

(4) If any citation has neither been paid nor appealed after twenty calendar days from the date of the citation, the university shall impose an additional fine as specified in WAC 478-116-325 or 478-116-331 and may:

- (a) Withhold the violator's degrees, transcripts, grades, refunds, or credits until all fines are paid;
- (b) Delay registration for the following quarter;
- (c) Impound or immobilize the violator's vehicle after providing notice of nonpayment to the permit holder and/or registered owner;
- (d) Deny future parking privileges to the violator; or
- (e) Refer outstanding balances associated with unpaid fines for collection in accordance with applicable statutes and university procedure.
- (5) An accumulation of traffic and parking violations by a student may be cause for discipline under the student conduct code of the university (see chapter 478-120 WAC).
- (6) In addition to any other penalty which may be imposed as a result of actions described in this chapter, campus parking privileges shall be suspended until all such debts are paid.

NEW SECTION

**WAC 478-116-341 Motorized vehicles—Responsible parties for illegal parking.** (1) For any motor vehicle citation involving a violation of this chapter where the motor vehicle is registered to a permit holder, there shall be a prima facie presumption that the permit holder was the person who operated the motor vehicle in violation of these rules. Such responsibility does not afford a defense to another person who violated these rules.

(2) For any motor vehicle citation involving a violation of this chapter where the motor vehicle is not registered to a permit holder, there shall be a prima facie presumption that the registered owner of the motor vehicle was the person who operated the motor vehicle in violation of these rules. Such responsibility does not afford a defense to another person who violated these rules.

(3) This section shall not apply to university operated motor vehicles. The operator of a university motor vehicle is personally liable for any citation issued to the motor vehicle.

(4) A third party other than the permit holder or registered owner can assume responsibility for a citation by either paying the citation within twenty calendar days of the date of the citation or submitting a petition where the third party agrees to take responsibility.

NEW SECTION

**WAC 478-116-351 Motorized vehicles—Immobilization and impoundment.** (1) In addition to issuing citations for violations of these rules, authorized agents of transportation services and UWPDP may immobilize or impound any motorized vehicle parked on campus in violation of these rules. The expenses of immobilization, impoundment, and storage shall be charged to the owner or operator of the motor vehicle, or both, and must be paid before the motor vehicle's release. Grounds for immobilizing or impounding motor vehicles shall include, but not be limited to, the following:

(a) Blocking a roadway so as to impede the flow of traffic;

(b) Blocking a walkway, trail, sidewalk, or crosswalk so as to impede the flow of pedestrian traffic;

(c) Blocking a fire hydrant or fire lane;

(d) Creating a public safety hazard;

(e) Blocking another legally parked vehicle;

(f) Parking in a marked "tow-away" zone;

(g) Failing to pay a fine imposed under this chapter following notice of nonpayment to the registered permit holder and/or registered owner of the motor vehicle;

(h) UWPDP has probable cause to believe the motor vehicle is stolen;

(i) UWPDP has probable cause to believe the motor vehicle contains or constitutes evidence of a crime and impoundment is necessary to obtain or preserve such evidence; or

(j) When a driver is arrested and/or deprived of the right to leave with the driver's motor vehicle and UWPDP is responsible for safekeeping of the vehicle.

(2) Not more than one business day after immobilization or impoundment of any motor vehicle, the university shall mail a notice of immobilization or impoundment to the permit holder and/or registered owner of the motor vehicle and

to any other person who claims the right to possession of the motor vehicle, if those persons can be identified. Similar notice shall be given to each person who seeks to redeem an immobilized or impounded motor vehicle. If a motor vehicle is redeemed prior to the mailing of the notice, the notice may not be mailed. The notice shall contain the date of immobilization or impoundment, reason for the action, the location of the motor vehicle if impounded, redemption procedures, and an opportunity to contest the immobilization or impoundment as provided in WAC 478-116-415.

(3) A sticker will be attached to a motor vehicle that is immobilized which shall include, but is not limited to, the following information:

(a) Date and time of immobilization;

(b) Reason for immobilization;

(c) Instruction for motor vehicle release; and

(d) Notification that the motor vehicle will be towed within seventy-two hours of the date/time indicated on the sticker if the motor vehicle remains immobilized.

Motor vehicles that remain immobilized seventy-two hours after the immobilization device was placed on the motor vehicle will be impounded. Impoundment of these motor vehicles will follow the procedures outlined in WAC 478-116-361.

(4) Impounding or immobilizing a motor vehicle does not remove the obligation for any fines associated with the violation or other outstanding citations. All fines, fees, and the cost of the immobilization and impoundment (e.g., booting, towing, storage fees) must be paid prior to the removal of an immobilization device or the release of an impounded motor vehicle.

(5) Impounded motor vehicles shall only be redeemed by the registered owner who has a valid driver's license or a person authorized by the registered owner who has a valid driver's license and who produces proof of authorization and signs a receipt for the motor vehicle.

(6) Any person seeking to redeem a motor vehicle impounded or immobilized under this chapter has the right to contest the validity of the impoundment or immobilization, the amount of applicable booting, towing, and storage fees and shall have the motor vehicle released upon requesting a review provided in WAC 478-116-415, and paying any outstanding fines, towing, and storage charges.

NEW SECTION

**WAC 478-116-361 Motorized vehicles—Impoundment of abandoned motor vehicles.** Authorized agents of transportation services discovering an apparently abandoned motor vehicle shall attach to the motor vehicle a readily visible notification sticker warning of impoundment if the motor vehicle is not removed within seventy-two hours from the time the sticker is attached. The sticker shall contain the following information:

(1) The date and time sticker was attached;

(2) A statement that if the motor vehicle is not removed within seventy-two hours from the time the sticker is attached, the motor vehicle will be impounded; and

(3) The address and telephone number where additional information may be obtained.

If, the motor vehicle is not removed within seventy-two hours, the motor vehicle shall be impounded as described in WAC 478-116-351.

#### NEW SECTION

**WAC 478-116-365 Nonmotorized vehicles—Impoundment of bicycles.** (1) Bicycles parked in violation of WAC 478-116-199 will be subject to seizure and impoundment by the university.

(2) Except as provided by WAC 478-116-199(2), a bicycle abandoned or parked on campus, other than at residential halls, for fourteen consecutive days or longer is presumed abandoned and is subject to seizure and impoundment by the university. Bicycles remaining at resident halls once the school year ends will be presumed abandoned and are subject to seizure and impoundment by the university. A bicycle will not be considered abandoned when the owner/operator is unable to remove it and so notifies UWPD. A bicycle that has been obviously stripped or vandalized may be immediately impounded.

(3) Owners of impounded bicycles, if identifiable, will be notified as soon as reasonably possible after impoundment and must reclaim their bicycle within fifteen consecutive days. All fines, fees, and the impoundment fee must be paid prior to the release of the bicycle. Bicycles unclaimed after sixty consecutive days will be subject to sale through the university surplus property department.

(4) The university and its officers, agents, and employees shall not be liable for loss or damage of any kind resulting from impoundment, storage, or sale of any item under this section.

(5) Impoundment or sale of any bicycle under this section shall neither substitute for, or release, any person from liability for damage to persons or property caused by the use of a bicycle, nor does it remove the obligation for any fines associated with the violation or other outstanding citations. Any proceeds resulting from the sale of a bicycle through the university surplus department will be credited toward the outstanding fee associated with the impoundment of that bicycle.

(6) Any person seeking to redeem a bicycle impounded under this chapter has the right to contest the validity of the impoundment and the amount of applicable fees and shall have the bicycle released upon establishing ownership, requesting a review provided in WAC 478-116-415, and paying any outstanding fines or storage charges.

#### NEW SECTION

**WAC 478-116-371 Nonmotorized vehicles—Skateboard violations.** (1) Skateboard use in violation of WAC 478-116-242 shall result in the following:

(a) For the first offense, UWPD will record the name of the individual and provide a written warning against further skateboard use in violation of WAC 478-116-242. Individuals who cannot produce satisfactory identification will be given a receipt for their skateboard, which will be impounded at the UWPD station until they are able to return with the receipt and identification. There will be no impoundment fee.

(b) For a second offense, within twenty-four months of any previous offense or warning, the skateboard will be impounded for not less than forty-eight hours and the offender shall be subject to a fine of ten dollars plus applicable impoundment fee.

(c) For a third or subsequent offense, within twenty-four months of any previous two offenses, warnings, or combination thereof, the skateboard will be impounded for not less than thirty calendar days and the offender shall be subject to a fine of thirty dollars plus the applicable impoundment fee.

(d) Impounded skateboards will be held by UWPD and released only during regular business hours to individuals with satisfactory identification. Payment of a ten-dollar storage fee will also be required for release, except as provided in (a) of this subsection.

(2) Skateboards impounded under this section which are unclaimed sixty consecutive days after the applicable minimum impoundment time period has elapsed will be presumed abandoned and be subject to sale at a public auction conducted by the university surplus property department.

(3) The university and its officers, agents, and employees shall not be liable for loss or damage of any kind resulting from impounding, storage, or sale of any item under this section.

(4) Impoundment or sale of any skateboard under this section shall neither substitute for, nor release any person from liability for damage to persons or property caused by use of a skateboard at the university, nor does it remove the obligation for any fines associated with the violation or other outstanding citations. Any proceeds resulting from the sale of a skateboard through the university surplus department will be credited toward the outstanding fee associated with the impoundment of that skateboard.

(5) Any person seeking to redeem a skateboard impounded under this chapter has the right to contest the validity of the impoundment, the amount of applicable fees, and shall have the skateboard released upon requesting a review provided in WAC 478-116-415, and paying any outstanding fines or impoundment fees.

### **PART V** **((IMPOUNDED MOTOR VEHICLES)) CITATION,** **IMMOBILIZATION, AND IMPOUNDMENT** **APPEALS**

#### NEW SECTION

**WAC 478-116-405 Election to pay fine or contest citations.** (1) **Election to pay fine.** A person who receives a citation, shall, within twenty calendar days from the date of the citation either pay the applicable fine or contest the issuance of the citation in the manner prescribed in subsection (2) of this section. If paid within twenty calendar days of citation issuance, motorized parking citation fines shall be discounted per WAC 478-116-325. Once the applicable fine is paid, the citation can no longer be appealed. Failure to either pay the fine or timely appeal the citation shall automatically result in the citation being final, the full amount of the fine shall stand, and an additional late payment fee per offense shall be

imposed for each citation which is not responded to within the time limits set forth in this section.

(2) **Election to contest a citation.** A person wishing to contest a citation (hereinafter "petitioner") may do so by completing and submitting a citation petition (hereinafter "petition") to the citation hearing office within twenty calendar days of the date of the citation. Petitions for motorized and nonmotorized parking citations must be delivered to transportation services within the allotted time limit. Petitions for traffic and all other nonmotorized citations must be delivered to UWPDP within the allotted time limit.

Petition forms are available at transportation services and UWPDP or on the transportation services and UWPDP web sites. The petitioner must complete each section of the petition form and provide a brief statement regarding circumstances associated with the citation. A citation hearing officer shall review the petition and provide written notification of his or her initial decision with information about the opportunity for further review within ten calendar days of taking action on the initial decision. The amount of any reduction to the fine assessed in the initial decision is at the discretion of the citation hearing officer. Any fines owed on an initial decision not contested as provided in subsection (3) of this section shall be paid within twenty-one calendar days after service of the initial decision. If payment is not received within twenty-one calendar days, any offer of settlement or reduction is withdrawn, the full amount of the fine shall stand, an additional late fee shall be imposed, and the citation shall be deemed final.

(3) **Review of initial decision.** If a petitioner chooses to contest the initial decision issued by the citation hearing officer, the petitioner shall forfeit any reduction in the assessed fines offered in the initial decision. The petitioner must contact the department processing the petition (transportation services or UWPDP) orally or in writing within twenty-one calendar days after service of the decision. The request for review shall contain an explanation of the petitioner's position and a statement of reasons why the initial decision on the petition was incorrect. The reviewing officer shall, within twenty calendar days of the date of the request to review the initial decision, render a final written decision which shall include a brief statement of the reasons for the decision, offer of settlement if applicable, and provide information about the opportunity to appeal the decision to district court. The amount of fine or settlement assessed in the final decision is at the discretion of the citation hearing officer. Any final decision of the reviewing officer not appealed as provided in subsection (4) or (5) of this section shall be paid within ten calendar days after service of the decision. If payment is not received within ten calendar days, any offer of settlement or reduction is withdrawn, the full amount of the fine shall stand, an additional late fee shall be imposed, and the citation shall be deemed final.

(4) **Discretionary review of initial decision.** If the petitioner has not requested a review of the initial decision, the citation hearing officer may, within twenty calendar days after service of the initial decision, conduct a review and issue a final decision on its own motion and without notice to the parties, but it may not take any action on review less favorable to the petitioner than the initial decision without

giving the petitioner notice and opportunity to explain his or her view of the matter.

(5) **Appeal to district court.** The application for appeal to district court shall be in writing and must be filed with the department processing the petition (transportation services or UWPDP) within ten calendar days of service of the final decision. The written notice must be submitted on the "Notice of Appeal" form provided by transportation services or UWPDP. The Notice of Appeal form will be available at transportation services or UWPDP during regular hours of operation. The department processing the citation will forward the documents relating to the appeal to district court. No appeal to the district court may be taken unless the citation has been contested as provided in subsections (2) and (3) of this section, in addition to this subsection. If a petitioner chooses to contest the decision issued by the citation hearing officer via appeal to the district court, the petitioner shall forfeit any reduction in the assessed fines offered in the hearing officer's decision.

(6) **Providing an oral statement.** A petitioner who requests a review of the initial decision under subsection (3) of this section may request the opportunity to provide an oral statement before the citation hearing officer. A request to make an oral statement must be included in the request for review of the initial decision and must be submitted within ten calendar days of the initial decision. If the request for an oral statement is made, the citation hearing officer shall provide reasonable notice of the time and place for receiving the oral statement, which must occur no later than twenty calendar days after the request for review was submitted. If an oral statement cannot be scheduled within this time frame, the citation hearing officer will review the request as outlined in subsection (3) of this section.

#### NEW SECTION

**WAC 478-116-415 Election to contest immobilization or impoundment.** (1) **Submission of petition.** A person wishing to contest immobilization or impoundment of his or her motor vehicle or bicycle (hereinafter "petitioner") may do so by completing and submitting an immobilization or impoundment petition (hereinafter "petition") to transportation services within twenty calendar days of the date of the immobilization or impoundment. A person wishing to contest impoundment of his or her skateboard (hereinafter "petitioner") may do so by completing and submitting a petition to UWPDP within twenty calendar days of the date of impoundment.

The petitioner must complete each section of the petition form and provide a brief statement regarding circumstances associated with immobilization or impoundment. The citation hearing officer shall review the petition and provide written notification of his or her decision with information about further review within ten calendar days of taking action on the petition. The amount of fine or fees assessed in the initial decision is at the discretion of the citation hearing officer. Any fines or fees owed on an initial decision not contested as provided in subsection (2) of this section shall be paid within twenty-one calendar days after service of the initial decision. If payment is not received within twenty-one calendar days, any offer of settlement or reduction is withdrawn, the full

amount of the fine and fees shall stand, an additional late fee shall be imposed, and the immobilization or impoundment shall be deemed final.

(2) **Review of initial decision.** If a petitioner chooses to contest the initial decision issued by the citation hearing officer, the petitioner shall forfeit any reduction to the assessed fines offered in the initial decision. The petitioner must contact the department processing the petition (transportation services or UWPD) orally or in writing within twenty-one calendar days after service of the decision. The request for review shall contain an explanation of the petitioner's position and a statement of reasons why the initial decision on the petition was incorrect. The reviewing officer shall, within twenty calendar days of the date of the request to review the initial decision, render a final written decision which shall include a brief statement of the reasons for the decision, offer of settlement if applicable, and provide information about the opportunity to appeal the decision to district court. The amount of fine or settlement assessed in the final decision is at the discretion of the citation hearing officer. Any final decision of the reviewing officer not appealed as provided in subsection (3) or (4) of this section shall be paid within ten calendar days after service of the decision. If payment is not received within ten calendar days, any offer of settlement or reduction is withdrawn, the full amount of the fine or fee shall stand, an additional late fee shall be imposed, and the citation shall be deemed final.

(3) **Discretionary review of initial decision.** If the petitioner has not requested a review of the initial decision, the citation hearing officer may, within twenty days after service of the initial decision, conduct a review and issue a final decision on its own motion and without notice to the parties, but it may not take any action on review less favorable to the petitioner than the initial decision without giving the petitioner notice and opportunity to explain his or her view of the matter.

(4) **Appeal to district court.** The application for appeal to district court shall be in writing and must be filed with the department processing the petition (transportation services or UWPD) within ten calendar days of service of the final decision. The written notice must be submitted on the "Notice of Appeal" form provided by transportation services or UWPD. The Notice of Appeal form will be available at transportation services or UWPD during regular hours of operation. The department processing the petition will forward the documents relating to the appeal to district court. No appeal to the district court may be taken unless the immobilization or impoundment has been contested as provided in subsections (2) and (3) of this section, in addition to this subsection.

(5) **Providing an oral statement.** A petitioner who requests a review of the initial decision under subsection (2) of this section may request the opportunity to provide an oral statement before the citation hearing officer. A request to make an oral statement must be included in the request for review of the initial decision and must be submitted within ten calendar days of the initial decision. If the request for an oral statement is made, the citation hearing officer shall provide reasonable notice of the time and place for receiving the oral statement, which must occur no later than twenty calendar days after the request for review was submitted. If an oral

statement cannot be scheduled within this time frame, the citation hearing officer will review the request as outlined in subsection (2) of this section. If a petitioner chooses to contest the decision issued by the citation hearing officer via appeal to the district court, the petitioner shall forfeit any reduction in the assessed fines offered in the hearing officer's decision.

#### NEW SECTION

**WAC 478-116-425 Presiding and reviewing citation hearing officer.** The presiding and reviewing citation hearing officers shall be appointed in accordance with WAC 478-108-030 and shall have authority to hear and decide matters involving violation of these rules including, but not limited to, the ability to issue warnings, dismiss citations, and reduce, suspend, or impose the fines set forth in this chapter.

#### ~~((PART VI APPEALS AND PAYMENT OF MOTOR VEHICLE FINES))~~

#### ~~((PART VH BICYCLES AND NONMOTORIZED VEHICLES))~~

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 478-116-044	Authorized use of streets and parking facilities.
WAC 478-116-051	Definitions.
WAC 478-116-101	Numbering of parking areas, parking allocation and issuance of permits.
WAC 478-116-116	Alternate and replacement permits.
WAC 478-116-121	Visitor parking.
WAC 478-116-125	Other types of permits.
WAC 478-116-141	Annual and quarterly permit periods.
WAC 478-116-145	Night and swing permits.
WAC 478-116-147	Carpool permits.
WAC 478-116-151	Parking of state of Washington-owned university-operated motor vehicles.
WAC 478-116-161	Parking fee payment.
WAC 478-116-163	Fee schedule.
WAC 478-116-165	Vehicle and driver's licenses required.
WAC 478-116-167	Right to refuse to issue a permit.

WAC 478-116-171	Responsibility of person to whom the permit is issued.	WAC 478-116-520	Motor vehicles—Payment of fines and penalties.
WAC 478-116-181	Refund conditions for parking permits.	WAC 478-116-531	Motor vehicles—Election to pay fine or contest citation.
WAC 478-116-184	Recall of permits.	WAC 478-116-541	Motor vehicles—Election to contest impoundment.
WAC 478-116-186	Recall of carpool permits.	WAC 478-116-551	Motor vehicles—Presiding and reviewing officer.
WAC 478-116-201	Permits required for motor vehicles parked during hours of operation—Assigned parking areas.	WAC 478-116-561	Motor vehicles—Enforcement of decisions of citation hearing office.
WAC 478-116-211	Metered parking.	WAC 478-116-605	Bicycle parking and traffic rules.
WAC 478-116-223	Display of permits.	WAC 478-116-611	Nonmotorized vehicles—Citation for violations.
WAC 478-116-225	Permits and vehicle license plates.	WAC 478-116-620	Nonmotorized vehicles—Fines and penalties.
WAC 478-116-227	Permit transfer.	WAC 478-116-630	Nonmotorized vehicles—Schedule of fines and penalties.
WAC 478-116-231	Use of revoked permits prohibited.	WAC 478-116-640	Nonmotorized vehicles—Election to pay fine or contest citation.
WAC 478-116-241	Overtime parking violations—Repeated.	WAC 478-116-650	Nonmotorized vehicles—Presiding and reviewing officer.
WAC 478-116-245	Obstructing traffic and pedestrian movement prohibited.	WAC 478-116-660	Nonmotorized vehicles—Enforcement of decisions of citation hearing office.
WAC 478-116-251	Obedying regulatory signs and instructions.	WAC 478-116-670	Use of skateboards.
WAC 478-116-253	Prohibited parking area(s).		
WAC 478-116-255	Prohibited parking—Space designated as disability or wheelchair.		
WAC 478-116-261	Designated parking areas.		
WAC 478-116-271	Parking within a designated parking space.		
WAC 478-116-281	Parking—Safekeeping of unattended motor vehicles.		
WAC 478-116-291	Impoundment of motor vehicles.		
WAC 478-116-311	Motor vehicle fines and penalties.		
WAC 478-116-401	Impoundment for failure to pay fines.		
WAC 478-116-411	Impoundment without prior notice.		
WAC 478-116-421	Impoundment of abandoned vehicles.		
WAC 478-116-431	Notice and redemption of impounded vehicles.		
WAC 478-116-501	Registered owner responsible for illegal parking.		

**WSR 11-13-068****PERMANENT RULES****OFFICE OF****INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2010-16—Filed June 15, 2011, 10:28 a.m., effective July 16, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The commissioner is adopting this rule to implement P.L. 111-148 and the interim final regulations issued June 28, 2010, found at Vol. 75 F.R. 37187-37241, and codified in 45 C.F.R. Parts 144, 146 and 147. The open enrollment and special enrollment periods for issuing policies to those under nineteen in the individual market are specifically explained, and consumer information and protections are included regarding access to and information about these policies.

Statutory Authority for Adoption: RCW 48.02.060, 48.18.120(2), 48.20.450, 48.44.050, 48.46.200.

Other Authority: P.L. 111-148 and the interim final regulations issued June 28, 2010, found at Vol. 75 F.R. 37187-37241, and codified in 45 C.F.R. Parts 144, 146 and 147.

Adopted under notice filed as WSR 11-07-101 on March 23, 2011.

Changes Other than Editing from Proposed to Adopted Version: WAC 284-43-985(2), [added] the phrase "that they use for any other individual health benefit plan enrollee" to the sentence, to make it a complete sentence. It had been erroneously deleted from the proposed version.

All other changes are editing changes.

A final cost-benefit analysis is available by contacting Meg Jones, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7170, fax (360) 586-3109, e-mail megj@oic.wa.gov.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 4, Amended 0, Repealed 0.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 0, Repealed 0.

Date Adopted: June 15, 2011.

Mike Kreidler  
Insurance Commissioner

## SUBCHAPTER J

### HEALTH PLAN ENROLLMENT AND COVERAGE REQUIREMENTS

#### NEW SECTION

**WAC 284-43-970 Purpose and scope.** These rules explain the requirements in effect in Washington governing the issue of individual health insurance or health benefit plans to persons under age nineteen, based on section 2704 of the Public Health Service Act, as amended by section 1201 of the Patient Protection and Affordable Care Act, P.L. 111-148 and the interim final regulations interpreting it, 45 CFR 145.103 and 147.108 (2010), which provide that a carrier may not apply preexisting condition exclusions or coverage limitations for persons under age nineteen.

#### NEW SECTION

**WAC 284-43-975 Definitions.** As used in this section, unless the context requires otherwise:

(1) "Applicant" means a person who applies for enrollment in an individual health plan as a subscriber or an enrollee, or the dependent or spouse of a subscriber or enrollee. For purposes of this subchapter J, a legal guardian

is an applicant if they apply for an individual coverage on behalf of a person under age nineteen.

(2) "Carrier" has the same meaning as its definition in RCW 48.43.005(18) and includes "issuers" as that term is used in the Patient Protection and Affordable Care Act, P.L. 111-148.

(3) "Open enrollment" means a period of time as defined in these rules, held at the same time each year, during which applicants may enroll in the carrier's individual health benefit plan without being subject to health screening or otherwise required to provide evidence of insurability as a condition for enrollment.

(4) "Special enrollment" means a defined period of time of not less than thirty-one days, triggered by a specific qualifying event experienced by the applicant, during which applicants may enroll in the carrier's individual health benefit plan without being subject to health screening or otherwise required to provide evidence of insurability as a condition for enrollment.

(5) "Standard health questionnaire" means the standard health questionnaire designated under chapter 48.41 RCW.

#### NEW SECTION

**WAC 284-43-980 Preexisting conditions.** For individual health plan applicants and nongrandfathered individual plan enrollees under age nineteen, a carrier must not apply a preexisting condition to limit eligibility, exclude benefits, deny coverage or otherwise limit coverage. This requirement includes those persons under age nineteen with a preexisting condition who seek coverage as the primary insured or as a dependent or as a spouse under individual health benefit plans that permit the enrollment of dependents, and enrolled persons under age nineteen who seek benefits for which they are otherwise eligible.

#### NEW SECTION

**WAC 284-43-985 Enrollment of persons under age nineteen.** (1) For any individual health benefit plan offered after January 1, 2011, a carrier must conduct an open enrollment period for persons under age nineteen during two time periods each year. The first open enrollment period must occur from March 15th through April 30th of each year, and the second open enrollment period must occur from September 15th through October 31st.

(2) A carrier must use the same method to establish the effective date of coverage for persons under age nineteen enrolling during either one of the open enrollment periods or a special enrollment period set forth in this rule that they use for any other individual health plan enrollee.

(3) A carrier must make a special enrollment period of not less than thirty-one days available to any person under age nineteen who experiences a qualifying event. A qualifying event means the occurrence of one of the following:

(a) The discontinuation for any reason of employer sponsored insurance coverage of a person under age nineteen or the person under whose policy they were enrolled;

(b) The loss of eligibility of person under age nineteen for medicaid or a public program providing health benefits;

(c) The loss of coverage for a person under age nineteen as the result of dissolution of marriage;

(d) The person under age nineteen or the person under whose policy they were enrolled changes residence, and the health plan under which they were covered does not provide coverage in that person's new service area;

(e) The person for whom coverage is sought was born, placed for adoption or adopted within sixty days of the application for enrollment. For newborns enrolled under an individual policy, coverage must be effective as of the moment of birth;

(f) Nothing in this rule is intended to alter or affect the application of RCW 48.43.517.

(4) During the enrollment periods described in subsections (1) through (3) of this section, or any other enrollment period, a carrier must not require a person under age nineteen applying for an individual health benefit plan to complete the standard health questionnaire designated under chapter 48.41 RCW or otherwise provide evidence of insurability.

(5) A carrier may offer enrollment in an individual health benefit plan outside the open or special enrollment period, but must not require any evidence of insurability or completion of the standard health questionnaire if the applicant is a person under age nineteen.

(6) A carrier must not limit the choice of individual plan for which a person under age nineteen may apply based on the applicant's age.

(7) A carrier must prominently display on its web site information about open enrollment periods and special enrollment periods for persons under age nineteen.

(a) If a carrier elects to limit enrollment for persons under nineteen to the open enrollment periods or a special enrollment period triggered by a qualifying event, the carrier must:

(i) Explain that fact on its web site;

(ii) Promptly make application packets available to interested persons upon request, even if the request is made outside the open enrollment periods; and

(iii) Provide contact information for the Washington state high risk pool and the federally sponsored preexisting condition insurance pool - Washington.

(b) The web site information about special enrollment periods must provide a consumer with the ability to access or request and receive an application packet for enrollment at any time. The displayed information must also include details written in plain language explaining what constitutes a qualifying event for special enrollment.

#### WSR 11-13-074

##### PERMANENT RULES

#### DEPARTMENT OF TRANSPORTATION

[Filed June 15, 2011, 4:11 p.m., effective July 16, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This is a proposal to revise WAC 468-38-290 to include an overheight feature for the annual and semi-annual farm implement permit. Currently the farm implement must be legal height to qualify for the farm implement permit.

Statutory Authority for Adoption: RCW 46.44.140.

Adopted under notice filed as WSR 11-10-036 on April 27, 2011.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: June 15, 2011.

Stephen T. Reinmuth  
Chief of Staff

AMENDATORY SECTION (Amending WSR 08-13-042, filed 6/12/08, effective 6/12/08)

**WAC 468-38-290 Farm implements.** (1) **For purposes of issuing special farm implement permits and certain permit exemptions, what is considered a farm implement?** A farm implement includes any device that directly affects the production of agricultural products, including fertilizer and chemical applicator apparatus (complete with auxiliary equipment). For purposes of this section, the implement must be nondivisible, weigh less than sixty-five thousand pounds, and comply with the requirements of RCW 46.44.-091. The implement must be less than twenty feet in width and not exceed ~~((fourteen))~~ sixteen feet ~~((high))~~ in height. However, for purposes of this section, farm implements must not exceed fourteen feet in height in the counties of Whatcom, Skagit, Island, Snohomish, and King. If the implement is self-propelled, it must not exceed forty feet in length, or seventy feet overall length if being towed. The implement must move on pneumatic tires, or solid rubber tracks ~~((having protuberances))~~ that will not damage public highways with parts that extend beyond the tracks. Implements exceeding any of these criteria must meet all ~~((appropriate))~~ requirements for special permits as referenced in other sections ~~((throughout))~~ in this chapter and chapter 46.44 RCW.

(2) **What dimensional criteria ~~((must be met before))~~ requires a special permit ((is required)) to move extra-legal farm implements?** Self-propelled farm implements, including a farm tractor pulling no more than two implements, that exceed~~((s))~~ fourteen feet in height or sixteen feet in width, but less than twenty feet ((wide)) in width, are required to get a special permit for movement of farm implements on state highways. Note: A tow vehicle capable of carrying a load (i.e., a truck of any kind) may not tow more than one trailing implement.

(3) **Will the ~~((ability))~~ opportunity to ((acquire)) purchase a special permit to move oversize farm implements**

**be affected if the implement(s) is carried on another vehicle?** The ~~((ability to use))~~ opportunity to purchase a special permit for farm implements as defined in subsection (1) of this section will not be affected unless one of the following circumstances occurs:

(a) The authorized users of the permit outlined in subsection (5) of this section use a commercial for-hire service to move the implement(s); or

(b) The loaded farm implement creates a combined height that exceeds ~~((fourteen))~~ sixteen feet; or

(c) The loaded farm implement causes the hauling vehicle to exceed legal weight limits. The farm implement weight may ~~((weigh up to forty-five))~~ exceed sixty-five thousand pounds when carried on another vehicle; however, the combined gross weight of the hauling unit carrying the implement ~~((and hauling unit))~~ may ~~((extend to))~~ not exceed the legal weight limits established in RCW 46.44.041 Maximum gross weights—Wheelbase and axle factors.

If any of ~~((the))~~ these circumstances occur, the provisions of this subsection will not apply to the movement of the farm implement. The movement will be required to comply with the ~~((appropriate))~~ requirements for special permits as ~~((referenced))~~ provided in chapter 46.44 RCW and in other sections ~~((throughout))~~ in this chapter.

(4) **How does the special permit farm implement application process ~~((for a special permit for farm implements))~~ differ from the special permit process outlined in WAC 468-38-050?** Due to the size of the implement and the potential for use in multiple jurisdictions, the written application must be submitted to the department's Olympia office for approval. Permits can be requested for ~~((a))~~ three-month periods up to one year. Once approved, ~~((the))~~ a special permit may be generated from the Olympia office by facsimile or a letter of authorization will be sent ~~((allowing))~~ authorizing the applicant to acquire a special permit at the nearest permit sales location. If the movement of the farm implement(s) is confined to a single department maintenance area, the applicant may make direct written application to that maintenance area office in lieu of the Olympia office.

(5) **Who is authorized to ~~((acquire this specific))~~ purchase a farm implement special permit?** The ~~((acquisition))~~ purchase and use of a special permit to move farm implements is restricted to a farmer, or anyone engaged in the business of selling, repairing and/or maintaining farm implements.

(6) **~~((Does))~~ Will the special permit restrict the movement to a specific area?** The special permit to move farm implements is generally restricted to six contiguous counties or less. With proper justification, the area can be expanded. ~~((The))~~ Farm implements may only travel on highway structures that are designed to support the weight of the farm implement.

(7) **~~((Are))~~ Is department notification ~~((s of movement))~~ required before moving implement(s)?** Affected department maintenance areas must be notified at least eight (8) hours in advance of implement(s) movements ~~((of vehicles))~~ in excess of sixteen feet wide ~~((must be communicated to all department maintenance areas affected at least eight hours in advance))~~. Movements of implements that exceed the legal weight limit established in RCW 46.44.041 must

contact all ~~((of the))~~ affected department maintenance ~~((department))~~ areas ~~((affected))~~ at least eight hours in advance for weight restriction information. The ~~((communication))~~ notification is for the purpose of ensuring that there will not be any planned activity or weight restrictions that would restrict the move. Locations of department maintenance area offices and phone listings are provided with each letter authorizing the purchase of the farm implement special permit.

(8) **What safety precautions must be taken when moving extra-legal farm implement(s)?** The movement of extra-legal farm implements must comply with the ~~((following))~~ safety requirements following:

(a) **Oversize load signs:** If the farm implement exceeds ten feet ~~((wide))~~ in width or exceeds fourteen feet in height from the road surface, it must display an "OVERSIZE LOAD" sign(s) visible to both oncoming traffic and overtaking traffic. Signs must comply with the requirements of WAC 468-38-155(7). If the implement is both preceded and followed by pilot/escort vehicles, a sign is not required on the implement itself.

(b) **Curfew/commuter hours:** Movement of a farm implement in excess of ten feet wide or fourteen feet in height must comply with any published curfew or commuter hour restrictions, which are an attachment to the farm implement special permit.

(c) **Red flags:** If the farm implement is moving during daylight hours, and exceeds ten feet ~~((wide))~~ in width, the vehicle configuration must display clean, bright red flags. The red flags must measure at least ~~((twelve))~~ eighteen inches square and be able to wave freely. The red flags are to be positioned at all four corners, or extremities, of the overwidth implement and at the extreme ends of all protrusions, projections or overhangs. If a transported implement overhangs the rear of a transporting vehicle or vehicle combination by more than four feet, one red flag is required at the extreme rear. If the width of the rear overhang~~((+))~~ or protrusion exceeds two feet, ~~((there must be))~~ two red flags must be positioned at the rear to ~~((indicate))~~ show the maximum width of the overhang~~((+))~~ or protrusion.

(d) **Warning lights and slow moving emblem:** Lamps and other lighting must be in compliance with RCW 46.37.160. In addition to ~~((the))~~ lighting requirements, RCW 46.37.160 ~~((also))~~ requires the use of a "slow moving emblem" for moves traveling at twenty-five miles per hour or less.

(e) **Convoys:** Convoys, the simultaneous movement of two or more individually transported implements, are authorized when the ~~((following))~~ criteria are met following:

(i) A minimum of five hundred feet is maintained between vehicles to allow the traveling public to safely pass ~~((safely))~~;

(ii) If five or more vehicles are lined up behind any one of the convoy implements, the operator must pull off the road at the nearest point wide enough to accommodate the implement(s) and to allow the vehicles to safely pass ~~((safely))~~; and

(iii) The convoy is preceded and followed with properly equipped pilot/escort vehicles.

(9) **Are there any unique requirements or exemptions regarding the use of farm implement(s) pilot/escort vehi-**

cles (~~with farm implements~~)? Pilot/escort vehicles must comply with the requirements of WAC 468-38-100, except for the (~~following~~) specific exemptions related only to special permits for moving farm implement(s) following:

(a) A farmer, farm implement dealer, or agri-chemical dealer (including employees of each) is exempt from WAC 468-38-100(4) regarding operator certification, WAC 468-38-100 (8)(a) and (b) regarding pilot/escort vehicle physical description, WAC 468-38-100 (10)(f) regarding use of height measuring device when the implement does not exceed fifteen feet in height measured from the road surface, and WAC 468-38-100(11) regarding passengers, when moving a farm implement off the interstate and (~~on~~) to the (~~following~~) interstate segments following:

- (i) I-90 between Exit 109 (Ellensburg) and Exit 270 (Four Lakes);
- (ii) I-82 between Junction with I-90 (Ellensburg) and Exit 31 (Yakima);
- (iii) I-82 between Exit 37 (Union Gap) and Washington/Oregon border;
- (iv) I-182 between Junction with I-82 (West Richland) and Junction with SR-395; (~~and~~) or
- (v) I-5 between Exit 208 (Arlington) and Exit 250 (south of Bellingham).

(b) On two lane highways, one pilot/escort vehicle must precede and one must follow the implement(s) when the width exceeds twelve feet six inches. Implements up to twelve feet six inches wide are exempt from using pilot/escort vehicles.

(c) On all highways, one pilot/escort vehicle equipped with a height measuring device in compliance with WAC 468-38-100 (10)(f) and (14) must precede the farm implement when the height of the farm implement exceeds fifteen feet measured from the road surface. Movements within a sixty mile radius from the place where the implement(s) is principally used or garaged are exempt from this requirement.

(d) A flag person(s) may be used in lieu of a pilot/escort(~~s~~) vehicle for moves under five hundred yards. This allowance must be stated on any farm implement special permit that may be required for the move.

(~~e~~) (e) Posting a route may also be used in lieu of a pilot/escort vehicle(s) when the route is less than two miles. Signs must state, "OVERSIZE VEHICLE MOVING AHEAD" on a background square at least three feet on each side (in diamond configuration), with black lettering on orange background. The signs must be placed at points before the oversize implement enters or leaves the highway, and at access points along the way. Signs must be immediately removed (~~immediately~~) after the move has been completed.

**WSR 11-13-075**

**PERMANENT RULES  
DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Medicaid Purchasing Administration)

[Filed June 16, 2011, 9:08 a.m., effective July 17, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Upon order of the governor (EO 10-04), the medicaid purchasing administration (MPA) was required to reduce its budget expenditures for the current fiscal year ending June 30, 2011, by 6.3 percent. To help achieve this budget reduction, MPA eliminated payment of medicare prescription drug copayments for dual-eligible clients.

Citation of Existing Rules Affected by this Order: Amending WAC 388-517-0500.

Statutory Authority for Adoption: RCW 74.08.090.

Adopted under notice filed as WSR 11-10-072 on May 3, 2011.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 1.

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

Date Adopted: June 14, 2011.

Katherine I. Vasquez  
Rules Coordinator

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 388-517-0500	State payment of medicare prescription drug copayments for full-benefit dual-eligible clients.
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**WSR 11-13-109**

**PERMANENT RULES  
GROWTH MANAGEMENT  
HEARINGS BOARD**

[Filed June 21, 2011, 11:19 a.m., effective July 22, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: RCW 36.70A.270(7) authorizes the board to develop and adopt rules of practice and procedure, including rules regarding expeditious and summary disposition of

appeals. In 1992, the then-existing three growth management hearings boards adopted joint rules. These rules have been minimally amended since that time. Therefore, the board has conducted, in conjunction with interested parties, a comprehensive evaluation of its rules and made extensive modifications. Due to the wide-ranging nature of the modifications, the board's existing rules, chapter 242-02 WAC, are repealed in their entirety and replaced with these new rules, chapter 242-03 WAC (see notice published in WSR 11-05-086 for repealed rules).

Statutory Authority for Adoption: RCW 36.70A.270(7).

Adopted under notice filed as WSR 11-05-087 (CR-102) on February 15, 2011, and WSR 10-15-001 (CR-101) on July 7, 2010.

Changes Other than Editing from Proposed to Adopted Version: Adopted version further incorporates public and board member comment that was received during the rule-making time period commenced after publication of CR-102 in WSR 11-05-087 so as to better reflect the board's practice and respond to the needs of parties appearing before the board including cities, counties, state agencies, and practice practitioners.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 83, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 83, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 83, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 83, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 7, 2011.

James J. McNamara  
Chair, Rules Committee

## Chapter 242-03 WAC

### GMHB RULES OF PRACTICE AND PROCEDURE

#### ADMINISTRATION

#### NEW SECTION

**WAC 242-03-010 Organization.** The growth management hearings board was established pursuant to chapter 36.70A RCW. The board is an independent quasi-judicial agency of the state of Washington with seven members appointed by the governor who are qualified by experience or training in matters pertaining to land use planning. These rules were developed, adopted, and amended by the board pursuant to RCW 36.70A.270(7). They should be read in conjunction with the act and the Administrative Procedure Act, chapter 34.05 RCW.

#### NEW SECTION

**WAC 242-03-015 Regional panels.** (1) Each petition for review that is filed with the growth management hearings board shall be heard and decided by a regional panel of growth management hearings board members. Regional panels shall be constituted as follows:

(a) Central Puget Sound region. A three-member Central Puget Sound panel shall be selected to hear matters pertaining to cities and counties located within the region comprised of King, Pierce, Snohomish, and Kitsap counties.

(b) Eastern Washington region. A three-member Eastern Washington panel shall be selected to hear matters pertaining to cities and counties that are required or choose to plan under RCW 36.70A.040 and are located east of the crest of the Cascade mountains.

(c) Western Washington region. A three-member Western Washington panel shall be selected to hear matters pertaining to cities and counties that are required or choose to plan under RCW 36.70A.040, are located west of the crest of the Cascade mountains, and are not included in the Central Puget Sound region. Skamania County, if it is required or chooses to plan under RCW 36.70A.040, may elect to be included within either the Western Washington region or the Eastern Washington region.

(2)(a) Each regional panel selected to hear and decide cases shall consist of three board members, at least a majority of whom shall reside within the region in which the case arose, unless such regional members cannot sit on a particular case because of recusal or disqualification, or unless the board administrative officer determines that there is an emergency including, but not limited to, the unavailability of a board member due to illness, absence, vacancy, or significant workload imbalance.

(b) The presiding officer of each case shall reside within the region in which the case arose, unless the board administrative officer determines that there is an emergency.

(c) Except as provided otherwise in (d) of this subsection, each regional panel shall:

(i) Include at least one member admitted to practice law in this state;

(ii) Include at least one member who has been a city or county elected official; and

(iii) Reflect the political composition of the board.

(d) The requirements of (c) of this subsection may be waived by the board administrative officer due to member unavailability, significant workload imbalances, or other reasons.

#### NEW SECTION

**WAC 242-03-020 Function.** The function of the board is to make informed decisions on appeals within the scope of its jurisdiction arising from implementation of the Growth Management Act, Shoreline Management Act, and State Environmental Policy Act, in a clear, consistent, timely, and impartial manner that recognizes regional diversity.

NEW SECTION

**WAC 242-03-025 Jurisdiction.** Subject matter jurisdiction. The board shall hear and determine:

(1) Petitions alleging that a state agency, county, or city is not in compliance with the requirements of:

(a) The Growth Management Act; or

(b) Chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, including the department of ecology's approval or denial of such adoption or amendment by excluding the department of ecology's adoption of a shoreline master program by rule pursuant to RCW 90.58.070(2); or

(c) Chapter 43.21C RCW as it relates to plans, development regulations, and amendments adopted under the act or chapter 90.58 RCW; or

(2) Petitions from cities or the governor relating to an adopted county-wide planning policy; or

(3) Petitions alleging that the twenty-year growth management planning projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted.

NEW SECTION

**WAC 242-03-030 Definitions.** As used in this title, the following terms shall have the following meaning:

(1) "Act" means the Growth Management Act, chapter 36.70A RCW, and subsequent amendments.

(2) "Administrative officer" means the board member annually elected by the board pursuant to RCW 36.70A.270 (10) to handle day-to-day administrative, budget and personnel matters on behalf of the board and to make case assignments to board members in accordance with the board's rules of procedure.

(3) "Board" means the growth management hearings board or a panel of the board hearing a matter as established in RCW 36.70A.260.

(4) "Compliance participant" means any person with standing to challenge legislation taken in response to a board order, as provided in RCW 36.70A.330(2).

(5) "Consolidation" means the combining of all petitions involving review of the same comprehensive plan or development regulation into a single case for hearing and decision, as provided in RCW 36.70A.290(5).

(6) "Coordination" means provision of parallel case schedules for cases involving related matters in the interest of efficient resolution and to avoid duplication of evidence and argument.

(7) "Ex parte communication" is communication about issues in a pending case between a party and a board member without including or providing notice to all other parties to the matter. Ex parte communication is prohibited.

(8) "Filing" of a document means actual receipt by the board during regular office hours, as specified in WAC 242-03-230 (for a petition for review) or WAC 242-03-240 (for all other documents).

(9) "Final decision" means:

(a) Any final order as provided in RCW 36.70A.300; or

(b) Any other written finding, determination or order of the board which finally determines a legal right, duty, or

other legal interest of the parties in the case and which clearly states in such written finding, determination or order that it is a final decision subject to appeal to superior court.

(10) "Office of the growth management hearings board" means the administrative office of the board established pursuant to RCW 36.70A.270(2).

(11) "Panel" means the three board members assigned to hear and decide a particular case pursuant to RCW 36.70A.-260.

(12) "Party" means the petitioner(s) and respondent(s) in a case before the board and, if admitted in the case, intervenor(s), amicus, and compliance participant(s).

(13) "Person" means any individual, partnership, corporation, association, state agency, governmental subdivision or unit, or public or private organization or entity of any character.

(14) "Petitioner" means a person who files a petition for review pursuant to RCW 36.70A.290 or who brings a petition for rule making to the board.

(15) "Presiding officer" means any member of the board who is designated to conduct a conference or hearing as directed by the board. The presiding officer shall be designated pursuant to WAC 242-03-525 and have authority as provided by WAC 242-03-530.

(16) "Publication" means:

(a) For a city, the date the city publishes the ordinance or summary of the ordinance adopting a comprehensive plan, development regulations or subsequent amendment, as is required to be published, or the date the department of ecology publishes notice that the shoreline master program or amendment has been approved or disapproved by final action of the department of ecology;

(b) For a county, the date the county publishes the notice that it has adopted a comprehensive plan, development regulations, or subsequent amendment pursuant to RCW 36.70A.290(2), or the date the department of ecology publishes notice that the shoreline master program or amendment has been approved or disapproved by final action of the department of ecology.

(17) "Respondent" means the city, county, or state agency whose action is challenged in a petition for review before the board.

(18) "Service" of a document means delivery of the document to the other parties to the appeal, as specified in WAC 242-03-230 (for the petition for review) or WAC 242-03-240 (for all other documents).

(19) "Shoreline master program" means the comprehensive use plan for a described shoreline area, the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies in RCW 90.58.020 and applicable guidelines. Pursuant to RCW 36.70A.480(1), an approved shoreline master program is a component of the city or county's comprehensive plan and development regulations.

(20) "Shoreline Management Act" means chapter 90.58 RCW and subsequent amendments.

(21) "State Environmental Policy Act" means chapter 43.21C RCW and subsequent amendments.

NEW SECTION

**WAC 242-03-035 Rules.** These rules shall govern the board's adoption or amendment of rules, and all practice and procedure for hearings before the board. Where a time frame is different in these rules from those in chapter 10-08 WAC, it is because the board is required to act pursuant to the time frames set forth in the act.

NEW SECTION

**WAC 242-03-040 Petition for rule making.** (1) Any person may petition the board for the adoption, amendment, or repeal of any rule. Said petition shall be filed with the board at its office. The form for a petition for rule making, the criteria to be addressed, and the procedure for submission shall be as specified in RCW 34.05.330(1).

(2) Upon receipt of a petition for the adoption, amendment, or repeal of a rule, the board may, in its discretion, solicit comments, invite discussion, and hold meetings concerning the matter prior to disposition of the petition.

(3) Within sixty days after submission of a petition for rule making, the board shall either:

(a) Deny the petition in writing, stating:

(i) Its reasons for the denial, specifically addressing the concerns raised by the petitioner and, where appropriate;

(ii) The alternative means by which it will address the concerns raised by the petitioner; or

(b) Initiate rule-making procedures in accordance with RCW 34.05.230.

NEW SECTION

**WAC 242-03-045 Computation of time.** The time within which any act shall be done, as provided by these rules, shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or a legal holiday, pursuant to RCW 1.16.050, and then it is excluded and the next succeeding day which is neither a Saturday, Sunday nor a legal holiday is included. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

NEW SECTION

**WAC 242-03-050 Quorum.** (1) Board quorum. For the purpose of adopting, amending, or repealing these rules or transacting other administrative business, at least four members of the board shall constitute a quorum of the board. A quorum being present, any action may be taken upon the vote of the majority of the board members.

(2) Panel quorum. For purposes of making orders or decisions in a case, two members of a panel shall constitute a quorum and may act even though one panel member is absent. One member may hold conferences or hearings. The findings of such member shall not become final until approved by a majority of the panel. A panel member who does not attend a hearing may participate in the decision and shall review a transcript or recording of the hearing before signing the decision.

NEW SECTION

**WAC 242-03-060 Board office.** (1) The administration of the board is consolidated in one office - The office of the growth management hearings board:

Growth Management Hearings Board  
319 7th Avenue S.E., Suite 103  
Olympia, WA 98501  
P.O. Box 40953  
Olympia, WA 98504-0953  
360-586-0260  
360-664-8975 Fax  
e-mail: eastern@ew.gmhb.wa.gov  
e-mail: western@wwgmhb.wa.gov  
e-mail: central@cps.gmhb.wa.gov  
web site: www.gmhb.wa.gov

(2) The filing of all petitions, briefs, exhibits, and other documents related to any proceeding before a regional panel shall be made to the office of the growth management hearings board, with specific indication of the appropriate regional panel's name - Eastern, Western, or Central Puget Sound.

NEW SECTION

**WAC 242-03-070 Regular meetings.** Regular meetings of the board will be held at the office of the growth management hearings board or a designated location on the first Wednesday of each month at 10:00 a.m. or following any scheduled hearing on that date. Meetings may be held telephonically.

NEW SECTION

**WAC 242-03-075 Special meeting.** (1) A special meeting of the board may be called at the request of any two of the board members. To call a special meeting, a written notice of the meeting shall be posted on the board's web site and personally e-mailed to:

(a) Each member of the board; and

(b) Each general circulation newspaper, television or radio station which has on file with the board a written request to be notified of special meetings.

(2) The written notice shall state the date and time of the meeting, and shall specify the business to be transacted by the board. The board will not take final action on any matter that is not specified in the written notice.

(3) Notices of special meetings shall be sent by e-mail:

(a) One day (twenty-four hours) before the scheduled meeting; except

(b) When a special meeting is called to consider rule changes pursuant to chapter 34.05 RCW, the notice shall be sent at least twenty days prior to the meeting; and except

(c) In the event of an emergency requiring board action, the notice and timing requirements may be waived as provided in RCW 42.30.080.

(4) The special meeting shall be chaired by the administrative officer.

(5) A special meeting may be held by telephone conference call.

(6) Members of the public may attend a special meeting by appearing at the board office, or the location of the special meeting, at the date and time set for the meeting.

#### NEW SECTION

**WAC 242-03-080 Annual and semiannual board meetings.** (1) The annual board meeting will be held in October of each year. The annual meeting should be held in person. The location, time, and agenda for the annual board meeting will be posted on the board's web site (www.gmhb.wa.gov) in September of each year.

(2) The semiannual board meeting may be held in April of each year. The location, time, and agenda for the semiannual board meeting will be posted on the board's web site (www.gmhb.wa.gov) in March of each year.

#### NEW SECTION

**WAC 242-03-095 Case numbering.** The board shall assign a case number to each petition for review which shall be the official reference number for purposes of identification. The first two digits of the case number shall correspond to the last two digits of the calendar year in which the petition was filed. The third digit shall designate which regional panel has jurisdiction over the matter. The Eastern Washington panel shall use the digit "1"; the Western Washington panel shall use the digit "2"; and the Central Puget Sound panel shall use the digit "3." The last four digits shall be numbered sequentially in order of receipt. Consolidated cases are generally assigned the number of the last filed petition followed by a "c."

### PRACTICE BEFORE THE BOARD

#### NEW SECTION

**WAC 242-03-100 Appearance and practice before the board—Who may appear.** Practice before the board shall be open to the following persons who have met the standing requirements of chapter 36.70A RCW:

(1) A party or compliance participant to a case before the board may appear personally or by a duly authorized representative. The duly authorized representative need not be an attorney;

(2) Attorneys at law representing a party before the board must be duly qualified and entitled to practice in the courts of the state of Washington or satisfy Washington Court Rule 9 standards.

#### NEW SECTION

**WAC 242-03-115 Authorized representatives.** (1) Notice of appearance. Any person acting in a representative capacity on behalf of a party or participant shall file a notice of appearance with the board and shall serve a copy on all other parties. This requirement shall apply to attorneys as well as to other duly authorized representatives of parties. This requirement shall apply to attorneys as well as to other duly authorized representatives of parties. A person listed in

a petition for review as representing petitioners need not file a notice of appearance.

(2) Substitution. In the event of a change in representative or attorney, a notice of substitution must be filed with the board and a copy served on all other parties before the change in representative shall become effective.

#### NEW SECTION

**WAC 242-03-120 Rules of professional conduct.** (1) An attorney appearing in proceedings before the board in a representative capacity shall conform to the Rules of Professional Conduct required of attorneys before the courts of Washington.

(2) A person other than an attorney appearing in a representative capacity or on his/her own behalf shall conform to the following standards as set forth in the Washington Court Rules of Professional Conduct, RCP 3.1 to 3.5.

- (a) Advancing good faith claims and contentions;
- (b) Making reasonable efforts to expedite the proceedings;
- (c) Candor and truthfulness toward the board;
- (d) Fairness to opposing parties; and
- (e) Refraining from conduct that is detrimental to the impartiality of the board or the decorum of the proceedings.

(3) If any person does not conform to such rules, the board may decline to permit such person to appear in any current or future proceedings before the board or impose appropriate sanctions.

#### NEW SECTION

**WAC 242-03-130 Ex parte communication.** No one in a board proceeding shall make or attempt to make any ex parte communications with board members regarding any issue in the proceeding that is prohibited by the Administrative Procedure Act, RCW 34.05.455. Communications on purely procedural matters such as scheduling and logistics should be directed to the board's administrative staff. Any person who attempts to make prohibited ex parte communications on behalf of a party may be subject to sanctions pursuant to WAC 242-03-120. The board should disclose any prohibited ex parte communication and include it in the record.

#### NEW SECTION

**WAC 242-03-140 Signing of pleadings, motions, and legal memoranda.** Every pleading, motion and legal memorandum of a party shall be dated and signed by the party, or the party's attorney or other authorized representative and include an address, telephone and fax numbers, and electronic mail address.

#### NEW SECTION

**WAC 242-03-145 Form and size of documents.** Documents, other than exhibits, shall be provided in the manner indicated in the board's prehearing order.

NEW SECTION

**WAC 242-03-150 Teleconference or video conference proceeding.**

(1) At the discretion of the board or a presiding officer, or where the parties agree and where the rights of the parties will not be prejudiced, all or part of any hearing, prehearing, or motion hearing may be conducted by telephone, video conference, or other electronic means. Each party in the proceeding must have an opportunity to participate effectively in, to hear, and if technically and economically feasible, to see the entire proceeding while it is taking place.

(2) The board will require documentary evidence, motions, and briefs to be submitted in accordance with the prehearing order or subsequent scheduling order to insure fair consideration and presentation of the issues. All such material shall also be served on other parties at the time of filing with the board.

**APPEAL PROCEDURE**

NEW SECTION

**WAC 242-03-200 Initiating an appeal with the board.** An appeal before the board is initiated by satisfying the following requirements:

(1) A petition for review relating to an adopted comprehensive plan, development regulation, or amendment thereto, must be filed with the growth management hearings board within sixty days after publication by the decision-making body of the state agency, county, or city whose action is being appealed and naming that state agency, county, or city as a respondent;

(2) The petition for review shall include a detailed statement of issues presented for resolution by the board;

(3) The petition for review shall include a statement showing that the petitioner has standing to file the petition; and

(4) The petition for review must allege either:

(a) A state agency, county, or city is not in compliance with the goals and requirements of the Growth Management Act, the Shoreline Management Act, applicable guidelines and rules, as it relates to shoreline master programs and amendments thereto, or the State Environmental Policy Act and rules, as it relates to plans, development regulations, shoreline master programs or amendments; or

(b) The twenty-year growth management planning populations projections adopted by the office of financial management should be adjusted.

NEW SECTION

**WAC 242-03-210 Petition for review—Forms—Contents.** A petition for review shall substantially contain:

(1) A caption in the following form:

BEFORE THE GROWTH MANAGEMENT  
HEARINGS BOARD  
\_\_\_\_\_ REGION  
STATE OF WASHINGTON

Petitioner,

Case No.

v.

Respondent.

PETITION FOR  
REVIEW

(2) Numbered paragraphs stating:

(a) Petitioner's name, mailing address, telephone number, and electronic mail address, and those of the attorney or other authorized representative, if any;

(b) Date of the challenged order, determination, publication, or other action or, in the case of an alleged failure to act under the Growth Management Act or the Shoreline Management Act, the date by which the action was required to be taken;

(c) A detailed statement of the issues presented for resolution by the board that specifies the provision(s) of the act or other statute allegedly being violated and, if applicable, the provision(s) of the document that is being appealed;

(d) A statement specifying the type and the basis of the petitioner's standing before the board pursuant to RCW 36.70A.280(2);

(e) The relief sought, including the specific nature and extent;

(f) A statement that the petitioner has read the petition for review and believes the contents to be true, followed by the petitioner's signature or signature of the attorney(s) or other authorized representative(s), if any.

(3) One copy of the applicable provisions of the document being appealed, if any, shall be attached to the petition for review. Petitioner shall provide the board with a copy of the entire document being appealed within thirty days of filing a petition for review, unless otherwise directed by the board.

NEW SECTION

**WAC 242-03-220 Petition for review—Time for filing.**

(1) A petition relating to whether or not an adopted comprehensive plan, development regulation, or subsequent amendment, is in compliance with the goals and requirements of the act or chapter 90.58 or 43.21C RCW shall be filed with the board within sixty days from the date of publication by the legislative body of the county or city as specified by RCW 36.70A.290(2).

(2) A petition relating to a shoreline master program or denial thereof shall be filed within sixty days from the date the department of ecology publishes notice that the shoreline master program has been approved or disapproved by final action of the department of ecology.

(3) A petition relating to an adopted county-wide planning policy shall be filed within sixty days of its adoption as specified in RCW 36.70A.210(6).

(4) A petition alleging that the twenty-year growth management planning population projections adopted by the office of financial management pursuant to RCW 43.62.035 should be adjusted can be filed at any time.

(5) A petition relating to the failure of a state agency, city or county to take an action by a deadline specified in the Growth Management Act or the Shoreline Management Act

may be brought at any time after the deadline for action has passed.

#### NEW SECTION

**WAC 242-03-230 Petition for review—Filing and service.** (1) Filing a Petition for Review. A petition for review shall be filed with the board by electronic mail, as provided in WAC 242-03-240, unless a petitioner does not have the technological capacity to do so. The original and four copies of the petition for review shall be filed with the board personally, or by first class, certified, or registered mail. Filings may also be made with the board by telefacsimile transmission as provided in WAC 242-03-240. A petition for review is deemed filed on the date the board receives it by electronic mail provided that the original and four copies are postmarked and mailed on the same date as the electronic filing.

(2) Service of petition for review.

(a) A copy of the petition for review shall be served upon the named respondent(s) and must be received by the respondent(s) on or before the date filed with the board. Service of the petition for review may be by mail or personal service, so long as the petition is received by respondent on or before the date filed with the board.

(b) When a county is a respondent, the petition for review shall be served on the county auditor in noncharter counties and the agent designated by the legislative authority in charter counties. When a city is a respondent, the mayor, city manager, or city clerk shall be served. When the state of Washington is a respondent, the office of the attorney general shall be served at its main office in Olympia unless service upon the state is otherwise provided by law. In a challenge to the adoption of, or amendment to, a shoreline master program approved by the department of ecology, the department of ecology shall be named as a respondent and served.

(3) Proof of service shall be filed with the board pursuant to WAC 242-03-245.

(4) The board may dismiss a case for failure to substantially comply with this section.

#### NEW SECTION

**WAC 242-03-240 Filing and service of all other papers.** (1) Filing of papers: All pleadings and briefs shall be filed with the board by electronic mail unless a petitioner does not have the technological capacity to do so. The original and four copies of all documents shall be filed with the board personally, or by first class, certified, or registered mail and must be postmarked and mailed on the same date as the electronic filing. Filings less than fifteen pages may be made by telefacsimile transmission. The original and four copies must be mailed on the same date as the telefacsimile transmission to be deemed filed.

Filings made by electronic mail and/or telefacsimile transmission shall be deemed filed upon actual receipt during office hours of 8:00 a.m. to 5:00 p.m. excluding Saturdays, Sundays, and legal holidays. Any transmission not completed before 5:00 p.m. will be stamped received on the following business day. The date and time indicated by the board's telefacsimile machine or receiving computer shall be

presumptive evidence of the date and time of receipt of transmission. All papers will be deemed filed with the board on the date received by electronic mail provided that the original document and four copies are mailed and postmarked on the same date as the telefacsimile transmission or electronic mail filing.

(2) Service: Parties shall serve copies of all filings on all other named parties by electronic mail, on or before the date filed with the board, unless a party lacks technical capability. Service is accomplished when the document is transmitted electronically, or, by agreement among the parties or exception granted by the presiding officer, is deposited in the mail and postmarked by the required date.

#### NEW SECTION

**WAC 242-03-245 Declaration of service.** A party filing any pleadings, briefs, exhibits, or documents with the board shall provide a signed declaration of service, on penalty of perjury under the laws of this state, stating that copies have been served on all other parties, listing the parties, and stating the method of service.

#### NEW SECTION

**WAC 242-03-250 Notice of appearance.** The respondent shall file and serve a notice of appearance within seven days after having been served with a petition for review.

#### NEW SECTION

**WAC 242-03-255 Governor certified standing.** If the board receives a request for governor certified standing from a petitioner pursuant to RCW 36.70A.280 (2)(c), the board shall immediately forward the petitioner's request to the governor. The board shall indicate to the governor the end of the sixty-day time period within which the determination of standing must be made. Pendency of a request for governor certified standing does not extend the time for filing a petition for review.

#### NEW SECTION

**WAC 242-03-260 Amendments to petitions for review.** (1) A petition for review may be amended as a matter of right until thirty days after its date of filing. Any such amendments shall be limited to amending the legal bases for challenging the matters raised in the original petition, but may not raise new challenges to the ordinance.

(2) Thereafter any amendments shall be requested in writing by motion, and will be made only after approval by the presiding officer. Amendments shall not be freely granted and may be denied upon a showing by the adverse party of unreasonable and unavoidable hardship, or by the presiding officer's finding that granting the same would adversely impact the board's ability to meet the time requirements of RCW 36.70A.300 for issuing a final order.

(3) At the prehearing conference the presiding officer will work with the parties to clarify the issues raised in the petition for review. The presiding officer may, upon motion of a party or upon its own motion, require a more complete or

concise statement of the issues presented for resolution by the board.

#### NEW SECTION

**WAC 242-03-270 Intervention.** (1) Upon motion, any person may request status as an intervenor in a case. The motion shall state the applicant's interests relating to the subject of the action, how disposition of the action may impair that interest, and whether that interest is adequately represented by existing parties. The motion shall specify the legal issue(s) in the case which the intervenor seeks to address and may not raise new issues beyond the issues already in the case. The applicant should make an effort to contact the parties so that the motion may be filed without objection. The motion to intervene shall be filed at least ten days prior to the deadline for filing the petitioner's prehearing brief, unless good cause is shown.

(2) In determining whether a person qualifies as an intervenor, the presiding officer shall apply any applicable provisions of law and may consider the applicable superior court civil rules (CR) of this state. The granting of intervention must be in the interests of justice and shall not impair the orderly and prompt conduct of the proceedings.

(3) If the person qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest as demonstrated by the motion;

(b) Requiring two or more intervenors to combine their presentations of evidence and argument, or requiring intervenor to combine its argument with the party whose position the intervenor supports; and

(c) Limiting the intervenor's role in settlement proceedings.

(4) The presiding officer shall timely grant or deny each motion and specify conditions, if any.

(5) Pleadings and briefs of an intervenor shall be filed and served in accordance with the deadlines applicable to the party whose position the intervenor supports, in accordance with the board's order on intervention.

#### NEW SECTION

**WAC 242-03-280 Amicus.** (1) Any person whose interest may be substantially affected by a proceeding before the board may, by motion, request status as an amicus in the case. A motion and amicus brief shall be filed no later than thirty days before the hearing on the matter, unless good cause is shown.

(2) A motion to file an amicus curiae brief must include a statement of:

(a) Applicant's interest and the person or group applicant represents;

(b) Applicant's familiarity with the issues involved in the matter and with the scope of the argument presented or to be presented by the parties;

(c) Specific issues to which the amicus curiae brief will be directed; and

(d) Applicant's reason for believing that additional argument is necessary on these specific issues. The brief of amicus curiae may be filed with the motion but must be filed no later than the time set for the filing of the brief for the party whose position the amicus supports.

(3) Any party may respond to an amicus motion and brief within ten days.

(4) If leave to file an amicus brief is granted, amicus does not participate in oral argument, except at the request of the board, and is not a party of record in subsequent proceedings.

#### NEW SECTION

**WAC 242-03-290 Direct review by superior court—Procedures.** RCW 36.70A.295 provides for direct review by superior court of a petition for review filed with the board if all parties to the proceeding agree to direct review in superior court and file an agreement in writing with the board within ten days after the petition for review is filed, or if multiple petitions have been filed and consolidated, within ten days after the board serves notice of consolidation.

(1) A direct review agreement of the parties shall contain:

(a) Petitioner's name, mailing address, telephone number, and electronic mail address, and those of the attorney or other designated representative, if any;

(b) Respondent's name, mailing address, telephone number, and electronic mail address, and those of the attorney or other designated representative, if any;

(c) Intervenor's name, mailing address, telephone number, and electronic mail address, and those of the attorney or other designated representative, if any;

(d) A statement indicating agreement to seek direct review by superior court of the petition for review filed with the board, citing case name and number as assigned by the board. The statement shall include agreement to proper venue, and may include other terms;

(e) Date the petition for review was filed, or if multiple petitions were filed and consolidated, the date the board served notice of consolidation;

(f) A statement that all parties have read the agreement for direct review by superior court, and agree to its terms, followed by the signatures of all the parties or the signatures of the attorneys or other designated representatives, if any.

(2) One copy of the filed petition for review, with the case name, number and date stamp shall be filed with the agreement for direct review by superior court.

(3) Within ten days of receiving the timely and complete agreement of the parties, the board shall file a certificate of agreement with the designated superior court with the documents required by RCW 36.70A.295(2) and shall serve the parties with copies of the certificate.

### **ADDITIONAL BOARD POWERS**

#### NEW SECTION

**WAC 242-03-300 Discovery—Limitation.** (1) Because the board bases its decision on the record developed by the city, county, or state agency in taking the challenged

action, discovery shall not be permitted except in extraordinary circumstances upon an order of the presiding officer.

(2) Insofar as applicable and not in conflict with this chapter, when discovery has been authorized by the presiding officer, the statutes and court rules regarding pretrial procedures in civil cases in superior courts of the state of Washington shall be used.

#### NEW SECTION

**WAC 242-03-310 Subpoena—Issuance.** (1) Because the board bases its decision on the record developed by the city, county, or a state agency taking the challenged action, subpoenas shall not be authorized except in extraordinary circumstances. When allowed by the presiding officer, subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446 and court rules.

(2) Every subpoena shall identify the party causing its issuance. Subpoenas may be issued by the board or by an attorney of record. The person issuing shall sign the subpoena. Parties desiring subpoenas to be signed by the board shall make a showing of relevance and reasonable scope of the testimony or evidence sought and shall prepare the subpoenas for issuance, send them to the board's office for signature, and, upon return, shall make arrangements for service.

#### NEW SECTION

**WAC 242-03-320 Hearing examiner—May be appointed.** (1) The board may appoint hearing examiners to assist the board in its hearing function, to make conclusions of law and findings of fact, and, if requested by the board, to make recommendations to the board for decisions in cases before the board.

(2) The findings and conclusions of the hearing examiner shall not become final until they have been formally approved by the panel hearing the case.

#### NEW SECTION

**WAC 242-03-330 Witnesses and testimony—Limitation.** (1) Because the board bases its decision on the record developed by the city, county, or the state in taking the challenged action, witnesses shall not be permitted to testify in hearings before the board except as allowed by the presiding officer. Requests to allow witness testimony shall be made no later than five working days prior to the hearing.

All testimony shall be given under oath as provided in chapter 5.28 RCW and subject to cross-examination. Where an interpreter is employed, the provisions of WAC 10-08-150 shall apply.

(2) When allowed to address the board by the presiding officer, local officials shall limit their comments to material contained in the record. Such comments will not be considered testimony, and therefore need not be given under oath.

#### NEW SECTION

**WAC 242-03-340 Board consultation of critical areas expert.** (1) Pursuant to RCW 36.70A.172(2), the board may retain scientific or other expert advice to assist in reviewing a

petition that involves critical areas. When the board has determined that such advice is necessary or will be of substantial assistance in reaching its decision, the board shall promptly notify the parties of the proposed scope of the consultation.

(2) Upon receiving the report of the consulted expert, the board shall provide all parties a copy of the report and a statement of the expert's qualifications.

(3) Any party may, within fourteen days, file objections to the qualifications or impartiality of the expert or to the substance of the report.

### PROCEDURES PRIOR TO HEARING

#### NEW SECTION

**WAC 242-03-500 Notice of hearing.** (1) Within ten days of the filing of a petition for review or of the filing of the last filed of consolidated petitions, unless a petition for review has been removed to superior court, pursuant to WAC 242-03-290, the board or presiding officer will issue a notice of hearing.

(2) The notice of hearing shall identify the appeal to be heard, the names of the parties to the appeal and their attorneys or other authorized representatives, if any, and shall include the information specified in RCW 34.05.434.

(3) The notice of hearing will inform the parties of the presiding officer and the panel members designated to hear the matter.

(4) The notice of hearing will include an order setting a date and time for a prehearing conference. If the prehearing conference is to be held by teleconference, the notice shall so state.

(5) The notice of hearing shall contain a tentative schedule for the case prepared by the presiding officer for review and finalization at the prehearing conference. The notice of hearing shall contain a date for the hearing on the merits. The presiding officer will thereafter schedule a place for the hearing.

(6) The notice shall state that if a limited-English-speaking or hearing impaired party needs an interpreter, a qualified interpreter will be appointed and that there will be no cost to the party. The notice shall include a form for a party to indicate if an interpreter is needed and identification of the primary language, or if a participant is hearing impaired or has other disability to be accommodated.

#### NEW SECTION

**WAC 242-03-510 Index of the record.** (1) Within thirty days of service of a petition for review, the respondent shall file with the board and serve a copy on the parties of an index listing all material used in taking the action which is the subject of the petition for review, including materials submitted in public comment. The index shall contain sufficient identifying information to enable unique documents to be distinguished.

(2) Concurrent with the filing of the index, the respondent shall make all documents in the index reasonably available to the petitioners for inspection and copying without the necessity for a public records request. In addition, the written

or tape recorded record of the legislative proceedings where action was taken shall be available to the parties for inspection or transcription. Respondents may charge for the cost of copies of documents requested by other parties in accordance with RCW 42.56.120, as amended.

(3) Within seven days after the filing of the index, any other party may file a list of proposed additions to the index. To the extent such documents were submitted to the jurisdiction or a part of the jurisdiction's proceedings prior to the challenged action, they are presumed admissible subject to relevance. If the respondent objects to any proposed addition, the petitioner may bring a motion to supplement the record as provided in WAC 242-03-565.

(4) Respondent may file a corrected index to add, delete, or correct the listing of documents it considered, without the necessity for a motion to supplement the record, by no later than a week before the date for filing the petitioner's prehearing brief.

#### NEW SECTION

**WAC 242-03-520 Exhibits.** Except as otherwise provided in these rules, the evidence in a case shall consist of the exhibits cited in the briefs or as exhibits allowed pursuant to a motion to supplement and attached thereto.

Exhibits shall be documents, portions of documents, or transcriptions of proceedings listed in the index, unless a motion to supplement the record has been granted. Exhibits attached to motions to supplement shall be cross-referenced in briefs for the hearing on the merits. The presiding officer may, at her/his discretion, require copies of all exhibits to be attached to both the motion to supplement and the hearing on the merits brief, or may just allow the exhibits to be cross-referenced. This requirement will be stated in the order on motion to supplement.

#### NEW SECTION

**WAC 242-03-525 Designation of presiding officer and panel members.** The board shall designate the presiding officer and panel members for each case at the time it issues the notice of hearing pursuant to WAC 242-03-500. In the event the presiding officer or any panel member subsequently changes, the board shall promptly notify the parties.

#### NEW SECTION

**WAC 242-03-530 Presiding officer—Powers and duties.** It shall be the duty of the presiding officer to conduct conferences or hearings in an impartial and orderly manner. The presiding officer shall have the authority, subject to the other provisions of the act or these rules to:

(1) Inspect the petition for review to determine whether, on its face, compliance with the jurisdictional and standing requirements of the act is shown, and if compliance is not shown, to recommend an action or to refer the issue to the board for resolution;

(2) Require that parties not represented by counsel designate a spokesperson(s);

(3) Conduct the prehearing conference, seek clarification or simplification of issues, establish the case schedule, and regulate the course of the case;

(4) Rule on all procedural matters, objections and routine motions; obtain agreement of the parties concerning service of papers electronically or by mail in light of technical capabilities or other circumstances;

(5) Rule on all evidentiary matters including supplementation of the record;

(6) Decide motions for intervention, amicus, or compliance participant status;

(7) Consolidate cases for hearing pursuant to RCW 36.70A.290(5) or coordinate cases pursuant to WAC 242-03-030(5) and 242-03-030(6) when such consolidation or coordination will expedite disposition and avoid duplication of evidence and argument;

(8) Review cases for settlement or mediation opportunities and assist the parties in arranging such sessions;

(9) Administer oaths and affirmations if witnesses are permitted to testify, authorize discovery, or issue subpoenas in exceptional circumstances as provided in RCW 34.05.446;

(10) Encourage the parties to stipulate to the admissibility of documents in advance of a hearing and rule on issues concerning the content of the record;

(11) Limit the length of a brief or impose format restrictions;

(12) Rule on requests for settlement extensions;

(13) Determine whether oral argument will be allowed on a motion and, if so, schedule the hearing; determine whether a conference or hearing shall be held by teleconference or in person;

(14) Require a party to provide a complete copy of the comprehensive plan, county-wide planning policy, or other core document germane to determination of the case;

(15) Waive any requirement of these rules unless a party shows that it would be prejudiced by such a waiver; and

(16) Take any other action necessary and authorized by these rules, the act, or the Administrative Procedure Act, chapter 34.05 RCW.

#### NEW SECTION

**WAC 242-03-535 Prehearing conference—When held.** The prehearing conference will be held thirty days after the filing of the petition for review or as scheduled in the notice of hearing. The prehearing conference is conducted by the presiding officer and is ordinarily held telephonically.

#### NEW SECTION

**WAC 242-03-540 Prehearing conference—Purpose.** The purpose of a prehearing conference is to:

(1) Determine the feasibility of and encourage settlement of the matter or any portion thereof and provide information about mediation as set forth in WAC 242-03-575;

(2) Obtain a stipulation of relevant facts including the board's jurisdiction, the petitioner's standing in the matter, and the timeliness of the petition for review;

(3) Obtain agreement as to the issues of law and fact presented and their clarification, simplification, limitation, or

resolution, so as to frame the final issues to be decided by the board;

(4) Rule on any pending matters of intervention, consolidation, or the qualification of individual board members or the composition of the panel;

(5) Determine the witnesses, if any, that may be allowed to be called by the parties;

(6) Set the final case schedule for filing motions, deadlines for briefing, and date and time of the hearing on the merits;

(7) Determine the approximate time necessary for the presentation of evidence and/or argument of the respective parties;

(8) Obtain all other information which may aid in the prompt disposition of the matter; and

(9) Obtain agreement of the parties concerning service of papers electronically or by mail in light of technical capabilities or other circumstances.

#### NEW SECTION

**WAC 242-03-545 Prehearing order.** (1) Within seven days after the prehearing conference, the presiding officer shall issue a prehearing order memorializing rulings of the board at or prior to the prehearing conference, establishing the issues for resolution in the case, and setting the final case schedule for motions, briefing, and the hearing on the merits. The prehearing order may include:

(a) Admissions concerning jurisdiction, standing, or timeliness of the appeal;

(b) Provisions concerning the record, documents to be provided, witnesses allowed, if any, and authenticity and/or admissibility of exhibits;

(c) Limitations on length of briefs and the coordination of arguments from parties with related issues; or

(d) Any other matters that may expedite the resolution of the matter.

(2) Any objection to such order shall be made in writing within seven days after the date the order is dated. The prehearing order shall control ensuing proceedings unless modified for good cause by a subsequent order.

#### NEW SECTION

##### **WAC 242-03-550 Motions—General requirements.**

(1) A motion is an application for an order or ruling. Every motion shall be in writing, unless made during a hearing; shall state with particularity the grounds; and shall set forth the relief or order sought.

(2) The deadline for filing certain motions is established in the prehearing order. No written motion may be filed after the date specified in the order without written permission of the presiding officer which may be granted for good cause shown.

(3) Unless the prehearing order or other order in the case establishes a different deadline, a party served with a motion shall have ten days from the date of service of the motion to respond to it. The presiding officer may allow the moving party to reply to the response.

(4) A party filing a motion on a routine matter is encouraged to inform other parties and to indicate in the motion whether it is filed with the concurrence of other parties.

(5) A motion on procedural matters will generally be decided by the presiding officer without a hearing.

(6) The presiding officer, taking into consideration the complexity and finality of the issues raised in a motion, may, in the officer's discretion, schedule a telephonic hearing for argument of the motion to the board or may defer consideration of the motion until the hearing on the merits.

#### NEW SECTION

**WAC 242-03-555 Dispositive motions.** (1) Dispositive motions on a limited record to determine the board's jurisdiction, the standing of a petitioner, or the timeliness of the petition are permitted. The board rarely entertains a motion for summary judgment except in a case of failure to act by a statutory deadline.

(2) Dispositive motions and responses shall be filed by the dates established in the prehearing order. The board may refuse to hear a motion that is not timely filed, except where good cause is shown.

(3) The presiding officer, taking into consideration the complexity and finality of the issues raised, may, in the presiding officer's discretion, request a reply brief from the moving party, schedule a telephonic hearing for argument of the motion or may defer the board's consideration of the motion until the hearing on the merits.

(4) Unless the order on dispositive motions is a final order pursuant to WAC 242-03-030(9), no motion for reconsideration will be allowed.

#### NEW SECTION

**WAC 242-03-560 Dispositive motion on notice and public participation.** Any party may bring a motion for the board to decide a challenge to compliance with the notice and public participation requirements of the act raised in the petition for review, provided that the evidence relevant to the challenge is limited. Such motion shall be filed by the deadline for dispositive motions established in the prehearing order. The presiding officer shall determine whether the panel will decide the notice and public participation issue(s) on motion or whether to continue those issues to the hearing on the merits.

#### NEW SECTION

**WAC 242-03-565 Motion to supplement the record.** Generally, the board will review only documents and exhibits taken from the record developed by the city, county, or state in taking the action that is the subject of review by the board and attached to the briefs of a party. A party by motion may request that the board allow the record to be supplemented with additional evidence.

(1) A motion to supplement the record shall be filed by the deadline established in the prehearing order, shall attach a copy of the document, and shall state the reasons why such evidence would be necessary or of substantial assistance to the board in reaching its decision, as specified in RCW

36.70A.290(4). The board may allow a later motion for supplementation on rebuttal or for other good cause shown.

(2) Evidence arising subsequent to adoption of the challenged legislation is rarely allowed except when supported by a motion to supplement showing the necessity of such evidence to the board's decision concerning invalidity.

(3) Exhibits attached to motions to supplement shall be cross-referenced in the briefs for the hearing on the merits, unless the presiding officer, in the order on motion to supplement, requires copies of supplemental exhibits to be attached also to the hearing on the merits brief.

#### NEW SECTION

**WAC 242-03-570 Motion to disqualify for cause—Challenge to panel.** (1) A motion to disqualify a board member from serving on a panel or to challenge the composition of the panel shall be brought at least seven days before the board holds a prehearing conference, or if facts establishing grounds for disqualification are subsequently discovered, promptly after discovery of such facts. In the event a new panel assignment is made during the course of the proceedings on a matter, any motion for disqualification or challenge to panel composition shall be brought no later than seven days after the board issues its notice of panel assignment.

(2) Any board member designated to serve on a panel is subject to disqualification for bias, prejudice, interest, or any other cause as provided in RCW 34.05.425. The board member whose disqualification is requested shall promptly determine whether to grant the motion, stating facts and reasons for the determination.

(3) If a party brings a motion challenging the composition of the panel for noncompliance with the requirements of RCW 36.70A.260, the presiding officer shall promptly forward the motion to the administrative officer who will prepare a response.

(4) If a motion for disqualification or challenge to composition of the panel is granted, a new panel assignment and/or presiding officer designation will be promptly made. The parties will be informed at the prehearing conference and the resolution of the matter will be included in the prehearing order or other written order of the board issued within twenty days of the filing of the motion.

#### NEW SECTION

**WAC 242-03-575 Settlement extensions and mediation.** (1) If additional time is necessary to achieve settlement of a dispute that is an issue in a petition before the board, the board may extend the one hundred eighty-day time limit for issuing a final decision and order, as provided in RCW 36.70A.300 (2)(b). The presiding officer may authorize one, or more, extensions of up to ninety days each.

(2) A request for a settlement extension must be filed with the board not later than seven days before the date scheduled for the hearing on the merits of the petition.

(3) The presiding officer may grant a request for a settlement extension if:

(a) The request was timely filed; and

(b)(i) All parties named in the caption of the petition, agree to and sign the request; or

(ii) A petitioner and respondent agree to and sign the request and the board determines that a negotiated settlement between the remaining parties could resolve significant issues in dispute.

(4) The presiding officer may require status reports from the parties to determine whether progress is being made on resolving the dispute.

(5) At the request of the parties the board may grant a settlement extension to allow time for mediation of some or all of the issues of the appeal. At the request of the parties, the board may appoint a board member from a different region to serve as a mediator. If the parties do not reach agreement through mediation in the extension time granted, the appeal proceeds to hearing.

#### NEW SECTION

**WAC 242-03-580 Continuance of hearing.** Other than for settlement purposes pursuant to WAC 242-03-575, continuance of a scheduled hearing will be granted only on the board's initiative or upon timely request of a party setting forth in detail the reason for such a request and a date by which such reason will no longer apply. The board will continue the hearing only in extraordinary circumstances and upon a finding of good cause. Continuance and rescheduling of a hearing on the merits or compliance hearing does not extend the statutory deadline for filing a final decision or for taking action to achieve compliance with the act.

#### NEW SECTION

**WAC 242-03-590 Briefs.** (1) A petitioner, or a moving party when a motion has been filed, shall submit a brief addressing each legal issue it expects the board to determine. Failure by such a party to brief an issue shall constitute abandonment of the unbrieffed issue. Briefs shall enumerate and set forth the legal issue(s) as specified in the prehearing order.

(2) Briefs shall be filed according to the schedule in the prehearing order or any subsequent order amending the briefing schedule.

(3) Clarity and brevity are expected to assist the board in meeting its statutorily imposed time limits. A presiding officer may limit the length of a brief and impose format restrictions.

#### NEW SECTION

**WAC 242-03-595 Stipulation to the facts.** Parties are encouraged to stipulate to any undisputed facts.

### HEARING PROCEDURE

#### NEW SECTION

**WAC 242-03-600 Hearing—Recording—Recording devices.** (1) All hearings shall be officially recorded by manual, electronic, or other type of recording device.

(2) Photographic and recording equipment of others shall be permitted at hearings; however, the presiding officer may impose such conditions upon their use as deemed neces-

sary to prevent disruption of the hearing, or when a statute or common law limits such use.

#### NEW SECTION

##### **WAC 242-03-610 Hearing—Procedures at hearing.**

(1) Purpose. The purpose of any hearing is for the parties to present oral argument based on the record as presented in their briefs and exhibits and for the board to ask questions necessary for a thorough understanding of the issues for decision.

(2) Presiding officer. All hearings shall be conducted by a presiding officer who shall conduct the hearing in an orderly manner and rule on all procedural matters, objections, and motions.

(3) Order of presentation. The presiding officer shall determine the proper order of presentation and the time allotted for presentation. Time allotted to petitioners and respondents will be roughly equal, with parties responsible for dividing their time with supporting intervenors, if any.

(4) Illustrative exhibits. Any proposed illustrative exhibit shall be circulated to the parties at least four days prior to the hearing. Paper copies of any illustrative exhibit, in pleading size, shall be brought to the hearing for the benefit of the board and the parties.

(5) Supplemental evidence submitted at hearing. In exceptional circumstance the board may allow the submission of supplemental evidence at a hearing in response to board questions, upon a showing that the supplemental evidence is necessary or of substantial assistance to the board. If supplemental evidence is thereby introduced, the opposing party shall have the opportunity to respond. The board may require the parties to submit post-hearing briefing or documents detailing the supplemental evidence, and the opposing party's rebuttal to the supplemental evidence.

#### NEW SECTION

**WAC 242-03-620 Evidence at hearing.** All evidence from the record which is to be relied upon at hearing shall be submitted to the board and to other parties with their briefs.

(1) All relevant evidence, including hearsay evidence, is admissible if, in the opinion of the presiding officer, the offered evidence is the kind of evidence upon which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The presiding officer shall exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(2) The board's experience, technical knowledge, competency, and specialized knowledge may be used in evaluation of evidence.

(3) If not inconsistent with subsection (1) of this section, the presiding officer may refer to, but shall not be bound by, the Washington rules of evidence.

(4) Documentary evidence submitted with briefs in the form of copies or excerpts, or by incorporation by reference, is subject to the following:

(a) That all documents so presented and examined be deemed authentic unless written objection is filed within ten days after receipt. A party will be permitted to challenge such authenticity at a later time only upon a clear showing of good cause.

(b) When only portions of a document or portions of a proceeding are to be relied upon, the offering party shall adequately identify and prepare the pertinent excerpts and shall supply copies of such excerpts for attachment as exhibits to a brief. However, the whole of the original document or recording shall be made available for examination and for use by all parties to the proceeding.

(c) That documentary evidence not submitted with the briefs and not in the record or supported by a timely filed motion to supplement the record pursuant to WAC 242-03-565 not be received in evidence in the absence of a clear showing that the offering party had good cause for the failure to produce the evidence sooner, unless it is submitted for impeachment or rebuttal purposes.

#### NEW SECTION

##### **WAC 242-03-630 Official notice—Matters of law.**

The board or presiding officer may officially notice:

(1) Federal law. The Constitution; congressional acts, resolutions, records, journals, and committee reports; decisions of federal courts and administrative agencies; executive orders and proclamations; and all rules, orders, and notices published in the Federal Register.

(2) Washington state law. The Constitution of the state of Washington; decisions of the state courts; acts, resolutions, records, journals, and committee reports of the legislature; decisions of administrative agencies of the state of Washington; executive orders and proclamations by the governor; all rules, orders, and notices filed with the code reviser; and codes or standards that have been adopted by an agency of this state or by a nationally recognized organization or association.

(3) Laws of other states. The constitutions of other states; decisions of state courts; acts, resolutions, records, journals and committee reports of other state legislatures; decisions of other states administrative agencies; executive orders and proclamations issued by a governor of another state; and codes or standards that have been adopted by an agency of another state.

(4) Counties and cities. Ordinances, resolutions, and motions enacted by cities, counties, or other municipal subdivisions of the state of Washington, including adopted plans, adopted regulations, and administrative decisions.

(5) Federally recognized Indian tribes. Constitutions, ordinances, resolutions and motions enacted by federally recognized Indian tribes.

(6) Growth management hearings board. Orders and decisions of the board and the board's rules of practice and procedure.

#### NEW SECTION

##### **WAC 242-03-640 Official notice—Material facts.**

(1) In the absence of conflicting evidence, the board or presiding officer, upon request made before or during a hearing, may officially notice:

(a) Business customs. General customs and practices followed in the transaction of business.

(b) Notorious facts. Facts so generally and widely known to all well-informed persons as not to be subject to

reasonable dispute or specific facts which are capable of immediate and accurate demonstration by resort to accessible sources of generally accepted authority, including, but not exclusively, facts stated in any publication authorized or permitted by law to be made by any federal or state officer, department, or agency.

(c) Technical or scientific facts. Technical or scientific facts within the board's specialized knowledge.

(2) Request. Any party may request, orally or in writing, that official notice be taken of a material fact. The board or presiding officer may take official notice of a material fact on its own initiative.

(3) Notice. Parties shall be notified either before or during a hearing of the material fact(s) proposed to be officially noticed, and shall be afforded the opportunity to contest such facts and materials.

(4) Statement of official notice.

(a) In determining whether to take official notice of material facts, the presiding officer may consult any source of pertinent information, whether or not furnished by any party and whether or not admissible under the rules of evidence.

(b) If official notice of a material fact is taken, it shall be clearly and precisely stated and made part of the record.

(c) Where a decision of the board rests in whole or in part upon official notice of a material fact, such fact shall be clearly and precisely stated in such decision.

#### NEW SECTION

**WAC 242-03-650 Hearings—Board questions.** Any member of the board may, at any time during the hearing, ask clarifying questions as necessary to understand the evidence or argument.

#### **DISPOSITION OF CASES PRIOR TO HEARING**

#### NEW SECTION

**WAC 242-03-700 Dismissal—How decided.** An order of dismissal, upon stipulation, dispositive motion, or default, is decided by the panel hearing the case. If the order disposes of the entire case, it is a final order for the purposes of appeal.

#### NEW SECTION

**WAC 242-03-710 Default.** (1) When a party to a proceeding has, after proper notice, failed to attend a hearing or any other matter before the board or presiding officer, or failed to file a prehearing brief, a motion for default or dismissal may be brought by any party to the case or raised by the board upon its own motion or by a presiding officer. Any order granting the motion shall include a statement of the grounds for the order and shall be served upon all parties to the case.

(2) If the party in default is the respondent, the board may determine whether petitioner has made a prima facie case that overcomes the statutory presumption of validity such that, in absence of briefing and argument by respondent, the board's order should include a finding of noncompliance, specifying the grounds for the order.

(3) Within seven days after service of an order of dismissal, default or noncompliance under subsection (1) or (2) of this section, the party against whom the order was entered may file a written objection requesting that the order be vacated and stating the specific grounds relied upon. The board may, for good cause, set aside the order.

#### NEW SECTION

**WAC 242-03-720 Dismissal of action.** (1) Any action shall be dismissed by the board:

(a) Upon petitioner's withdrawal of the petition for review before entry of a final decision and order; or

(b) Upon stipulation for dismissal by petitioner(s) and respondent(s).

(2) Any action may be dismissed by the board:

(a) Upon motion of the respondent alleging that the petitioner has failed to prosecute the case, failed to comply with these rules, or failed to follow any order of the board; or

(b) Upon the board's own motion for failure by the parties to comply with these rules or any order of the board.

#### **DISPOSITION OF PETITIONS FOR REVIEW AFTER HEARING**

#### NEW SECTION

**WAC 242-03-800 Presentation of post hearing matters.** Unless requested by or authorized by the board, no post hearing evidence, documents, briefs, or motions will be accepted.

#### NEW SECTION

**WAC 242-03-810 Final decision and order—Basis.**

(1) When the hearing on the petition for review has been held and the record reviewed by a majority of the panel hearing the matter, a written final decision and order shall be issued that contains appropriate findings and conclusions, and articulates the basis for the final decision and order.

(2) The board will not issue advisory opinions on issues not presented to the board in the petition for review's statement of the issues, as modified by any prehearing order.

(3) Except as provided in RCW 36.70A.300 (2)(b) and WAC 242-03-575, the final decision and order shall be issued by the board within one hundred eighty days of receipt of the petition for review, or if multiple petitions are filed, within one hundred eighty days of receipt of the last petition that is consolidated. The order shall be served on each party of record.

#### NEW SECTION

**WAC 242-03-820 Final decision and order.** (1) In its final decision and order, the board shall either:

(a) Find that the state agency, county or city is in compliance with the requirements of chapter 36.70A RCW, chapter 90.58 RCW as it relates to the adoption, denial or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and

amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW; or

(b) Find that the state agency, county or city is not in compliance with the requirements of chapter 36.70A RCW, chapter 90.58 RCW as it relates to the adoption, denial or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW.

(2) If the board's final decision and order finds noncompliance:

(a) Conclusions of law in the final decision and order shall specify the nature, scope, and statutory basis for the finding of noncompliance.

(b) The board's final decision and order shall remand the matter to the state agency, county, and/or city and establish a compliance schedule as specified in RCW 36.70A.300 (3)(b).

(c) The board retains jurisdiction of the matter until the board issues its final order on compliance.

(3) In its final decision and order, the board may determine that part or all of a comprehensive plan or development regulations, including shoreline master program provisions, are invalid if the board:

(a) Makes a finding of noncompliance and issues an order of remand;

(b) Includes in its final decision and order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of the act; and

(c) Specifies the part or parts, if applicable, of the plan or regulation that are determined to be invalid and the reasons for invalidity.

(4) The effect of a determination of invalidity is as set forth in RCW 36.70A.302.

#### NEW SECTION

**WAC 242-03-830 Postdecision motions—Reconsideration.** (1) After issuance of a final decision any party may file a motion for reconsideration with the board in accordance with subsection (2) of this section. Such motion must be filed and served within ten days of service of the final decision. Within ten days of filing the motion for reconsideration, a party may file an answer to the motion for reconsideration without direction or request from the board. The board may require an answer or additional briefing from other parties.

(2) A motion for reconsideration shall be based on at least one of the following grounds:

(a) Errors of procedure or misinterpretation of fact or law, material to the party seeking reconsideration; or

(b) Irregularity in the hearing before the board by which such party was prevented from having a fair hearing.

(3) In response to a motion for reconsideration, the board may deny the motion, modify its decision, or reopen the hearing. The motion for reconsideration shall be disposed of by the same panel that entered the order, if reasonably available. A motion is deemed denied, if, within twenty days from the date the motion for reconsideration is filed, the board does not either:

(a) Dispose of the motion; or

(b) Serve the parties with a written notice specifying the date by which it will act on the motion.

(4) Upon receipt of a letter from a party identifying typographical errors or clerical mistakes in a final order, the board may, without objection, issue a corrected order. The letter must be filed within the deadline for motions for reconsideration and should indicate that the sender has obtained the concurrence of all other parties. Issuance of a corrected order does not extend the time for filing a petition for judicial review.

(5) A decision in response to the motion for reconsideration shall constitute a final decision and order for purposes of judicial review. A board order on a motion for reconsideration is not subject to a motion for reconsideration.

(6) No motion for reconsideration stays the effectiveness of the board's final decision and order.

#### NEW SECTION

**WAC 242-03-840 Postdecision motions—Reconsider compliance schedule.** Where the board's order makes a finding of noncompliance and enters a schedule for the responding jurisdiction to achieve compliance, the respondent may file a motion for reconsideration requesting modification of the compliance schedule upon a showing of special complexity, specific hardship, or the need to coordinate the compliance action with other planning activities of the jurisdiction. The motion shall be filed and disposed of as a motion for reconsideration pursuant to WAC 242-03-830. Any later motion to extend time for compliance may require a compliance hearing and finding of continuing noncompliance before time may be granted.

#### NEW SECTION

**WAC 242-03-850 Postdecision motions—Clarify, modify or rescind invalidity.** Where the board's final decision and order makes a determination of invalidity, and the city or county subject to the order has not yet enacted legislation in response to the board's order, the city or county may file a motion to clarify, modify or rescind invalidity. The motion and any response may be supported by evidence arising subsequent to adoption of the invalidated legislation. Pursuant to RCW 36.70A.302(6), the board shall expeditiously schedule a hearing on the motion. Not later than thirty days after the hearing on the motion, the board shall issue any supplemental order continuing, clarifying, modifying or rescinding invalidity based on information provided at the hearing.

#### NEW SECTION

**WAC 242-03-860 Stay.** The presiding officer pursuant to RCW 34.05.467 or the board pursuant to RCW 34.05.550 (1) may stay the effectiveness of a final order upon motion for stay filed within ten days of filing an appeal to a reviewing court.

A stay may be granted if the presiding officer or board finds:

(1) An appeal is pending in court, the outcome of which may render the case moot; and

(2) Delay in application of the board's order will not substantially harm the interest of other parties to the proceedings; and

(3)(a) Delay in application of the board's order is not likely to result in actions that substantially interfere with the goals of the GMA, including the goals and policies of the Shoreline Management Act; or

(b) The parties have agreed to halt implementation of the noncompliant ordinance and undertake no irreversible actions regarding the subject matter of the case during the pendency of the stay; and

(4) Delay in application of the board's order furthers the orderly administration of justice.

The board's order granting a stay will contain appropriate findings and conditions. A board order denying stay is not subject to judicial review.

#### NEW SECTION

**WAC 242-03-870 Publication of final decisions and orders.** Copies of all final decisions and orders are available from the office of the growth management hearings board. The growth management hearings board's web site is [www.gmhb.wa.gov](http://www.gmhb.wa.gov). The board posts final orders, compliance orders, and other decisions on its web site and maintains a digest of its decisions by region.

#### NEW SECTION

**WAC 242-03-880 Transcripts.** The following shall be the policy of the board with regard to transcription of the record of a hearing on the merits or other hearing:

(1) The board, in its discretion, may at any time cause a transcript to be printed. Any person may obtain a copy upon payment of the reasonable costs thereof.

(2) In any case when the board shall not cause the transcript to be printed, it shall be the obligation of the party wishing a transcript, or portions of it, to assume the cost of producing it.

(3) When an appeal is taken from any final decision and order of a board to a reviewing court, the appealing party is responsible for ordering and paying for the transcript of the hearing.

### COMPLIANCE/REMAND

#### NEW SECTION

**WAC 242-03-900 Determination of noncompliance—Compliance schedule and notice of compliance hearing.** (1) In those cases where the board, in a final order, has made a determination of noncompliance pursuant to RCW 36.70A.300 (3)(b), the board shall remand the matter to the affected state agency, county, or city.

(2) The board's final decision and order shall specify a reasonable time not in excess of one hundred eighty days, or such longer time as determined by the board in cases of unusual scope or complexity, within which the state agency, county, or city shall comply. In its order the board shall

establish a compliance schedule, including a schedule for briefing and hearing, and may require periodic reports on the progress the state agency, county, or city is making toward compliance.

(3) The compliance schedule in the board's order shall set a hearing date for the purpose of determining whether compliance has been achieved and shall constitute notice of the compliance hearing. The compliance hearing shall be given the highest priority of business.

#### NEW SECTION

#### **WAC 242-03-910 Compliance—Expedited hearing.**

When a city or county has taken legislative action to comply with all or part of the board's order prior to the expiration of the time set for compliance, the city or county may file a motion requesting an expedited compliance hearing. The department of ecology may request an expedited compliance hearing when it has taken action to comply with the board's order. The presiding officer shall promptly set a new hearing date and issue a notice establishing the time and place of the hearing and a briefing schedule.

#### NEW SECTION

#### **WAC 242-03-920 Statement of action taken to comply—Compliance index.**

On or before the date indicated in the compliance schedule, the city, county or state agency subject to an order of noncompliance shall file a brief indicating the legislation adopted or other action taken to comply with the board's order. A copy of the legislation or relevant portion shall be attached to the brief. The city, county or state agency shall also provide a compliance index including the index from the original proceeding and a listing of all additional material used subsequent to the remand in taking the action to comply, including materials submitted in public comment.

#### NEW SECTION

**WAC 242-03-930 Compliance participant.** (1) A person with standing to challenge legislation or other action taken in response to the board's order may petition the board to be allowed to participate at the compliance hearing. The compliance participant shall file a motion to participate by the date indicated in the compliance schedule, or if no date is indicated, by at least twenty days before the initial prehearing brief would be required under the compliance schedule. The motion should indicate the basis of the person's standing pursuant to RCW 36.70A.330(2) and the person's interest in the matter. Participation in the compliance proceeding shall be limited to matters about which the person testified in the proceedings below related to issues concerning compliance with the board's prior order. The compliance participant shall abide by the briefing schedule set in the compliance schedule.

(2) A person who has participated in the proceedings of a city, county, or state agency to enact legislation or take other action in response to the board's order and who seeks to raise new issues unrelated to compliance with the board's prior order, must file a new petition for review. New issues are issues not within the nature, scope and statutory basis of

conclusions of noncompliance in the board's prior order finding noncompliance.

(3) A compliance participant seeking to be a party to all subsequent proceedings in the matter shall so indicate by a motion to intervene.

#### NEW SECTION

**WAC 242-03-940 Compliance—Hearing.** (1) The procedures at the compliance hearing shall be as set forth by the presiding officer. The matter shall be heard and decided by the same panel that entered the final decision and order, if reasonably available.

(2) The evidence in a compliance hearing shall consist of the exhibits cited in the briefs submitted in the compliance proceeding and attached thereto. Documents provided in the original proceeding, if referenced in briefs in the compliance proceeding, must be attached as exhibits.

(3) The burden is on the petitioner to demonstrate that the action taken by the city, county, or state agency is not in compliance with the board's order, except that a city or county subject to a determination of invalidity has the burden of demonstrating that the action taken will no longer substantially interfere with fulfillment of the goals of the act.

(4) When the basis for an order of noncompliance is the failure to take an action by a deadline specified in the Growth Management Act or the Shoreline Management Act, the only question before the board at the compliance hearing is whether the county, city, or state agency has taken the required action. Any challenge to the merits of the newly enacted legislation must be asserted in a new petition for review. In a case of noncompliance or failure to act, when the department of ecology has adopted a shoreline master program by rule, any challenge to the merits of the adoption must be appealed to the court pursuant to RCW 90.58.190(1).

(5) Issues not within the nature, scope, and statutory basis of the conclusions of noncompliance in the prior order will not be addressed in the compliance hearing but require the filing of a new petition for review.

(6) After a compliance hearing, the board shall determine whether a state agency, city or county is in compliance with the requirements of the act as remanded in the final decision and order. The board shall issue an order on compliance indicating its findings and conclusions. If the board finds continuing noncompliance, the board shall enter conclusions of law specifying the nature, scope and statutory basis for the finding of continuing noncompliance. The board shall establish a new compliance schedule to address any remaining matters of noncompliance with the issues raised in the prior order. The board may require periodic reports to the board on the progress the jurisdiction is making towards compliance.

(7) Upon motion of a party or participant, if the board finds that the state agency, county, or city continues to be in noncompliance with the act, the board shall decide, if no determination of invalidity had previously been made, whether one should now be made. The board shall state in its order the part or parts of the legislation invalidated and the facts and law on which the determination of invalidity is based.

#### NEW SECTION

**WAC 242-03-950 Compliance—Rescinding invalidity after new legislation or action.** If a county, city, or state agency subject to a determination of invalidity has taken action amending the invalidated plan, regulation or part thereof, the county, city, or state agency may move for a hearing to modify or rescind invalidity. Pursuant to RCW 36.70A.302(7), the board shall expeditiously schedule a hearing on the motion. Not later than thirty days after the hearing on the motion, the board shall issue an order continuing, modifying, or rescinding the determination of invalidity depending upon whether the city, county, or state agency's action has removed the basis for invalidity so that it no longer substantially interferes with the goals of the act. The board may rescind a determination of invalidity but find continuing noncompliance, in which case the board shall establish a new compliance schedule.

#### NEW SECTION

**WAC 242-03-960 Continued noncompliance—Recommendation to the governor.** If the board finds that the county, city, or state agency continues to be in noncompliance with the act, the board shall transmit its findings to the governor. The board may recommend that sanctions authorized by the act be imposed. A county or city's efforts to meet a compliance schedule shall be considered by the board in making a recommendation on sanctions to the governor.

#### NEW SECTION

##### **WAC 242-03-970 Appeals of a board's final decision.**

(1) Any party aggrieved by a final decision of the board may appeal the decision to superior court as provided in RCW 34.05.514 or 36.01.050 within thirty days of service of the final decision of the board.

(2) In the event that direct appellate review is sought, within thirty days of the filing of a petition for review in the superior court, a party may request a certificate of appealability for direct review by the court of appeals. If the issue on review is the jurisdiction of the board, the board may file an application for direct review. Application for direct review of a decision of the board is governed by the procedures and criteria of RCW 35.04.518.

#### NEW SECTION

**WAC 242-03-980 Record on appeal.** (1) The board's record on appeal includes all documents served on the parties by the board for that numbered case plus all documents submitted to the board for that numbered case, including any compliance proceedings. For a consolidated case, the record also includes all such documents associated with the cases that were so consolidated. The record also includes the board's recorded hearing(s).

(2) Pursuant to RCW 34.05.566(4), the record may be shortened by stipulation of all parties within twenty days of the filing of the appeal and prior to commencement of certification of the record.

(3) The board will prepare the record for certification after it receives a commitment from the party seeking review to pay the costs of transcribing the recorded hearing(s) and of copying the record. Payment of costs is required prior to certification of the record to the court.

NEW SECTION

**WAC 242-03-990 Procedure on remand.** Within forty-five days of receipt of a reviewing court's final order remanding a decision of the board, the presiding officer will schedule a conference of the parties to determine the procedures required to resolve the matter in accordance with the mandate.

**WSR 11-13-110  
PERMANENT RULES  
DEPARTMENT OF REVENUE**

[Filed June 21, 2011, 11:19 a.m., effective July 22, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Under RCW 43.20A.725 and 80.36.430, the department is required to annually determine the tax rates imposed on switched access lines to fund the telephone relay service program and the Washington telephone assistance program. The telecommunications relay services (TRS) and Washington telephone assistance program (WTAP) tax rates are determined by dividing the respective program budgets by the number of switched access lines reported to the department in the prior calendar year. The department retains no discretion in the determination of these tax rates, the amount of which is explicitly dictated by the statutory formulas and inputs provided to the department.

The department is amending WAC 458-20-270 to recognize the tax rates effective July 1, 2011. The TRS rate remains at nineteen cents per switched access line for the upcoming fiscal year. The WTAP rate remains at fourteen cents per switched access line for the upcoming fiscal year. These rates were previously announced by the department in a special notice dated March 24, 2011, and can be found at [http://dor.wa.gov/Docs/Pubs/SpecialNotices/2011/sn\\_TelephoneTax.pdf](http://dor.wa.gov/Docs/Pubs/SpecialNotices/2011/sn_TelephoneTax.pdf).

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-270 Telephone program excise tax rates.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Other Authority: RCW 43.20A.725 and 80.36.430.

Adopted under notice filed as WSR 11-08-074 on April 6, 2011.

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

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

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

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

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

Date Adopted: June 21, 2011.

Alan R. Lynn  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-14-032, filed 6/28/10, effective 7/29/10)

**WAC 458-20-270 Telephone program excise tax rates.** RCW 82.72.020 requires the department of revenue (department) to collect certain telephone program excise taxes. Those taxes include the tax on switched access lines imposed by RCW 43.20A.725 (telephone relay service—TRS) and 80.36.430 (Washington telephone assistance program—WTAP). Pursuant to those statutes, the department must annually determine the rate of each respective tax according to the statutory formulas.

The monthly telephone program excise tax rates per switched access line are as follows:

Period	TRS Rate	WTAP Rate
<del>((7/1/2006—6/30/2007</del>	<del>9 cents</del>	<del>14 cents))</del>
7/1/2007 - 6/30/2008	12 cents	14 cents
7/1/2008 - 6/30/2009	12 cents	13 cents
7/1/2009 - 6/30/2010	11 cents	13 cents
7/1/2010 - 6/30/2011	19 cents	14 cents
<u>7/1/2011 - 6/30/2012</u>	<u>19 cents</u>	<u>14 cents</u>

**WSR 11-13-111  
PERMANENT RULES  
GROWTH MANAGEMENT  
HEARINGS BOARD**

[Filed June 21, 2011, 11:19 a.m., effective July 22, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: RCW 36.70A.270(7) authorizes the board to develop and adopt rules of practice and procedure, including rules regarding expeditious and summary disposition of appeals. In 1992, the then-existing three growth management hearings boards adopted joint rules. These rules have been minimally amended since that time. Therefore, the board has conducted, in conjunction with interested parties, a comprehensive evaluation of its rules and made extensive modifications. Due to the wide-ranging nature of the modifications, the board's existing rules, chapter 242-02 WAC, are repealed in their entirety and replaced with new rules, chapter 242-03 WAC (see notice published in WSR 11-05-087 for new rules text).

Citation of Existing Rules Affected by this Order: Repealing chapter 242-02 WAC.

Statutory Authority for Adoption: RCW 36.70A.270(7).

Adopted under notice filed as WSR 11-05-086 (CR-102) on February 15, 2011 and WSR 10-15-001 (CR-101) on July 7, 2010.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 87.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 87.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 87; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 7, 2011.

James J. McNamara  
Chair, Rules Committee

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 242-02-010	Organization.
WAC 242-02-015	Regional panels.
WAC 242-02-020	Function—Local deference.
WAC 242-02-030	Jurisdiction.
WAC 242-02-040	Definitions.
WAC 242-02-050	Rules.
WAC 242-02-052	Petition for rule making.
WAC 242-02-054	Petition for rule making—Consideration and disposition.
WAC 242-02-060	Computation of time.
WAC 242-02-070	Quorum.
WAC 242-02-072	Board office.
WAC 242-02-074	Regular meetings.
WAC 242-02-075	Special meeting.
WAC 242-02-076	Annual and semiannual board meetings.
WAC 242-02-080	Form and size of documents.
WAC 242-02-090	Case numbering.
WAC 242-02-110	Appearance and practice before the board—Who may appear.
WAC 242-02-115	Authorized representatives.

WAC 242-02-120	Rules of professional conduct.
WAC 242-02-130	Ex parte communication.
WAC 242-02-140	Signing of pleadings, motions, and legal memoranda.
WAC 242-02-150	Teleconference proceeding.
WAC 242-02-210	Petition for review—Forms—Contents.
WAC 242-02-220	Petition for review—Time for filing.
WAC 242-02-230	Petition for review—Service and filing.
WAC 242-02-240	Date of filing—Facsimile and electronic mail.
WAC 242-02-250	Notice of appearance and answer.
WAC 242-02-255	Governor certified standing.
WAC 242-02-260	Amendments to petitions for review and answers.
WAC 242-02-270	Intervention.
WAC 242-02-280	Amicus.
WAC 242-02-290	Direct review by superior court—Procedures.
WAC 242-02-292	Direct review by superior court—Agreement of the parties.
WAC 242-02-295	Board filing with superior court—Certificate of agreement.
WAC 242-02-310	Service of papers.
WAC 242-02-320	Method of service.
WAC 242-02-330	Service of papers—When complete.
WAC 242-02-340	Proof of service—Declaration.
WAC 242-02-410	Discovery—Limitation.
WAC 242-02-420	Subpoena—Issuance.
WAC 242-02-510	Notice of hearing—Setting of time and place.
WAC 242-02-520	Record.
WAC 242-02-52001	Exhibits.
WAC 242-02-52002	Documentary evidence.
WAC 242-02-521	Designation of presiding officer.

WAC 242-02-522	Presiding officer—Powers and duties.	WAC 242-02-810	Presentation of post hearing matters.
WAC 242-02-530	Motions—Requirements.	WAC 242-02-830	Final decision and order—Basis.
WAC 242-02-532	Motions—Time for filing and hearing.	WAC 242-02-831	Final decision and order—Compliance, noncompliance, invalidity.
WAC 242-02-533	Motion to disqualify for cause.	WAC 242-02-832	Reconsideration.
WAC 242-02-534	Response to motions.	WAC 242-02-833	Invalidity—Hearing pursuant to motion to clarify, modify or rescind.
WAC 242-02-540	New or supplemental evidence.	WAC 242-02-834	Publication of final decision and orders.
WAC 242-02-550	Prehearing conference.	WAC 242-02-880	Transcripts.
WAC 242-02-552	Prehearing conference—When held.	WAC 242-02-890	Determination of noncompliance—Compliance schedule.
WAC 242-02-556	Prehearing conference—Failure to supply information.	WAC 242-02-891	Compliance—Notice of hearing.
WAC 242-02-558	Prehearing conference—Agreements.	WAC 242-02-89201	Intent to participate in compliance hearings.
WAC 242-02-560	Settlement extensions—Continuances.	WAC 242-02-893	Compliance—Hearing.
WAC 242-02-570	Briefs.	WAC 242-02-894	Compliance—Hearing pursuant to motion—Rescinding invalidity.
WAC 242-02-580	Stipulation to the facts.	WAC 242-02-896	Continued noncompliance—Recommendation to the governor.
WAC 242-02-582	Waiver of parties' appearance.	WAC 242-02-898	Appeals of a board's final decision.
WAC 242-02-610	Hearing—Testimony under oath—Interpreters.	WAC 242-02-899	Record on review.
WAC 242-02-612	Hearing—Interpreters.		
WAC 242-02-620	Hearing—Reporting—Recording—Recording devices.		
WAC 242-02-630	Presumption of validity.		
WAC 242-02-632	Burden of proof.		
WAC 242-02-634	Standard of proof.		
WAC 242-02-640	Hearing—Procedures at hearing.		
WAC 242-02-650	Rules of evidence—Admissibility criteria.		
WAC 242-02-660	Official notice—Matters of law.		
WAC 242-02-670	Official notice—Material facts.		
WAC 242-02-680	Hearings—Board questions.		
WAC 242-02-710	Failure to attend—Default or dismissal—Setting aside.		
WAC 242-02-720	Dismissal of action.		

**WSR 11-13-124****PERMANENT RULES****DEPARTMENT OF HEALTH**

[Filed June 22, 2011, 8:58 a.m., effective July 23, 2011]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 246-358-990 and 246-361-990 increases licensing fees for temporary worker housing and cherry harvest camps. The rules are in response to ESSB 6444 (chapter 37, Laws of 2010), which reduced general fund state dollars for the temporary worker housing program and authorized the department to raise fees in fiscal year 2011 as necessary to meet the actual costs of conducting business.

Citation of Existing Rules Affected by this Order: Amending WAC 246-358-990 and 246-361-990.

Statutory Authority for Adoption: RCW 43.70.340, ESSB 6444 (chapter 37, Laws of 2010).

Adopted under notice filed as WSR 11-07-089 on March 22, 2011.

Changes Other than Editing from Proposed to Adopted Version: In response to stakeholder input, the department decreased the proposed licensing fee from \$11.00 to \$9.00 per occupant. Language was also added to clarify that the license fee covers initial licenses, renewals, and on-site surveys.

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

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

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

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

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

Date Adopted: June 22, 2011.

Mary C. Selecky  
Secretary

**AMENDATORY SECTION** (Amending WSR 99-24-095, filed 11/30/99, effective 12/31/99)

**WAC 246-358-990 Fees.** ~~((1) License fees. An operator must submit to the department a license fee of twenty-five dollars and an on-site survey fee as specified in Table 990.~~

Note: A separate on-site survey fee will be charged for each housing site owned or managed by an operator which is more than thirty minutes or twenty-five miles apart.

~~(2) Self-survey program fee. An operator who meets the self-survey program requirements of WAC 246-358-027 must pay:~~

- ~~(a) An annual licensing fee, according to Table 990; and~~
- ~~(b) An on-site survey fee every third year.~~

~~(3) Follow-up surveys. An operator will be charged an additional on-site survey fee for any follow-up surveys, when the department determines additional on-site surveys are necessary to confirm compliance with this chapter.~~

~~(4) Complaint investigation fees. An operator will be charged for each on-site survey conducted by the department when a complaint investigation results in the complaint being found valid. This fee will be charged according to Table 990 for on-site survey.~~

~~(5) Water test fees. An operator who cannot provide written proof that the water system serving the camp is in compliance with WAC 246-358-055 at the time of survey will be:~~

- ~~(a) Directly billed for the cost of each required water sample collected by department staff;~~
- ~~(b) Cited for noncompliance with WAC 246-358-055; and~~
- ~~(c) If substantiated, cited for operating an unlicensed camp.~~

~~(6) Late fees. An operator who does not submit the fee and application as required by WAC 246-358-025, Licensing, may be charged a late fee of one-half the cost of the license fee. If the license fee and the application are not received by the time of the preoccupancy survey, an additional late fee of one-half the cost of the license fee may be charged. If the fee and application are not received within ten days of the preoccupancy survey the TWH may be considered unlicensed and subject to fines according to WAC 246-358-900.~~

~~(7) Refunds. The license and on-site survey fee may be refunded when the operator submits:~~

- ~~(a) A written request to the department; and~~
- ~~(b) Provides documentation that the housing was not occupied during the license period.~~

Table 990

Number of Units or Occupants - Whichever is Greater	On-Site Survey Fee (Includes: Initial, Annual Licensing, Follow-Up, and Complaint Investigation Surveys)	License Fee	Total Fee Survey + License
1 to 4 units or 9 occupants or less*	\$45.00	\$25.00	\$70.00
5 to 10 units or 10 to 50 occupants	\$70.00	\$25.00	\$95.00
11 to 20 units or 51 to 100 occupants	\$120.00	\$25.00	\$145.00
21 to 50 units or 101 to 150 occupants	\$150.00	\$25.00	\$175.00
over 50 units or over 150 occupants	\$175.00	\$25.00	\$200.00

Note: The on-site survey fee includes two surveys per year (one preoccupancy and one occupancy). Any additional visits (follow-up and/or complaint investigation) will be considered an additional service and will be billed separately at the rates established in Table 990.

\*Operators with four or less units or nine or less occupants are not required to be licensed except when licensure is required by WAC 246-358-025.)

**(1) License fee.** The license fee covers initial licenses and renewals, and includes on-site surveys. An operator must submit to the department an annual license fee for maximum occupancy according to Table 1 of this section. For purposes of licensing, maximum occupancy is the total number of occupants that the amount of space and fixtures of the temporary worker housing (TWH) can support.

(2) **Technical assistance fee.** An operator may be charged for each technical assistance visit conducted by the department when requested or approved by the operator or their designee. This fee will be charged according to WAC 246-359-990 Table 1, Part G.

(3) **Late fees.** A late fee may be charged according to Table 1 of this section when:

(a) The initial application and licensing fee, as required by WAC 246-358-025(2), are not received by the department at least forty-five days prior to the TWH opening operation date;

(b) The renewal application and licensing fee, as required by WAC 246-358-025(2), are not received by the department by the TWH renewal due date.

(4) **TWH civil fine.** An operator may be assessed a civil fine for failure or refusal to obtain a license prior to occupancy of TWH. Civil fines for TWH are provided for in RCW 43.70.335.

(5) **Refunds.**

(a) The department will refund fees paid by the operator if:

(i) The operator submits a written request to the department for a refund; and

(ii) The operator provides documentation to the department that the housing was not occupied during the license period.

(b) The department will refund two-thirds of the licensing fees paid, less a fifty dollar processing fee, if an application has been received but no preoccupancy survey has been performed by the department.

(c) The department will refund one-third of the licensing fees paid, less a fifty dollar processing fee, if an application has been received and a preoccupancy survey has been performed by the department.

(d) The department will not refund applicant licensing fees under the following conditions:

(i) The department has performed more than one on-site survey for any purpose; or

(ii) One year has elapsed since a license application was received by the department, but no license was issued because the applicant failed to complete requirements for licensure.

**Table 1**  
**Fees, Regular Temporary Worker Housing**

<u>Fee Type</u>	<u>Fee</u>
<u>License fee</u>	<u>\$9 per occupant, at maximum occupancy (\$90 minimum fee)</u>
<u>Late fee</u>	<u>\$100</u>

AMENDATORY SECTION (Amending WSR 00-06-082, filed 3/1/00, effective 3/1/00)

**WAC 246-361-990 Fees for cherry harvest camps.**

((1) **License and survey fees.** A cherry camp operator must submit to the department a license fee of twenty-five dollars and an on-site survey fee as specified in Table 990.

Note: The on-site survey fee for licensing includes four surveys (one prior to camp being occupied, two while camp is occupied, and one to verify the camp has been closed).

(2) **Additional survey fees.** An operator will be charged an additional on-site survey fee for any follow-up surveys, when the department determines additional on-site surveys are necessary to confirm compliance with this chapter. The additional survey will be one-half the cost of the on-site survey fee as stated in Table 990.

(3) **Complaint investigation fees.** Operators will be charged for each on-site survey conducted by the department when a complaint investigation results in the complaint being found valid. This fee will be charged according to Table 990 for on-site survey.

(4) **Water test fees.** An operator will be directly billed for each water sample collected by the department when the operator has not submitted the water tests as required by WAC 246-361-025 and 246-361-055.

(5) **Refunds.** The license and on-site survey fee may be refunded when the operator submits:

(a) A written request to the department; and

(b) Provides documentation that the housing was not occupied during the license period.

TABLE 990

<u>NUMBER OF UNITS</u>	<u>ON-SITE SURVEY FEE (includes cost of all survey types: Initial, annual, follow-up, complaint)</u>	<u>LICENSE FEE</u>	<u>TOTAL</u>
0 to 9 persons	\$45.00	\$25.00	\$70.00
10 to 50 persons	70.00	25.00	95.00
51 to 100 persons	100.00	25.00	125.00
101 to 150 persons	125.00	25.00	150.00
for each additional 50 persons over 150	125.00+ add \$25	25.00))	
	\$25.00 for each 50 persons		

(1) **License fee.** The license fee covers initial licenses and renewals, and includes on-site surveys. An operator must submit to the department an annual license fee for maximum occupancy according to Table 1 of this section. For purposes of licensing, maximum occupancy is the total number of occupants that the amount of space and fixtures of the temporary worker housing (TWH) can support.

(2) **Technical assistance fee.** An operator may be charged for each technical assistance visit conducted by the department when requested or approved by the operator or their designee. This fee will be charged according to WAC 246-359-990 Table 1, Part G.

(3) **Late fees.** A late fee may be charged according to Table 1 of this section when:

(a) The initial application and licensing fee, as required by WAC 246-361-025(2), are not received by the department at least forty-five days prior to the TWH opening operation date;

(b) The renewal application and licensing fee, as required by WAC 246-361-025(2), are not received by the department by the TWH renewal due date.

(4) **TWH civil fine.** An operator may be assessed a civil fine for failure or refusal to obtain a license prior to occu-

pancy of TWH. Civil fines for TWH are provided for in RCW 43.70.335.

**(5) Refunds.**

(a) The department will refund fees paid by the operator if:

(i) The operator submits a written request to the department for a refund; and

(ii) The operator provides documentation to the department that the housing was not occupied during the license period.

(b) The department will refund two-thirds of the licensing fees paid, less a fifty dollar processing fee, if an application has been received but no preoccupancy survey has been performed by the department.

(c) The department will refund one-third of the licensing fees paid, less a fifty dollar processing fee, if an application has been received and a preoccupancy survey has been performed by the department.

(d) The department will not refund applicant licensing fees under the following conditions:

(i) The department has performed more than one on-site survey for any purpose; or

(ii) One year has elapsed since a license application was received by the department, but no license was issued because the applicant failed to complete requirements for licensure.

**Table 1**  
**Fees, Cherry Harvest Camps**

<u>Fee Type</u>	<u>Fee</u>
<u>License fee</u>	<u>\$9 per occupant, at maximum occupancy (\$90 minimum fee)</u>
<u>Late fee</u>	<u>\$100</u>