

WSR 12-05-001
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-15—Filed February 1, 2012, 3:02 p.m., effective February 12, 2012, 7:00 p.m.]

Effective Date of Rule: February 12, 2012, 7:00 p.m.

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

Citation of Existing Rules Affected by this Order: Amending WAC 220-33-010.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets the 2012 winter and spring select area commercial seasons. Impacts to nonlocal stocks are expected to be minimal. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of January 26, 2012. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The

Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

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

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

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

Date Adopted: February 1, 2012.

Philip Anderson
Director

NEW SECTION

WAC 220-33-01000K Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

1. Deep River Select Area

a) **Area:** From the markers at USCG navigation marker #16, upstream to the Highway 4 Bridge.

b) **Dates:** Winter Season: Open hours are 7 PM to 7 AM Sunday and Thursday nights from February 12 through March 16, 2012, and Sunday nights only from March 18 through April 2, 2012.

Spring Season: Open hours are 7 PM to 7 AM Thursday night April 19, Tuesday night April 24, and each Monday and Thursday night from April 26, 2012, until further notice.

c) **Gear:** Gillnets. Winter season: 7-inch minimum mesh. Spring season: 9 3/4-inch maximum mesh. Nets restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets cannot be tied off to stationary structures. Nets may not fully cross navigation channel. It is unlawful to operate in any river, stream or

channel any gill net longer than three-fourths the width of the stream (WAC 220-20-015(1)). It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department (WAC 220-20-010(17)). Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required. Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater

d) **Allowable Sale:** Salmon, shad, and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) **Miscellaneous:** Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by WDFW staff. During the winter season fishers are required to call 360-795-0319 to confirm the place and time of sampling. In the spring season, a sampling station will be established at WDFW's Oneida Road boat ramp, about 0.5 miles upstream of the lower Deep River area boundary (USCG navigation marker #16).

f) **24-hour** quick reporting in effect for Washington buyers.

2. Tongue Point/South Channel

a) **Area:** Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility, through navigation marker #6 to Mott Island (new spring lower deadline); a line from a marker at the southeast end of Mott Island, northeasterly to a marker on the northwest tip of Lois Island; and a line from a marker on the southwest end of Lois Island, westerly to a marker on the Oregon shore.

The South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy #7 to a marker on the southwest end of Lois Island, upstream to an upper boundary line from a marker on Settler Point, northwesterly to the flashing red USCG marker #10, and northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

b) **Dates:** Monday and Thursday nights from April 26, 2012, until further notice. Open hours are 7:00 PM to 7:00 AM

c) **Gear:** Gillnets. In the Tongue Point fishing area, gear restricted to 9 3/4-inch maximum mesh size, maximum net length of 250 fathoms, and weight not to exceed two pounds on any one fathom. In the South Channel fishing area, gear restricted to 9 3/4-inch maximum mesh size, maximum net length of 100 fathoms, no weight restriction on leadline, and

use of additional weights or anchors attached directly to the leadline is allowed.

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

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

d) **Allowable Sale:** Salmon, shad, and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) **Miscellaneous:** During April 26 through May 11, 2012, transportation or possession of fish outside the fishing area is unlawful (except while in transit to ODFW sampling stations) until ODFW staff has biologically sampled individual catches. A sampling station will be established at the MERTS dock. After sampling, fishers will be issued a transportation permit by agency staff. Beginning May 14, fishers are required to call 971-230-8247 and leave a message including name, catch, and where and when fish will be sold.

f) **24-hour** quick reporting in effect for Washington buyers.

3. Blind Slough/Knappa Slough Select Area

a) **Area:** Winter season: Blind Slough open. Spring season: Blind Slough and Knappa Slough areas are open. From April 30 through June 15, 2012, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon Shore (fall season boundary).

b) **Dates:** Winter Season: Sunday and Thursday nights from February 12 through March 16, 2012, and Sunday nights from March 18 through April 2, 2012. Open hours are: 7:00 PM to 7:00 AM

Spring Season: Thursday night April 19, Tuesday night April 24, and Monday and Thursday nights from April 26 through June 15, 2012. Open hours are 7:00 PM to 7:00 AM

c) **Gear:** Gillnets. Winter season: 7-inch minimum mesh. Spring Season: 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length, with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed.

Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

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

d) **Allowable Sales:** Salmon, shad, and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open.

e) **24-hour** quick reporting in effect for Washington buyers. Permanent transportation rules in effect.

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

WSR 12-05-004
EMERGENCY RULES
DEPARTMENT OF
EARLY LEARNING

[Filed February 3, 2012, 8:43 a.m., effective February 3, 2012, 8:43 a.m.]

Effective Date of Rule: Immediately.

Purpose: As directed by the 2011 legislature, effective July 1, 2011, the department of early learning (DEL) increased child care license fees as provided in section 617(2) of 2ESHB 1087, enrolled as chapter 50, Laws of 2011 1st sp. sess. (the state operating appropriations bill), to raise revenues intended to help balance the 2011-2013 budget. Base license fees were increased by twenty-five percent for all DEL-licensed child care agencies (providers). In addition, per-child fees were increased for child care centers and school-age center programs to \$12 per child - after the first twelve children in care - up to the maximum capacity stated on the center's license. The original emergency rules to implement 2ESHB 1087, section 617(2), were filed on June 16, 2011, as WSR 11-13-077. Second emergency rules were filed on October 11, 2011, as WSR 11-21-021. This third emergency rule continues the same provisions as the first and second emergency rules, while DEL takes further steps toward permanent adoption. A new CR-102 was filed on January 4, 2012, under WSR 12-02-079 that would make these rules permanent.

Citation of Existing Rules Affected by this Order: Amending WAC 170-151-070, 170-295-0060, and 170-296-0170.

Statutory Authority for Adoption: RCW 43.215.255, 43.215.070 (2)(c), section 617(2) of 2ESHB 1087 (2011 1st sp. sess.).

Other Authority: EHB 1248 (chapter 2, Laws of 2011 1st sp. sess.).

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012 or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: Section 617(2) of 2ESHB 1087 states, "(2) In accordance with RCW 43.215.255(2) and 43.135.055, the department is authorized to increase child care center and family home licensure fees in fiscal years 2012 and 2013 for costs to the department for the licensure activity, including costs of necessary inspection. These increases are necessary to support expenditures authorized in this section."

The legislature's 2011-2013 Operating budget overview - Revenue documents indicate that DEL is required to raise

nearly one-million dollars in the biennium through this license fee increase. Further senate ways and means committee projections indicated that DEL is expected to raise an approximately \$990,826 through FY 2013 (July 1, 2011, through June 30, 2013) by increasing annual license fees for:

- Family home child cares to \$30 from the current \$24; and
- Child care centers and school-age center programs:
 - To \$125 (from the current \$100) for the first twelve children in care; plus
 - To \$12 (from the current \$8) per child after the first twelve children, up to the center's maximum capacity stated on the center's license.

Child care license fees collected are deposited to the state general fund and are not retained by DEL.

In order to achieve the legislatively directed revenue targets, DEL adopted emergency rules that were filed on June 16, 2011, effective July 1, 2011, as WSR 11-13-077. Second emergency rules were filed on October 11, 2011, as WSR 11-21-021. This third emergency rule continues the same provisions as the first and second emergency rules, as DEL takes steps toward permanent adoption of these license fee increases. DEL filed a preproposal statement of inquiry, WSR 11-12-076, and a new CR-102 was filed on January 4, 2012, under WSR 12-02-079 that would make these rules permanent.

Family home child cares are not charged a per-child fee in addition to their base license - they may care for a maximum of twelve children. A child care home or center may be licensed to care for fewer children than the physical capacity of its facility. The maximum number of children to be in care (licensed capacity) is stated on the facility's DEL-issued license. Currently, individual child care centers are licensed from twelve children to more than two hundred fifty children.

This is the first fee increase for licensed family home children cares since 1982. Child care center and school-age center license fees were raised in 2010 - prior to that increase center license fees had remained at the same amount since 1982.

RCW 34.05.350 (1)(c) was amended by EHB 1248 (chapter 2, Laws of 2011 1st sp. sess.) to permit emergency rule making if the agency finds for good cause, "(c) *That in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012, or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.*"

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: February 3, 2012.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 10-24-016, filed 11/19/10, effective 12/20/10)

WAC 170-151-070 How do I apply or reapply for a license? (1) You must comply with the department's application procedures and submit to the department:

(a) A completed department-supplied application for school-age child care center license, including attachments, ninety or more days before the:

- (i) Expiration of your current license;
- (ii) Opening date of your center;
- (iii) Relocation of your center; or
- (iv) Change of the licensee.

(b) A completed background check form for each staff person or volunteer having unsupervised or regular access to the child in care; and

(c) The annual licensing fee is:

(i) ~~((For new licenses issued by the department before July 1, 2010, or for licensees whose annual licensing fees are due before July 1, 2010, forty-eight dollars per year for the first twelve children plus four dollars for each additional child over the licensed capacity of twelve children; or~~

~~((ii)) For new licenses issued ((after June 30, 2010)) before July 1, 2011, or for licensees whose annual licensing fees are due ((after June 30, 2010)) before July 1, 2011, one hundred dollars per year for the first twelve children plus eight dollars for each additional child over the licensed capacity of twelve children; or~~

((ii)) For new licenses issued after June 30, 2011, or for licensees whose annual licensing fees are due after June 30, 2011, one hundred twenty-five dollars per year for the first twelve children, plus twelve dollars per year for each additional child over the licensed capacity of twelve children.

(2) In addition to the required application materials specified under subsection (1) of this section, you must submit to the department:

(a) An employment and education resume of the person responsible for the active management of the center and of the site coordinator;

(b) Copies of diplomas or education transcripts of the director and site coordinator; and

(c) Three professional references each for you, the director, and the site coordinator.

(3) You, as the applicant for a license under this chapter must be twenty-one years of age or older.

(4) You must conform to rules and regulations approved or adopted by the:

(a) State department of health and relating to the health care of children at school-age child care centers;

(b) State fire marshal's office, establishing standards for fire prevention and protection of life and property from fire, under chapter 212-12 WAC.

(5) The department must not issue a license to you until the state fire marshal's office has certified or inspected and approved the center.

(6) The department may exempt a school site possessing a fire safety certification signed by the local fire official within six months prior to licensure from the requirement to receive an additional fire safety inspection by the state fire marshal's office.

(7) You must submit a completed plan of deficiency correction, when required, to the department of health and the department licensor before the department will issue you a license.

(8) You, your director and site coordinator must attend department-provided orientation training.

AMENDATORY SECTION (Amending WSR 10-24-016, filed 11/19/10, effective 12/20/10)

WAC 170-295-0060 What are the requirements for applying for a license to operate a child care center? (1) To apply or reapply for a license to operate a child care center you must:

(a) Be twenty-one years of age or older;

(b) The applicant, director and program supervisor must attend the orientation programs that we provide, arrange or approve;

(c) Submit to us a completed and signed application for a child care center license or certification using our forms (with required attachments).

(2) The application package must include the following attachments:

(a) The annual licensing fee. The fee is based on your licensed capacity, and is:

~~(i) ((For new licenses issued by the department before July 1, 2010, or for licensees whose annual licensing fees are due before July 1, 2010, forty-eight dollars for the first twelve children plus four dollars for each additional child over the licensed capacity of twelve children; or~~

~~((ii)) For new licenses issued ((after June 30, 2010)) before July 1, 2011, or for ((licenses)) licensees whose annual license fees are due ((after June 30, 2010)) before July 1, 2011, one hundred dollars per year for the first twelve children plus eight dollars for each additional child over the licensed capacity of twelve children; or~~

((ii)) For new licenses issued after June 30, 2011, or for licensees whose annual license fees are due after June 30, 2011, one hundred twenty-five dollars per year for the first twelve children, plus twelve dollars for each additional child over the licensed capacity of twelve children;

(b) If the center is solely owned by you, a copy of your:

(i) Photo identification issued by a government entity; and

(ii) Social Security card that is valid for employment or verification of your employer identification number((-));

(c) If the center is owned by a corporation, verification of the corporation's employer identification number;

(d) An employment and education resume for:

- (i) The person responsible for the active management of the center; and
- (ii) The program supervisor((-);
- (e) Diploma or education transcript copies of the program supervisor;
- (f) Three professional references each, for yourself, the director, and the program supervisor;
- (g) Articles of incorporation if you choose to be incorporated;
- (h) List of staff (form is provided in the application);
- (i) Written parent communication (child care handbook);
- (j) Copy of transportation insurance policy (liability and medical);
- (k) In-service training program (for facilities employing more than five persons);
- (l) A floor plan of the facility drawn to scale;
- (m) A copy of your health care plan reviewed and signed by an advisory physician, physician's assistant, or registered nurse;
- (n) A copy of your policies and procedures that you give to parents; and
 - (o) A copy of your occupancy permit.
- (3) You must submit to the department a completed background check form for all persons required to be authorized by DEL to care for or have unsupervised access to the children in care under chapter 170-06 WAC; and
- (4) You must submit your application and reapplication ninety or more calendar days before the date:
 - (a) You expect to open your new center;
 - (b) Your current license is scheduled to expire;
 - (c) You expect to relocate your center;
 - (d) You expect to change licensee; or
 - (e) You expect a change in your license category.

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-296-0170 Am I required to pay a fee when applying for a family home child care license? (1) For new licenses issued by the department before July 1, 2011, or for licensees whose annual licensing fees are due before July 1, 2011, you must pay a nonrefundable license fee of twenty-four dollars. ((This))

(2) For new licenses issued by the department after June 30, 2011, or for licensees whose annual license fees are due after June 30, 2011, you must pay a nonrefundable license fee of thirty dollars.

(3) Payments must be in the form of a check or money order. You must pay the license fee each year before or on your anniversary date.

WSR 12-05-005
RESCISSON OF EMERGENCY RULES
DEPARTMENT OF
EARLY LEARNING

[Filed February 3, 2012, 9:08 a.m.]

Effective immediately upon this filing, the department of early learning (DEL) rescinds emergency rules filed on Octo-

ber 11, 2011, as WSR 11-21-021, revising rules in chapters 170-151, 170-295, and 170-296 WAC to implement section 617(2) of 2ESHB 1087, enrolled as chapter 50, Laws of 2011 1st sp. sess. The department has filed subsequent emergency rules on this date to replace and supersede the rules filed as WSR 11-21-021.

Elizabeth M. Hyde
 Director

WSR 12-05-029
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-18—Filed February 8, 2012, 2:41 p.m., effective February 9, 2012, 8:00 a.m.]

Effective Date of Rule: February 9, 2012, 8:00 a.m.

Purpose: Commercial crab regulations.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000J and 220-52-04600R; and amending WAC 220-52-040 and 220-52-046.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The provisions of this rule are in conformity with agreed plans with applicable tribes, which plans have been entered as required by court order. The Puget Sound commercial crab season is structured to meet harvest allocation objectives. In order to meet harvest allocation goals, it is necessary to increase crab-pot limits in Regions 3-2 and 3-1 from fifty pots per license to seventy-five and one hundred pots per license, respectively. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: February 8, 2012.

Joe Stohr
 for Philip Anderson
 Director

NEW SECTION

WAC 220-52-04000M Commercial crab fishery— Lawful and unlawful gear, methods, and other unlawful acts. Notwithstanding the provisions of WAC 220-52-040:

(1) Additional area gear limits. The following Marine Fish-Shellfish Management and Catch Reporting Areas are restricted in the number of pots fished, operated, or used by a person or vessel, and it is unlawful for any person to use, maintain, operate, or control pots in excess of the following limits:

(a) No commercial gear is allowed in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123° 7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(2) Effective 8:00 AM, February 9, 2012, until further notice, it is unlawful for any person to fish for crab for commercial purposes with more than 50 pots per license per buoy tag number in Crab Management Regions 1 (Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B).

(3) Effective 8:00 AM, February 9, 2012, until further notice, it is unlawful for any person to fish for crab for commercial purposes with more than 75 pots per license per buoy tag number in Crab Management sub-area 3-2 (Marine Fish-Shellfish Management and Catch Reporting Areas 23D, 25A, 25E).

(4) The remaining buoy tags per license per region must be onboard the designated vessel and available for inspection.

NEW SECTION

WAC 220-52-04600T Puget Sound crab fishery— Seasons and areas. Notwithstanding the provisions of WAC 220-52-046:

(1) Effective immediately until further notice, it is permissible to fish for Dungeness crab for commercial purposes in the following areas:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina, and a line from the same boat ramp to Birch Point.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cape Sante Marina to the northern end of the eastern-most oil dock.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass.

(2) Effective immediately until further notice, the following areas are closed to commercial crab fishing:

(a) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of the 123° 7.0' longitude line projected from the new Dungeness light due south to the shore of Dungeness Bay.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the ITT Rayonier Dock.

(3) Effective immediately until further notice, the following areas are closed to commercial crab fishing:

(a) Crab Management Region 2 East (Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D, 26A-East) and Crab Management Region 2 West (Marine Fish-Shellfish Management and Catch Reporting Areas 25B, 25D and 26A West).

REPEALER

The following sections of the Washington Administrative Code are repealed effective 8:00 AM, February 9, 2012:

WAC 220-52-04000J	Commercial crab fishery— Lawful and unlawful gear, methods, and other unlawful acts. (11-312)
WAC 220-52-04600R	Puget Sound crab fishery— Seasons and areas. (11-312)

WSR 12-05-033**EMERGENCY RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed February 9, 2012, 8:32 a.m., effective February 9, 2012, 8:32 a.m.]

Effective Date of Rule: Immediately.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: ESHB 2082, Laws of 2011, terminates all components of the disability lifeline (DL) program effective October 31, 2011, and establishes the aged, blind, or disabled (ABD) assistance and the pregnant women assistance (PWA) programs effective November 1, 2011.

Purpose: The department will maintain existing amendments, repeals and new rules filed as WSR 11-21-049 to eliminate reference to the DL program and to establish standards for the ABD assistance and PWA programs to comply with ESHB 2082 while the department completes the regular rule-making process.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-400-0025, 388-404-0010, 388-408-0010, 388-418-0025, 388-424-0016, 388-448-0001, 388-448-0010, 388-448-0020, 388-448-0030, 388-448-0035, 388-448-0040, 388-448-0050, 388-448-0060, 388-448-0070, 388-448-0080, 388-448-0090, 388-448-0100, 388-448-0110, 388-448-0120, 388-448-0130, 388-448-0140, 388-448-0150, 388-448-0160, 388-448-0180, 388-448-0200, 388-448-0210, 388-448-0220, 388-448-0250, 388-450-0110, 388-450-0135, 388-450-0175, 388-462-0011 and 388-478-0030; and amending WAC 388-273-0020, 388-406-0005, 388-406-0045, 388-406-0055, 388-408-0005, 388-416-0010, 388-424-0010, 388-424-0015, 388-436-0030, 388-442-0010, 388-450-0040, 388-450-0045, 388-450-0095, 388-450-0100, 388-450-0115, 388-450-0120, 388-450-0130, 388-450-0156, 388-450-0170, 388-460-0020, 388-460-0040, 388-468-0005,

388-470-0055, 388-473-0010, 388-474-0010, 388-474-0020, 388-476-0005, 388-478-0035, and 388-486-0005.

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

Other Authority: ESHB 2082, chapter 36, Laws of 2011.

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

Reasons for this Finding: ESHB 2082, Laws of 2011, eliminates DL October 31, 2011, and creates ABD and PWA November 1, 2011. This filing continues the emergency rule filed as WSR 11-21-049 while the department completes the regular rule-making process. The department has filed a pre-proposal statement of inquiry (WSR 11-15-104) and a proposed rule making (WSR 11-22-032). The hearing was held on December 27, 2011. The department is currently reviewing public comments received and anticipates filing a supplemental notice CR-102 to WSR 11-22-032 mid-February 2012.

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 27, Amended 29, Repealed 33.

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 27, Amended 29, Repealed 33; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 25, 2012.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 12-07 issue of the Register.

WSR 12-05-036
EMERGENCY RULES
DEPARTMENT OF REVENUE

[Filed February 9, 2012, 11:45 a.m., effective February 9, 2012, 11:45 a.m.]

Effective Date of Rule: Immediately.

Purpose: SHB 2017, chapter 298, Laws of 2011, transferred responsibility for the master license service (MLS) program from the department of licensing to the department of revenue, effective July 1, 2011. This program is now referred to as the business licensing service (BLS).

This legislation requires that the application and renewal handling fees be established by rule. The department adopted a permanent rule providing these rules, WAC 308-300-160

on January 30, 2012 (WSR 12-04-060). This rule becomes effective March 1, 2012, and at that time will be recodified as WAC 458-20-10101. The department is at this time adopting the rule as an emergency rule to provide the handling fees during the interim period.

Citation of Existing Rules Affected by this Order: Amending WAC 308-300-160 Business licensing service—Total fee payable—Handling of fees.

Statutory Authority for Adoption: RCW 19.02.020 and 19.02.075, as amended by chapter 298, Laws of 2011.

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

Reasons for this Finding: An emergency adoption of this rule is necessary because the permanent rule is not effective until March 1, 2012.

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

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

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

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

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

Date Adopted: February 9, 2012.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-13-039, filed 6/8/10, effective 7/9/10)

WAC 308-300-160 Business licensing service—Total fee payable—Handling of fees. (1) Introduction. Chapter 298, Laws of 2011, transferred responsibility for the master license service program (MLS) from the department of licensing to the department of revenue, effective July 1, 2011. This program is now referred to as the business licensing service (BLS).

Information about BLS is available on-line at <http://business.wa.gov/BLS>. If you are seeking in-person assistance, you may want to visit:

6500 Linderson Way S.W., Suite 102
Tumwater, WA 98501
8 a.m. to 5 p.m., Monday - Friday
(except state holidays or temporary layoff days)

The department of licensing continues to issue, renew, and regulate professional licenses, see <http://dol.wa.gov/business/>.

(2) What fee do I need to pay when applying for or renewing a license? The fee payable will be the total amount of all individual license fees, late filing fees, other penalty fees, and handling fees, and may include additional fees charged to cover credit or debit card processing. Licensing fees vary depending on the license for which you are applying. Refer to <http://bls.dor.wa.gov/specialtylicenses.aspx> for information about licenses and license fee amounts.

((2)) (3) What does the department do with these fees? The department will distribute the fees received for individual licenses issued or renewed to the appropriate agencies on an established schedule.

((3)) (4) When do I get my business license? The ~~((master))~~ business license will not be issued until the full amount of the total fee payable is collected. When the fee payment received is less than the total fee payable, the department will bill the applicant for the balance.

((4)) (5) Can I get a refund? The ~~((master))~~ business license ~~((service))~~ application and renewal handling fees collected under RCW 19.02.075 are not refundable. When a license is denied or when an applicant withdraws an application, a refund of any other refundable portion of the total payment will be made in accordance with the applicable licensing laws.

(6) What are the handling fees? The business license application handling fee amounts are:

<u>Type of handling fee:</u>	<u>Fee amount:</u>
<u>Business license application filing</u>	<u>\$15.00</u>
<u>License renewal application filing</u>	<u>\$9.00</u>

**WSR 12-05-037
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

[Filed February 10, 2012, 9:43 a.m., effective February 13, 2012]

Effective Date of Rule: February 13, 2012.

Purpose: To establish hearing rules related to medicaid funded services to implement the requirements of 2E2SBH [2E2SHB] 1738, section 53, effective July 1, 2011, for the transition of the single state medicaid agency to the Washington health care authority.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-526-2610.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: 2E2SHB 1738, section 53.

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

Reasons for this Finding: 2E2SHB 1738, section 53(10) states that the authority "shall adopt any rules it deems necessary to implement this section" dealing with hearing rights. Further, in section 130, the bill states that "this act is necessary for the immediate preservation of the public peace, health, or safety of the state government and its existing public institution, and takes effect July 1, 2011.["] Delaying this adoption could jeopardize the agency's ability to provide general hearing rules and procedures that apply to the resolution of disputes between medical assistance clients and the various medical services programs established under chapter 74.09 RCW. This emergency rule is necessary to continue the current emergency rule adopted under WSR 11-22-028 while the permanent rule-making process is completed. This emergency rule differs from the current emergency rule in that the subsidized Basic Health program can now operate under these rules in compliance with federal law. The agency filed a CR-101 Preproposal statement of inquiry under WSR 11-19-004 on September 7, 2011, and continues to meet and work with stakeholders in drafting the permanent rules. The agency anticipates filing a CR-102 proposal sometime in May 2012.

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 137, 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 137, Amended 0, Repealed 1.

Date Adopted: February 7, 2012.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 12-07 issue of the Register.

**WSR 12-05-044
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-19—Filed February 10, 2012, 2:07 p.m., effective February 18, 2012]

Effective Date of Rule: February 18, 2012.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The fishery will close to retention of sturgeon in order to reserve approximately nine hundred fish for a summer retention season in Bonneville Reservoir. This decision was made February 8, 2012, at a joint Washington-Oregon public hearing based on input received at a public meeting held December 14, 2011. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: February 10, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900D Exceptions to statewide rules—Columbia River sturgeon. Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. February 18, 2012, until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to The Dalles Dam.

WSR 12-05-046
EMERGENCY RULES
HEALTH CARE AUTHORITY
(Basic Health)

[Filed February 10, 2012, 2:50 p.m., effective February 13, 2012]

Effective Date of Rule: February 13, 2012.

Purpose: The health care authority (HCA) intends to reform, align, and clarify the Basic Health processes as a result of the federal requirements contained in the section 1115 federal waiver and to align rules and processes as a portion of the implementation of chapter 15, Laws of 2011 (2E2SHB 1738, section 53), for the transition of the single state medicaid agency to the HCA.

Citation of Existing Rules Affected by this Order:
Amending WAC 182-22-320.

Statutory Authority for Adoption: RCW 70.47.050.

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

Reasons for this Finding: On January 18, 2012, the HCA received confirmation from the Center for Medicare and Medicaid Services that HCA's grievance process is out of compliance with federal law. Without the immediate adoption of this rule, no viable hearing process exists to address members' grievances, thus endangering members' ability to access medical care and services. The lack of a grievance process has immobilized subsidized Basic Health operations.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, 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 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: February 10, 2012.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending Order 10-03, filed 11/30/10, effective 12/31/10)

WAC 182-22-320 How to appeal health care authority (HCA) decisions. (1) HCA decisions regarding the following may be appealed under this section:

- (a) Eligibility;
- (b) Premiums;
- (c) Premium adjustments or penalties;
- (d) Enrollment;
- (e) Suspension;
- (f) Disenrollment; or
- (g) Selection of managed health care system (MHCS).

(2) ~~((To appeal an HCA decision, enrollees))~~ The hearing process described in chapter 388-526 WAC applies to the **subsidized basic health program (BHP) appeal process found in this subsection. Where conflict exists, the requirements in this chapter take precedence.**

(a) To appeal an HCA decision, enrollees or applicants must send a written request for a hearing to the HCA. The written hearing request should be signed by the appealing party and must be received by the HCA within ninety calen-

dar days of the date of the agency action. The request must be sent to:

Basic Health Appeals
P.O. Box 42690
Olympia, WA 98504-2690

(b) The hearing request should include:

(i) The name, mailing address, and BHP account number of the subscriber or applicant;

(ii) The name and address of the enrollee or applicant affected by the decision, if that person is not the subscriber on the account;

(iii) A copy of the HCA notice of the decision that is being appealed or, if the notice is not available, a statement of the decision being appealed;

(iv) A statement explaining why the appealing party believes the decision was incorrect, outlining the facts surrounding the decision and including supporting documentation; and

(v) If the appealing party is not an enrollee or the subscriber on the account, a signed agreement from the enrollee authorizing the appealing party to act on the enrollees behalf and authorizing the HCA to release otherwise confidential information to the appealing party's designated representative.

(c) HCA provides at least ten days advanced notice of any change in enrollment or premiums. An enrollee may continue receiving the same benefits under the same terms and conditions as received before the change, if a hearing is requested before the effective date of the agency action. This is called continuation of benefits. Requests for continuation of benefits should be in writing. To qualify for continuation of benefits, the appealing party must continue to pay all premiums when due as required by law and request the hearing in writing before the effective date of the agency's action.

(d) All active appeals filed for which no final agency decision has been rendered will be subject to the rules in this subsection. HCA reviews all appeals to determine whether the appeal can be resolved prior to sending the appeal to the office of administrative hearings (OAH) to schedule a hearing. If the appeal can be resolved to the satisfaction of the applicant or enrollee who requested the hearing, and they choose to withdraw the appeal, HCA will send a withdrawal confirmation notice and close the appeal. If the appeal cannot be resolved in favor of the applicant or enrollee that requested the hearing or if that party chooses not to withdraw the appeal, HCA will forward the appeal to OAH so a hearing can be scheduled. The provisions of chapter 388-526 WAC only apply if the appeal is sent to OAH for a hearing.

(3) This subsection applies only to Washington health (WH) program appeals. Enrollees or applicants must send a letter of appeal to the HCA. The letter of appeal should be signed by the appealing party and must be received by the HCA within thirty calendar days of the date of the decision.

(a) The letter of appeal should include:

((a)) (i) The name, mailing address, and ((BHP or)) WHP account number of the subscriber or applicant;

((b)) (ii) The name and address of the WH enrollee or applicant affected by the decision, if that person is not the subscriber on the account;

((c)) (iii) A copy of the HCA notice of the decision that is being appealed or, if the notice is not available, a statement of the decision being appealed;

((d)) (iv) A statement explaining why the appealing party believes the decision was incorrect, outlining the facts surrounding the decision and including supporting documentation; and

((e)) (v) If the appealing party is not an enrollee or the subscriber on the account, a signed agreement from the enrollee, authorizing the appealing party to act on his/her behalf.

((f)) (b) When an appeal is received, the HCA will send a notice to the appealing party, confirming that the appeal has been received and indicating when a decision can be expected. If the appealing party is not an enrollee on the affected account, the notice will also be sent to the subscriber.

((g)) (c) Initial HCA decisions: The HCA will conduct WH appeals according to RCW 34.05.485. The HCA appeals committee or a single presiding officer designated by the HCA will review and decide the appeal. The appealing party may request an opportunity to be present in person or by telephone to explain his or her view. If the appealing party does not request an opportunity to be present to explain, the HCA appeals committee or presiding officer will review and decide the appeal based on the information and documentation submitted.

((h)) (i) The HCA will give priority handling to appeals regarding a loss of coverage for an enrollee with an urgent medical need that could seriously jeopardize the enrollee's life, health, or ability to regain maximum function, provided:

((a)) (A) The appeal is received within ten business days of the effective date of the loss of coverage; and

((b)) (B) The enrollee has clearly stated in the letter of appeal or has otherwise notified the HCA that he or she has an urgent medical need.

((i)) (ii) For all other appeals, the HCA will send the appealing party written notice of the initial HCA decision within sixty days of receiving the letter of appeal. If the appealing party is not an enrollee on the affected account, the notice will also be sent to the subscriber. The notice will include the reasons for the initial decision and instructions on further appeal rights.

((j)) (d) Review of initial HCA decision on WH appeal: The initial HCA decision becomes the final agency decision unless the HCA receives a valid request for a review from the appealing party.

((k)) (i) To be a valid request for review, the appealing party's request may be either verbal or in writing, but must:

((l)) (A) Be received within thirty days of the date of the initial HCA decision.

((m)) (B) Include a summary of the initial HCA decision being appealed and state why the appealing party believes the decision was incorrect; and

((n)) (C) Provide any additional information or documentation that the appealing party would like considered in the review.

((o)) (ii) Requests for review of an initial HCA decision regarding a disenrollment for nonpayment will be reviewed by the office of administrative hearings through a

hearing conducted under chapter 34.12 RCW and RCW 34.05.488 through 34.05.494.

((e)) (iii) All other requests for review of an initial HCA decision will be reviewed by a presiding officer designated by the HCA according to the requirements of RCW 34.05.488 through 34.05.494, with the following exception: These review decisions will be based on the record and documentation submitted, unless the presiding officer decides that an in-person or telephone hearing is needed. If an in-person or telephone hearing is needed, the presiding officer will decide whether to conduct the hearing as an informal hearing or formal adjudicative proceeding.

((e)) (iv) The presiding officer will issue a written notice of the review decision, giving reasons for the decision, within twenty-one days of receiving the request for review, unless the presiding officer finds that additional time is needed for the decision.

((e)) (e) Enrollees who appeal a disenrollment decision that was based on eligibility issues and not related to premium payments may remain enrolled during the appeal process, provided:

((a)) (i) The appeal was submitted according to the requirements of this section; and

((b)) (ii) The enrollee:

((i)) (A) Remains otherwise eligible;

((i)) (B) Continues to make all premium payments when due; and

((i)) (C) Has not demonstrated a danger or threat to the safety or property of the MHCS or health care authority or their staff, providers, patients or visitors.

~~((9) Enrollees who appeal a disenrollment decision related to nonpayment of premium or any issue other than eligibility will remain disenrolled during the appeal process.~~

~~(10) If the appealing party disagrees with a review decision under subsection (6) of this section, the appealing party may request judicial review of the decision, as provided for in RCW 34.05.542. Request for judicial review must be filed with the court within thirty days of service of the final agency decision.)~~ (4) For both WH and the BHP, enrollees who appeal a disenrollment decision related to nonpayment of premium or any issue other than eligibility will remain disenrolled during the appeal process.

WSR 12-05-050
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-20—Filed February 13, 2012, 3:27 p.m., effective February 18, 2012, 12:01 p.m.]

Effective Date of Rule: February 18, 2012, 12:01 p.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000B; and amending WAC 220-56-360.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is

necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 2 and those portions of Razor Clam Area 3 opened for harvest. Washington department of health has certified clams from these beaches to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: February 13, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

WAC 220-56-36000B Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 2, or 3, except as provided for in this section:

1. Effective 12:01 p.m. February 18 through 11:59 p.m. February 19, 2012, razor clam digging is allowed in Razor Clam Area 1. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

2. Effective 12:01 p.m. February 18 through 11:59 p.m. February 19, 2012, razor clam digging is allowed in Razor Clam Area 2. Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

3. Effective 12:01 p.m. February 18 through 11:59 p.m. February 19, 2012, razor clam digging is allowed in that portion Razor Clam Area 3 that is between Copalis River and the southern boundary of the Quinault Indian Nation (Grays Harbor County). Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

4. It is unlawful to dig for razor clams at any time in Long Beach, Twin Harbors Beach or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. February 20, 2012:

WAC 220-56-36000B Razor clams—Areas and seasons.

WSR 12-05-059
EMERGENCY RULES
OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2012-02—Filed February 15, 2012, 9:39 a.m., effective February 15, 2012, 9:39 a.m.]

Effective Date of Rule: Immediately.

Purpose: The rule explains the commissioner's minimum standard for approval or disapproval of a health benefit plan that includes a prescription drug benefit, in particular as it relates to coverage of generic and brand name drugs, so that the plan does not structure the prescription drug benefit in a way that establishes an unreasonable restriction on the treatment of patients, or that deceptively or unreasonably affects the risk the general coverage of the plan contract or agreement purports to assume. The rule is intended to apply to any health benefit plan with a prescription drug benefit offered or issued in Washington by a health carrier, as defined in RCW 48.43.005. In addition, the rule is being issued to confirm notice to health carriers of the commissioner's approval standard to facilitate their internal work on product design and benefit structure.

Statutory Authority for Adoption: RCW 48.02.060, 48.18.110, 48.18.140, 48.21.200, 48.44.020, 48.44.050, 48.46.060.

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

Reasons for this Finding: Because some medical conditions require prescription medication for which there is not a therapeutically equivalent generic alternative or for which the generic alternative is not efficacious based on a person's clinical response, a generic only drug benefit prevents a covered person from being able to use their purchased insurance plan to help pay for medically necessary medicine or drugs, unreasonably restricting their treatment. Therefore, the commissioner finds that if a person buys a health benefit plan with a prescription drug benefit where the benefit strictly limits covered drugs to generic products, they are purchasing a plan that offers an illusory benefit. An emergency rule is necessary because some health carriers are continuing to apply a generic only benefit in this way, and have not refiled their product for the commissioner's approval to correct the problem.

Other carriers have filed products for approval that include a generic only product, which must be disapproved. This rule is necessary to protect the public from being at risk

of purchasing a product that provides full medical coverage but insufficient prescription coverage to treat the covered medical condition, and to preclude carriers from unnecessarily preparing a rate and form filing for approval to offer a product that does not meet state standards in this regard.

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 1, Amended 0, Repealed 0.

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

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

Date Adopted: February 15, 2012.

Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-43-817 Prescription drug benefit—Generic drugs. (1) A health carrier must not offer or issue a health benefit plan providing a prescription drug benefit after August 1, 2012, that limits the prescription drug benefit to generic drugs or otherwise applies a prescription drug benefit structure, including a formulary, that the commissioner determines results or can reasonably be expected to result, in an unreasonable restriction on the treatment of patients.

(2) This requirement does not prohibit a health benefit plan from:

(a) Using a tiered prescription drug benefit structure that includes a generic tier. The prescription drug benefit must cover brand name drugs when no generic drug is available, when the available generic is not therapeutically equivalent or if the provider determines that the generic is not efficacious based on the patient's clinical response;

(b) Applying lower cost-sharing for generic drugs that are therapeutically equivalent to a prescribed brand name product;

(c) Using a step therapy protocol;

(d) Requiring substitution of a therapeutically equivalent generic drug for a brand name product with the prescribing physician's approval or direction. A carrier must cover a brand name drug if the prescribing provider determines that the generic substitute is not efficacious based on the patient's clinical response or that the brand name drug does not have a therapeutically equivalent generic drug for the patient's condition;

(e) Requiring preauthorization for prescription of a brand name drug based on the patient's clinical response. The preauthorization process must not unreasonably restrict treatment of or the health of the patient, and must be fully set forth in the health benefit contract or benefit booklet.

(3) Upon the effective date of this rule the commissioner must disapprove a health benefit plan if the prescription drug benefit does not comply with this rule provided that the health benefit plan was filed prior to, on, or after the effective date of this rule and such plan has not been offered or issued in the market.

(4) For purposes of this section, "brand name," "generic name," "substitute," and "therapeutically equivalent," have the meaning set forth in RCW 69.41.110.

WSR 12-05-068
RESCISSON OF EMERGENCY RULES
OFFICE OF
INSURANCE COMMISSIONER

[Filed February 15, 2012, 4:17 p.m.]

The insurance commissioner would like to rescind WSR 12-05-059.

Mike Kreidler
Insurance Commissioner

WSR 12-05-069
EMERGENCY RULES
OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2012-04—Filed February 15, 2012,
4:20 p.m., effective February 15, 2012, 4:20 p.m.]

Effective Date of Rule: Immediately.

Purpose: The rule explains the commissioner's minimum standard for approval or disapproval of a health benefit plan that includes a prescription drug benefit, in particular as it relates to coverage of generic and brand name drugs, so that the plan does not structure the prescription drug benefit in a way that establishes an unreasonable restriction on the treatment of patients, or that deceptively or unreasonably affects the risk the general coverage of the plan contract or agreement purports to assume. The rule is intended to apply to any health benefit plan with a prescription drug benefit offered or issued in Washington by a health carrier, as defined in RCW 48.43.005. In addition, the rule is being issued to confirm notice to health carriers of the commissioner's approval standard to facilitate their internal work on product design and benefit structure.

Statutory Authority for Adoption: RCW 48.02.060, 48.18.110, 48.18.140, 48.21.200, 48.44.020, 48.44.050, 48.46.060.

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

Reasons for this Finding: Because some medical conditions require prescription medication for which there is not a therapeutically equivalent generic alternative or for which the generic alternative is not efficacious based on a person's clinical

response, a generic only drug benefit prevents a covered person from being able to use their purchased insurance plan to help pay for medically necessary medicine or drugs, unreasonably restricting their treatment. Therefore, the commissioner finds that if a person buys a health benefit plan with a prescription drug benefit where the benefit strictly limits covered drugs to generic products, they are purchasing a plan that offers an illusory benefit. An emergency rule is necessary because some health carriers are continuing to apply a generic only benefit in this way, and have not re-filed their product for the commissioner's approval to correct the problem.

Other carriers have filed products for approval that include a generic only product, which must be disapproved. This rule is necessary to protect the public from being at risk of purchasing a product that provides full medical coverage but insufficient prescription coverage to treat the covered medical condition, and to preclude carriers from unnecessarily preparing a rate and form filing for approval to offer a product that does not meet state standards in this regard.

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 1, Amended 0, Repealed 0.

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

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

Date Adopted: February 15, 2012.

Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-43-817 Prescription drug benefit—Generic drugs. (1) A health carrier must not offer, renew, or issue a health benefit plan providing a prescription drug benefit after August 1, 2012, that limits the prescription drug benefit to generic drugs or otherwise applies a prescription drug benefit structure, including a formulary, that the commissioner determines results or can reasonably be expected to result, in an unreasonable restriction on the treatment of patients.

(2) This requirement does not prohibit a health benefit plan from:

(a) Using a tiered prescription drug benefit structure that includes a generic tier. The prescription drug benefit must cover brand name drugs when no generic drug is available, when the available generic is not therapeutically equivalent or if the provider determines that the generic is not efficacious based on the patient's clinical response;

(b) Applying lower cost-sharing for generic drugs that are therapeutically equivalent to a prescribed brand name product;

(c) Using a step therapy protocol;

(d) Requiring substitution of a therapeutically equivalent generic drug for a brand name product with the prescribing physician's approval or direction. A carrier must cover a brand name drug if the prescribing provider determines that the generic substitute is not efficacious based on the patient's clinical response or that the brand name drug does not have a therapeutically equivalent generic drug for the patient's condition;

(e) Requiring preauthorization for prescription of a brand name drug based on the patient's clinical response. The preauthorization process must not unreasonably restrict treatment or the health of the patient, and must be fully set forth in the health benefit contract or benefit booklet.

(3) Upon the effective date of this rule, the commissioner must disapprove a health benefit plan if the prescription drug benefit does not comply with this rule, provided that the health benefit plan was filed prior to, on, or after the effective date of this rule and such plan has not been offered or issued in the market.

(4) For purposes of this section, "brand name," "generic name," "substitute," and "therapeutically equivalent," have the meaning set forth in RCW 69.41.110.

WSR 12-05-074

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed February 16, 2012, 2:41 p.m., effective February 16, 2012, 2:41 p.m.]

Effective Date of Rule: Immediately.

Purpose: The text of the rules filed as WSR 12-02-044 has not changed. This filing is a response to a lawsuit that was filed in Thurston County superior court on February 1, 2012: *SEIU Healthcare 775NW v. Robin Arnold-Williams and DSHS*, alleging that the emergency rule filing process for WSR 12-02-044 did not comply with rule-making requirements. The department of social and health services disagrees with those allegations. However, this CR-103E is provided to further clarify the basis for the emergency rules.

Effective December 30, 2011, the department amended WAC 388-106-0010 by adding and amending certain definitions related to informal supports. WAC 388-106-0210 was amended to include age guidelines that were needed to implement children's personal care changes that were initially made under WSR 11-23-053. These revisions were necessitated by the Washington state supreme court's decision in *Samantha A. v. Department of Social and Health Services* and serve the public interest by providing clients a way to better understand their award of personal care service hours.

This CR-103E *Cancels and supersedes WSR 12-02-044.*

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0010 and 388-106-0210.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

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

Reasons for this Finding: On February 1, 2012, the Service Employees International Union filed a lawsuit challenging the adoption of changes to WAC 388-106-0010 and 388-106-0130 by emergency rule. *SEIU Healthcare 775NW v. Robin Arnold-Williams and DSHS*, Thurston County Superior Court, Docket No. 12-2-00195-0. The emergency rule filing process complied with rule-making requirement[s] and the department disagrees with the allegations made in the lawsuit. Nevertheless, this CR-103E is provided to further clarify the basis for the emergency rules.

Clarified Reasons for Changes Originally Made under WSR 12-02-044: The department revised its assessment process to allocate personal care services for children on a more individualized basis. The emergency rules are necessary in order to comply with state law following Washington state supreme court's decision in *Samantha A. v. Department of Social and Health Services* and serve the public interest by providing clients a way to better understand their award of personal care service hours that may have been adjusted during the individualized assessment process.

The changes to WAC 388-106-0010 and 388-106-0210 are necessary to comport with emergency amendments initially filed under WSR 11-23-082 on November 16, 2011. These rule changes were filed as soon as possible. Changes to WAC 388-106-0010 could not be included in the November 16, 2011, filing because, for unrelated reasons, it had been recently subject to permanent rule making. New changes to a recently adopted permanent rule cannot be made until the office of the code reviser incorporates the new or amended rule into the Title 388 WAC web site, which can take four to eleven weeks after the permanent rule-making order is filed.

This filing supersedes the CR-103E filed as **WSR 12-02-044** on December 30, 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 2, 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 0, Amended 2, Repealed 0.

Date Adopted: February 16, 2012.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 12-06 issue of the Register.

WSR 12-05-075
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed February 16, 2012, 2:43 p.m., effective February 16, 2012, 2:43 p.m.]

Effective Date of Rule: Immediately.

Purpose: The text of the rules has not changed. Instead, this filing is a response to a lawsuit that was filed in Thurston County superior court on February 1, 2012: *SEIU Healthcare 775NW v. Robin Arnold-Williams and DSHS*. Although the department of social and health services maintains that there is no merit to this lawsuit and there was ample legal authority to file the previous emergency rules (WSR 11-23-082 and 12-04-053) on an emergency basis, as stated in the CR-103E forms filed in conjunction with such rules, this filing is offered to clarify the reasons for the emergency rules.

1. Effective November 16, 2011, the department amended long-term care services rules, including WAC 388-106-0130, to revise the assessment process for allocating personal care hours. This revision was necessitated by the Washington state supreme court's decision in *Samantha A. v. Department of Social and Health Services*.

2. Effective February 1, 2012, the department amended long-term care services rules, including WAC 388-106-0130, to eliminate add-on personal care hours for off-site laundry service and for clients who live more than forty-five minutes from essential services.

This CR-103E *supersedes* WSR 12-04-053.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-106-0126 and 388-106-0213; and amending WAC 388-106-0075 and 388-106-0130.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012 or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule

would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: On February 1, 2012, the Service Employees International Union filed a lawsuit challenging the adoption of changes to WAC 388-106-0010 and 388-106-0130 by emergency rule. *SEIU Healthcare 775NW v. Robin Arnold-Williams and DSHS*, Thurston County Superior Court, Docket No. 12-2-00195-0. The emergency rule filing process complied with rule-making requirement[s] and the department disagrees with the allegations made in the lawsuit. Nevertheless, this CR-103E is provided to further clarify the basis for the emergency rules.

Clarified Reasons for Changes Originally Made Under WSR 11-23-082. In *Samantha A. v. DSHS*, the state supreme court ruled that DSHS's personal care rule for children violated medicaid comparability requirements because the reductions were made without consideration of a child's individualized circumstances. This decision was a state law change that required an immediate change to the assessment process under WAC 388-106-0130. The emergency amendments to the rule were authorized by RCW 34.05.350 (1)(a) and (b) for the following reasons: They were necessary to provide for individualized assessments that consider children's developmental stage and informal support, as well as shared benefits between two or more clients and between a client and provider; they were necessary to provide clients with detailed information about their personal care benefits to help them understand the reasons for any adjustments to base hours, which were made during the individualized assessment process. The department is proceeding with the permanent adoption of these rules; the CR-101 was filed as WSR 11-22-074 on November 1, 2011.

Clarified Reasons for Changes Under WSR 12-04-053: The department eliminated the add-on hours for off-site laundry and add-on hours for those clients living more than forty-five minutes from essential services as a result of the department's need to stay within budget appropriations. WAC 388-106-0130 was already being amended by emergency rule under WSR 11-23-082 (as described above). Thus, WSR 12-04-053 replaced and superseded the earlier emergency filing under WSR 11-23-082.

The emergency elimination of add-on hours under this filing was required to meet the legislative appropriation for personal care services and was authorized by RCW 34.05.350 (1)(c). The *Samantha A.* decision required adjustments in children's base personal care services hours, which resulted in the expenditure of additional funds for children's personal care services. In order to remain within available resources and meet budgetary requirements, the elimination of these add-on hours needed to take effect immediately. Consequently, the amendments had to be adopted as an emergency rule as authorized by RCW 34.05.350.

This filing supersedes the CR-103E filed as **WSR 12-04-053** on January 30, 2012.

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: February 16, 2012.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0075 How is my need for personal care services assessed in CARE? ~~((To assess your need for personal care services,))~~ The department gathers information from you, your caregivers, family members~~((;))~~ and other sources to assess your abilities to perform personal care tasks. The department will also consider developmental milestones for children as defined in WAC 388-106-0130 when individually assessing your abilities and needs for assistance. The department will assess your ability to perform:

(1) Activities of daily living (ADL) using self performance~~((;))~~ support provided, status and assistance available, as defined in WAC 388-106-0010. Also, the department

determines your need for "assistance with body care" and "assistance with medication management," as defined in WAC 388-106-0010; and

(2) Instrumental activities of daily living (IADL) using self performance~~((;))~~ difficulty, status and assistance available, as defined in WAC 388-106-0010.

AMENDATORY SECTION (Amending WSR 11-11-024, filed 5/10/11, effective 6/10/11)

WAC 388-106-0130 How does the department determine the number of hours I may receive for in-home care? (1) The department assigns a base number of hours to each classification group as described in WAC 388-106-0125.

(2) The department will ~~((deduct from the))~~ adjust base hours to account for informal supports, shared benefit, and age appropriate functioning (as those terms are defined in WAC 388-106-0010), ~~((or))~~ and other paid services that meet some of an individual's need for personal care services, including adult day health, as follows:

(a) The CARE tool determines the adjustment for informal supports ~~((by determining))~~, shared benefit, and age appropriate functioning; determines the amount of assistance available ~~((to meet your needs,))~~; assigns ~~((#))~~ a numeric ~~((percentage,))~~ value to those assessed indicators; and ~~((reduces))~~ adjusts the base hours assigned to the classification group by the numeric ~~((percentage))~~ value. The department has assigned the following numeric values for the amount of assistance available for each ADL and IADL:

Meds	Self ((Performance)) Administration	Status	Assistance Available	Value ((Percentage))
((Self administration of medications)) <u>Medication Management</u>	Rules for all codes apply except independent is not counted	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		<u>Age appropriate functioning</u>	<u>N/A</u>	<u>0</u>
		Partially met	<1/4 time	.9
1/4 to 1/2 time	.7			
1/2 to 3/4 time	.5			
>3/4 time	.3			
Unscheduled ADLs	Self Performance	Status	Assistance Available	Value ((Percentage))
Bed mobility, transfer, walk in room, eating, toilet use	Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		<u>Age appropriate functioning</u>	<u>N/A</u>	<u>0</u>
		Partially met	<1/4 time	.9
1/4 to 1/2 time	.7			
1/2 to 3/4 time	.5			
>3/4 time	.3			

Scheduled ADLs	Self Performance	Status	Assistance Available	Value ((Percentage))
Dressing, personal hygiene, bathing	Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		<u>Age appropriate functioning</u>	<u>N/A</u>	<u>0</u>
		Partially met	<1/4 time	.75
1/4 to 1/2 time	.55			
1/2 to 3/4 time	.35			
>3/4 time	.15			
IADLs	Self Performance	Status	Assistance Available	Value ((Percentage))
Meal preparation, Ordinary housework, Essential shopping	Rules for all codes apply except independent is not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		<u>Age appropriate functioning</u>	<u>N/A</u>	<u>0</u>
		Partially met or Shared benefit	<1/4 time	.3
1/4 to 1/2 time	.2			
1/2 to 3/4 time	.1			
>3/4 time	.05			
IADLs	Self Performance	Status	Assistance Available	Value ((Percentage))
Travel to medical	Rules for all codes apply except independent is not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		<u>Age appropriate functioning</u>	<u>N/A</u>	<u>0</u>
		Partially met	<1/4 time	.9
1/4 to 1/2 time	.7			
1/2 to 3/4 time	.5			
>3/4 time	.3			

Key:
 > means greater than
 < means less than

(b) To determine the amount ~~((of reduction))~~ adjusted for informal support, shared benefit and/or age appropriate functioning, the ~~((value percentages))~~ numeric values are totaled and divided by the number of qualifying ADLs and IADLs needs. The result is value A. Value A is then subtracted from one. This is value B. Value B is divided by three. This is value C. Value A and Value C are summed. This is value D. Value D is multiplied by the "base hours" assigned to your classification group and the result is the number of adjusted in-home hours ~~((reduced for informal supports))~~.

(3) ~~((Also, the department will adjust in-home base hours when:~~

~~((a) There is more than one client receiving ADSA-paid personal care services living in the same household, the status under subsection (2)(a) of this section must be met or partially met for the following IADLs:~~

- ~~((i) Meal preparation;~~
- ~~((ii) Housekeeping;~~
- ~~((iii) Shopping; and~~
- ~~((iv) Wood supply.~~

~~((b) You are under the age of eighteen, your assessment will be coded according to age guidelines codified in WAC 388-106-0213.~~

~~((4))~~ Effective February 1, 2012, after ((deductions)) adjustments are made to your base hours, as described in ~~((subsections (2) and (3)))~~ subsection (2), the department may add on hours ~~((based on your living environment))~~ only if you use wood as your sole source of heat:

Condition	Status	Assistance Available	Add On Hours
((Offsite laundry facilities, which means the client does not have facilities in own home and the caregiver is not available to perform any other personal or household tasks while laundry is done.	N/A	N/A	8
Client is >45 minutes from essential services (which means he/she lives more than 45 minutes one way from a full service market).	Unmet	N/A	5
	Met	N/A	0
	Partially met	<1/4 time	5
		between 1/4 to 1/2 time	4
		between 1/2 to 3/4 time	2
>3/4 time		2))	
Wood supply used as sole source of heat.	Unmet	N/A	8
	Met	N/A	0
	Declines	N/A	0
	Age appropriate	N/A	0
	Partially met or Shared benefit	<1/4 time	8
		between 1/4 to 1/2 time	6
		between 1/2 to 3/4 time	4
>3/4 time		2	

((5)) (4) In the case of New Freedom consumer directed services (NFCDS), the department determines hours as described in WAC 388-106-1445.

((6)) (5) The result of actions under subsections (2), (3), and (4) is the maximum number of hours that can be used to develop your plan of care. The department must take into account cost effectiveness, client health and safety, and program limits in determining how hours can be used to ((meet)) address your identified needs. In the case of New Freedom consumer directed services (NFCDS), a New Freedom spending plan (NFSP) is developed in place of a plan of care.

((7)) (6) You and your case manager will work to determine what services you choose to receive if you are eligible. The hours may be used to authorize:

(a) Personal care services from a home care agency provider and/or an individual provider.

(b) Home delivered meals (i.e. a half hour from the available hours for each meal authorized).

(c) Adult day care (i.e. a half hour from the available hours for each hour of day care authorized).

(d) A home health aide if you are eligible per WAC 388-106-0300 or 388-106-0500.

(e) A private duty nurse (PDN) if you are eligible per WAC 388-71-0910 and 388-71-0915 or WAC 388-551-3000 (i.e. one hour from the available hours for each hour of PDN authorized).

(f) The purchase of New Freedom consumer directed services (NFCDS).

(7) If you are a child applying for personal care services:

(a) The department will complete a CARE assessment and use the developmental milestones table below when assessing your ability to perform personal care tasks.

(b) Your status will be coded as age appropriate when your self performance is at a level expected for persons in your assessed age range, as indicated by the developmental milestones table, unless the circumstances in subpart (c) apply.

(c) The department may code status as other than age appropriate for an ADL or IADL, despite your self performance falling within the expected developmental milestones for your age, if the department determines during your assessment that your level of functioning is not primarily due to your age.

Developmental Milestones for Activities of Daily Living (ADLS)		
<u>ADL</u>	<u>Self-Performance</u>	<u>Assessed Age Range</u>
<u>Medication Management</u>	<u>Independent</u> <u>Self-Directed</u> <u>Assistance Required</u> <u>Must Be Administered</u>	<u>Birth through the 17th year</u>
<u>Locomotion in Room</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u>	<u>Birth through the 3rd year</u>
	<u>Total</u>	<u>Birth through the 1st year</u>

<u>ADL</u>	<u>Self-Performance</u>	<u>Assessed Age Range</u>
<u>Locomotion Outside Room</u>	<u>Independent Supervision</u>	<u>Birth through the 5th year</u>
	<u>Limited Extensive</u>	<u>Birth through the 3rd year</u>
	<u>Total</u>	<u>Birth through the 1st year</u>
<u>Walk in Room</u>	<u>Independent Supervision</u>	<u>Birth through the 3rd year</u>
	<u>Limited Extensive</u>	
	<u>Total</u>	<u>Birth through the 1st year</u>
<u>Bed Mobility</u>	<u>Independent Supervision</u>	<u>Birth through the 2nd year</u>
	<u>Limited Extensive</u>	
	<u>Total</u>	<u>Birth through the 1st year</u>
<u>Transfers</u>	<u>Independent Supervision</u>	<u>Birth through the 2nd year</u>
	<u>Limited Extensive</u>	
	<u>Total</u>	
<u>Toilet Use</u>	<u>Independent Supervision</u>	<u>Birth through the 7th year</u>
	<u>Limited Extensive</u>	
	<u>Total</u>	<u>Birth through the 3rd year</u>
<u>Eating</u>	<u>Independent Supervision</u>	<u>Birth through the 2nd year</u>
	<u>Limited Extensive</u>	
	<u>Total</u>	
<u>Bathing</u>	<u>Independent Supervision</u>	<u>Birth through the 11th year</u>
	<u>Physical help/Transfer only</u>	<u>Birth through the 7th year</u>
	<u>Physical help/part of bathing</u>	
	<u>Total</u>	<u>Birth through the 4th year</u>
<u>Dressing</u>	<u>Independent Supervision</u>	<u>Birth through the 11th year</u>
	<u>Limited Extensive</u>	<u>Birth through the 7th year</u>
	<u>Total</u>	<u>Birth through the 4th year</u>
<u>Personal Hygiene</u>	<u>Independent Supervision</u>	<u>Birth through the 11th year</u>
	<u>Limited or extensive</u>	<u>Birth through the 7th year</u>
	<u>Total</u>	<u>Birth through the 4th year</u>

Developmental Milestones for Instrumental Activities of Daily Living		
<u>IADL</u>	<u>Self Performance</u>	<u>Assessed Age</u>
<u>Telephone</u> <u>Transportation</u> <u>Essential</u> <u>Shopping</u> <u>Wood Supply</u> <u>Housework</u> <u>Finances</u> <u>Meal Preparation</u>	<u>Independent</u> <u>Supervision</u> <u>Limited</u> <u>Extensive</u> <u>Total</u>	<u>Birth through the 17th year</u>

Additional Developmental Milestones coding		
<u>CARE panel</u>	<u>Selection</u>	<u>Assessed Age</u>
<u>Speech/Hearing: Comprehension</u>	<u>By others client is = Age Appropriate</u>	<u>Birth through the 2nd year</u>
<u>Psych Social: MMSE</u>	<u>Can MMSE be administered? = No</u>	<u>Birth through the 17th year</u>
<u>Psych Social: Memory/Short Term</u>	<u>Recent memory = Age appropriate</u>	<u>Birth through the 11th year</u>
<u>Psych Social: Memory/Long Term</u>	<u>Long Term memory = Age appropriate</u>	<u>Birth through the 11th year</u>
<u>Psych Social: Depression</u>	<u>Interview = unable to obtain</u>	<u>Birth through the 11th year</u>
<u>Psych Social: Decision Making</u>	<u>Rate how client makes decision = Age appropriate</u>	<u>Birth through the 11th year</u>
<u>Bladder/Bowel:</u>	<u>Bladder/Bowel Control:</u> <u>Continent</u> <u>Usually Continent</u> <u>Occasionally Incontinent</u> <u>Frequently Incontinent</u>	<u>Birth through the 11th year</u>
<u>Bladder/Bowel:</u>	<u>Bladder/Bowel Control:</u> <u>Incontinent all or most of the time</u>	<u>Birth through the 5th year</u>
<u>Bladder/Bowel:</u>	<u>Appliance and programs = Potty Training</u>	<u>Birth through the 3rd year</u>

(8) If you are a child applying for personal care services and your self performance is not age appropriate as determined under subsection (7), the department will assess for any informal supports or shared benefit available to assist you with each ADL and IADL.

(a) When you are living with your legally responsible parent(s), the department will take into account their legal obligation to care for you when determining the availability of informal supports. Legally responsible parents include natural parents, step-parents, and adoptive parents. Legally responsible parents generally do not include other relative caregivers or foster parents. A legally responsible parent will not be considered unavailable to meet your needs due to other obligations such as work or additional children because such obligations do not decrease the parent's legal responsibility to care for you regardless of your disabilities.

(b) Informal supports for school-age children include supports actually available through a school district, regardless of whether you take advantage of those available supports.

(c) The department will presume that you have informal supports available to assist you with your ADLs and IADLs over three-fourths but not all of the time. The department will code your informal support as greater or less than the presumed amount if your assessment shows that your need for assistance with personal care tasks is fully met by informal supports or shared benefit, or if you provide specific information during your assessment to indicate why you do not have support available three-fourths or more of the time to assist you with a particular ADL or IADL.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-106-0126

If I am under age twenty-one, how does CARE use criteria

WAC 388-106-0213 to place me in a classification group for in-home care?
How are my needs assessed if I am a child applying for MPC services?

WSR 12-05-089
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed February 17, 2012, 1:01 p.m., effective February 17, 2012, 1:01 p.m.]

Effective Date of Rule: Immediately.

Purpose: The department [is] amending and adding to the adult family home rules to comply with state laws: Initiative Measure 1163 and ESHB 1277. Initiative 1163 requires national fingerprint background checks for long-term care workers hired after January 1, 2012. It is estimated that it may be as long as three weeks and possibly longer before the national fingerprint background check results are received. RCW 43.43.837(6) gives the department authority to adopt rules authorizing provisional hiring. Therefore, the department needs to adopt emergency rules to allow adult family homes to hire long-term care workers provisionally, pending the results of the fingerprint based background check and following a name and date of birth background check result that shows no disqualifying crimes or findings. ESHB 1277 was passed during the 2011 legislative session and subsequently codified in chapter 70.128 RCW. RCW 70.128.130(16) includes language that requires a qualified caregiver be on-site whenever a resident is at the adult family home. Current WAC 388-76-10200 allows for certain resident[s] to be in the home when a qualified caregiver is not present and thus conflicts with the new law.

WAC 388-76-10166, 388-76-10176, and 388-76-10181 are added as new sections.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-76-10162; and amending WAC 388-76-10160, 388-76-10161, 388-76-10163, 388-76-10164, 388-76-10165, 388-76-10175, 388-76-10180, and 388-76-10200.

Statutory Authority for Adoption: RCW 70.128.040.

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

Reasons for this Finding: These emergency rules are necessary for the following reasons: Adult family homes often experience a significant amount of staff turnover. If a new adult family home employee is prevented from having unsupervised access to residents for several weeks, adult family homes may experience staffing shortages and the res-

idents may suffer from a lack of caregivers. Without adequate staffing, the health and safety of residents could be jeopardized. In addition, emergency rules need to be adopted to remove the conflicting language from WAC.

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 3, Amended 8, Repealed 1.

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 3, Amended 8, Repealed 1.

Date Adopted: February 13, 2012.

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

WAC 388-76-10160 Background checks—General. Background checks conducted (~~by~~) through the department and required in this chapter include but are not limited to:

(1) A Washington state name and date of birth background check(~~s including:~~

~~(a) Department and department of health findings; and~~
~~(b) Criminal background check information from the Washington state patrol and the Washington state courts.);~~
and

(2) After January 1, 2012, a national fingerprint(~~-based~~) background check in accordance with RCW (~~74.39A.055~~) 74.39A.056.

(3) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the adult family home.

(4) In addition to chapter 70.128 RCW, these rules are authorized by RCW 43.20A.710, 43.43.830 through 43.43.842 and RCW (~~74.39A.050(8)~~) 74.39A.051(8).

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

WAC 388-76-10161 Background checks—(~~Washington state~~) Who is required to have. (1) An adult family home applicant and anyone affiliated with an applicant must have (~~a Washington state~~) the following background checks before licensure:

(a) A Washington state name and date of birth background check; and

(b) If applying after January 1, 2012, a national fingerprint background check.

(2) The adult family home must ensure (~~the following individuals~~) that all caregivers, entity representatives, and

resident managers who are employed directly or by contract after January 1, 2012, have ((Washington state)) the following background checks:

~~(a) ((Caregivers, including volunteers and students who may have unsupervised access to residents)) A Washington state name and date of birth background check; and~~

~~(b) ((Entity representatives;~~

~~(c) Resident managers; and~~

~~(d) All household members over the age of eleven who may have unsupervised access to residents)) A national fingerprint background check.~~

(3) All household members over the age of eleven, volunteers, and students who may have unsupervised access to residents must have a Washington state name and date of birth background check, but are not required to have a national fingerprint background check.

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

WAC 388-76-10163 Background checks—Process.

(1) Before the adult family home employs, directly or by contract, a resident manager, entity representative or caregiver, or accepts as a caregiver any volunteer or student, or allows a household member over the age of eleven unsupervised access to residents, the home must:

~~((+)) (a) Require the person to complete a DSHS background authorization form; and~~

~~((2)) (b) Send the completed form to the department's background check central unit (BCCU), including any additional documentation and information requested by the department.~~

(2) After receiving the results of the Washington state name and date of birth background check the adult family home must:

(a) Not employ, directly or by contract, a resident manager, entity representative or caregiver convicted of a disqualifying crime or a disqualifying finding under WAC 388-76-10180;

(b) Not allow a household member over the age of eleven, volunteer or student to have unsupervised access to residents if they have been convicted of a disqualifying crime or disqualifying finding under WAC 388-76-10180;

(c) Require individuals specified in WAC 388-76-10161(2) who are hired after January 1, 2012 and are not disqualified by the Washington state name and date of birth background check, to complete a national fingerprint background check and follow department procedures.

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

WAC 388-76-10164 Background checks—Results.

~~((1) The adult family home must not allow persons listed in WAC 388-76-10161(2) to have unsupervised access to residents until the adult family home receives background check results from the department verifying that the person does not have convictions, or findings described in WAC 388-76-10180.~~

~~(2) If the background check results show that the person has a conviction or finding that is not disqualifying under~~

~~WAC 388-76-10180, then the adult family home must determine whether the person has the character, suitability and competence to work with vulnerable adults in long-term care.~~

~~(3)) After receiving the results of the background checks, the adult family home must:~~

~~((a)) (1) Inform the person of the results of the background checks;~~

~~((b)) (2) Inform the person that they may request a copy of the results of the background checks. If requested, a copy of the background checks results must be provided within ten days of the request; and~~

~~((c)) (3) Notify the department and the other appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.~~

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

WAC 388-76-10165 Background checks—Washington state name and date of birth background check—Valid for two years.

A Washington state name and date of birth background check is valid for two years from the initial date it is conducted. The adult family home must ensure:

(1) A new DSHS background authorization form is submitted to the BCCU every two years for all individuals listed in WAC 388-76-10161;

(2) There is a valid Washington state background check for all individuals listed in WAC 388-76-10161.

NEW SECTION

WAC 388-76-10166 Background checks—Household members and unpaid staff—Unsupervised access.

(1) The adult family home must not allow individuals specified in WAC 388-76-10161(3) to have unsupervised access to residents until the home receives results of the Washington state name and date of birth background check from the department verifying that the person does not have convictions or findings described in WAC 388-76-10180.

(2) If any background check results show that the person has a conviction or finding that is not automatically disqualifying under WAC 388-76-10180, then the adult family home must determine whether or not the person has the character, competence and suitability to have unsupervised access to residents.

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

WAC 388-76-10175 Background checks—Employment—Conditional hire—Pending results of Washington state name and date of birth background check.

An adult family home may conditionally employ a person directly or by contract, pending the result of a Washington state name and date of birth background check, provided the home:

(1) Requests the Washington state name and date of birth background check no later than one business day after conditional employment;

(2) Requires the individual to sign a disclosure statement and the individual denies having been convicted of a disqual-

ifying crime or a disqualifying finding under WAC 388-76-10180;

(3) Does not allow the individual to have unsupervised access to any resident;

(4) Ensures direct supervision, ~~((of the individual,))~~ as defined in WAC 388-76-10000, ~~of the individual;~~ and

(5) Ensures the individual is competent and receives the necessary training to perform assigned tasks and meets the staff training requirements under chapter 388-112 WAC.

NEW SECTION

WAC 388-76-10176 Background checks—Employment—Provisional hire—Pending results of national fingerprint background checks. The adult family home may provisionally employ individuals hired after January 1, 2012 and listed in WAC 388-76-10161(2) for one hundred twenty-days and allow those individuals to have unsupervised access to residents when:

(1) The individual is not disqualified based on the results of the Washington state name and date of birth background check; and

(2) The results of the national fingerprint background check are pending.

AMENDATORY SECTION (Amending WSR 10-16-082, filed 7/30/10, effective 1/1/11)

WAC 388-76-10180 Background checks—Employment—Disqualifying information. ~~((Unless hired conditionally as specified in))~~ Except as provided in WAC 388-76-10175 and 388-76-10176, the adult family home must not ~~((use or))~~ employ anyone, directly or by contract, who is listed in WAC 388-76-10161(2) if the individual has~~(=~~

~~(+))~~ any of the convictions, history, or findings, described below:

~~((a))~~ (1) Has a history of significant noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;

~~((b))~~ (2) Has been convicted of a crime in federal court or in any other state, and the department determines that the crime is equivalent to a crime under subsections (c), (d), (e), (f), or (g) below;

~~((c))~~ (3) Has been convicted of a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years has passed since conviction;

~~((d))~~ (4) Has been convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in third degree and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years has passed since conviction;

~~((e))~~ (5) Has been convicted of:

~~((i))~~ (a) Violation of the Imitation Controlled Substances Act (VICSA);

~~((ii))~~ (b) Violation of the Uniform Controlled Substances Act (VUCSA);

~~((iii))~~ (c) Violation of the Uniform Legend Drug Act (VULDA); or

~~((iv))~~ (d) Violation of the Uniform Precursor Drug Act (VUPDA).

~~((f))~~ (6) Has been convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;

~~((g))~~ (7) Has been convicted of criminal mistreatment;

~~((h))~~ (8) Has been found to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult by court of law or a disciplining authority, including the department of health. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceeding under Title 26, RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW;

~~((i))~~ (9) Has a finding of abuse or neglect of a child that is:

~~((ii))~~ (a) Listed on the department's background check central unit (BCCU) report; or

~~((ii))~~ (b) Disclosed by the individual, except for findings made before December, 1998.

~~((ii))~~ (10) Has a finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:

~~((ii))~~ (a) Listed on any registry, including the department's registry;

~~((ii))~~ (b) Listed on the department's background check central unit (BCCU) report; or

~~((iii))~~ (c) Disclosed by the individual, except for adult protective services findings made before October, 2003.

~~((2) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the adult family home.)~~

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

NEW SECTION

WAC 388-76-10181 Background checks—Employment—Nondisqualifying information. (1) If any background check results show that the person has a conviction or finding that is not automatically disqualifying under WAC 388-76-10180, then the adult family home must determine whether the person has the character, competence and suitability to work with vulnerable adults in long-term care.

(2) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the adult family home.

AMENDATORY SECTION (Amending WSR 10-04-008, filed 1/22/10, effective 2/22/10)

WAC 388-76-10200 Adult family home—Staff—Availability—Contact information. In addition to other licensing requirements for staff availability, the adult family home must:

(1) Ensure at least one qualified caregiver is present in the home whenever one or more residents are present in the home ~~((, unless the resident has been assessed as being safe when left unattended for a specific period of time, and that information is included in the negotiated care plan)).~~ For

purpose of this subsection, a qualified caregiver means someone who has completed orientation and basic training;

(2) Designate an experienced, staff member who is capable of responding on behalf of the adult family home by phone or pager at all times.

(3) Give residents the telephone or pager number for the contact required in subsection (2) of this section;

(4) Ensure the provider, entity representative or resident manager is readily available to:

- (a) Each resident;
- (b) Residents' representatives;
- (c) Caregivers; and
- (d) Authorized state staff.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-76-10162	Background check— National fingerprint checks—Who is required to have.
------------------	---

WSR 12-05-100
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed February 21, 2012, 10:46 a.m., effective February 21, 2012, 10:46 a.m.]

Effective Date of Rule: Immediately.

Purpose: The purpose of the new language in chapters 388-71 and 388-112 WAC is to implement and clarify the training requirements and the criminal history background check requirements as directed in chapter 74.39A RCW and to revise the implementation effective dates as directed by Initiative 1163. Chapter 74.39A RCW requires training for long-term care workers which includes seventy-five hours of entry-level training and also requires federal and state criminal history background checks for all long-term care workers. This law increases the basic training hour requirements for long-term care workers from thirty-two hours to seventy-five hours and increases their continuing education hour requirement from ten to twelve hours annually. Initiative 1163, enacted by the people in November 2011, requires implementation of these rules effective beginning January 7, 2012 (unless otherwise specified). Emergency rules were filed to implement the effective dates as WSR 12-02-049. This emergency rule filing supersedes the emergency rule filed as WSR 12-02-049 in order to (1) add requirements for the filing of administrative hearings that are available under I-1163; and (2) change dates in the original filing that are not consistent with I-1163. A CR-101 has been filed successfully to begin the permanent rule process.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-71-05665, 388-71-05670, 388-71-05675, 388-71-05680, 388-71-05685, 388-71-05690, 388-

71-05695, 388-71-05700, 388-71-05705, 388-71-05710, 388-71-05715, 388-71-05720, 388-71-05725, 388-71-05730, 388-71-05735, 388-71-05740, 388-71-05745, 388-71-05750, 388-71-05755, 388-71-05760, 388-71-05765, 388-71-05770, 388-71-05775, 388-71-05780, 388-71-05785, 388-71-05790, 388-71-05795, 388-71-05799, 388-71-05805, 388-71-05810, 388-71-05815, 388-71-05820, 388-71-05825, 388-71-05830, 388-71-05832, 388-71-05835, 388-71-05840, 388-71-05845, 388-71-05850, 388-71-05855, 388-71-05860, 388-71-05865, 388-71-05870, 388-71-05875, 388-71-05880, 388-71-05885, 388-71-05890, 388-71-05895, 388-71-05899, 388-71-05905, 388-71-05909, 388-71-0801, 388-71-0806, 388-71-0811, 388-71-0816, 388-71-0821, 388-71-0826, 388-112-0025, 388-112-0030, 388-112-0050, 388-112-0060, 388-112-0065, 388-112-0090, 388-112-0095, 388-112-0105, 388-112-0245, 388-112-02610, 388-112-02615, 388-112-02620, 388-112-02625, 388-112-02630, and 388-112-0375; and amending WAC 388-71-0500, 388-71-0505, 388-71-0510, 388-71-0513, 388-71-0515, 388-71-0520, 388-71-0540, 388-71-0546, 388-71-0551, 388-71-0560, 388-112-0001, 388-112-0005, 388-112-0010, 388-112-0015, 388-112-0035, 388-112-0040, 388-112-0045, 388-112-0055, 388-112-0070, 388-112-0075, 388-112-0080, 388-112-0085, 388-112-0110, 388-112-0115, 388-112-0120, 388-112-0125, 388-112-0130, 388-112-0135, 388-112-0140, 388-112-0145, 388-112-0150, 388-112-0155, 388-112-0160, 388-112-0165, 388-112-0195, 388-112-0200, 388-112-0205, 388-112-0210, 388-112-0220, 388-112-0225, 388-112-0230, 388-112-0235, 388-112-0240, 388-112-0255, 388-112-0260, 388-112-0270, 388-112-0295, 388-112-0300, 388-112-0315, 388-112-0320, 388-112-0325, 388-112-0330, 388-112-0335, 388-112-0340, 388-112-0345, 388-112-0350, 388-112-0355, 388-112-0360, 388-112-0365, 388-112-0370, 388-112-0380, 388-112-0385, 388-112-0390, 388-112-0395, 388-112-0405, and 388-112-0410.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520; Washington state 2009-11 budget (ESHB 1244, section 206(5)).

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

Reasons for this Finding: See above.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 74, Amended 66, Repealed 82; 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 74, Amended 66, Repealed 82.

Date Adopted: February 17, 2012.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 12-07 issue of the Register.

**WSR 12-05-115
EMERGENCY RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed February 22, 2012, 9:58 a.m., effective February 22, 2012, 9:58 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department is amending sections to the boarding home rules, adding sections and repealing a section to comply with Initiative 1163 recently passed by Washington state voters. Initiative 1163 requires national fingerprint background checks for long-term workers hired after January 1, 2012. It is estimated that it may be as long as three weeks and possibly longer before the national fingerprint background check results are received. RCW 43.43.837(6) gives the department authority to adopt rules authorizing provisional hiring. Therefore, the department needs to adopt emergency rules to allow boarding homes to hire long-term care workers provisionally, pending the results of the fingerprint based background check and following a name and date of birth background check result that shows no disqualifying crimes or findings.

WAC 388-78A-24681 and 388-78A-24701 are new sections.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-78A-2463; and amending WAC 388-78A-2461, 388-78A-2462, 388-78A-2464, 388-78A-2465, 388-78A-2466, 388-78A-2468, and 388-78A-2469.

Statutory Authority for Adoption: Chapter 18.20 RCW.

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

Reasons for this Finding: Boarding homes often experience a significant amount of staff turnover. If a new boarding home employee is prevented from having unsupervised access to resident[s] for several weeks, boarding homes may experience staffing shortages and the residents may suffer from a lack of caregivers. Without adequate staffing, the health and safety of resident[s] could be jeopardized.

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 2, Amended 7, Repealed 1.

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 2, Amended 7, 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 2, Amended 7, Repealed 1.

Date Adopted: February 17, 2012.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2461 Background checks—General.

(1) Background checks conducted by the department and required in this chapter include ((but are not limited to)):

((+)) (a) Washington state name and date of birth background checks ((including:

(a) Department and department of health findings); and

(b) ((Criminal background check information from the Washington state patrol and the Washington state courts;

(-)) (2)) After January 1, 2012, a national fingerprint((-based)) background check in accordance with RCW ((74.39A.055)) 74.39A.056.

((-)) (2) Nothing in this chapter should be interpreted as requiring the employment of a person against the better judgment of the boarding home.

((+)) (3) In addition to chapter 18.20 RCW, these rules are authorized by RCW 43.20A.710, RCW 43.43.830 through 43.43.842 and RCW ((74.39A.050(8))) 74.39A.051 (8).

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2462 Background checks—((Washington state)) Who is required to have.

(1) Applicants for a boarding home license, as defined in WAC 388-78A-2740, ((are required to have a Washington state)) must have the following background checks before licensure:

(a) A Washington state name and date of birth background check; and

(b) A national fingerprint background check.

(2) For purposes of this section, the administrator is presumed to provide direct care.

(3) For purposes of this section the term "caregiver" has the same meaning as the term "long-term care worker" as defined in RCW 74.39A.009 and chapter 388-112 WAC.

(4) The boarding home must ensure ((the following have Washington state)) that the administrator and all caregivers employed directly or by contract after January 1, 2012 have the following background checks:

(a) A Washington state name and date of birth background check; and

(b) A national fingerprint background check.

(5) The boarding home must ensure that the following individuals have a Washington state name and date of birth background check. They are not required to have a national fingerprint background check:

~~((a))~~ ~~((Caregivers, including))~~ Volunteers who are not residents, and students who may have unsupervised access to residents;

~~((b))~~ ~~((Administrators;~~

~~((c))~~ ~~((Licensee;~~

~~((d))~~ ~~((Staff persons other than caregivers and administrators;~~

~~((e))~~ ~~((c) Managers unless they provide direct care to residents; and~~

~~((f))~~ ~~((d) Contractors other than the administrator and caregivers who may have unsupervised access to residents.~~

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2464 Background checks—Process.

(1) Before the boarding home employs, directly or by contract, an administrator, staff person or caregiver, or accepts as a caregiver, any volunteer who is not a resident, or student, the home must:

(a) Require the person to complete a DSHS background authorization form; and

(b) Send the completed form to the department's background check central unit (BCCU), including any additional documentation and information requested by the department.

~~((2))~~ ~~((For purposes of this section, the administrator is presumed to provide direct care))~~ After receiving the results of the Washington state name and date of birth background check the boarding home must:

(a) Not allow individuals to have unsupervised access to residents if they have been convicted of a disqualifying crime or finding under WAC 388-78A-2470.

(b) Require individuals listed in WAC 388-78A-2462(2), who are hired after January 1, 2012 and are not disqualified by the Washington state name and date of birth background check, to complete a national fingerprint background check and follow department procedures.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2465 Background check—Results.

~~((1))~~ ~~The boarding home must not allow the persons listed in WAC 388-78A-2462(2) to have unsupervised access to residents until the boarding home receives background check results from the department verifying that the person does not have any convictions, or findings described in WAC 388-78A-2470.~~

~~((2))~~ ~~If the background check results show that the person has a conviction or finding that is not disqualifying under WAC 388-78A-2470, then the boarding home must determine whether the person has the character, suitability and competence to work with vulnerable adults in long-term care.~~

~~((3))~~ After receiving the results of the background checks, the boarding home must:

~~((a))~~ (1) Inform the person of the results of the background checks;

~~((b))~~ (2) Inform the person that they may request a copy of the results of the background check. If requested, a copy of the background check results must be provided within ten days of the request; and

~~((c))~~ (3) Notify the department and other appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2466 Background check—Washington state name and date of birth background check—Valid for two years.

A Washington state name and date of birth background check is valid for two years from the initial date it is conducted. The boarding home must ensure:

(1) A new DSHS background authorization form is submitted to BCCU every two years for individuals listed in WAC 388-78A-2462; and

(2) There is a valid Washington state name and date of birth background check for all individuals listed in WAC 388-78A-2462.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2468 Background checks—Employment—Conditional hire—Pending results of Washington state name and date of birth background check.

The boarding home may conditionally hire an individual described in WAC 388-78A-2462, directly or by contract, pending the result of ~~((a))~~ the Washington state name and date of birth background check, provided that the boarding home:

(1) Submits the background authorization form for the individual to the department no later than one business day after the individual starts working;

(2) Requires the individual to sign a disclosure statement, and the individual denies having been convicted of a disqualifying crime or have a disqualifying finding under WAC 388-78A-2470;

(3) Has received three positive references for the individual;

(4) Does not allow the individual to have unsupervised access to any resident;

(5) Ensures direct supervision~~((, of the individual,))~~ as defined in RCW 18.20.270, of the individual; and

(6) Ensures that the person is competent, and receives the necessary training to perform assigned tasks and meets the training requirements under chapter 388-112 WAC.

NEW SECTION

WAC 388-78A-24681 Background checks—Employment—Provisional hire—Pending results of national fingerprint background check.

The boarding home may provisionally employ caregivers and an administrator hired after January 1, 2012 as specified in WAC 388-78A-2462(2) for one hundred and twenty-days and allow those individuals to have unsupervised access to residents when:

(1) The individual is not disqualified based on the results of the Washington state name and date of birth background check; and

(2) The results of the national fingerprint background check are pending.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2469 Background check—Disclosure statement. (1) Prior to first starting his or her duties, the boarding home must require each individual described in WAC 388-78A-2462 to make disclosures(;) of any crimes or findings consistent with RCW 43.43.834(2). The disclosures must be in writing and signed by the individual under penalty of perjury.

(2) The department may require the boarding home or any individual described in WAC 388-78A-2462 to complete additional disclosure statements or background authorization forms if the department has reason to believe that offenses specified in WAC 388-78A-2470 have occurred since completion of the previous disclosure statement or background check.

NEW SECTION

WAC 388-78A-24701 Background checks—Employment—Nondisqualifying information. (1) If any background check results show that the person has a conviction or finding that is not automatically disqualifying under WAC 388-78A-2470, then the boarding home must determine whether the person has the character, competence and suitability to work with vulnerable adults in long-term care.

(2) Nothing in this chapter should be interpreted as requiring the employment of any person against the better judgment of the boarding home.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-78A-2463	Background check— National fingerprint checks—Who is required to have.
------------------	---