

WSR 12-21-070
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed October 18, 2012, 11:29 a.m., effective November 18, 2012]

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

Purpose: The department is amending and adding sections to these rules to comply with and be consistent with Initiative 1163, and SHB 2314 Long-term care workers. In addition, the department is clarifying in rule the provision related to disqualifying drug crimes.

The department added new sections WAC 388-78A-24641, 388-78A-24642, 388-78A-24681, and 388-78A-24701.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-78A-2463; and amending WAC 388-78A-2020, 388-78A-2461, 388-78A-2462, 388-78A-2464, 388-78A-2465, 388-78A-2465 [388-78A-2466], 388-78A-2468, 388-78A-2469, 388-78A-2470, 388-78A-2474, and 388-78A-2750.

Statutory Authority for Adoption: Chapter 18.20 RCW.

Adopted under notice filed as WSR 12-15-073 on July 18, 2012.

Changes Other than Editing from Proposed to Adopted Version: The changes, other than editing follow: Changes are shown with the new language underlined and deleted text lined through.

WAC 388-78A-2020 Definitions.

"Administrator" means a boarding home administrator who must be in active administrative charge of the boarding home as required in this chapter. Unless exempt under RCW 18.88B.041, the administrator must complete long-term care training and home care aide certification. For training, certification, and background check purposes, the administrator or designee is presumed to provide direct care.

WAC 388-78A-24641 Background checks—Washington state name and date of birth background check.

If the results of the Washington state name and date of birth background check indicate the person ~~has been convicted of a crime or has a finding that is disqualifying under WAC 388-78A-2470~~ is disqualified by having a conviction listed in WAC 388-78A-2470 subsections 1 through 6, or by having a finding listed in WAC 388-78A-2470 subsections 7 through 9, then the boarding home must:

- (1) Not employ, directly or by contract, a caregiver, administrator, or staff person; and
- (2) Not allow a volunteer or student to have unsupervised access to residents.

NEW SECTION

WAC 388-78A-24701 Background checks—Employment—Nondisqualifying information.

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

~~(b) Document in writing the basis for making the decision, and make it available to the department upon request.~~

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

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW
WAC 388-78A-2020, change the words "presumed to provide direct care" in the definition for "administrator."	This comment was accepted and the department clarified when an administrator may be exempt from training and home aide certification.
WAC 388-78A-24641, rephrase the sentence to clarify that both crimes and findings are disqualifying under WAC 388-78A-2470.	This comment was accepted and the department made a change to clarify that the disqualification could be from specified convictions or findings.
WAC 388-78A-24701, delete this entire section, including language on documentation and "character, competence and suitability" to current and prospective employees.	The department has accepted part of this comment. Although the department had added the language based upon stakeholder comments, we did delete the proposed language related to documentation. The department did not accept the comment on "character, competence and suitability" since this language is not a new requirement and is in current existing rules (WAC 388-78A-2465(2)). It was moved to a new section for clarity to make it easier for providers to find the process for assessing employees and prospective employees who have nondisqualifying crimes.

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 4, Amended 11, 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 4, Amended 11, Repealed 1.

Date Adopted: October 15, 2012.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-08-004, filed 3/22/12, effective 4/22/12)

WAC 388-78A-2020 Definitions. "Abandonment" means action or inaction by a person with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a resident. In instances of abuse of a resident who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a resident, which have the following meanings:

(1) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing;

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints;

(3) **"Sexual abuse"** means any form of nonconsensual sexual contact, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual;

(4) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a resident causing the resident to act in a way that is inconsistent with relevant past behavior, or causing the resident to perform services for the benefit of another.

"Activities of daily living" means the following tasks related to basic personal care: Bathing; toileting; dressing; personal hygiene; mobility; transferring; and eating.

"Administrator" means a boarding home administrator who must be in active administrative charge of the boarding home as required in this chapter. Unless exempt under RCW

18.88B.041, the administrator must complete long-term care training and home care aide certification.

"Adult day services" means care and services provided to a nonresident individual by the boarding home on the boarding home premises, for a period of time not to exceed ten continuous hours, and does not involve an overnight stay.

"Ambulatory" means capable of walking or traversing a normal path to safety without the physical assistance of another individual:

(1) **"Nonambulatory"** means unable to walk or traverse a normal path to safety without the physical assistance of another individual;

(2) **"Semiambulatory"** means physically and mentally capable of traversing a normal path to safety with the use of mobility aids, but unable to ascend or descend stairs without the physical assistance of another individual.

"Applicant" means the person, as defined in this section, that has submitted, or is in the process of submitting, an application for a boarding home license.

"Basic services" means housekeeping services, meals, nutritious snacks, laundry, and activities.

"Bathing fixture" means a bathtub, shower or sit-down shower.

"Bathroom" means a room containing at least one bathing fixture.

"Boarding home" means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing housing, basic services, and assuming general responsibility for the safety and well-being of the residents, and may also provide domiciliary care, consistent with this chapter to seven or more residents after July 1, 2000. However, a boarding home that is licensed for three to six residents prior to or on July 1, 2000, may maintain its boarding home license as long as it is continually licensed as a boarding home. "Boarding home" does not include facilities certified as group training homes pursuant to RCW 71A.22.040, nor any home, institution or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution or section thereof. Nor shall it include any independent senior housing, independent living units in continuing care retirement communities, or other similar living situations including those subsidized by the Department of Housing and Urban Development. "Boarding home" may also include persons associated with the boarding home to carry out its duties under this chapter.

"Building code" means the building codes and standards adopted by the Washington state building code council.

"Caregiver" means anyone providing ~~((hands-on))~~ direct personal care to another person including, but not limited to: Cuing, reminding or supervision of residents, on behalf of a boarding home, except volunteers who are directly supervised. ~~((Direct supervision means oversight by a person who has demonstrated competency in the basic training (and specialty training if required), or who has been exempted from the basic training requirements, is on the premises, and is quickly and easily available to the caregiver.))~~

"Construction review services" means the office of construction review services within the Washington state department of health.

"Continuing care contract" means, as stated in RCW 70.38.025, a contract providing a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

"Continuing care retirement community" means, as stated in RCW 70.38.025, an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service.

"Contractor" means an agency or person who contracts with a licensee to provide resident care, services or equipment.

"Crimes relating to financial exploitation" means the same as "crimes relating to financial exploitation" as defined in RCW 43.43.830 or 43.43.842.

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

"Dietitian" means an individual certified under chapter 18.138 RCW.

"Direct supervision" means oversight by a person on behalf of the boarding home who has met training requirements, demonstrated competency in core areas, or has been fully exempted from the training requirements, is on the premises, and is quickly and easily available to the caregiver.

"Document" means to record, with signature, title, date and time:

(1) Information about medication administration, medication assistance or disposal, a nursing care procedure, accident, occurrence or change in resident condition that may affect the care or needs of a resident; and

(2) Processes, events or activities that are required by law, rule or policy.

"Domiciliary care" means:

(1) Assistance with activities of daily living provided by the boarding home either directly or indirectly; or

(2) Health support services, if provided directly or indirectly by the boarding home; or

(3) Intermittent nursing services, if provided directly or indirectly by the boarding home.

"Enforcement remedy" means one or more of the department's responses to a boarding home's noncompliance with chapter 18.20 RCW and this chapter, as authorized by RCW 18.20.190.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.-020(6).

"Food service worker" means according to chapter 246-217 WAC an individual who works (or intends to work) with or without pay in a food service establishment and handles unwrapped or unpackage food or who may contribute to the transmission of infectious diseases through the nature of his/her contact with food products and/or equipment and facilities. This does not include persons who simply assist residents with meals.

"General responsibility for the safety and well-being of the resident" means the provision of the following:

(1) Prescribed general low sodium diets;

(2) Prescribed general diabetic diets;

(3) Prescribed mechanical soft foods;

(4) Emergency assistance;

(5) Monitoring of the resident;

(6) Arranging health care appointments with outside health care providers and reminding residents of such appointments as necessary;

(7) Coordinating health care services with outside health care providers consistent with WAC 388-78A-2350;

(8) Assisting the resident to obtain and maintain glasses, hearing aids, dentures, canes, crutches, walkers, wheelchairs, and assistive communication devices;

(9) Observation of the resident for changes in overall functioning;

(10) Blood pressure checks as scheduled;

(11) Responding appropriately when there are observable or reported changes in the resident's physical, mental, or emotional functioning; or

(12) Medication assistance as permitted under RCW 69.41.085 and as described in RCW 69.41.010 and chapter 246-888 WAC.

"Harm" means a physical or mental or emotional injury or damage to a resident including those resulting from neglect or violations of a resident's rights.

"Health support services" means any of the following optional services:

(1) Blood glucose testing;

(2) Puree diets;

(3) Calorie controlled diabetic diets;

(4) Dementia care;

(5) Mental health care; or

(6) Developmental disabilities care.

"Independent living unit" means:

(1) Independent senior housing;

(2) Independent living unit in a continuing care retirement community or other similar living environments;

(3) Boarding home unit where domiciliary services are not provided; or

(4) Boarding home unit where one or more items listed under "general responsibilities" are not provided.

"Independent senior housing" means an independent living unit occupied by an individual or individuals sixty or more years of age.

"Infectious" means capable of causing infection or disease by entrance of organisms into the body, which grow and multiply there, including, but not limited to, bacteria, viruses, protozoans, and fungi.

"Licensee" means the person, as defined in this chapter, to whom the department issues the boarding home license.

"Licensed resident bed capacity" means the resident occupancy level requested by the licensee and approved by the department. All residents receiving domiciliary care or the items or services listed under general responsibility for the safety and well-being of the resident as defined in this section count towards the licensed resident bed capacity. Adult day services clients do not count towards the licensed resident bed capacity.

"Long-term care worker", as defined in RCW 74.39A.009, has the same meaning as the term "caregiver".

"Majority owner" means any person that owns:

- (1) More than fifty percent interest; or
- (2) If no one person owns more than fifty percent interest, the largest interest portion; or
- (3) If more than one person owns equal largest interest portions, then all persons owning those equal largest interest portions.

"Manager" means the person defined in this chapter, providing management services on behalf of the licensee.

"Management agreement" means a written, executed agreement between the licensee and the manager regarding the provision of certain services on behalf of the licensee.

"Mandated reporter":

(1) Is an employee of the department, law enforcement officer, social worker, professional school personnel, individual provider, an employee of a facility, an operator of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW; and

(2) For the purpose of the definition of mandated reporter, "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW (boarding homes), chapter 18.51 RCW (nursing homes), chapter 70.128 RCW (adult family homes), chapter 72.36 RCW (soldiers' homes), chapter 71A.20 RCW (residential habilitation centers), or any other facility licensed by the department.

"Maximum facility capacity" means the maximum number of individuals that the boarding home may serve at any one time, as determined by the department.

(1) The maximum facility capacity includes all residents and respite care residents and adult day services clients.

(2) The maximum facility capacity is equal to the lesser of:

(a) The sum of the number of approved bed spaces for all resident rooms (total number of approved bed spaces), except as specified in subsection (3); or

(b) Twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (1)(h); or

(c) The number of residents permitted by calculating the ratios of toilets, sinks, and bathing fixtures to residents consistent with WAC 388-78A-3030; or

(d) For boarding homes licensed on or before December 31, 1988, the total day room area in square feet divided by ten square feet, consistent with WAC 388-78A-3050; or

(e) For boarding homes licensed after December 31, 1988, the total day room area in square feet divided by twenty square feet, consistent with WAC 388-78A-3050.

(3) For the purposes of providing adult day services consistent with WAC 388-78A-2360, one additional adult day services client may be served, beyond the total number of approved bed spaces, for each additional sixty square feet of day room area greater than the area produced by multiplying the total number of approved bed spaces by twenty square feet, provided that:

(a) There is at least one toilet and one hand washing sink accessible to adult day services clients for every eight adult day services clients or fraction thereof;

(b) The total number of residents and adult day services clients does not exceed twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (1)(h); and

(c) The adult day services program area(s) and building do not exceed the occupancy load as determined by the local building official or state fire marshal.

"Medication administration" means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the resident by an individual legally authorized to do so.

"Medication assistance" means assistance with self-administration of medication rendered by a nonpractitioner to a resident of a boarding home in accordance with chapter 246-888 WAC.

"Medication organizer" means a container with separate compartments for storing oral medications organized in daily doses.

"Medication service" means any service provided either directly or indirectly by a boarding home related to medication administration, medication administration provided through nurse delegation, medication assistance, or resident self-administration of medication.

"Neglect" means:

(1) A pattern of conduct or inaction resulting in the failure to provide the goods and services that maintain physical or mental health of a resident, or that fails to avoid or prevent physical or mental harm or pain to a resident; or

(2) An act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

"Nonresident individual" means an individual who resides in independent senior housing, independent living units in continuing care retirement communities, or in other similar living environments or in an unlicensed room located within a boarding home. A nonresident individual may not receive from the boarding home:

(1) Domiciliary care directly or indirectly; or

(2) The items or services listed in the definition of "general responsibility for the safety and well-being of the resident", except as allowed under WAC 388-78A-2032 or when the person is receiving adult day services.

"Nonpractitioner" means any individual who is not a practitioner as defined in WAC 388-78A-2020 and chapter 69.41 RCW.

"Nurse" means an individual currently licensed under chapter 18.79 RCW as either a:

(1) **"Licensed practical nurse"** (LPN); or

(2) **"Registered nurse"** (RN).

"Over-the-counter (OTC) medication" means any medication that may be legally purchased without a prescriptive order, including, but not limited to, aspirin, antacids, vitamins, minerals, or herbal preparations.

"Person" means any individual, firm, partnership, corporation, company, association, joint stock association or any other legal or commercial entity.

"Physician" means an individual licensed under chapter 18.57 or 18.71 RCW.

"Practitioner" includes a licensed physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant. Refer to chapter 69.41 RCW for a complete listing of practitioners.

"Prescribed medication" means any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Prescriber" means a health care practitioner authorized by Washington state law to prescribe drugs.

"Problem" means a violation of any WAC or RCW applicable to the operation of a boarding home:

(1) **"Recurring problem"** means, for all purposes other than those described in RCW 18.20.400, that the department has cited the boarding home for a violation of WAC or RCW and the circumstances of (a) or (b) of this subsection are present:

(a) The department previously imposed an enforcement remedy for a violation of the same section of WAC or RCW for substantially the same problem following any type of inspection within the preceding thirty-six months; or

(b) The department previously cited a violation under the same section of WAC or RCW for substantially the same problem following any type of inspection on two occasions within the preceding thirty-six months.

(c) If the previous violation in (a) or (b) of this subsection was pursuant to WAC or RCW that has changed at the time of the new violation, citation to the equivalent current WAC or RCW section is sufficient.

(d) When there is a change in licensees between the first and the second or third citations, the new licensee must accept, and the department will consider, the prior licensee's compliance and enforcement record as part of the new licensee's compliance record at that boarding home if any person affiliated with the new licensee was affiliated with the prior licensee at the same boarding home. A person is considered affiliated with the licensee if the person is an applicant for the boarding home license, or is listed on the license application as a partner, officer, director, or majority owner of the applicant.

(2) **"Serious problem"** means:

(a) There has been a violation of a WAC or RCW; and

(b) Significant harm has actually occurred to a resident; or

(c) It is likely that significant harm or death will occur to a resident.

(3) **"Uncorrected problem"** means the department has cited a violation of WAC or RCW following any type of inspection and the violation remains uncorrected at the time the department makes a subsequent inspection for the specific purpose of verifying whether such violation has been

corrected. When a change in licensees occurs, the new licensee is responsible for correcting any remaining violations that may exist, including complying with any plan of correction in effect immediately prior to the change in licensees.

"Prospective resident" means an individual who is seeking admission to a licensed boarding home and who has completed and signed an application for admission, or such application for admission has been completed and signed in their behalf by their legal representative if any, and if not, then the designated representative if any.

"Reasonable accommodation" and **"reasonably accommodate"** have the meaning given in federal and state antidiscrimination laws and regulations which include, but are not limited to, the following:

(1) Reasonable accommodation means that the boarding home must:

(a) Not impose admission criteria that excludes individuals unless the criteria is necessary for the provision of boarding home services;

(b) Make reasonable modification to its policies, practices or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the boarding home; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

"RCW" means Revised Code of Washington.

"Records" means:

(1) **"Active records"** means the current, relevant documentation regarding residents necessary to provide care and services to residents; or

(2) **"Inactive records"** means historical documentation regarding the provision of care and services to residents that is no longer relevant to the current delivery of services and has been thinned from the active record.

"Resident" means an individual who:

(1) Chooses to reside in a boarding home, including an individual receiving respite care;

(2) Is not related by blood or marriage to the operator of the boarding home;

(3) Receives basic services; and

(4) Receives one or more of the services listed in the definition of "general responsibility for the safety and well-being of the resident," and may receive domiciliary care or respite care provided directly, or indirectly, by the boarding home. A nonresident individual may receive services that are permitted under WAC 388-78A-2032.

"Resident's representative" means:

(1) The legal representative who is the person or persons identified in RCW 7.70.065 and who may act on behalf of the resident pursuant to the scope of their legal authority. The legal representative shall not be affiliated with the licensee,

boarding home, or management company, unless the affiliated person is a family member of the resident; or

(2) If there is no legal representative, a person designated voluntarily by a competent resident in writing, to act in the resident's behalf concerning the care and services provided by the boarding home and to receive information from the boarding home if there is no legal representative. The resident's representative may not be affiliated with the licensee, boarding home, or management company, unless the affiliated person is a family member of the resident. The resident's representative under this subsection shall not have authority to act on behalf of the resident once the resident is no longer competent. The resident's competence shall be determined using the criteria in RCW 11.88.010 (1)(e).

"Respite care" means short-term care for any period in excess of twenty-four continuous hours for a resident to temporarily relieve the family or other caregiver of providing that care.

"Restraint" means any method or device used to prevent or limit free body movement, including, but not limited to:

(1) Confinement, unless agreed to as provided in WAC 388-78A-2370;

(2) **"Chemical restraint"** which means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms; and

(3) **"Physical restraint"** which means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and not required to treat the resident's medical symptoms.

"Room" means a space set apart by floor to ceiling partitions on all sides with all openings provided with doors or windows.

(1) **"Sleeping room"** means a room where a resident is customarily expected to sleep and contains a resident's bed.

(2) **"Resident living room"** means the common space in a resident unit that is not a sleeping room, bathroom or closet.

"Significant change" means a change in the resident's physical, mental, or psychosocial status that causes either life-threatening conditions or clinical complications.

"Special needs" means a developmental disability, mental illness, or dementia.

"Staff person" means any boarding home employee or temporary employee or contractor, whether employed or retained by the licensee or any management company, or volunteer.

"State fire marshal" means the director of fire protection under the direction of the chief of the Washington state patrol.

"Toilet" means a disposal apparatus used for urination and defecation, fitted with a seat and flushing device.

"Volunteer" means an individual who interacts with residents without reimbursement.

"Vulnerable adult" includes a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(2) Found incapacitated under chapter 11.88 RCW; or

(3) Who has a developmental disability as defined under RCW 71A.10.020; or

(4) Admitted to any facility, including any boarding home; or

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(6) Receiving services from an individual provider.

(7) For the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

"WAC" means Washington Administrative Code.

"Wellness program" means an educational program provided by the boarding home. It is a proactive and preventative approach to assist residents and nonresident individuals in achieving optimal levels of health, social, and emotional functioning. A wellness program does not include medical care or interventions.

"Willful" means the deliberate, or nonaccidental, action or inaction by an alleged perpetrator that he/she knows or reasonably should have known could cause a negative outcome, including harm, injury, pain or anguish.

"WISHA" means the Washington Industrial Safety and Health Act, chapter 49.17 RCW administered by the Washington state department of labor and industries.

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))~~ (2) After ~~((January 1, 2012))~~ January 7, 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.

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) The boarding home must ensure ~~((the following have Washington state))~~ that the administrator and all caregivers

employed directly or by contract after January 7, 2012 have the following background checks:

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

(b) A national fingerprint background check.

(3) The boarding home must ensure that the following individuals have a Washington state name and date of birth background check:

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

~~(b) (Administrators;~~

~~(c) Licensee;~~

~~(d))~~ Staff persons who are not caregivers or administrators;

~~((e))~~ (c) Managers who do not 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—Background authorization form. ~~((+))~~ 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))~~ (1) Require the person to complete a DSHS background authorization form; and

~~((b))~~ (2) 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.)~~

NEW SECTION

WAC 388-78A-24641 Background checks—Washington state name and date of birth background check. If the results of the Washington state name and date of birth background check indicate the person is disqualified by having a conviction listed in WAC 388-78A-2470 subsections (1) through (6), or by having a finding listed in WAC 388-78A-2470 subsections (7) through (9), then the boarding home must:

(1) Not employ, directly or by contract, a caregiver, administrator, or staff person; and

(2) Not allow a volunteer or student to have unsupervised access to residents.

NEW SECTION

WAC 388-78A-24642 Background checks—National fingerprint background check. (1) Administrators and all caregivers who are hired after January 7, 2012 and are not disqualified by the Washington state name and date of birth background check, must complete a national fingerprint background check and follow department procedures.

(2) After receiving the results of the national fingerprint background check the boarding home must not employ, directly or by contract, an administrator or caregiver who has been convicted of a crime or has a finding that is disqualifying under WAC 388-78A-2470.

(3) The boarding home may accept a copy of the national fingerprint background check results letter and any additional information from the department's background check central unit from an individual who previously completed a national fingerprint check through the department's background check central unit, provided the national fingerprint background check was completed after January 7, 2012.

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

WAC 388-78A-2465 Background check—Results—Inform. ~~(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 Washington state name and date of birth background check, the boarding home must:

(a) Inform the person of the results of the background check;

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

(2) After receiving the result letter for the national fingerprint background check, the boarding home must inform the person:

(a) Of the national fingerprint background check result letter;

(b) That they may request a copy of the national fingerprint check result letter; and

(c) That any additional information requested can only be obtained from the department's background check central unit.

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

WAC 388-78A-2466 Background checks—Washington state name and date of birth background check—Valid for two years—National fingerprint background check—Valid indefinitely. (1) 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:

~~((H))~~ (a) A new DSHS background authorization form is submitted to ~~((BCCU))~~ the department's background check central unit every two years for ~~((individuals listed in WAC 388-78A-2462))~~ all administrators, caregivers, staff persons, volunteers and students; and

~~((Z))~~ (b) There is a valid Washington state name and date of birth background check for all ~~((individuals listed in WAC 388-78A-2462))~~ administrators, caregivers, staff persons, volunteers and students.

(2) A national fingerprint background check is valid for an indefinite period of time. The boarding home must ensure there is a valid national fingerprint background check completed for all administrators and caregivers hired after January 7, 2012. To be considered valid, the national fingerprint background check must be initiated and completed through the department's background check central unit after January 7, 2012.

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;))~~ administrator, caregiver, or staff person 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))~~ person to the department no later than one business day after ~~((the individual))~~ he or she starts working;

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

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

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

(5) Ensures direct supervision~~((, of the individual, as defined in RCW 18.20.270))~~ of the administrator, all caregivers, and staff persons; 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 a caregiver and an administrator hired after January 7, 2012 for one hundred and twenty-days and allow the caregiver or administrator to have unsupervised access to residents when:

(1) The caregiver or administrator 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))~~ administrator, caregiver, staff person, volunteer and student, prior to starting his or her duties, 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))~~ person under penalty of perjury.

(2) The department may require the boarding home or any ~~((individual described in WAC 388-78A-2462))~~ administrator, caregiver, staff person, volunteer or student 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.

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

WAC 388-78A-2470 Background check—Employment-disqualifying information. The boarding home must not employ or allow an ~~((individual described in WAC 388-78A-2462))~~ administrator, caregiver, or staff person, to have unsupervised access to residents, as defined in RCW 43.43.830, if the ~~((individual))~~ person has been:

(1) 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))~~ have passed since the last conviction;

(2) Convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in the 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;

(3) Convicted of the manufacture, delivery, or possession with intent to manufacture or deliver drugs under one of the following laws:

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

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

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

(d) Violation of the Uniform Precursor Drug Act (VUPDA);

(4) Convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;

(5) Convicted of criminal mistreatment;

(6) Convicted of a crime in any federal ~~((court))~~ or ~~((in any other))~~ state court, and the department determines that

the crime is equivalent to a crime described in this ~~((subsection))~~ section;

(7) Found to have abused, neglected, financially exploited or abandoned a minor or vulnerable adult by a court of law or a disciplining authority, including the department of health;

(8) Found to have abused or neglected a child and that finding is:

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

(b) Disclosed by the individual, except for finding made before December, 1998.

(9) Found to have abused, neglected, financially exploited or abandoned a vulnerable adult and that finding is:

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

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

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

NEW SECTION

WAC 388-78A-24701 Background checks—Employment—Nondisqualifying information. (1) If the background check results show that an employee or prospective employee 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, 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 boarding home.

AMENDATORY SECTION (Amending WSR 12-01-003, filed 12/7/11, effective 1/7/12)

WAC 388-78A-2474 Training and home care aide certification requirements. (1) The boarding home must ensure staff persons hired before January 7, 2012 meet training requirements in effect on the date hired, including requirements in chapter 388-112 WAC.

(2) The boarding home must ensure all boarding home administrators, or their designees, and caregivers hired on or after January 7, 2012 meet the long-term care worker training requirements of chapter 388-112 WAC, including but not limited to:

(a) Orientation and safety;

(b) Basic;

(c) Specialty for dementia, mental illness and/or developmental disabilities when serving residents with any of those primary special needs;

(d) Cardiopulmonary resuscitation and first aid; and

(e) Continuing education.

(3) The boarding home must ensure that all staff receive appropriate training and orientation ~~((for))~~ to perform their specific job duties and responsibilities.

(4) The boarding home must ensure all persons listed in subsection (2) of this section, obtain the home-care aide certification ~~((if required by chapter 246-980 WAC))~~.

(5) Under RCW ~~((18.88B.040))~~ 18.88B.041 and chapter 246-980 WAC, certain ~~((persons))~~ individuals including registered nurses, licensed practical nurses, certified nursing assistants, or persons who are in an approved certified nursing assistant program are exempt from long-term care worker training requirements. Continuing education requirements still apply as outlined in chapter 388-112 WAC.

(6) For the purpose of this section, the term "caregiver" has the same meaning as the term "long-term care worker" as defined in RCW 74.39A.009.

AMENDATORY SECTION (Amending WSR 12-01-003, filed 12/7/11, effective 1/7/12)

WAC 388-78A-2750 Application process. To apply for a boarding home license, a person must:

(1) Submit to the department a complete license application on forms designated by the department at least ninety days prior to the proposed effective date of the license;

(2) Submit all relevant attachments specified in the application;

(3) Submit department background authorization forms ~~((as required in WAC 388-78A-2462 and 388-78A-2463))~~;

(4) Sign the application;

(5) Submit the license fee as specified in WAC 388-78A-3230;

(6) Submit verification that construction plans have been approved by construction review services;

(7) Submit a revised application before the license is issued if any information has changed since the initial license application was submitted;

(8) Submit a revised application containing current information about the proposed licensee or any other persons named in the application, if a license application is pending for more than one year; and

(9) If the licensee's agent prepares an application on the licensee's behalf, the licensee must review, sign and attest to the accuracy of the information contained in the application.

(10) A license must be issued only to the person who applied for the license.

(11) A license may not exceed twelve months in duration and expires on a date set by the department.

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.

WSR 12-22-012
PERMANENT RULES
PUGET SOUND
CLEAN AIR AGENCY

[Filed October 26, 2012, 4:47 p.m., effective December 1, 2012]

Effective Date of Rule: December 1, 2012.

Purpose: The proposed rules amend the Puget Sound Clean Air Agency's existing rules regarding solid fuel burning devices to clarify the definition of "adequate source of heat;" to require the removal of uncertified wood stoves and coal-only heaters from buildings in the Tacoma, Pierce County, nonattainment area by September 30, 2015; to clarify allowable fuels; and to add a prohibition on installing unapproved devices, including older, polluting, uncertified wood stoves.

Citation of Existing Rules Affected by this Order: Amending Regulation I, Article 13.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 12-17-145 on August 21, 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: October 25, 2012.

Craig Kenworthy
Executive Director

AMENDATORY SECTION

REGULATION I, SECTION 13.01 POLICY AND PURPOSE

The Board of Directors of the Puget Sound Clean Air Agency (Board) declares it to be the public policy of the Agency to control and reduce air pollution caused by (~~woodstove emissions~~) solid fuel burning devices such as wood stoves, pellet stoves, and fireplaces. It is the Agency's policy to (~~reduce woodstove emissions by encouraging the continued efforts to~~) educate the public about the health effects of (~~woodstove~~) wood stove emissions (~~(, other)~~) and cleaner heating alternatives (~~(, and)~~). It is the (~~(desirability)~~) intent of (~~(achieving better emission performance and heating efficiency from woodstoves pursuant to the emissions performance standards as adopted by the Department of Ecology)~~) this regulation to secure and maintain levels of air quality that protect human health and to comply with the requirements of the state and federal Clean Air Acts. (~~(It is further the policy~~

~~of the Board to encourage the replacement of uncertified woodstoves with cleaner sources of heat.))~~

The Board encourages cities, towns and counties within its jurisdiction to (~~(adopt woodsmoke control programs including)~~) enhance (~~(d)~~) public education (~~(and abatement ordinances)~~) and assist in the enforcement of this Regulation during declared air quality episodes and periods of impaired air quality. (~~(Nothing in this Regulation shall be construed to impair the right of any city, town or county to adopt and enforce woodsmoke abatement ordinances.))~~)

REPEALER

REGULATION I, SECTION 13.02 GENERAL CONDITIONS FOR SOLID FUEL BURNING DEVICES

NEW SECTION

REGULATION I, SECTION 13.02 DEFINITIONS

When used herein:

(a) ADEQUATE SOURCE OF HEAT means a heating system designed to maintain seventy degrees Fahrenheit at a point three feet above the floor in each normally inhabited room. If any part of the heating system has been disconnected, damaged, or is otherwise nonfunctional, the Agency shall base the assessment of the adequacy of the design on the system's capability prior to the disconnection, damage, improper maintenance (~~(failure to maintain)~~), malfunction, or occurrence that rendered the system nonfunctional.

(b) AGENCY means the Puget Sound Clean Air Agency.

(c) CERTIFIED WOOD STOVE means a wood stove that:

(1) has been determined by Ecology to meet Washington emission performance standards, pursuant to RCW 70.94.457 and WAC 173-433-100; or

(2) has been certified and labeled in accordance with procedures and criteria specified in "40 C.F.R. 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990; or

(3) meets the "Oregon Department of Environmental Quality Phase 2" emissions standards contained in Subsections (2) and (3) of Section 340-21-115, and is certified in accordance with "Oregon Administrative Rules, Chapter 340, Division 21 - Woodstove Certification" dated November 1984.

(d) COAL-ONLY HEATER means an enclosed, coal burning appliance capable of and intended for residential space heating, domestic water heating, or indoor cooking and has all of the following characteristics:

(1) An opening for emptying ash which is located near the bottom or the side of the appliance;

(2) A system which admits air primarily up and through the fuel bed;

(3) A grate or other similar device for shaking or disturbing the fuel bed or power driven mechanical stoker; and

(4) The model is listed by a nationally recognized safety testing laboratory for use of coal only, except for coal ignition purposes.

(e) ECOLOGY means the Washington State Department of Ecology.

(f) EPA means the United States Environmental Protection Agency.

(g) FINE PARTICULATE or PM2.5 means particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers.

(h) FIREPLACE means any permanently installed masonry fireplace or any factory-built metal solid fuel burning device designed to be used with an open combustion chamber and without features to control the air to fuel ratio.

(i) NONAFFECTED PELLET STOVE means a pellet stove that has an air-to-fuel ratio equal to or greater than 35.0 to 1.0 when tested by an accredited laboratory in accordance with methods and procedures specified by the EPA in "40 CFR 60 Appendix A, Test Method 28A - Measurement of Air to Fuel Ratio and Minimum Achievable Burn Rates for Wood-Fired Appliances" as amended through July 1, 1990.

(j) NONATTAINMENT AREA means a geographical area designated by EPA at 40 C.F.R. Part 81 as exceeding a National Ambient Air Quality Standard for a given criteria pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

(k) PM10 means particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

(l) PROPERLY SEASONED FUEL WOOD means untreated wood or untreated lumber with moisture content of 20% or less, wet basis, or 25% or less, dry basis.

(m) SOLID FUEL BURNING DEVICE or SOLID FUEL HEATING DEVICE means a device that burns wood, coal, or any other nongaseous or nonliquid fuels, and includes any device burning any solid fuel which has a heat input less than one million British thermal units per hour. This includes, but is not limited to, devices used for aesthetic or space-heating purposes in a private residence or commercial establishment.

(n) SUBSTANTIALLY REMODELED means any alteration or restoration of a building exceeding sixty percent of the appraised value of such building within a twelve-month period.

(o) TACOMA, WASHINGTON FINE PARTICULATE NONATTAINMENT AREA means the area of Pierce County that is designated by EPA as not meeting the 2006 federal 24-hr fine particulate National Ambient Air Quality Standard and described in 40 CFR 81.348. This area is also known as the Tacoma, Pierce County Nonattainment Area.

(p) TREATED WOOD means wood or lumber of any species that has been chemically impregnated, painted, or similarly modified to prevent weathering and deterioration.

(q) WOOD STOVE or WOOD HEATER means an enclosed solid fuel burning device capable of and intended for residential space heating and domestic water heating that meets the following criteria contained in "40 CFR 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990:

(1) An air-to-fuel ratio in the combustion chamber averaging less than 35.0, as determined by EPA Reference Method 28A;

(2) A useable firebox volume of less than twenty cubic feet;

(3) A minimum burn rate less than 5 kg/hr as determined by EPA Reference Method 28; and

(4) A maximum weight of 800 kg, excluding fixtures and devices that are normally sold separately, such as flue pipe, chimney, and masonry components not integral to the appliance.

Any combination of parts, typically consisting of but not limited to: doors, legs, flue pipe collars, brackets, bolts and other hardware, when manufactured for the purpose of being assembled, with or without additional owner supplied parts, into a woodstove, is considered a woodstove.

REPEALER

REGULATION I, SECTION 13.03 CONTINGENCY PLAN

NEW SECTION

REGULATION I, SECTION 13.03 OPACITY STANDARDS

(a) A person shall not cause or allow emission of a smoke plume from any solid fuel burning device to exceed an average of twenty percent opacity for six consecutive minutes in any one-hour period.

(b) Test method and procedures. Methods and procedures specified by the EPA in "40 CFR 60 Appendix A reference method 9 - Visual Determinations of the Opacity of Emissions from Stationary Sources" as amended through July 1, 1990, shall be used to determine compliance with subsection (a) of this section.

(c) Enforcement. Smoke visible from a chimney, flue or exhaust duct in excess of the opacity standard shall constitute prima facie evidence of unlawful operation of a solid fuel burning device. This presumption may be refuted by demonstration that the smoke was not caused by a solid fuel burning device. The provisions of this section shall not apply during the starting of a new fire for a period not to exceed twenty minutes in any four-hour period.

NEW SECTION

REGULATION I, SECTION 13.04 ALLOWED AND PROHIBITED FUEL TYPES

(a) A person shall cause or allow only the following materials to be burned in a solid fuel burning device:

(1) Properly seasoned fuel wood; or

(2) An amount of paper necessary for starting a fire; or

(3) Wood pellets; or

(4) Biomass fire logs intended for burning in a wood stove or fireplace; or

(5) Coal with sulfur content less than 1.0% by weight burned in a coal-only heater.

(b) All other materials are prohibited from being burned in a solid fuel burning device, including, but not limited to: garbage; pallets; treated lumber; fencing; treated wood; plastic and plastic products; rubber products; animal carcasses; asphaltic products; waste petroleum products; paints and chemicals; paper (other than an amount necessary to start a fire); or any substance that emits dense smoke or obnoxious odors.

NEW SECTION**REGULATION I, SECTION 13.05 RESTRICTIONS ON OPERATION OF SOLID FUEL BURNING DEVICES**

(a) No person in a residence or commercial establishment shall operate a solid fuel burning device under any of the following conditions:

(1) Whenever the Agency has declared the first stage of impaired air quality for a geographical area in accordance with RCW 70.94.473 (1)(b)(i) or (ii) unless an exemption for the residence or commercial building has been obtained from the Agency pursuant to subsection (d) of this section or the solid fuel burning device is one of the following:

(A) A nonaffected pellet stove; or

(B) A wood stove certified and labeled by the EPA under "40 CFR 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990; or

(C) A wood stove meeting the "Oregon Department of Environmental Quality Phase 2" emission standards contained in Subsections (2) and (3) of Section 340-21-115, and certified in accordance with "Oregon Administrative Rules, Chapter 340, Division 21 - Woodstove Certification" dated November 1984; or

(D) A solid fuel burning device approved by Ecology as meeting the standards in RCW 70.94.457 (1)(a)-(b).

(2) Whenever the Agency has declared the second stage of impaired air quality for a geographical area in accordance with RCW 70.94.473 (1)(c)(i), (ii), or (iii) unless an exemption for the residence or commercial building has been obtained from the Agency pursuant to subsection (d) of this section.

(b) Whenever a first stage of impaired air quality is declared under subsection (a)(1):

(1) New solid fuel shall be withheld from any solid fuel burning device already in operation for the duration of the first stage of impaired air quality if that device is restricted from operating under subsection (a)(1) of this section during the first stage of impaired air quality;

(2) Smoke visible from a chimney, flue, or exhaust duct after three hours has elapsed from the declaration of a first stage of impaired air quality shall constitute prima facie evidence of unlawful operation of a solid fuel burning device if that solid fuel burning device is restricted from operating during a first stage of impaired air quality. This presumption may be refuted by demonstration that the smoke was not caused by a solid fuel burning device.

(c) Whenever a second stage of impaired air quality is declared under subsection (a)(2):

(1) New solid fuel shall be withheld from any solid fuel burning device already in operation for the duration of the second stage of impaired air quality if that device is restricted from operating under subsection (a)(2) of this section during the second stage of impaired air quality.

(2) Smoke visible from a chimney, flue, or exhaust duct after three hours has elapsed from the declaration of a second stage of impaired air quality shall constitute prima facie evidence of unlawful operation of a solid fuel burning device if that solid fuel burning device is restricted from operating during a second stage of impaired air quality. This presumption

may be refuted by demonstration that the smoke was not caused by a solid fuel burning device.

(d) Any person desiring an exemption from the Agency for the purposes of subsections (a)(1) or (2) of this section shall apply to the Agency using procedures specified by the Agency.

(1) The following are eligible for exemption:

(A) A residence or commercial building that has no adequate source of heat other than a solid fuel burning device and the building was neither constructed nor substantially remodeled after July 1, 1992.

(B) A residence or commercial building that has no adequate source of heat other than a solid fuel heating device and the building:

i. was constructed or substantially remodeled after July 1, 1992; and

ii. is outside an urban growth area, as defined in RCW 36.70A; and

iii. is outside an area designated by EPA as a PM2.5 or PM10 particulate nonattainment area.

(2) Exemptions shall be valid for a period determined by the Agency. Exemptions may be renewed using procedures specified by the Agency, provided the applicant meets the applicable requirements at the time of exemption renewal. Exemptions may be revoked if the Agency determines the residence or commercial building for which the exemption was approved no longer qualifies for an exemption.

NEW SECTION**REGULATION I, SECTION 13.06 EMISSION PERFORMANCE STANDARDS**

(a) Solid fuel burning devices. A person shall not advertise to sell, offer to sell, sell, bargain, exchange, give away, or install a solid fuel burning device unless it meets both subsections (1) and (2):

(1) It has been certified and labeled in accordance with procedures and criteria specified in "40 CFR 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990; and

(2) It meets the following particulate air contaminant emission standards and the test methodology of EPA in effect on January 1, 1991, or an equivalent standard under any test methodology adopted by EPA subsequent to such date:

(A) Two and one-half grams per hour for catalytic woodstoves; and

(B) Four and one-half grams per hour for all other solid fuel burning devices.

(3) For purposes of subsection (a)(2) of this section, "equivalent" shall mean the emissions limits specified in subsection (a)(2) multiplied by a statistically reliable conversion factor determined by Ecology that relates the emission test results from the methodology established by the EPA prior to May 15, 1991, to the test results from the methodology subsequently adopted by EPA.

(b) Fireplaces. A person shall not advertise to sell, offer to sell, sell, bargain, exchange, give away, or install a factory-built fireplace unless it meets the 1990 EPA standards for wood stoves or an equivalent standard that may be established by the state building code council by rule.

(c) Subsection (a) of this section shall not apply to fireplaces, including factory-built fireplaces and masonry fireplaces.

NEW SECTION

REGULATION I, SECTION 13.07 PROHIBITIONS ON WOOD STOVES THAT ARE NOT CERTIFIED WOOD STOVES

(a) Subsections (a)(1) - (a)(4) of this section shall be effective January 1, 2015 and apply only to PM2.5 nonattainment areas or areas where required by EPA.

(1) Any person who owns or is responsible for a wood stove that is both (a) not a certified wood stove and (b) is located in the Tacoma, Washington fine particulate nonattainment area must remove and dispose of it or render it permanently inoperable by September 30, 2015.

(2) Any person who owns or is responsible for a coal-only heater located in the Tacoma, Washington fine particulate nonattainment area must remove and dispose of it or render it permanently inoperable by September 30, 2015.

(3) Subsection (a)(1) of section does not apply to:

(A) A person in a residence or commercial establishment that does not have an adequate source of heat without burning wood; or

(B) A person with a shop or garage that is detached from the main residence or commercial establishment that does not have an adequate source of heat in the detached shop or garage without burning wood.

(4) The owner or person responsible for removing or rendering permanently inoperable a wood stove under subsection (a)(1) of this section or a coal-only heater under subsection (a)(2) of this section must provide documentation of the removal and disposal or rendering permanently inoperable to the Agency using the Agency's procedures within 30 days of the removal or rendering permanently inoperable.

(b) PM10. Subsection (b) of this section is established for the sole purpose of a contingency measure for PM10 nonattainment and maintenance areas. If the EPA makes written findings that: (1) an area has failed to attain or maintain the National Ambient Air Quality Standard for PM10, and (2) in consultation with Ecology and the Agency, finds that the emissions from solid fuel burning devices are a contributing factor to such failure to attain or maintain the standard, the use of wood stoves not meeting the standards set forth in RCW 70.94.457 shall be prohibited within the area determined by the Agency to have contributed to the violation. This provision shall take effect one year after such a determination.

WSR 12-22-015

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 29, 2012, 10:36 a.m., effective January 1, 2013]

Effective Date of Rule: January 1, 2013.

Purpose: Washington state department of agriculture (WSDA) estimates that it costs from \$19 - \$31/tester to

administer exams yet does not currently collect a fee for this activity. The fee will raise approximately \$100,000 and will partially offset the \$616,000 in general fund dollars lost by the pesticide management division (PMD) during the last biennium. This proposal would revise WAC 16-228-1540 to establish a \$25 testing fee when taking WSDA pesticide and structural pest inspector exams. The fee would be charged each time exams are administered and is the same for each test taker regardless of the number of exams taken. The fee will assist the program in recovering costs to administer exams to approximately four thousand prospective licensees each year. Exams are offered in all PMD offices, following large WSU prelicense shortcourses and upon request whenever fifteen or more testers can be guaranteed.

Citation of Existing Rules Affected by this Order:
Amending WAC 16-228-1540.

Statutory Authority for Adoption: 3ESHB 2127, chapter 7, Laws of 2012, RCW 17.21.030 and 15.58.040.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 12-18-077 on September 5, 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 1, 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: October 25, 2012.

Dan Newhouse
Director

AMENDATORY SECTION (Amending WSR 03-22-029, filed 10/28/03, effective 11/28/03)

WAC 16-228-1540 What are the requirements for pesticide examinations? (1) An examination fee of ~~((ten))~~ twenty-five dollars shall be paid prior to administration of any pesticide or structural pest inspector license examinations ~~((at other than a regularly scheduled examination session. Scheduled exam sessions occur every Tuesday at the Olympia and Yakima pesticide management division offices and at other offices as scheduled))~~. The department reserves the right to restrict the number of applicants examining at any given time.

(2) Any individual who fails any pesticide licensing examination twice shall be required to wait at least fourteen days before retaking that examination a third time. Subsequent testing shall be at the director's discretion.

(3) An applicant shall complete the application form for a pesticide or structural pest inspector license and pay the

required license application fee (~~(prior to being given)~~) and testing fee at the time pesticide or structural pest inspector examinations are given, unless prior arrangements have been made.

(4) Pesticide and structural pest inspector examination scores shall not be released by the department until the license application fee (~~has~~) and testing fee have been paid.

WSR 12-22-019

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 29, 2012, 11:05 a.m., effective November 29, 2012]

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

Purpose: In 2009, the legislature established a requirement to chapter 90.64 RCW that dairy producers must maintain records to demonstrate that applications of nutrients to crop land are within acceptable agronomic rates (RCW 90.64.010 (17)(c)). In 2010, the legislature established a new penalty under the Dairy Nutrient Management Act for lack of recordkeeping, with criteria for the level of penalty to be adopted in rule (RCW 90.64.102). The department is establishing a penalty matrix for discharge violations and recordkeeping violations in new chapter 16-611 WAC.

Statutory Authority for Adoption: RCW 90.64.110.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 12-18-078 on September 5, 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 7, 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: October 29, 2012.

Dan Newhouse
Director

Chapter 16-611 WAC

NUTRIENT MANAGEMENT

NEW SECTION

WAC 16-611-005 Purpose. The purpose of this chapter is to provide for fair and uniform determination of civil penalties issued for violations of chapter 90.64 RCW.

NEW SECTION

WAC 16-611-010 Definitions. "Agronomic rate" means the application of nutrients to supply crop or plant nutrient needs to achieve realistic yields and minimize the movements of nutrients to surface and ground waters.

"Dairy nutrient management plan" means a plan meeting the requirements established under RCW 90.64.026.

"Dairy producer" means a person who owns or operates a licensed dairy farm.

"Department" means the Washington state department of agriculture.

"Nutrient," for purposes of this rule, means any product or combination of products used to supply crops with plant nutrients including, but not limited to, manure or commercial fertilizer.

"Transfer of manure" means the transfer of manure, litter or process waste water to other persons when the receiving facility is in direct control of:

- (a) Application acreage;
- (b) Application rate;
- (c) Application times; and
- (d) Transfer rate and time.

NEW SECTION

WAC 16-611-020 Recordkeeping requirements. (1) In accordance with RCW 90.64.010 (17)(c) and 90.64.102, dairy producers must maintain records to demonstrate that applications of nutrients to crop land are within acceptable agronomic rates.

(2) Dairy producers must maintain the following records to demonstrate that applications of nutrients to the land were within acceptable agronomic rates:

- (a) Soil analysis.
 - (i) Annual post-harvest soil nitrate nitrogen analysis;
 - (ii) Every three years, a current soil analysis that includes:
 - (A) Organic matter;
 - (B) pH;
 - (C) Ammonium nitrogen;
 - (D) Phosphorus (the Bray-1 method must be used to determine soil phosphorus for soils below pH 7 and the Olsen bicarbonate method must be used for soils at or above pH 7);
 - (E) Potassium; and
 - (F) A measure of electrical conductivity.
 - (b) Nutrient analysis for all sources of organic and inorganic nutrients including, but not limited to, manure and commercial fertilizer supplied for crop uptake. Manure and other organic sources of nutrients must be analyzed annually for organic nitrogen, ammonia nitrogen, and phosphorus.
 - (c) Application records must include:
 - (i) Field identification and year of application;
 - (ii) Crop grown in each field where the application occurred;
 - (iii) Crop nutrient needs based on expected crop yield;
 - (iv) Nutrient sources available from residual soil nitrogen including contributions from soil organic matter, previous legume crop, and previous organic nutrients applied;

(v) Date of applications, method of application, nutrient sources, nutrient analysis, amount of nitrogen and phosphorus applied and available for each source;

(vi) Total amount of nitrogen and phosphorus applied to each field each year; and

(vii) Weather conditions twenty-four hours prior to and at time of application.

(d) Manure transfer records, including imports or exports. Records must include:

(i) Date of manure transfer;

(ii) Amount of nutrients transferred;

(iii) The name of the person supplying and receiving the nutrients; and

(iv) Nutrient analysis of manure transferred.

(e) Irrigation water management records. Records must include:

(i) Field identification;

(ii) Total amount of irrigation water applied to each field each year.

NEW SECTION

WAC 16-611-100 Assessing civil penalties. The department may assess civil penalties.

(1) Nothing in this chapter shall prevent the department from:

(a) Choosing not to pursue a civil penalty;

(b) Issuing a notice of correction in lieu of pursuing a civil penalty;

(c) Negotiating a settlement of cases of such terms and for reasons as it deems necessary; or

(d) Referring a violation to any federal or state agency with jurisdiction over the activities in question.

(2) Prior violations may be used by the department for the purpose of determining the appropriate penalty for current violations.

(3) Responses and mitigating actions taken by the dairy and responsible party may be used by the department for the purpose of determining the appropriate penalty for current violations.

(4) Civil penalties under this rule are imposed pursuant to the procedures set forth in RCW 43.21B.300 and may be appealed to the pollution control hearings board in accordance with chapter 43.21B RCW.

NEW SECTION

WAC 16-611-110 Issuing a civil penalty without first issuing a notice of correction. (1) Pursuant to RCW 43.05.100, the department may issue a notice of correction when the department becomes aware of conditions that are not in compliance with the applicable laws and rules enforced by the department.

(2) The department may assess a civil penalty without first issuing a notice of correction in accordance with RCW 43.05.110 and 34.05.110.

NEW SECTION

WAC 16-611-200 Penalty for lack of recordkeeping.

(1) In accordance with RCW 90.64.010 (17)(c) and 90.64.-

102, failure to maintain all records necessary to show that applications of nutrient to the land were within acceptable agronomic rates may be subject to a civil penalty. The aggregate amount of civil penalties issued to a dairy producer under this section shall not exceed five thousand dollars per calendar year. Each violation is a separate and distinct offense.

(2) The median penalty shall be assessed unless an adjustment is warranted due to the presence of aggravating or mitigating factors.

(3) **Aggravating factors.** The department may consider aggravating circumstances and enhance the penalty based on the seriousness of the violation. When the department determines that one or more aggravating factors are present, the department may assess the maximum penalty as listed within the penalty schedule table in subsection (5) of this section or may, in its discretion, assess a civil penalty in an amount between the median and maximum amount or increase the penalty above the maximum penalty listed for the violation in subsection (5) of this section. Aggravating factors include, but are not limited to, the following:

(a) The gravity and magnitude of the violation;

(b) Whether the violation was repeated or is continuous;

(c) Whether the cause of the violation was due to negligence, or an intentional act; and

(d) The immediacy and extent to which the violation threatens the public health or safety or harms the environment.

(4) **Mitigating factors.** The department may consider mitigating circumstances and reduce the penalty. When the department determines that one or more mitigating factors are present, the department may assess the minimum penalty for the violation within the penalty schedule table in subsection (5) of this section or may, in its discretion, assess a civil penalty in an amount between the minimum and median amount listed for the violation in WAC 16-611-300(5). Mitigating factors include, but are not limited to, the following:

(a) Whether the cause of the violation was an unavoidable accident;

(b) The violator's efforts to correct the violation.

(5) Penalty schedule for recordkeeping violations.

Penalties	Recordkeeping Violations		
	Minimum	Median	Maximum
First	\$100.00	\$250.00	\$2500.00
Second	\$200.00	\$500.00	\$3000.00
Third or subsequent	\$400.00	\$1000.00	\$5000.00

NEW SECTION

WAC 16-611-300 Penalty for discharge of pollutants.

(1) In accordance with RCW 90.64.010 (17)(a), 90.48.080, and 90.48.144, a discharge of pollutants into the waters of the state may be subject to a civil penalty in the amount of up to ten thousand dollars a day for each violation. Each violation is a separate and distinct offense and, in case of a continuing violation, every day's continuance is a separate and distinct violation.

(2) The median penalty shall be assessed unless an adjustment is warranted due to the presence of aggravating or mitigating factors.

(3) **Aggravating factors.** The department may consider aggravating circumstances and enhance the penalty based on the seriousness of the violation. When the department determines that one or more aggravating factors are present, the department may assess the maximum penalty as listed within the penalty schedule table in subsection (5) of this section or may, in its discretion, assess a civil penalty in an amount between the median and maximum amount. Aggravating factors include, but are not limited to, the following:

- (a) The magnitude of harm or potential harm to:
 - (i) Waters of the state;
 - (ii) Humans, animals, plants, property, the environment;
- or
- (iii) Species listed as threatened or endangered caused by the violation(s).

(b) The similarity of the current alleged violation to previous history of the dairy, or the extent to which the alleged violation is part of a pattern of the same or substantially similar conduct.

(c) Economic value derived from noncompliance.

(4) **Mitigating factors.** The department may consider mitigating circumstances and reduce the penalty. When the department determines that one or more mitigating factors are present, the department may assess the minimum penalty for the violation within the penalty schedule table in subsection (5) of this section or may, in its discretion, assess a civil penalty in an amount between the minimum and median amount listed for the violation in subsection (3) of this section. Mitigating factors include, but are not limited to, the following:

- (a) Voluntary disclosure of a violation;
- (b) Speed and effectiveness of actions taken to correct the violation or stop a discharge to waters of the state;
- (c) Remedial actions taken to repair or compensate for impacts or that will result in increased public protection or that will permanently result in a decreased likelihood that the violation will be repeated.

(5) Penalty schedule for discharges to waters of the state.

Violation	Discharge to Waters of the State		
	Minimum	Median	Maximum
First	\$1000.00	\$4000.00	\$10,000.00
Second	\$2000.00	\$6000.00	\$10,000.00
Third or subsequent	\$4000.00	\$8000.00	\$10,000.00 ¹

¹Statutory authority RCW 90.48.144.

**WSR 12-22-020
PERMANENT RULES
OFFICE OF**

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2012-23—Filed October 29, 2012, 1:46 p.m., effective November 29, 2012]

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

Purpose: These new rules automate the fingerprint process for background checks required as part of the application process for resident licensees.

Citation of Existing Rules Affected by this Order: Amending WAC 284-17-001 and 284-17-055.

Statutory Authority for Adoption: RCW 48.02.060 and 48.17.005.

Adopted under notice filed as WSR 12-19-086 on September 18, 2012.

A final cost-benefit analysis is available by contacting Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7041, fax (360) 586-3109, e-mail kacys@oic.wa.gov.

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

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

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

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

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

Date Adopted: October 29, 2012.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2011-12, filed 9/13/11, effective 10/14/11)

WAC 284-17-001 Definitions. For purposes of this chapter, unless the context requires otherwise:

(1) "Affiliation" is a type of appointment whereby a business entity authorizes an individual insurance producer or surplus line broker to represent it when conducting insurance business.

(2) "Business entity" has the meaning set forth in RCW 48.17.010(2) and includes a sole proprietorship having associated licensees authorized to act on its behalf in the business or trade name of the sole proprietorship.

(3) "Days" means calendar days including Saturday and Sunday and holidays, unless otherwise specified.

(4) "Electronic submission" or "submitted electronically" means submission of a licensing process by an applicant, licensee, insurer, or education provider by means of the commissioner's web site or a third-party licensing provider or other state agency.

(5) "File" means a record in any retrievable format, and unless otherwise specified, includes paper and electronic formats.

(6) "Home state" has the meaning set forth in RCW 48.17.010(4).

(7) "Insurer" has the meaning set forth in RCW 48.17.-010(7).

(8) "Licensee" means a person licensed by the commissioner under Title 48 RCW to sell, solicit or negotiate insurance and includes adjusters and surplus line brokers.

(9) "Line of authority" means a license issued in one or more lines of insurance listed in RCW 48.17.170.

(10) "NAIC" means the National Association of Insurance Commissioners.

(11) "Third-party licensing provider" is designated on the commissioner's web site at: www.insurance.wa.gov.

(12) "Reinstatement" means the reissuance by the commissioner of a license that was not renewed more than sixty days but fewer than twelve months after its expiration date.

(13) "Resident" means a person who has elected to make Washington his or her home state, or, in the case of a business entity, has a place of business in this state.

(14) "Sending written notice" or "sending a copy of the written notice" means transmitting the required information in writing and, where required, on forms designated by the commissioner for that purpose, via first class mail, commercial parcel delivery company, telefacsimile, or electronic transmission, unless a specific method of transmission is specified.

(15) "Surety" means that limited line of authority of insurance or bond that covers obligations to pay the debts of, or answer for the default of another, including faithlessness in a position of public or private trust.

(16) "Travel insurance" means that limited line of authority of insurance coverage for trip cancellation, trip interruption, baggage, life, sickness and accident, disability, and personal effects when limited to a specific trip and sold in connection with transportation provided by a common carrier.

(17) "Written" or "in writing" means any retrievable method of recording an agreement or document, and, unless otherwise specified, includes paper and electronic formats.

AMENDATORY SECTION (Amending Matter No. R 2010-07, filed 1/28/11, effective 2/28/11)

WAC 284-17-055 Electronic submission of licensing processes—Implementation dates. (1) Beginning May 1, 2011, all company appointments including new, renewal, and terminations must be submitted electronically.

(2) Beginning June 1, 2011, all license renewals, both individual and business entity, must be submitted electronically.

(3) Beginning July 1, 2011, all applications for licenses, including affiliations, must be submitted electronically.

(4) Beginning July 1, 2011, all processes determined by the commissioner to be exclusive on-line licensing processes must be completed electronically through the commissioner's web site or through a third-party licensing provider. A list of exclusive on-line licensing processes is available on the commissioner's web site at: www.insurance.wa.gov.

(5) Beginning February 1, 2013, all fingerprints for a resident insurance license must be submitted electronically. A list of locations where electronic submission is available can be found on the commissioner's web site: www.insurance.wa.gov.

(6) The commissioner will no longer print or mail any document generated as part of a licensing process which the commissioner has determined to be an exclusive on-line licensing process.

WSR 12-22-021
PERMANENT RULES
OFFICE OF
INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2011-17—Filed October 29, 2012,
1:49 p.m., effective January 1, 2013]

Effective Date of Rule: January 1, 2013.

Purpose: This new rule:

1. Specifies situations in which property and casualty insurance rating rules, formulas and other rating methods will not result in rates that are unfairly discriminatory;

2. Clarifies the meaning of RCW 48.19.040 as it applies to these rating rules, formulas and other rating methods and the rate manuals they involve; and

3. Establishes processes and procedures that insurers must use when implementing rate capping rules, transition rating rules, rate stability formulas, and other rating methods.

Statutory Authority for Adoption: RCW 48.02.060 and 48.19.370.

Other Authority: RCW 48.19.080.

Adopted under notice filed as WSR 12-17-148 on August 22, 2012.

Changes Other than Editing from Proposed to Adopted Version: Subsection (4) was amended as follows:

(4) In the rate filing review process, rate stability rules that do not satisfy the requirements of this section will be considered to be unfairly discriminatory and in violation or [of] RCW 48.19.020.

A final cost-benefit analysis is available by contacting Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7036, fax (360) 586-3109, e-mail jimt@oic.wa.gov.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 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: October 29, 2012.

Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-24-130 Rate stability rules. (1) This section prescribes standards that apply to insurers' rate stability rules, which are also sometimes called "transition rules" or "premium-capping rules." For the purposes of this section, a "rate stability rule" means a rating rule created by an insurer to limit premium changes experienced by policyholders due to the insurer's:

- (a) Revision of its own rating plan;
- (b) Acquisition or planned acquisition of a book of business from an unaffiliated insurer; or
- (c) Moving or receiving business from an affiliated insurer.

(2) Insurers must file rate stability rules with the commissioner under RCW 48.19.040(1) and 48.19.043(2). If an insurer has a rate stability rule, it must be included in its filed manual of rates and rules.

(3) Subsections (4) through (11) of this section apply only to personal lines of property and casualty insurance and only to rate stability rules filed on or after the effective date of this section.

(4) In the rate filing review process, rate stability rules that do not satisfy the requirements of this section will be considered to be unfairly discriminatory and in violation of RCW 48.19.020.

(5) Insurers must not use rate stability rules as:

(a) A means of extending the applicability of a previously filed rate stability rule; or

(b) A substitute for multiple filings of base rate changes or other rate changes that have similar premium effects on all policyholders. For example, if an insurer desires a twenty-one percent rate increase across the board, it cannot file a rate stability rule that has the effect of implementing two ten percent changes one year apart.

(6) In each rate filing that proposes a rate stability rule the insurer must describe the circumstances, under subsection (1) of this section, that make a rate stability rule necessary.

(7) Each rate stability rule must specify the class or classes of risks to which it applies. Only policyholders affected by one of the situations described in subsection (1) of this section may be subject to a rate stability rule.

(8) Each rate stability rule must apply only to that portion of the premium change that results from one of the situations described in subsection (1) of this section. A rate stability rule must not apply to premium changes resulting from changes in coverage, exposure, or policyholder characteristics, or from subsequent rate changes by the insurer.

(9) Each rate stability rule must state the date or number of renewals after which the rule will no longer be in effect. A rate stability rule may not continue to affect premiums for new or renewal policies having effective dates that are more than three years after the effective date of the rate stability rule.

(10) A rate stability rule must affect only policyholders who would otherwise experience a premium change of more than ten percent for an annual policy, or five percent for a six-month policy, due to one of the situations described in subsection (1) of this section. The rate stability rule must not limit the policyholder's premium change to less than ten per-

cent for an annual policy, or five percent for a six-month policy, at each renewal.

(11) In each rate filing after the implementation of a rate stability rule, the insurer must take into consideration, in an actuarially sound manner, the effect of the rate stability rule on the indicated rate level.

**WSR 12-22-023
PERMANENT RULES
DEPARTMENT OF
EARLY LEARNING**

[Filed October 30, 2012, 9:53 a.m., effective November 30, 2012]

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

Purpose: Recent United States Consumer Product Safety Commission (CPSC) rules require child care facilities nationwide to use only cribs that meet 2010 testing and design requirements of American Society for Testing and Materials standard F1169-10 for full-size cribs, or standard F406-10a for nonfull-size cribs. See Federal Register Volume 75, Number 248, pages 81765-81788. Child care facilities have until December 28, 2012, to replace cribs that do not meet the federal standards.

Citation of Existing Rules Affected by this Order:
Amending WAC 170-295-4100.

Statutory Authority for Adoption: Chapter 43.215 RCW.

Other Authority: 16 C.F.R. parts 1219, 1220, 1500, et al.

Adopted under notice filed as WSR 12-17-156 on August 22, 2012.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: October 30, 2012.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 06-15-075 filed 7/13/06, effective 7/13/06)

WAC 170-295-4100 What sleep equipment do I need for infants? (1) You must not put infants to sleep in infant or car seats.

(2) You must provide each infant with a single-level crib (stacking cribs must not be used), infant bed, bassinet or play-

pen for napping until you and the parent agree that the child can safely use a mat, cot or other approved sleeping equipment.

(3) ((Cribs, if used, must:

(a) Be sturdy and made of wood, metal or plastic with a secure latching device;

(b) Be constructed with vertical slats that are no more than two and three eighths inches apart or be solid plexiglas;

(c) Have corner posts that extend less than one sixteenth of an inch above the sides and railing;

(d) Not have cutout designs on the end panels;

(e) Have a rail height and end panel as measured from the top of the rail or panel in its lowest position to the top of the mattress support in its highest position of at least nine inches;

(f) Have a rail height and end panel as measured from the top of the rail or panel in its highest position to the top of the mattress support in its lowest position of at least twenty six inches; and

(g) Not use crib bumper pads, stuffed toys, quilts, lamb skins, and pillows in cribs, infant beds, bassinets or playpens.) Effective December 28, 2012, each crib in use in licensed child care must meet U.S. Consumer Product Safety Commission (CPSC) requirements for full size cribs as defined in 16 Code of Federal Regulations (C.F.R.) 1219, or nonfull size cribs as defined in 16 C.F.R. 1220.

(a) A crib meets the requirements of this subsection if the crib is labeled by the manufacturer as made on or after June 28, 2011.

(b) A crib labeled as made from July 1, 2010, through June 27, 2011, may meet the requirements of this subsection if the licensee has obtained a certificate of compliance from the crib manufacturer or importer, or the licensee has other documentation from the manufacturer that the crib is certified as meeting the CPSC regulations.

(c) Any crib that does not meet the requirements of subsection (a) or (b) of this subsection must be removed from the child care facility not later than December 28, 2012.

(d) The licensee must keep in the licensed space a log documenting that each crib in use meets the requirements of this section.

(4) You must provide a crib, infant bed, playpen or bassinet mattress that is:

(a) Snug fitting and touches each side of the crib to prevent the infant from becoming entrapped between the mattress and crib side rails;

(b) Waterproof; and

(c) Easily cleaned and sanitized, without tears or tape.

(5) To allow walking room between cribs and reduce the spread of germs you must:

(a) Space cribs a minimum of thirty inches apart. You may place cribs end to end if you provide a barrier. If you use barriers, staff must be able to observe and have immediate access to each child.

(b) Provide a moisture resistant and easily cleanable solid barrier on the side or end adjacent to another crib.

(6) You must provide:

(a) An appropriate fitting sheet or cover for the sleeping surface; and

(b) A clean light weight blanket or suitable cover for the child.

(7) You must launder bedding at least weekly and more often if it becomes soiled.

WSR 12-22-028

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed October 31, 2012, 8:55 a.m., effective December 1, 2012]

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

Purpose: This rule-making order amends chapter 16-470 WAC by increasing the fees for requested services performed under the authority of chapter 17.24 RCW. During the 2012 legislative session, the Washington state legislature authorized (as required by Initiative 960) the Washington state department of agriculture to increase these fees as necessary to meet the actual costs of conducting business (see chapter 7, Laws of 2012 (3ESHB 2127)).

Citation of Existing Rules Affected by this Order: Amending WAC 16-470-912, 16-470-917, and 16-470-921.

Statutory Authority for Adoption: RCW 17.24.131 and chapter 7, Laws of 2012 (3ESHB 2127).

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 12-19-096 on September 19, 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 3, 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: October 31, 2012.

Dan Newhouse
Director

AMENDATORY SECTION (Amending WSR 09-23-006, filed 11/5/09, effective 1/1/10)

WAC 16-470-912 Schedule of fees and charges— Applicable fees and charges. (1) Hourly rate.

Hourly rate - Business hours	\$(40.00) <u>50.00</u>
Hourly rate - Nonbusiness hours	\$(51.00) <u>65.00</u>

(2) Laboratory diagnostic services, except as provided in subsection (3) or (4) of this section, are charged at the applicable hourly rate plus materials.

- (3) Plant pathology laboratory diagnostic fees:
 - (a) Nematode assay (plant material) \$38.00
 - (b) Nematode assay (soil) \$60.00
 - (c) Assay for dwarf bunt (TCK), Karnal bunt, flag smut \$60.00

Note: Fee is for one sample for one specific organism, unless more than one organism can be detected in a single test without additional inputs.

(4) The department reserves the right to provide service by written agreement at a single, negotiated cost or at a negotiated rate for projects with at least one of the following characteristics:

- (a) Projects greater than one hundred samples;
- (b) Projects requiring materials not readily available; or
- (c) Projects requiring special handling, multiple phase test procedures, or prolonged incubation periods.

The rate charged shall not be less than the cost to the department of performing the tests.

AMENDATORY SECTION (Amending WSR 09-23-006, filed 11/5/09, effective 1/1/10)

WAC 16-470-917 Schedule of fees and charges—Fees for post entry inspection services. (1) Post entry site inspection and/or permit review and approval. . . . ~~\$(81.00)~~ **101.00**

(2) Subsequent inspections of post entry plant materials are provided at the applicable hourly rate.

(3) Post entry inspection fees may be waived for state universities, United States Department of Agriculture researchers, and other public entities.

AMENDATORY SECTION (Amending WSR 09-23-006, filed 11/5/09, effective 1/1/10)

WAC 16-470-921 Schedule of fees and charges—Miscellaneous fees. (1) Mileage at the established office of financial management rate (schedule A), per diem and other authorized travel expenses at actual cost, and travel time at the applicable hourly rate may be assessed for requested inspections or post entry inspections that are not a part of a regular work schedule. Such charges may be prorated among applicants if more than one applicant is provided service during a workday or trip when per diem is applicable.

(2) Postage, special handling services and other miscellaneous costs exceeding five dollars will be charged back to the applicant at the actual cost.

(3) Certificates of inspection, phytosanitary certificates, and other official documents will be provided to the applicant subject to the charges and conditions established (~~in chapter 16-401 WAC.~~) below:

<u>Fee or Charge:</u>	
<u>Certificate issued at time of inspection</u>	<u>No charge</u>
<u>Certificate issued more than twenty-four hours after the inspection</u>	<u>\$24.00</u>
<u>Additional certificates</u>	<u>\$8.00</u>
<u>Fumigation lot or container fee</u>	<u>\$20.00</u>
<u>Compliance agreement</u>	<u>\$50.00</u>

**WSR 12-22-031
PERMANENT RULES
PARKS AND RECREATION
COMMISSION**

[Filed October 31, 2012, 12:35 p.m., effective December 1, 2012]

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

Purpose: State parks staff has reviewed commission rules and proposed changes to current business practices. These proposed changes were approved by the commission at its October 25, 2012, meeting in Vancouver. The rule changes modify the following rules as noted:

WAC 352-32-030 Camping, to allow camping in approved areas within designated sno-parks.

WAC 352-32-056 Peace and quiet, to allow the operation of electric generators after 9:00 p.m. at Easton Reload and Crystal Springs sno-parks during the winter recreation season.

WAC 352-32-125 Fires and campfires, to restrict campfires at Crystal Springs and Easton Reload sno-parks to portable fire receptacles not to exceed three feet in diameter and at least six inches off the ground, and only when open for winter recreation access.

Citation of Existing Rules Affected by this Order: Amending WAC 352-32-030 Camping, 352-32-056 Peace and quiet, and 352-32-125 Fires and campfires.

Statutory Authority for Adoption: RCW 79A.05.030 and 79A.05.035.

Adopted under notice filed as WSR 12-19-024 on September 11, 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 3, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, 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: October 25, 2012.

Valeria Evans
Management Analyst

AMENDATORY SECTION (Amending WSR 07-03-121, filed 1/22/07, effective 2/22/07)

WAC 352-32-030 Camping. (1) Camping facilities of the state parks within the Washington state parks and recreation commission system are designed and administered specifically to provide recreational opportunities for park visitors. Use of park facilities for purposes which are of a nonrecreational nature, such as long-term residency at park facilities, obstructs opportunities for recreational use, and is

inconsistent with the purposes for which those facilities were designed.

No person or camping party may use any state park facility for residence purposes, as defined (WAC 352-32-010).

(2) No person shall camp in any state park area except in areas specifically designated and/or marked for that purpose or as directed by a ranger.

(3) Occupants shall vacate camping facilities by removing their personal property therefrom no later than 1:00 p.m., if the applicable camping fee has not been paid or if the time limit for occupancy of the campsite has expired or the site is reserved by another party. Remaining in a campsite beyond the established checkout time shall subject the occupant to the payment of an additional camping fee.

(4) Use of utility campsites by tent campers shall be subject to payment of the utility campsite fee except when otherwise specified by a ranger.

(5) A campsite is considered occupied when it is being used for purposes of camping by a person or persons who have paid the camping fee within the applicable time limits or when it has been reserved through the appropriate procedures of the reservation system. No person shall take or attempt to take possession of a campsite when it is being occupied by another party, or when informed by a ranger that such site is occupied, or when the site is posted with a "reserved" sign. In the case of a reserved site, a person holding a valid reservation for that specific site may occupy it according to the rules relating to the reservation system for that park. In order to afford the public the greatest possible use of the state park system on a fair and equal basis, campsites in those parks not on the state park reservation system will be available on a first-come, first-serve basis. No person shall hold or attempt to hold campsite(s), for another camping party for present or future camping dates, except as prescribed for multiple campsites. Any site occupied by a camping party must be actively utilized for camping purposes.

(6) One person may register for one or more sites within a multiple campsite by paying the multiple campsite fee and providing the required information regarding the occupants of the other sites. An individual may register and hold a multiple campsite for occupancy on the same day by other camping parties. Multiple campsites in designated reservation parks may be reserved under the reservation system.

(7) In order to afford the general public the greatest possible use of the state park system, on a fair and equal basis, and to prevent residential use, continuous occupancy of facilities by the same camping party shall be limited. Campers may stay ten consecutive nights in one park, after which the camping party must vacate the park for three consecutive nights, April 1 through September 30, not to exceed thirty days in a forty-day time period; provided that at the discretion of the park ranger the maximum stay may be extended to fourteen consecutive nights if the campground is not fully occupied. Campers may stay twenty consecutive nights in one park, after which the camping party must vacate the park for three consecutive nights, October 1 through March 31, not to exceed forty days in a sixty-day time period. This limitation shall not apply to those individuals who meet the qualifications of WAC 352-32-280 and 352-32-285.

(8) A maximum of eight people shall be permitted at a campsite overnight, unless otherwise authorized by a ranger. The number of vehicles occupying a campsite shall be limited to one car and one recreational vehicle: Provided, That one additional vehicle without built-in sleeping accommodations may occupy a designated campsite when in the judgment of a ranger the constructed facilities so warrant. The number of tents allowed at each campsite shall be limited to the number that will fit on the developed tent pad or designated area as determined by a ranger.

(9) Persons traveling by bicycles, motor bikes or other similar modes of transportation and utilizing campsites shall be limited to eight persons per site, provided no more than four motorcycles may occupy a campsite.

(10) Water trail camping sites are for the exclusive use of persons traveling by human and wind powered beachable vessels as their primary mode of transportation to the areas. Such camping areas are subject to the campsite capacity limitations as otherwise set forth in this section. Exceptions for emergencies may be approved by the ranger on an individual basis. Water trail site fees, as published by state parks, must be paid at the time the site is occupied.

(11) Overnight stays (bivouac) on technical rock climbing routes will be allowed as outlined in the park's site specific climbing management plan. All litter and human waste must be contained and disposed of properly.

(12) Emergency camping areas may be used only when all designated campsites are full and at the park ranger's discretion. Persons using emergency areas must pay the applicable campsite fee and must vacate the site when directed by the park ranger.

(13) Designated overflow camping areas may be used only when all designated campsites in a park are full and the demand for camping in the geographic area around the park appears to exceed available facilities. Persons using overflow camping areas must pay the applicable campsite fee.

(14) Overnight camping will be allowed in approved areas within designated sno-parks in Washington state parks, when posted, provided the appropriate required sno-park permit is displayed.

(15) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 07-03-121, filed 1/22/07, effective 2/22/07)

WAC 352-32-056 Peace and quiet. To insure peace and quiet for visitors:

(1) No person shall conduct themselves so that park users are disturbed in their sleeping quarters or in campgrounds or park employees in their sleeping quarters between the quiet hours of 10:00 p.m. and 6:30 a.m.

(2) No person shall, at any time, use sound-emitting electronic equipment including electrical speakers, radios, phonographs, televisions, or other such equipment, at a volume which emits sound beyond the person's vehicle or immediate area of use, individual camp or picnic site that may disturb other park users without specific permission of the park ranger.

(3) Engine driven electric generators may be operated only between the hours of 8:00 a.m. and 9:00 p.m., except at Crystal Springs and Easton Reload sno-parks where engine driven electric generators may be operated after 9:00 p.m. during the winter recreation season.

(4) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 07-03-121, filed 1/22/07, effective 2/22/07)

WAC 352-32-125 Fires and campfires. All fires, except campfires, fires for stoves, candles, torches, barbecues and charcoal, are prohibited in state parks. Campfires are restricted to within the designated campfire pit, ring or other provided campfire enclosure and the flame must be no higher than two feet. On ocean beaches, campfires must be at least one hundred feet from the dunes, no more than four feet in diameter and no more than four feet high. No campfires are allowed on any shellfish bed. Park rangers may impose additional restrictions on fires for the protection of the health, safety and welfare of the public, park visitors or staff, or for the protection of park resources.

At Crystal Springs and Easton Reload sno-parks all campfires must be restricted to portable fire receptacles not to exceed three feet in diameter and must be at least six inches off the ground, and are only permitted when the sno-parks are open for winter recreation access.

Any violation of this section is an infraction under chapter 7.84 RCW.

WSR 12-22-037

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed November 1, 2012, 1:08 p.m., effective December 2, 2012]

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

Purpose: The purpose of these changes is to identify how the department is implementing 2SSB 5459 and further amended state law, chapter 71A.20 RCW, directing that no person under the age of sixteen years may be admitted to receive services at a residential habilitation center. In addition, that no person under the age of twenty-one years may be admitted to receive services at a residential center, unless there are no service options available in the community to appropriately meet the needs of the individual. Such admission is limited to the provision of short-term respite or crisis stabilization services.

In addition, new sections include how the department will provide a consistent, statewide process for determining what individuals may receive enhanced respite services in the community and how long they may receive those services.

Additional changes were made to all references of "mental retardation" to "intellectual disability." This change to respectful language was signed by the governor in HB 2490 and is incorporated within RCW 44.04.280, state and due to

comments received we have made some clarification changes.

Citation of Existing Rules Affected by this Order: Amending WAC 388-825-020, 388-825-068, 388-825-069, 388-825-0871, 388-825-088, 388-825-089, 388-825-091, 388-825-093, 388-825-094, 388-825-096, and 388-825-120.

Statutory Authority for Adoption: RCW 71A.12.030, 44.04.280, 2SSB 5459 and further amended state law, chapter 71A.20 RCW.

Adopted under notice filed as WSR 12-16-101 on August 1, 2012.

Changes Other than Editing from Proposed to Adopted Version: **WAC 388-825-061:** Because of comments received and advice from our AAG we have decided to withdraw this change and update it and other sections related to ITEIP during our next update to this chapter.

Initial Proposal:

WAC 388-825-061 What service am I eligible for if I am under the age of three?

DDD has withdrawn this change and will be updating WAC 388-825-061, 388-825-062, 388-825-063, and 388-825-066 in the future.

Revised Version:

WAC 388-825-061 What service am I eligible for if I am under the age of three? (1) Children under age three (0-36 months) **may be** eligible for the Early Support for Infants and Toddlers (ESIT) program under the Individuals with Disabilities Education Act, (IDEA), Part C, and Washington's federally approved plan. The ESIT is a statewide, multi-agency program, administered by and located within the department of early learning, to coordinate a system of early intervention services for children, birth to three, and their families under the federal Individuals with Disabilities Education Act (IDEA), Part C.

WAC 388-825-094: Changes to this section were to clarify that a person in a RHC does not live there but only receives services while there.

Initial Proposal:

WAC 388-825-094 Can I request to live in an RHC? You may request admission to an RHC at any time. RHC admissions are not considered permanent.

(1) Your case/resource manager will update your DDD assessment and gather other information.

(2) Admission to an RHC requires approval by the director of the division of developmental disabilities or designee.

(3) You must be twenty one years old or older.

Revised Version:

WAC 388-825-094 Can I request to receive services in an RHC? You may request to receive services in an RHC at any time. RHC admissions are not considered permanent.

(1) Your case/resource manager will update your DDD assessment and gather other information.

(2) Admission to an RHC requires approval by the director of the division of developmental disabilities or designee.

(3) You must be twenty-one years of age or older to be admitted as a long-term resident.

Number of Sections Adopted in Order to Comply with Federal Statute: New 3, Amended 11, 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.

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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 11, Repealed 0.

Date Adopted: October 29, 2012.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-02-101, filed 1/6/10, effective 2/6/10)

WAC 388-825-020 Definitions. "Authorization" means DDD approval of funding for a service as identified in the individual support plan or evidence of payment for a service.

"Client or person" means a person who has a developmental disability as defined in RCW 71A.10.020(3) who also has been determined eligible to receive services by the division under chapter 71A.16 RCW.

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

"Director" means the director of the division of developmental disabilities.

"Division or DDD" means the division of developmental disabilities within the aging and disability services administration of the department of social and health services.

"Enhanced respite services" means respite care for DDD enrolled children and youth, who meet specific criteria, in a DDD contracted and licensed staffed residential setting.

"Family" means relatives who live in the same home with the eligible client. Relatives include spouse or registered domestic partner; natural, adoptive or step parent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"((ICF/MR)) ICF/ID" means a facility certified as an intermediate care facility for ~~((the mentally retarded))~~ intellectually disabled by Title XIX to provide diagnosis, treatment and rehabilitation services to the ~~((mentally retarded))~~ individuals with intellectual disabilities or ~~((persons))~~ individuals with related conditions.

"((ICF/MR)) ICF/ID eligible" for admission to an ~~((ICF/MR))~~ ICF/ID means a person is determined by DDD as needing active treatment as defined in C.F.R. 483.440. Active treatment requires:

- (1) Twenty-four hour supervision; and
- (2) Continuous training and physical assistance in order to function on a daily basis due to deficits in the following areas: Toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing, grooming, and communication.

"Individual support plan (ISP)" is a document that authorizes and identifies the DDD paid services to meet a client's assessed needs.

"Medicaid personal care" is the provision of medically necessary personal care tasks as defined in chapter 388-106 WAC.

"Residential habilitation center" or "RHC" means a state-operated facility certified to provide ~~((ICF/MR))~~ ICF/ID and/or nursing facility level of care for persons with developmental disabilities.

"Residential programs" means provision of support for persons in community living situations. Residential programs include DDD certified community residential services and support, both facility-based such as licensed group homes, and nonfacility based, such as supported living and state-operated living alternatives (SOLA). Other residential programs include alternative living (as described in chapter 388-829A WAC, companion homes (as described in chapter 388-829C WAC), adult family homes, adult residential care services, children's foster homes, group care and staffed residential homes.

"Respite care" means short-term intermittent care for DDD clients in order to provide relief for persons who normally ~~((providing))~~ provide that care ~~((for the individuals))~~.

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

"State supplementary payment (SSP)" is the state paid cash assistance program for certain DDD eligible SSI clients.

AMENDATORY SECTION (Amending WSR 10-04-002, filed 1/21/10, effective 2/21/10)

WAC 388-825-068 What medicaid state plan services can DDD authorize? DDD may authorize the following medicaid state plan services:

- (1) Medicaid personal care, per chapter 388-106 WAC;
- (2) Private duty nursing for adults age eighteen and older; per chapter 388-106 WAC;
- (3) Private duty nursing for children under the age of eighteen, per WAC ~~((388-551-3000))~~ 182-551-3000;
- (4) Adult day health for adults, per chapter 388-106 WAC; and
- (5) ~~((ICF/MR))~~ ICF/ID services, per chapters 388-835 and 388-837 WAC.

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

WAC 388-825-069 What services are provided under a home and community based services (HCBS) waiver?

- (1) Home and community based services (HCBS) waivers provide specific services approved by the federal centers for medicare and medicaid services (CMS) under section 1915(c) of the Social Security Act as an alternative to placement in an intermediate care facility for ~~((the mentally retarded (ICF/MR)))~~ individuals with intellectual disabilities (ICF/ID).

- (2) Certain federal regulations governing ~~((ICF/MRs))~~ ICF/IDs are "waived" enabling the provision of services in the home and community to persons who would otherwise

require the services provided in an ~~((ICF/MR))~~ ICF/ID as defined in chapters 388-835 and 388-837 WAC.

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

WAC 388-825-0871 Does DDD provide out-of-home residential services that address the special needs of persons with developmental disabilities? DDD provides the following out-of-home residential services that address the special needs of adults and children with developmental disabilities:

- (1) Contracted and DDD-certified community based residential services for adults;
- (2) Contracted community based services for children; and
- (3) Residential habilitation centers (RHC) for a person ~~((of any age))~~ who requires ~~((ICF/MR))~~ ICF/ID or nursing facility care.

(a) On a short-term basis for those ages sixteen through twenty; or

(b) On a short or long-term basis if age twenty-one or older.

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

WAC 388-825-088 Where can I find more information about DDD contracted residential services? The information about DDD contracted residential services is in the following rules:

(1) Certified community residential services and supports are contained in chapter 388-101 WAC and include information regarding:

- (a) Group homes (GH);
- (b) Group training home;
- (c) Supported living (SL); and
- (d) State operated living alternative (SOLA).

(2) Alternative living services are contained in chapter 388-829A WAC;

(3) Companion home services are contained in chapter 388-829C WAC;

(4) Voluntary placement program services for children are contained in chapter 388-826 WAC and include information regarding:

- (a) Foster homes;
- (b) Group homes;
- (c) ~~((Group training homes;~~
- ~~((d)))~~ Child placing agencies; and
- ~~((e)))~~ (d) Staffed residential homes.

AMENDATORY SECTION (Amending WSR 10-02-101, filed 1/6/10, effective 2/6/10)

WAC 388-825-089 What is a residential habilitation center (RHC)? A residential habilitation center or RHC is a state-operated facility certified to provide ~~((ICF/MR))~~ ICF/ID services (see chapter 388-837 WAC) and/or nursing facility services (chapter 388-97 WAC) for persons who are eligible clients of DDD. RHCs include:

- (1) Rainier School in Buckley, Washington;

- (2) ~~((Francis Hadden Morgan Center in Bremerton, Washington;~~
- ~~((3)))~~ Fircrest School in Shoreline, Washington;
- ~~((4)))~~ (3) Yakima Valley School in Selah, Washington; and
- ~~((5)))~~ (4) Lakeland Village in Medical Lake, Washington.

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

WAC 388-825-091 Am I eligible for residential habilitation center (RHC) services? You are eligible to receive residential habilitation center (RHC) services if:

- (1) You are currently DDD eligible;
- (2) You choose to receive services in the RHC;
- (3) You need the level of care provided at the RHC; ~~((and))~~
- (4) DDD has determined that you can be supported safely in an RHC environment and will not pose a danger to other residents of the RHC; and
- (5) You are sixteen years old or older.

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

WAC 388-825-093 Can I receive a short term stay at a residential habilitation center (RHC)? If there is capacity at a residential habilitation center (RHC), the vacancies may be available for short term stays.

(1) Short term stays are limited by available vacancies;

(2) Short term stays must be included in your individual support plan; ~~((and))~~

(3) Short term stays in excess of thirty days in a calendar year require approval by the director of the division of developmental disabilities; and

(4) You are sixteen years old or older.

(a) If you are sixteen through twenty years of age your stay will only be for short-term respite or crisis stabilization purposes.

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

WAC 388-825-094 Can I request to ~~((live))~~ receive services in an RHC? You may request ~~((admission))~~ to receive services in an RHC at any time. RHC admissions are not considered permanent.

(1) Your case/resource manager will update your DDD assessment and gather other information.

(2) Admission to an RHC requires approval by the director of the division of developmental disabilities or designee.

(3) You must be twenty-one years old or older to be admitted as a long-term resident.

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

WAC 388-825-096 Will I have to pay for the services DDD authorizes for me? (1) If you live in your own home, you do not pay toward the cost of your services except chore

services. You must pay toward the cost of chore services as described in WAC 388-106-0625.

(2) If DDD authorizes you to live in a licensed community residential facility you must pay your room and board costs from your earned and unearned income. You may also be responsible for a portion of the cost of your care.

(a) If you are eligible for and receiving SSI or have SSI related eligibility per WAC 388-475-0100 (2)(a) or (b), you are not required to pay toward the cost of your care if you are living at home or in a community setting.

(b) If you are enrolled in a DDD HCBS waiver you must pay toward the cost of your services as described in WAC 388-515-1510.

(c) If you are not enrolled in a DDD HCBS waiver you must pay toward the cost of your services as described in WAC 388-106-0225.

(3) If you live in a medical institution you must pay toward the cost of your care as described in WAC 388-513-1380. See WAC ((388-500-0005)) 182-500-0005 for the definition of a medical institution.

AMENDATORY SECTION (Amending WSR 10-02-101, filed 1/6/10, effective 2/6/10)

WAC 388-825-120 When can I appeal department decisions through an administrative hearing process? (1) Administrative hearings are governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 71A.10.050, the rules in this chapter and by chapter 388-02 WAC. If any provision in this chapter conflicts with chapter 388-02 WAC or WAC 388-440-0001(3), the provision in this chapter shall prevail.

(2) A client, former client, or applicant acting on the applicant's own behalf or through an authorized representative has the right to an administrative hearing.

(3) You have the right to an administrative hearing to dispute the following department actions:

(a) Authorization, denial, reduction, or termination of services;

(b) Reduction or termination of a service that was initially approved through an exception to rule;

(c) Authorization, denial, or termination of eligibility;

(d) Authorization, denial, reduction, or termination of payment of SSP authorized by DDD set forth in chapter 388-827 WAC;

(e) Admission or readmission to, or discharge from, a residential habilitation center set forth in WAC 388-825-155;

(f) Refusal to abide by your request not to send notices to any other person;

(g) Refusal to comply with your request to consult only with you;

(h) A decision to move you to a different type of residential service;

(i) Denial or termination of the provider of your choice or the denial of payment for any reason listed in WAC 388-825-375 through 388-825-390;

(j) An unreasonable delay to act on an application for eligibility or service;

(k) A claim the client, former client, or applicant owes an overpayment debt.

(4) If you are not enrolled in a waiver and your request to be enrolled in a waiver is denied, your appeal rights are limited to the decision that you are not eligible to have your request documented in a statewide data base because you do not need ((ICF/MR)) ICF/ID level of care per WAC 388-845-0070, 388-828-8040 or 388-828-8060.

NEW SECTION

WAC 388-825-201 What is the purpose of enhanced respite services? Enhanced respite services are designed to enable DDD enrolled children and youth, who meet specific criteria, access to short term respite in a DDD contracted and licensed staffed residential setting.

NEW SECTION

WAC 388-825-206 Who is eligible to receive enhanced respite services? (1) To be eligible for enhanced respite services, the following conditions must be met at a minimum:

(a) The child has been determined eligible for DDD services per RCW 71A.10.020(3);

(b) The child is at least eight years of age and under age eighteen;

(c) The child is at high risk of institutionalization and/or out-of-home placement; and

(d) The parents/caregivers have demonstrated they have accessed alternative appropriate and available services to meet the unmet need.

(2) The enhanced respite services committee will also consider the following factors when reviewing requests for services:

(a) The child is experiencing school placement disruption and/or a shortened school day due to his/her behavior;

(b) There is a current family emergency;

(c) The child has had behavioral incident(s), which resulted in injury to self or others that required more than first aid;

(d) The child is awake at night, resulting in the child and/or the caregivers receiving less than five hours of uninterrupted sleep per night;

(e) The child is exhibiting behaviors such as aggression with significant injury, elopement, and challenging repetitive behaviors;

(f) The child's behavior acuity level is high per WAC 388-828-5640, the ICF/ID score is eligible per WAC 388-828-4400, and the caregiver's risk score is medium, high, or immediate per WAC 388-828-5300; and/or

(g) The child has assessed needs that exceed the scope of current services and/or is currently not eligible to receive any paid services.

NEW SECTION

WAC 388-825-211 How long am I eligible to receive enhanced respite services? The maximum length of stay the child/youth may access services is for up to thirty days total in a calendar year.

WSR 12-22-045
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-257—Filed November 2, 2012, 4:14 p.m., effective December 3, 2012]

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

Purpose: This rule amendment removes Game Management Unit (GMU) 186 and adds GMU 175 to the hunt area for the Rocky Mountain bighorn sheep raffle hunt. This action was taken due to the decline in the number of mature rams in GMU 186 and the disease outbreak in GMU 175, which has several mature rams. The expected result of this action is to reduce the bighorn ram harvest in GMU 186 and increase it in GMU 175. Reducing the number of rams in GMU 175 may also be helpful in terms of reducing the number of potentially wandering rams spreading the disease.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-283.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, 77.12.150, 77.32.530.

Adopted under notice filed as WSR 12-13-105 on June 20, 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 1, Repealed 0.

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

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

Date Adopted: October 6, 2012.

Miranda Wecker, Chair
 Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 10-10, filed 1/13/10, effective 2/13/10)

WAC 232-28-283 Big game and wild turkey auction, raffle, and special incentive permits.

AUCTION PERMITS

(1) BLACK-TAILED DEER AUCTION PERMIT

Season dates: September 1 - December 31
 Hunt Area: Those GMUs open to black-tailed deer hunting EXCEPT GMU 485 and those GMUs closed to black-tailed deer hunting by the fish and wildlife commission.

Weapon type: Any legal weapon.

Bag limit: One additional any buck black-tailed deer.

Number of permit hunters selected: 1

(2) MULE DEER AUCTION PERMIT

Season dates: September 1 - December 31
 Hunt Area: Those GMUs open to mule deer hunting EXCEPT those GMUs closed to mule deer hunting by the fish and wildlife commission.

Weapon type: Any legal weapon.

Bag limit: One additional any buck mule deer.

Number of permit hunters selected: 1

(3) WHITE-TAILED DEER AUCTION PERMIT

Season dates: September 1 - December 31
 Hunt Area: Those GMUs open to white-tailed deer hunting EXCEPT those GMUs closed to white-tailed deer hunting by the fish and wildlife commission.

Weapon type: Any legal weapon.

Bag limit: One additional any buck white-tailed deer.

Number of permit hunters selected: 1

(4) WESTSIDE ELK AUCTION PERMIT

Season dates: September 1 - December 31
 Hunt Area: Western Washington EXCEPT GMU 485, those GMUs closed to elk hunting, and those GMUs not opened to branch antlered bull elk hunting by the fish and wildlife commission.

Weapon type: Any legal weapon.

Bag limit: One additional any bull elk.

Number of permit hunters selected: 1

(5) EASTSIDE ELK AUCTION PERMIT

Season dates: September 1 - December 31
 Hunt Area: Eastern Washington EXCEPT GMU 157, those GMUs closed to elk hunting, and those GMUs not opened to branch antlered bull elk hunting by the fish and wildlife commission.

Weapon type: Any legal weapon.

Bag limit: One additional any bull elk.

Number of permit hunters selected: 1

(6) CALIFORNIA BIGHORN SHEEP AUCTION PERMIT

Season dates: September 1 - December 31
 Hunt Area: Any open sheep unit with two or more ram permits during the respective license year, EXCEPT sheep units in Walla Walla, Columbia, Garfield, Asotin, or Pend Oreille counties are not open.

Weapon: Any legal weapon.

Bag limit: One California bighorn ram.

Number of permit hunters selected: 1

(7) MOOSE AUCTION PERMIT

Season dates: September 1 - December 31

Hunt Area: Any open moose unit.

Weapon: Any legal weapon.

Bag limit: One moose of either sex.

Number of permit hunters selected: 1

(8) MOUNTAIN GOAT AUCTION PERMIT

Season dates: September 1 - December 31

Hunt Area: Any open goat unit with two or more permits during the respective license year.

Weapon: Any legal weapon.
 Bag limit: One mountain goat of either sex.
 Number of permit hunters selected: 1

RAFFLE PERMITS**(9) BLACK-TAILED DEER RAFFLE PERMIT**

Season dates: September 1 - December 31
 Hunt Area: Those GMUs open to black-tailed deer hunting EXCEPT GMU 485 and those GMUs closed to deer hunting by the fish and wildlife commission.
 Weapon: Any legal weapon.
 Bag limit: One additional any buck black-tailed deer.
 Number of permit hunters selected: 1

(10) MULE DEER RAFFLE PERMIT

Season dates: September 1 - December 31
 Hunt Area: Those GMUs open to mule deer hunting EXCEPT those GMUs closed to mule deer hunting by the fish and wildlife commission.
 Weapon: Any legal weapon.
 Bag limit: One additional any buck mule deer.
 Number of permit hunters selected: 1

(11) WHITE-TAILED DEER RAFFLE PERMIT

Season dates: September 1 - December 31
 Hunt Area: Those GMUs open to white-tailed deer hunting EXCEPT those GMUs closed to white-tailed deer hunting by the fish and wildlife commission.
 Weapon: Any legal weapon.
 Bag limit: One additional any buck white-tailed deer.
 Number of permit hunters selected: 1

(12) WESTSIDE ELK RAFFLE PERMIT

Season dates: September 1 - December 31
 Hunt Area: Western Washington EXCEPT GMU 485, those GMUs closed to elk hunting, and those GMUs not open to branch antlered bull elk hunting by the fish and wildlife commission.
 Weapon: Any legal weapon.
 Bag limit: One additional any bull elk.
 Number of permit hunters selected: 1

(13) EASTSIDE ELK RAFFLE PERMIT

Season dates: September 1 - December 31
 Hunt Area: Eastern Washington EXCEPT GMU 157, those GMUs closed to elk hunting, and those GMUs not opened to branch antlered bull elk hunting by the fish and wildlife commission.
 Weapon: Any legal weapon.
 Bag limit: One additional any bull elk.
 Number of permit hunters selected: 1

(14) CALIFORNIA BIGHORN SHEEP RAFFLE PERMIT

Season dates: September 1 - December 31
 Hunt Area: Any open bighorn sheep unit with two or more ram permits during the respective license year, EXCEPT sheep units in Walla Walla, Columbia, Garfield, Asotin, or Pend Oreille counties are not open.
 Weapon: Any legal weapon.

Bag limit: One California bighorn ram.
 Number of permit hunters selected: 1

(15) MOOSE RAFFLE PERMIT

Season dates: September 1 - December 31
 Hunt Area: Any open moose unit.
 Weapon: Any legal weapon.
 Bag limit: One moose of either sex.
 Number of permit hunters selected: 2

(16) MOUNTAIN GOAT RAFFLE PERMIT

Season dates: September 1 - December 31
 Hunt Area: Any open goat unit with two or more permits during the respective license year.
 Weapon: Any legal weapon.
 Bag limit: One mountain goat of either sex.
 Number of permit hunters selected: 1

(17) TURKEY RAFFLE PERMIT

Season dates: April 1 - May 31 and September 1 - December 31
 Hunt Area: Statewide.
 Weapon: Archery or shotgun only.
 Bag limit: Three additional wild turkeys, but not to exceed more than one turkey in Western Washington or two turkeys in Eastern Washington.
 Number of permit hunters selected: 1

(18) ROCKY MOUNTAIN BIGHORN SHEEP RAFFLE PERMIT

Bag limit: One Rocky Mountain bighorn ram.
 Hunt Area: GMUs 113, 175, 181(~~(7-186)~~).
 Season dates: September 1 - December 31
 Weapon: Any legal weapon.
 Number of permit hunters selected: 1

(19) THREE-DEER RAFFLE PERMIT

Bag limit: One additional any buck black-tailed deer, one additional any buck mule deer, and one additional any buck white-tailed deer; total harvest not to exceed three animals.
 Hunt Area: For black-tailed deer, those GMUs open to black-tailed deer hunting EXCEPT GMU 485 and those GMUs closed to deer hunting by the fish and wildlife commission. For mule deer, those GMUs open to mule deer hunting EXCEPT those GMUs closed to mule deer hunting by the fish and wildlife commission. For white-tailed deer, those GMUs open to white-tailed deer hunting EXCEPT those GMUs closed to white-tailed deer hunting by the fish and wildlife commission.
 Season dates: September 1 - December 31
 Weapon: Any legal weapon.
 Number of permit hunters selected: 1

(20) NORTHEAST WASHINGTON BIG GAME RAFFLE PERMIT

Bag limit: Permit hunter may harvest three of six possible species. Species that may be harvested under this permit include: One additional any buck white-tailed deer, one additional any bull elk, one any bull moose, one additional any legal cougar, one additional any legal black bear, and one additional any legal turkey (gobbler and turkey with visible beard ONLY); total harvest not to exceed three animals.

Hunt Area: GMUs 101-124.

Season dates: September 1 - December 31 for white-tailed deer, elk, and moose. April 15 - May 31 and September 1 - December 31 for black bear. September 1 - March 31 for cougar. April 15 - May 31 for turkey

Weapon: Any legal weapon EXCEPT archery and shotgun only for turkey.

Number of permit hunters selected: 1

(21) SOUTH-CENTRAL WASHINGTON BIG GAME RAFFLE PERMIT

Bag limit: One additional any bull elk, one additional any buck deer, and one California bighorn sheep ram; total harvest not to exceed three animals.

Hunt Area: For elk, any 300 or 500 series GMU EXCEPT those GMUs closed to elk hunting and those GMUs not open to branch antlered bull elk hunting by the fish and wildlife commission. For deer, any 300 or 500 series GMU EXCEPT those GMUs closed to deer hunting by the fish and wildlife commission. For California bighorn sheep, those bighorn sheep hunt areas south of Interstate 90 and west of Interstate 82 open to bighorn sheep hunting by the fish and wildlife commission with two or more permits during the respective license year.

Season dates: September 1 - December 31

Weapon: Any legal weapon.

Number of permit hunters selected: 1

(22) SOUTHEAST WASHINGTON BIG GAME RAFFLE PERMIT

Bag limit: Permit hunter may harvest four of five possible species. Species that may be harvested under this permit include: One additional any buck white-tailed deer, one additional any buck mule deer, one additional any bull elk, one additional any legal cougar, and one additional any legal black bear; total harvest not to exceed four animals.

Hunt Area: GMUs 139-154 and 162-186.

Season dates: September 1 - December 31 for white-tailed deer, mule deer, and elk. April 15 - June 15 and September 1 - December 31 for black bear. September 1 - March 31 for cougar

Weapon: Any legal weapon.

Number of permit hunters selected: 1

(23) NORTH-CENTRAL WASHINGTON BIG GAME RAFFLE PERMIT

Bag limit: Permit hunter may harvest three of five possible species. Species that may be harvested under this permit include: One additional any buck white-tailed deer, one additional any buck mule deer, one any ram California bighorn sheep, one additional any legal cougar, and one additional any legal black bear; total harvest not to exceed three animals.

Hunt Area: For white-tailed deer, mule deer, cougar, and black bear, any 200 series GMU EXCEPT those GMUs closed to deer hunting by the fish and wildlife commission. For California bighorn sheep, those bighorn sheep hunt areas in Chelan or Okanogan counties open to bighorn sheep hunting by the fish and wildlife commission with two or more permits during the respective license year.

Season dates: September 1 - December 31 for white-tailed deer, mule deer, and California bighorn sheep. April 15 - May 15 and September 1 - December 31 for black bear. September 1 - March 31 for cougar

Weapon: Any legal weapon.

Number of permit hunters selected: 1

SPECIAL INCENTIVE PERMITS

(24) WESTERN WASHINGTON ELK INCENTIVE PERMITS

Hunt Area: Western Washington EXCEPT GMUs 418, 485, 522, and those GMUs closed to elk hunting or closed to branch antlered bull elk hunting by the fish and wildlife commission.

Season dates: September 1 - December 31

Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.

Bag limit: One additional elk.

Number of permit hunters selected: 2

(25) EASTERN WASHINGTON ELK INCENTIVE PERMITS

Hunt Area: Eastern Washington EXCEPT GMU 157 and those GMUs closed to elk hunting or closed to branch antlered bull elk hunting by the fish and wildlife commission.

Season dates: September 1 - December 31

Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons.

Bag limit: One additional elk.

Number of permit hunters selected: 2

(26) DEER INCENTIVE PERMITS

Hunt Area: Statewide, for use in any area open to general or permit hunting seasons EXCEPT GMUs 157, 418, 485, 522, and those GMUs closed to deer hunting by the fish and wildlife commission.

Season dates: September 1 - December 31

Weapon: Any legal weapon, EXCEPT must use archery equipment during archery seasons and muzzleloader equipment during muzzleloader seasons and any legal weapon at other times if there are no firearm restrictions.

Bag limit: One additional any deer.

Number of permit hunters selected: 5

PERMIT ISSUANCE PROCEDURE

(27) Auction permits: The director will select a conservation organization(s) to conduct annual auction(s). Selection of the conservation organizations will be based on criteria adopted by the Washington department of fish and wildlife. Big game and wild turkey auctions shall be conducted consistent with WAC 232-28-292.

(28) Raffle permits: Raffle permits will be issued to individuals selected through a Washington department of fish and wildlife drawing or the director may select a conservation organization(s) to conduct annual raffles. Selection of a conservation organization will be based on criteria adopted by the Washington department of fish and wildlife. Big game and wild turkey raffles shall be conducted consistent with WAC 232-28-290.

(29) Special incentive permits: Hunters will be entered into a drawing for special deer and elk incentive permits for prompt reporting of hunting activity in compliance with WAC 232-28-299.

(30) For permit hunts where the permittee may harvest multiple species, the permittee must select the species he/she wants to hunt within fourteen days of notification of being selected.

QUALIFICATIONS FOR PARTICIPATION AND REQUIREMENTS:

(31) Permittee shall contact the appropriate regional office of the department of fish and wildlife when entering the designated hunt area or entering the region to hunt outside the general season.

(32) The permittee may be accompanied by others; however, only the permittee is allowed to carry a legal weapon or harvest an animal.

(33) Any attempt by members of the permittee's party to herd or drive wildlife is prohibited.

(34) If requested by the department, the permittee is required to direct department officials to the site of the kill.

(35) The permit is valid during the hunting season dates for the year issued.

(36) The permittee will present the head and carcass of the bighorn sheep killed to any department office within seventy-two hours of date of kill.

(37) The permittee must abide by all local, state, and federal regulations including firearm restriction areas and area closures.

(38) Hunters awarded the special incentive permit will be required to send the appropriate license fee to the department of fish and wildlife headquarters in Olympia. The department will issue the license and transport tag and send it to the special incentive permit winner.

(39) Permit hunters awarded a cougar permit may only use dogs in GMUs that have a cougar season open to dog use (WAC 232-28-285).

(b) Medical care services; or

(c) Alcohol and Drug Addiction Treatment and Support Act (ADATSA).

Citation of Existing Rules Affected by this Order: Amending WAC 182-534-0100.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: Section 1115 (a)(2) of the Social Security Act.

Adopted under notice filed as WSR 12-18-037 on August 29, 2012.

Changes Other than Editing from Proposed to Adopted Version: The agency updated the incorrect cross-references under WAC 182-534-0100 (2)(b):

(b) EPSDT services are exempt from specific coverage or service limitations which are imposed on the rest of the CN and MN program. Examples of service limits which do not apply to the EPSDT program are the specific numerical limits in ~~WAC 388-545-300, 388-545-500, and 388-545-700~~ WAC 182-545-200.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: November 2, 2012.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-534-0100 EPSDT. (1) Persons who are eligible for medicaid, except those identified in subsection (4) of this section, are eligible for coverage through the early and periodic screening, diagnosis, and treatment (EPSDT) program up through the day before their twenty-first birthday.

(2) Access and services for EPSDT are governed by federal rules at 42 C.F.R., Part 441, Subpart B which were in effect as of January 1, 1998.

(a) The standard for coverage for EPSDT is that the services, treatment or other measures are:

- (i) Medically necessary;
- (ii) Safe and effective; and
- (iii) Not experimental.

(b) EPSDT services are exempt from specific coverage or service limitations which are imposed on the rest of the CN and MN program. Examples of service limits which do not apply to the EPSDT program are the specific numerical limits

WSR 12-22-046

PERMANENT RULES

HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed November 2, 2012, 4:22 p.m., effective December 3, 2012]

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

Purpose: These rules are necessary to clarify that persons nineteen and twenty years of age who are eligible for any of the following programs that receive medicaid funding under the Transitional Bridge 1115 Demonstration Waiver allowed under section 1115 (a)(2) of the Social Security Act are not eligible for EPSDT services:

- (a) Basic health;

in WAC ((388-545-300, 388-545-500, and 388-545-700)) 182-545-200.

(c) Services not otherwise covered under the medicaid program are available to children under EPSDT. The services, treatments and other measures which are available include but are not limited to:

- (i) Nutritional counseling;
- (ii) Chiropractic care;
- (iii) Orthodontics; and
- (iv) Occupational therapy (not otherwise covered under the MN program).

(d) Prior authorization and referral requirements are imposed on medical service providers under EPSDT. Such requirements are designed as tools for determining that a service, treatment or other measure meets the standards in subsection (2)(a) of this section.

(3) Transportation requirements of 42 C.F.R. 441, Subpart B are met through a contract with transportation brokers throughout the state.

(4) Persons who are nineteen through twenty years of age who are eligible for any of the following programs that receive medicaid funding under the transitional bridge demonstration waiver allowed under section 1115 (a)(2) of the Social Security Act are not eligible for EPSDT services:

- (a) Basic health;
- (b) Medical care services; or
- (c) Alcohol and Drug Addiction Treatment and Support Act (ADATSA).

WSR 12-22-054

PERMANENT RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed November 6, 2012, 9:22 a.m., effective December 31, 2012]

Effective Date of Rule: December 31, 2012.

Purpose: The purpose of this rule making is to revise the insurance and bond filing requirements for contractors to reflect changes in new technology. Currently, the department is required to maintain a hard copy of the documents; however, the department has the ability to receive the information through an electronic system, which eliminates the need for paper.

Citation of Existing Rules Affected by this Order: Amending WAC 296-200A-025.

Statutory Authority for Adoption: Chapter 18.27 RCW.

Adopted under notice filed as WSR 12-16-065 on July 31, 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 1, Repealed 0.

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

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

Date Adopted: November 6, 2012.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 09-10-079, filed 5/5/09, effective 6/5/09)

WAC 296-200A-025 How does a contractor register, renew, reregister or reinstate its registration? (1) A contractor may register/renew/reregister/reinstate if it:

(a) Complete an application for contractor registration, have it notarized, and submit it to the department as required by RCW 18.27.030;

(b) Satisfies one of the following:

(i) Obtains a continuous surety bond in the total amount specified in WAC 296-200A-030 and submits the original bond (~~(with bond number)~~) to the department or submits the bond information through the department of labor and industries' electronic bond and insurance policy system (EBIPS) (see RCW 18.27.040); or

(ii) Assigns, to the department, a security deposit in the form of a savings account held in a Washington state bank on a department issued form (F625-000-008) in the amounts specified in WAC 296-200A-030;

(c) Obtains public liability and property damage insurance and submits the original insurance certificate (~~(with policy number)~~) to the department or submits the insurance information through the department of labor and industries' electronic bond and insurance policy system (EBIPS) (see RCW 18.27.050); and

(d) Pays the issuance/renewal/reregistration/reinstate ment fee shown in WAC 296-200A-900.

(2) A contractor may renew its registration if it submits, to the department, a completed contractor registration renewal notice and the material required in subsection (1)(b) and (c) of this section and pays the renewal fee shown in WAC 296-200A-900. No more than forty-five days before the contractor's registration expires, the department must send a renewal notice to the contractor's last recorded address with the contractor registration program. It is the responsibility of the contractor to notify the department within ten days and **in writing** of a change in address.

(3) The contractor must submit all required documents to the department in a manner approved by the department as set forth in this subsection:

(a) Include, on each document, the name exactly as it appears on the contractor registration application or renewal notice;

(b) Include, if renewing a registration, the contractor's registration number on each of the documents;

(c) Include a copy of the certificate or document (when required) by the secretary of state for the contractor to do business in the state of Washington; and

(d) Have and maintain an active and valid unified business identifier (certificate of registration) with the department of revenue.

(4) The department will not register, renew, or reinstate the registration of a contractor if:

(a) Any of the required documents are missing, false, or are incomplete;

(b) The documents do not have the legal name of the contractor as documented on official governmental issued photo identification;

(c) In the case of a renewal, the documents do not include the registration number or UBI number; or

(d) The applicant or person pursuant to RCW 18.27.030 has an unsatisfied final judgment based on work which is subject to chapter 18.27 RCW and this chapter.

(5) The contractor may request, in a letter filed with the application or renewal materials, that the registration period end on a particular day. However, the registration period cannot exceed two years.