

WSR 15-09-003
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-62—Filed April 1, 2015, 4:41 p.m., effective April 1, 2015, 4:41 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04500D and 220-52-04000W; and amending WAC 220-52-045.

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

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

Reasons for this Finding: Mandatory meat pick-out rate allowance for coastal crab will be achieved by the opening dates contained herein. The special management areas are listed in accordance with state/tribal management agreements. The stepped opening periods/areas will also provide for fair start provisions. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 1, 2015.

J. W. Unsworth
 Director

NEW SECTION

WAC 220-52-04500E Coastal crab seasons. Notwithstanding the provisions of WAC 220-52-046, effective immediately until further notice, it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided for in this section.

(1) The area from the WA/OR border (46°15.00) and the U.S./Canada Border, including Willapa Bay and Grays Harbor: Open.

(2) For the purposes of this order, the waters of Willapa Bay are defined to include the marine waters east of a line

connecting 46°44.76 N, 124°05.76 W and 46°38.93 N, 124°04.33 W.

(3) The Quinault Secondary Special Management Area (SSMA) is closed to fishing for Dungeness crab starting at 8:00 A.M., April 3, 2015, from the area shoreward of a line **approximating** the 27-fathom depth curve between Split Rock (47°24.50) and the mouth of the Copalis River (47°08.00). The legal SSMA is defined by the following coordinates:

(a) Northeast Corner (Split Rock): 47°24.50 N. Lat. 124°20.00 W. Lon.

(b) Northwest Corner: 47°24.50 N. Lat. 124°32.40 W. Lon.

(c) Southwest Corner: 47°08.00 N. Lat. 124°25.50 W. Lon.

(d) Southeast Corner (Copalis River): 47°08.00 N. Lat. 124°11.20 W. Lon.

(4) It is unlawful for a vessel to use more than 200 pots in the area between Raft River (47°28.00) and Split Rock (47°24.50) shoreward of a line approximating the 27-fathom depth curve from 8:00 a.m. April 3, 2015, until 8:00 a.m. May 3, 2015. The area in which the pot limit applies is legally defined by the following coordinates:

(a) Northeast Corner (Raft River): 47°28.00 N. Lat. 124°20.70 W. Lon.

(b) Northwest Corner: 47°28.00 N. Lat. 124°34.00 W. Lon.

(c) Southwest Corner: 47°24.50 N. Lat. 124°32.40 W. Lon.

(d) Southeast Corner (Split Rock): 47°24.50 N. Lat. 124°20.00 W. Lon.

Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Carol Henry at 360-249-1229;
- E-mail to: Carol Henry at Carol.Henry@dfw.wa.gov; or
- Telephone call to Carol Henry at 360-249-1296.

(5) The Quinault Secondary Special Management Area (SSMA) is modified and closed to fishing for Dungeness crab starting at 8:00 A.M., April 10, 2015, from the area shoreward of a line approximating the 27-fathom depth curve between Split Rock (47°24.50) and the mouth of the Joe Creek (47°12.11). This area is closed until further notice. The legal modified SSMA is defined by the following coordinates:

(a) Northeast Corner (Split Rock): 47°24.50 N. Lat. 124°20.00 W. Lon.

(b) Northwest Corner: 47°24.50 N. Lat. 124°32.40 W. Lon.

(c) Southwest Corner: 47°12.11 N. Lat. 124°27.33 W. Lon.

(d) Southeast Corner (Joe Creek): 47°12.11 N. Lat. 124°12.28 W. Lon.

(6) It is unlawful for a vessel to use more than 200 pots in the area between the mouth of Joe Creek (47°12.11) and the mouth of the Copalis River (47°08.00) shoreward of a line **approximating** the 27-fathom depth curve and from the area from 8:00 a.m. April 10, 2015, until 8:00 a.m. May 10,

2015. The area in which the pot limit applies is legally defined by the following coordinates:

(a) Northeast Corner (Joe Creek): 47°12.11 N. Lat. 124°12.28 W. Lon.

(b) Northwest Corner: 47°12.11 N. Lat. 124°27.33 W. Lon.

(c) Southwest Corner: 47°08.00 N. Lat. 124°25.50 W. Lon.

(d) Southeast Corner (Copalis River): 47°08.00 N. Lat. 124°11.20 W. Lon.

Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Carol Henry at 360-249-1229;
- E-mail to: Carol Henry at Carol.Henry@dfw.wa.gov; or
- Telephone call to Carol Henry at 360-249-1296.

(7) All other provisions of the permanent rule remain in effect.

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-52-04000W Commercial crab fishery. Lawful and unlawful gear, methods and other unlawful acts. (15-09)

WAC 220-52-04500D Coastal crab seasons (15-26)

**WSR 15-09-008
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 14-51—Filed April 3, 2015, 9:29 a.m., effective April 9, 2015]

Effective Date of Rule: April 9, 2015.

Purpose: Amend recreational fishing rules for Kline Pond.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-18500S; and amending WAC 220-310-185.

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

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

Reasons for this Finding: This emergency rule is necessary to ensure a safe and successful fishing event for juvenile anglers. Fish will be planted in Kline Pond one day prior to the Kline Kids Fishing Event to better acclimate them before the event. Fish will be placed into netted areas along

the shoreline of the pond. On the days of the fishing event, preregistered kids will be allowed to fish within these netted areas. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 3, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-18500S Exceptions to statewide rules—Kline Pond (Clark Co.) Notwithstanding the provisions of WAC 220-310-185, effective 12:01 a.m. April 9 through April 11, 2015, it is unlawful to fish in those waters of Kline Pond, except as provided in this section:

(1) Open to fishing 8:00 a.m. to 4:00 p.m. April 10 and 11, 2015, in the netted area, to juvenile anglers participating in the Kline Kids Fishing Event.

(2) Daily limit of two fish.

REPEALER

The following section of the Washington Administrative Code is repealed effective April 12, 2015:

WAC 220-310-18500S Exceptions to statewide rules—Kline Pond (Clark Co.)

**WSR 15-09-011
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-57—Filed April 3, 2015, 4:25 p.m., effective April 6, 2015]

Effective Date of Rule: April 6, 2015.

Purpose: Amend recreational fishing rules for hardshell clams and oysters.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-350 and 220-56-380.

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

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

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

Reasons for this Finding: Surveys at Sequim Bay State Park indicate that the clam and oyster populations on this beach have decreased, and the state share of clams and oysters were overharvested in 2014, requiring a shorter season in 2015. This rule is interim until permanent rules take effect.

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

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

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

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

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

Date Adopted: April 3, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-56-3500C Clams other than razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-350, effective immediately until further notice, it is unlawful to take, dig for and possess clams, cockles, and mussels taken for personal use from the following public tidelands except during the open periods specified herein:

Sequim Bay State Park: Open May 1 through May 31, 2015.

NEW SECTION

WAC 220-56-3800H Oysters—Areas and seasons. Notwithstanding the provisions of WAC 220-56-380, effective immediately until further notice, it is unlawful to take and possess oysters taken for personal use from the following public tidelands, except during the open periods specified herein:

Sequim Bay State Park: Open May 1 through May 31, 2015.

WSR 15-09-022 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 15-65—Filed April 6, 2015, 4:44 p.m., effective April 7, 2015, 8:00 a.m.]

Effective Date of Rule: April 7, 2015, 8:00 a.m.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000I; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

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

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

Reasons for this Finding: Sets a mainstem commercial salmon season with landing limits in place. The commercial mainstem fishery was allocated one thousand seven hundred sixty upriver spring chinook mortalities. Catch from the previous fishery was less than expected, which leaves a balance of harvestable fish. Spring select area commercial seasons also remain in place. The fisheries are consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of January 28 and April 6, 2015. There is insufficient time to promulgate permanent rules.

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

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries

Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in treaty and nontreaty Columbia River fisheries governed by the 2008-2017 *U.S. v. Oregon* Management Agreement. The Washington and Oregon fish and wildlife commissions have developed policies to guide the implementation of such biological opinions in the states' regulation of nontreaty fisheries.

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

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

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

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

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

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

Date Adopted: April 6, 2015.

Nate Pamplin
for J. W. Unsworth
Director

NEW SECTION

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

(1) Mainstem Columbia River

(a) **Dates:** 8:00 a.m. to 6:00 p.m. Tuesday April 7, 2015.

(b) **Area:** SMCRA 1A, 1B, 1C, 1D, and 1E (Zones 1-5).

(c) **Sanctuaries:** Grays River, Elochoman-B, Abernathy Creek, Cowlitz River, Kalama-B, Lewis-B, Sandy, and Washougal rivers.

(d) **Allowable Possession:** Adipose fin-clipped Chinook salmon and shad. Landing limits in place: A maximum of 8 adult adipose fin clipped Chinook may be possessed or sold by each participating vessel. The first 8 adult hatchery fish must be retained and no additional drifts may be conducted once the Chinook limit has been retained. Jacks (Chinook

less than 24-inches in total length) do not count against the adult landing limit.

(e) **Gear:** Drift nets only. 4 1/4" maximum mesh size (tangle net). Single-wall multi-filament net only. Monofilament tangle nets are not allowed. Mesh size is determined by placing three consecutive meshes under hand tension, and the measurement is taken from the inside of one vertical knot to the inside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact. Net length not to exceed 150 fathoms. There are no restrictions on the use of slackers or stringers to slacken the net vertically. There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net and is determined by the length of the web per length of the corkline.

Net length may be increased from 150 to 175 fathoms for nets constructed with a steelhead excluder panel, weedlines, or droppers. An optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4 1/4" maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12" stretched measure when taut under hand tension. Monofilament mesh is allowed for the excluder panel only. The excluder panel must be a minimum of five feet in depth and must not exceed ten feet in depth as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submersed corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers must extend a minimum of five feet above the 4 1/4" maximum mesh size tangle net. Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers must have two red corks at each end of the net, as well as the red corks as required under subsection (1)(f)(ii) of this section.

(f) Miscellaneous Regulations:

(i) **Soak times** are defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water, must not exceed 45 minutes.

(ii) **Red corks** are required at 25-fathom intervals, and red corks must be in contrast to the corks used in the remainder of the net.

(iii) **Recovery Box:** Each boat will be required to have on board two operable recovery boxes or one box with two chambers. Each chamber of the recovery box(es) must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute, not to exceed 20 gallons per minute of freshwater per chamber. Each box and chamber and associated pump shall be operating during any time that the net is being retrieved or picked. Each chamber of the recovery box must meet the following dimensions as measured from within the box: the inside length measure-

ment must be at or within 39 1/2 inches to 48 inches; the inside width measurements must be at or within 8 to 10 inches; and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or end wall of the chamber and 1 3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole that is at least 1 1/2 inches in diameter located on either the same or opposite end as the inlet. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber.

The fisher must demonstrate to WDFW and ODFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

All sturgeon, non-adipose fin-clipped salmon, and steelhead must be released immediately to the river with care and with the least possible injury to the fish, or placed into an operating recovery box.

Any salmonid that is bleeding or lethargic must be placed in the recovery box prior to being released. All fish placed in recovery boxes must be released to the river prior to landing or docking.

(iv) **Observer program:** As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with department observers or observers collecting data for the department, when notified by the observer of his or her intent to board the commercial vessel for observation and sampling during the fishery. In addition, cooperation with department personnel prior to a fishing period is expected.

(v) **Live Capture workshop:** Only licensed Columbia River commercial fishers that have completed the required state-sponsored workshop concerning live-capture commercial fishing techniques may participate in this fishery. At least one fisher on each boat must have live-capture certification.

(2) Deep River Select Area

(a) **Dates:** Open hours are 7 PM to 7 AM Tuesday and Thursday nights from April 16 through May 1, 2015, and Monday and Thursday nights from May 4 through June 12, 2015.

(b) **Area:** From USCG navigation marker #16 upstream to the Highway 4 Bridge.

(c) **Gear:** Gillnets. 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is allowed. Nets cannot be tied off to stationary structures. Nets may not fully cross navigation channel. It is unlawful to operate in any river, stream or channel any gillnet longer than three-fourths the width of the stream (WAC 220-20-015)(1). It shall be unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department (WAC 220-20-010)(17).

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

(e) **Allowable possession:** Salmon and shad

(3) Tongue Point/South Channel

(a) **Dates:** April 21 from 8 PM-midnight, Thursday night April 23 from 9 PM-3 AM. Tuesday night April 28 from 7 PM-7 AM. Thursday night April 30 from 7 PM to 7 AM and Monday and Thursday nights from May 4 through June 12, 2015.

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

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

(c) **Gear:** Gillnets. 9 3/4-inch maximum mesh. In the Tongue Point fishing area, gear restricted to a maximum net length of 250 fathoms, and weight not to exceed two pounds on any one fathom. In the South Channel fishing area, gear restricted to a maximum net length of 250 fathoms, no weight restriction on leadline, and use of additional weights or anchors attached directly to the leadline is allowed.

(d) **Miscellaneous:** Permanent transportation rules in effect.

(e) **Allowable possession:** Salmon and shad

(4) Blind Slough/Knappa Slough Select Area

(a) **Dates:** Tuesday and Thursday nights from April 21 through May 1 and Monday and Thursday nights from May 4 through June 12, 2015. Open hours are 7:00 PM to 7:00 AM.

(b) **Area:** Blind Slough and Knappa Slough areas are both open. From May 4 through June 12, 2015, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon Shore (fall season boundary).

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

(d) **Allowable possession:** Salmon and shad

(5) For all seasons listed above, the following is in place:

(a) **24-hour** quick reporting is in effect for Washington buyers (WAC 220-69-240 (14)(d)). Permanent transportation rules in effect.

(b) **Multi-Net Rule:** Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-33-001(2)).

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 8:00 a.m. April 7, 2015:

WAC 220-33-01000I Columbia River seasons below Bonneville. (15-61)

WSR 15-09-028

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed April 8, 2015, 10:16 a.m., effective April 9, 2015]

Effective Date of Rule: April 9, 2015.

Purpose: Federal regulation 42 C.F.R. § 431.232(d) does not allow medicaid benefits to continue at their previous level following an evidentiary hearing decision to reduce or terminate those benefits. Therefore, this emergency rule is to ensure the administration has language in rule that conforms to the C.F.R. regarding continuing benefits.

Citation of Existing Rules Affected by this Order: Amending WAC 388-825-145.

Statutory Authority for Adoption: RCW 71A.12.030, 34.05.350 (1)(b), 74.08.080, 42 C.F.R. § 431.232, 42 C.F.R. § 431.230.

Other Authority: RCW 71A.12.030, 34.05.350 (1)(b), 74.08.080, 42 C.F.R. § 431.232, 42 C.F.R. § 431.230.

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

Reasons for this Finding: 42 C.F.R. § 431.232(d) requires the state to discontinue medicaid benefits following an initial administrative order that affirms the state's decision to reduce or terminate those benefits. WAC 388-825-0135(2) currently allows continued benefits (including medicaid ben-

efits) past the initial order. This emergency rule is necessary to conform DSHS rules with federal requirements. A preproposal CR-101 was filed March 6, 2015, to proceed with permanent adoption.

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 1, Repealed 0.

Date Adopted: April 8, 2015.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-04-072, filed 2/4/08, effective 3/6/08)

WAC 388-825-145 Will my benefits continue if I request an administrative hearing? (1) If you request an administrative hearing regarding the department's decision to transfer you from a residential habilitation center to the community under RCW 71A.20.080, the rules in WAC 388-825-155 apply.

(2) If you request an administrative hearing (~~within the ten-day notice period, as described in chapter 388-458 WAC, unless one or more of the conditions in WAC 388-825-150 applies, the department will take no action until there is a final decision on your appeal of the department's decision to:~~

~~(a) Terminate your eligibility for services;~~

~~(b) Reduce or terminate your services;~~

~~(c) Reduce or terminate the payment of SSP set forth in chapter 388-827 WAC; or~~

~~(d) Disenroll you from a DDD home and community based services waiver under WAC 388-845-0060, including a disenrollment from a waiver and enrollment in a different waiver)~~ regarding the department's decision to reduce or terminate your services, and you request the hearing before the date specified on the notice of the action, and none of the conditions in WAC 388-825-150 applies, the department will not reduce or terminate those services unless and until an administrative law judge issues an initial order or a review judge issues a final order that reduces or terminates those services.

This subsection also applies to the department's decision to disenroll you from a DDA home and community based services waiver under WAC 388-845-0060.

(3) The department will take no action until there is a final decision on your appeal of the department's decision to remove or transfer you to another residential service unless one or more of the conditions in WAC 388-825-150 applies.

(4) The department will take no action until there is a final decision on your appeal to terminate your provider of choice unless one or more of the circumstances described in WAC 388-825-150 applies.

(5) After the administrative hearing, you may have to pay back up to sixty days of the continued benefits you get (~~as described in chapter 388-410 WAC~~) if the administrative hearing decision (~~is in favor of the department~~) determines your benefits should be less than the continued benefits you have received.

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

WSR 15-09-030
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-63—Filed April 8, 2015, 2:08 p.m., effective April 18, 2015, 8:00 a.m.]

Effective Date of Rule: April 18, 2015, 8:00 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-310-18000N; and amending WAC 220-310-180.

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

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

Reasons for this Finding: An emergency rule is needed to open Failor Lake which will allow boys and girls fourteen and younger to participate in a fishing derby hosted by the Grays Harbor Poggie Club. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 8, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-18000N Exceptions to statewide rules—Failor Lake (Grays Harbor Co.) Notwithstanding the provisions of WAC 220-310-180, Failor Lake is open to fishing on April 18, 2015, from 8:00 a.m. to 12:00 p.m. for anglers age fourteen years old and younger who are participating in the youth fishing event. Adults may assist children participating in the event, but no child may fish with more than one fishing rod. All other provisions of the permanent rule remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed, effective 12:01 p.m. April 18, 2015:

WAC 220-310-18000N Exceptions to statewide rules—
Failor Lake (Grays Harbor Co.)

WSR 15-09-033
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-66—Filed April 9, 2015, 8:59 a.m., effective April 9, 2015, 8:59 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-52-05000B.

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

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

Reasons for this Finding: The department has decided to proceed with the permanent rule-making process for the Washington coastal shrimp fishery, therefore an emergency rule is not needed at this time.

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 1.

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

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

Date Adopted: April 9, 2015.

J. W. Unsworth
Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05000B Ocean pink shrimp trawl fishery—
Coastal. (15-59)

WSR 15-09-034
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-69—Filed April 9, 2015, 11:42 a.m., effective April 9, 2015,
11:42 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-310-20000A; and amending WAC 220-310-200.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, and 77.12.047.

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

Reasons for this Finding: Extends the 2015 spring recreational salmon season in the Columbia River in the area from Buoy 10 upstream to Bonneville Dam for two additional days. Catch rates have been less than expected and harvestable fish remain on the guideline. The regulation continues to adjust the hatchery adult bag limit in Deep River to be consistent with the adjacent Columbia River when both areas are open. The regulation continues to allow for the retention of shad and hatchery steelhead during days and in areas that are open for hatchery chinook.

In the geographic area from The Dalles Dam to the Oregon/Washington border when the area is open for hatchery spring chinook, the possession limit was increased to allow up to four adult hatchery fish in fresh form. When the daily limit was reduced from two to one hatchery adult fish, this also affected the number of fish allowed under possession limit rules. Today's action will allow anglers who use this fishery as a destination fishery to remain in the area for a longer period of time. Endangered Species Act (ESA) impacts for wild fish are available to recreational fisheries in order to access hatchery fish. The state will pursue making this regulation a permanent rule during the spring season when the area is open for hatchery chinook retention.

In the geographic area of Bonneville Pool from the Tower Island powerlines (located approximately six miles below The Dalles Dam) downstream to Bonneville Dam,

anglers on the Washington shore may only use hand-casted lines. Anglers have been using boats or other floating devices to set lines further out from the bank. This is causing the stock mix of chinook in the catch to change by including more fish destined for areas upriver, which is contrary to the analysis performed to justify the opening of the bank fishery beginning in 2008. The state will pursue making this regulation a permanent rule during the spring season when the area is open for hatchery chinook retention.

The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of January 28 and April 8, 2015. There is insufficient time to promulgate permanent rules. Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

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

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

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

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

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

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

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 9, 2015.

David Giglio
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-20000C Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-310-200, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Columbia River: Effective Immediately through April 12, and open on April 16, 2015:

(a) Open for fishing for salmonids and shad from a true north-south line through Buoy 10 upstream to 600 feet downstream of the fish ladder at the new Bonneville Dam powerhouse (#2), except closed to fishing from boats upstream of Beacon Rock. For the purposes of this section, Beacon Rock is defined as a deadline marker on the Oregon bank, located approximately four miles downstream from Bonneville Dam Powerhouse #1, projecting a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock.

(b) Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adults and no more than 1 may be an adult Chinook.

(c) Release all wild Chinook and wild steelhead.

(d) Salmon minimum size is 12 inches.

(2) Columbia River: Effective immediately through May 6, 2015:

(a) Open to fishing from the Tower Island power lines in Bonneville Pool (located approximately 6 miles below The Dalles Dam) upstream to the Oregon and Washington border, plus the Washington bank between Bonneville Dam and the Tower Island power lines (except for those waters closed under permanent regulations).

(b) Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adults and no more than 1 may be an adult Chinook.

(c) Release all wild Chinook and wild steelhead.

(d) Salmon minimum size is 12 inches.

(3) Columbia River Possession limit: Effective April 13 through June 15, 2015, when the Columbia River is open to fishing for hatchery Spring Chinook from the Tower Island power lines in Bonneville Pool (located approximately 6 miles below The Dalles Dam) upstream to the Oregon and Washington border, including the Washington bank between Bonneville Dam and the Tower Island power lines, from the Dalles Dam upstream: Anglers may possess 2 daily limits in fresh form (special rule) in addition to the 2 daily limits in fresh form allowed by permanent rule, except anglers aboard a boat may only possess one daily limit of salmon in fresh form.

(4) Columbia River Hand cast restriction: Effective April 13 through June 15:

(a) When the Columbia River from the Tower Island powerlines (located approximately 6 miles below The Dalles

Dam) downstream to Bonneville Dam is open to fishing from the Washington bank for hatchery spring Chinook, only hand-casted lines may be used.

(b) It is unlawful to use a floating device to set lines for salmon and steelhead.

(5) Deep River (Wahkiakum Co.): Effective immediately through June 15, 2015: The hatchery adult Chinook daily limit is the same as the adjacent mainstem Columbia River during those days when the mainstem Columbia River is open for adult Chinook retention. When the adjacent mainstem Columbia River is closed for adult Chinook retention, the salmon daily limit is the same as provided in the permanent rules for Deep River.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-20000A Exceptions to statewide rules—
Columbia River. (15-20)

WSR 15-09-041

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 15-68—Filed April 9, 2015, 4:19 p.m., effective May 2, 2015, 4:45 a.m.]

Effective Date of Rule: May 2, 2015, 4:45 a.m.

Purpose: Amend rules in the recreational spot shrimp fishery.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-32500Q; and amending WAC 220-56-325.

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

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

Reasons for this Finding: This regulation is needed to ensure an orderly fishery, manage the fishery within court-ordered sharing requirements, and ensure conservation. Harvestable amounts of spot shrimp are available, but only enough recreational shares exist for a limited number of open days in the Marine Areas listed in this section. In addition, this emergency regulation opens the Marine Area 4, 5, 6, 7 and 13 seasons one hour before sunrise (at 4:45 a.m.), which is the default daily start time for those areas the remainder of

the season. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 9, 2015.

David Giglio
for J. W. Unsworth
Director

NEW SECTION

WAC 220-56-32500Q Shrimp—Areas and seasons.

Notwithstanding the provisions of WAC 220-56-325, effective 4:45 a.m. May 2 through May 31, 2015, it is unlawful to fish for or possess shrimp taken for personal use in all waters of Marine Areas 4 (east of the east of the Bonilla-Tatoosh line), 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12 and the Discovery Bay Shrimp District, except as provided for in this section:

(1) Marine Areas 4 (east of the Bonilla-Tatoosh line), 5, 6 (excluding the Discovery Bay Shrimp District) and 13: Open May 2 through May 31.

(2) Marine Area 7:

(a) Open May 2, 2015;

(b) Open May 13 through May 16;

(c) Open May 20 through May 23; and

(d) Open May 27 through May 30.

(3) Marine Areas 8-1, 8-2 and 9:

(a) Open May 2 and May 13 from 7:00 a.m. through 3:00 p.m.

(b) Divers may take shrimp by hand or hand-held device from 7:00 p.m. until midnight on those open days in Marine Area 8-2.

(4) Marine Area 10 and 11

(a) Open May 2 from 7:00 a.m. through 3:00 p.m.

(b) On May 13, in that portion of Marine Area 10 west of a line from West Point to Alki Point, open from 7:00 a.m. to 3:00 p.m.

(5) Marine Area 12: Open May 2, 9, 11 and 13 from 9:00 a.m. through 1:00 p.m.

(6) Discovery Bay Shrimp District: Open May 2, 9, 11 and 13 from 7:00 a.m. through 3:00 p.m.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective June 1, 2015:

WAC 220-56-32500Q Shrimp—Areas and seasons.

WSR 15-09-042 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 15-64—Filed April 9, 2015, 4:19 p.m., effective April 9, 2015, 4:19 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for hardshell clams and oysters.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-35000A and 220-56-38000F; and amending WAC 220-56-350 and 220-56-380.

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

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

Reasons for this Finding: Surveys at Fort Flagler State Park and Frye Cove County Park indicate that the clam populations have decreased, requiring shorter seasons. Oyster seasons should coincide with the clam seasons on these beaches. These rules are interim until permanent rules take effect.

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

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

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

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

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

Date Adopted: April 9, 2015.

David Giglio
for J. W. Unsworth
Director

NEW SECTION

WAC 220-56-35000D Clams other than razor clams—Areas and seasons. Notwithstanding the provisions of

WAC 220-56-350, effective immediately until further notice, it is unlawful to take, dig for and possess clams, cockles, and mussels taken for personal use from the following public tidelands except during the open periods specified herein:

- (1) Fort Flagler State Park: Closed through May 14, 2015.
- (2) Frye Cove County Park: Closed through April 30, 2015; Open May 1 through May 31, 2015.

NEW SECTION

WAC 220-56-38000I Oysters—Areas and seasons.

Notwithstanding the provisions of WAC 220-56-380, immediately until further notice, it is unlawful to take and possess oysters taken for personal use from the following public tidelands except during the open periods specified herein:

- (1) Fort Flagler State Park: Closed through May 14, 2015.
- (2) Frye Cove County Park: Closed through April 30, 2015; Open May 1 through May 31, 2015.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 220-56-35000A Clams other than razor clams—
Areas and seasons. (14-348)
- WAC 220-56-38000F Oysters—Areas and seasons. (14-
348)

**WSR 15-09-044
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-73—Filed April 10, 2015, 8:50 a.m., effective April 10, 2015,
8:50 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-310-20000C; and amending WAC 220-310-200.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, and 77.12.047.

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

Reasons for this Finding: Extends the 2015 spring recreational salmon season in the Columbia River in the area from Buoy 10 upstream to Bonneville Dam for two additional days. Catch rates have been less than expected and harvestable fish remain on the guideline. The regulation continues to adjust the hatchery adult bag limit in Deep River to be consistent with the adjacent Columbia River when both areas are open. The regulation continues to allow for the retention of

shad and hatchery steelhead during days and in areas that are open for hatchery chinook.

In the geographic area from The Dalles Dam to the Oregon/Washington border when the area is open for hatchery spring chinook, the possession limit was increased to allow up to four adult hatchery fish in fresh form. When the daily limit was reduced from two to one hatchery adult fish, this also affected the number of fish allowed under possession limit rules. Today's action will allow anglers who use this fishery as a destination fishery to remain in the area for a longer period of time. The Endangered Species Act (ESA) impacts for wild fish are available to recreational fisheries in order to access hatchery fish. The state will pursue making this regulation a permanent rule during the spring season when the area is open for hatchery chinook retention.

In the geographic area of Bonneville Pool from the Tower Island powerlines (located approximately six miles below The Dalles Dam) downstream to Bonneville Dam, anglers on the Washington shore may only use hand-casted lines. Anglers have been using boats or other floating devices to set lines further out from the bank. This is causing the stock mix of chinook in the catch to change by including more fish destined for areas upriver, which is contrary to the analysis performed to justify the opening of the bank fishery beginning in 2008. The state will pursue making this regulation a permanent rule during the spring season when the area is open for hatchery chinook retention.

The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of January 28 and April 8, 2015. There is insufficient time to promulgate permanent rules. Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546).

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

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington

(WDFW) and Oregon (ODFW) departments of fish and wild-life convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: April 10, 2015.

David Giglio
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-20000E Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-310-200, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Columbia River: Effective immediately through April 11 and open on April 16, 2015:

(a) Open for fishing for salmonids and shad from a true north-south line through Buoy 10 upstream to 600 feet downstream of the fish ladder at the new Bonneville Dam powerhouse (#2), except closed to fishing from boats upstream of Beacon Rock. For the purposes of this section, Beacon Rock is defined as a deadline marker on the Oregon bank, located approximately four miles downstream from Bonneville Dam Powerhouse #1, projecting a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock.

(b) Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adults and no more than 1 may be an adult Chinook.

(c) Release all wild Chinook and wild steelhead.

(d) Salmon minimum size is 12 inches.

(2) Columbia River: Effective immediately through May 6, 2015:

(a) Open to fishing from the Tower Island power lines in Bonneville Pool (located approximately 6 miles below The Dalles Dam) upstream to the Oregon and Washington border, plus the Washington bank between Bonneville Dam and the Tower Island power lines (except for those waters closed under permanent regulations).

(b) Daily salmonid limit is 6 fish (hatchery Chinook or hatchery steelhead), of which no more than 2 may be adults and no more than 1 may be an adult Chinook.

(c) Release all wild Chinook and wild steelhead.

(d) Salmon minimum size is 12 inches.

(3) Columbia River Possession limit: Effective April 13 through June 15, 2015, when the Columbia River is open to fishing for hatchery Spring Chinook from the Tower Island power lines in Bonneville Pool (located approximately 6 miles below The Dalles Dam) upstream to the Oregon and Washington border, including the Washington bank between Bonneville Dam and the Tower Island power lines, from the Dalles Dam upstream: Anglers may possess 2 daily limits in fresh form (special rule) in addition to the 2 daily limits in fresh form allowed by permanent rule, except anglers aboard a boat may only possess one daily limit of salmon in fresh form.

(4) Columbia River Hand cast restriction: Effective April 13 through June 15:

(a) When the Columbia River from the Tower Island powerlines (located approximately 6 miles below The Dalles Dam) downstream to Bonneville Dam is open to fishing from the Washington bank for hatchery spring Chinook, only hand-casted lines may be used.

(b) It is unlawful to use a floating device to set lines for salmon and steelhead.

(5) Deep River (Wahkiakum Co.): Effective immediately through June 15, 2015: The hatchery adult Chinook daily limit is the same as the adjacent mainstem Columbia River during those days when the mainstem Columbia River is open for adult Chinook retention. When the adjacent mainstem Columbia River is closed for adult Chinook retention, the salmon daily limit is the same as provided in the permanent rules for Deep River.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-20000C Exceptions to statewide rules—Columbia River. (15-69)

WSR 15-09-047
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed April 10, 2015, 10:13 a.m., effective May 1, 2015]

Effective Date of Rule: May 1, 2015.

Purpose: Amend recreational fishing rules for the halibut fishery.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-255.

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

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

Reasons for this Finding: This rule conforms to federal action taken by the Pacific Fisheries Management Council, International Pacific Halibut Commission and National Marine Fisheries Service. The recreational halibut quota is sufficient to provide for these seasons. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 10, 2015.

David Giglio
for J. W. Unsworth
Director

NEW SECTION

WAC 220-56-25500X Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-56-255, 220-56-250, and 220-56-230, effective immediately until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(1) **Catch Record Card Area 1**

(a) Open May 1, 2015, until further notice, Thursdays through Sundays.

(b) It is unlawful during any vessel trip to bring into port or land bottomfish except sablefish, Pacific Cod, or flat fish species when halibut are on board.

(2) **Catch Record Card Area 1 (Nearshore fishery)**

Those waters shoreward from 46°38.17'N. lat., 124°15.88'W. long., to the WA/OR border at 46°16.00'N. lat., 24°15.88'W. long. (then connecting to the 40 fathom depth contour in Oregon).

(a) Open May 4, 2015, until further notice, Mondays through Wednesdays.

(b) It is permissible to retain bottomfish while possessing halibut onboard boats in the nearshore area.

(3) **Catch Record Card Area 2** - Open May 3, through May 19, 2015, Sundays and Tuesdays only. See (a) and (b) below for additional details.

(a) **Catch Record Card Area 2 (Northern Nearshore fishery)** Those waters from 47°31.70'N. latitude south to 46°58.00'N latitude and east of a line approximating the 30 fathom depth contour as defined by the following coordinates, open May 3, 2015, seven days per week until further notice:

47°31.70 N. lat, 124°37.03 W. long

47°25.67 N. lat, 124°34.79 W. long

47°12.82 N. lat, 124°29.12 W. long

47°58.00 N. lat, 124°24.24 W. long

(b) Lingcod may be taken, retained and possessed seaward of the 30 fathom line on any day open to the primary halibut fishery as provided in subsection (2) above.

(4) **Catch Record Card Areas 3 and 4**

(a) Open May 14, May 16, May 21 and May 23, 2015, Thursdays and Saturdays only.

(b) The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48°18' N., 125°18' W.; thence to

48°18'N., 124°59'W.; thence to

48°11'N., 124°59'W.; thence to

48°11'N., 125°11'W.; thence to

48°04'N., 125°11'W.; thence to

48°04'N., 124°59'W.; thence to

48°N., 124°59'W.; thence to

48°N., 125°18'W.; thence to point of origin.

(c) It is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour, from May 9, 2015, until further notice, except, on days open to the Pacific halibut fishery in these areas, it is permissible to retain lingcod, sablefish and Pacific cod seaward of the 20 fathom depth contour as defined by the following coordinates:

48°23.9'N. lat., 124°44.2'W. long.

48°23.6'N. lat., 124°44.9'W. long.

48°18.6'N. lat., 124°43.6'W. long.

48°18.6'N. lat., 124°48.2'W. long.

48°10.0'N. lat., 124°48.8'W. long.

48°02.4'N. lat., 124°49.3'W. long.

47°37.6'N. lat., 124°34.3'W. long.

47°31.7'N. lat., 124°32.4'W. long.

(d) In Marine Area 4 (east of the Bonilla-Tatoosh Line) it is unlawful to fish for or possess bottomfish seaward of a line approximating 120-feet (20 fathoms), except, on days open to the Pacific halibut fishery in this area, it is permissible to retain lingcod, and Pacific cod seaward of the 120 feet (20 fathoms) as defined by WAC 220-56-230.

(5) **Catch Record Card Area 5**

(a) Open May 15 through May 16, 2015, Friday and Saturday.

(b) Open May 21 through May 24, 2015, Thursday through Sunday.

(c) Open May 29 through May 30, 2015, Friday and Saturday.

(d) It is permissible for halibut anglers to retain lingcod and Pacific cod caught while fishing for halibut in waters deeper than 120 feet on days when halibut fishing is open.

(6) Catch Record Card Areas 6 through 10

(a) Open May 8 through May 9, 2015, Friday and Saturday.

(b) Open May 15 through May 16, 2015, Friday and Saturday.

(c) Open May 21 through May 24, 2015, Thursday through Sunday

(d) Open May 28 through May 30, 2015, Thursday through Saturday.

(e) It is permissible for halibut anglers to retain lingcod and Pacific cod caught while fishing for halibut in waters deeper than 120 feet on days that halibut fishing is open.

(7) Catch Record Card Areas 11, 12 and 13 - Closed.

(8) Daily limit one halibut, no minimum size limit. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

(9) All other permanent rules remain in effect.

(10) It is unlawful to land halibut in a port within an area closed to halibut fishing.

Building and Fire codes. Permanent rule making was filed under WSR 14-24-089 on December 1, 2014.

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: March 7, 2014.

Dave Kokot
Chair

**WSR 15-09-049
EMERGENCY RULES**

BUILDING CODE COUNCIL

[Filed April 10, 2015, 11:33 a.m., effective April 10, 2015, 11:33 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This change will redefine "portable school classrooms" and add a definition of "clusters" of such classrooms, and will modify the requirements for fire sprinklers in clusters of portable school classrooms below six thousand square feet for the purpose of improving fire safety and egress for school occupants. The rule is being filed for consistency with the state Fire Code.

NOTE: The emergency rule was first filed on August 15, 2014, under WSR 14-17-065. The state building code council entered permanent rule making on this matter and filed the CR-103P on December 1, 2014, under WSR 14-24-089. The first renewal of this emergency rule was filed on December 12, 2014, as WSR 15-01-074 [15-01-071]. The permanent rule is scheduled to have an effective date of May 1, 2015.

Citation of Existing Rules Affected by this Order: Amending WAC 51-50-020 and 51-50-0903.

Statutory Authority for Adoption: RCW 19.27.031, 19.27.074.

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

Reasons for this Finding: The current WAC language has become obsolete, and does not reflect the needs of school districts regarding fire safety in portable school classrooms, and negatively impacts building plans for school districts throughout the state. This modification will provide immediate economic relief to school districts planning to add portable classrooms, and a safer environment for building occupants. This modification provides consistency between the

AMENDATORY SECTION (Amending WSR 13-04-067, filed 2/1/13, effective 7/1/13)

WAC 51-50-0200 Chapter 2—Definitions.

SECTION 202—DEFINITIONS.

ADULT FAMILY HOME. A dwelling, licensed by Washington state, in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.

AIR-IMPERMEABLE INSULATION. An insulation having an air permeance equal to or less than 0.02 L/s-m² at 75 Pa pressure differential tested in accordance with ASTM E2178 or ASTM E283.

CHILD CARE. The care of children during any period of a 24-hour day.

CHILD CARE, FAMILY HOME. A child care facility, licensed by Washington state, located in the dwelling of the person or persons under whose direct care and supervision the child is placed, for the care of twelve or fewer children, including children who reside at the home.

CLUSTER. Clusters are multiple portable school classrooms separated by less than the requirements of the building code for separate buildings.

HOSPICE CARE CENTER. A building or portion thereof used on a 24-hour basis for the provision of hospice services to terminally ill inpatients.

NIGHTCLUB. An A-2 Occupancy use under the 2006 International Building Code in which the aggregate area of concentrated use of unfixed chairs and standing space that is specifically designated and primarily used for dancing or viewing performers exceeds three hundred fifty square feet, excluding adjacent lobby areas. "Nightclub" does not include theaters with fixed seating, banquet halls, or lodge halls.

NONSTRUCTURAL CONCRETE. Any element made of plain or reinforced concrete that is not part of a structural system required to transfer either gravity or lateral loads to the ground.

PORTABLE SCHOOL CLASSROOM. A prefabricated structure consisting of one or more rooms with direct exterior egress from the classroom(s). The structure is transportable in one or more sections (which requires a chassis to be transported) and is designed to be used as an educational space with or without a permanent foundation. The structure shall be ((trailerable and)) capable of being demounted and relocated to other locations as needs arise.

SMALL BUSINESS. Any business entity (including a sole proprietorship, corporation, partnership or other legal entity) which is owned and operated independently from all other businesses, which has the purpose of making a profit, and which has fifty or fewer employees.

AMENDATORY SECTION (Amending WSR 13-04-067, filed 2/1/13, effective 7/1/13)

WAC 51-50-0903 Section 903—Automatic sprinkler systems.

903.2.1.6 Nightclub. An automatic sprinkler system shall be provided throughout Group A-2 nightclubs as defined in this code.

903.2.3 Group E. An automatic sprinkler system shall be provided for Group E Occupancies.

EXCEPTIONS:

1. Portable school classrooms with an occupant load of 50 or less calculated in accordance with Table 1004.1.2, provided that the aggregate area of any cluster ((or portion of a cluster)) of portable school classrooms does not exceed ((5,000)) 6,000 square feet ((1465 m²)) (557 m²); and clusters of portable school classrooms shall be separated as required by the building code((-)); or
2. Portable school classrooms with an occupant load from 51 through 98, calculated in accordance with Table 1004.1.2, and provided with two means of direct independent exterior egress from each classroom in accordance with Chapter 10, and one exit from each classroom shall be accessible, provided that the aggregate area of any cluster of portable classrooms does not exceed 6,000 square feet (557 m²); and clusters of portable school classrooms shall be separated as required by the building code; or
3. Group E occupancies with an occupant load of 50 or less, calculated in accordance with Table 1004.1.2.

903.2.7 Group M. An automatic sprinkler system shall be provided throughout buildings containing a Group M occupancy, where one of the following conditions exists:

1. A Group M fire area exceeds 12,000 square feet (1115 m²).
2. A Group M fire area is located more than three stories above grade plane.
3. The combined area of all Group M fire areas on all floors, including any mezzanines, exceeds 24,000 square feet (2230 m²).

4. Where a Group M occupancy that is used for the display and sale of upholstered furniture or mattresses exceeds 5000 square feet (464 m²).

903.2.8 Group R. An automatic fire sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

EXCEPTION: Group R-1 if all of the following conditions apply:

1. The Group R fire area is no more than 500 square feet and is used for recreational use only.
2. The Group R fire area is only one story.
3. The Group R fire area does not include a basement.
4. The Group R fire area is no closer than 30 feet from another structure.
5. Cooking is not allowed within the Group R fire area.
6. The Group R fire area has an occupant load of no more than 8.
7. A hand held (portable) fire extinguisher is in every Group R fire area.

WSR 15-09-052
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-71—Filed April 10, 2015, 3:39 p.m., effective April 19, 2015]

Effective Date of Rule: April 19, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-310-195.

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

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

Reasons for this Finding: Based on the preseason prediction for a relatively good return of spring chinook and angler input requesting an emphasis for a longer fishery season, Snake River fisheries in each of these zones are open for only three days per week (with one weekend day included each week) with a daily bag limit of one adult hatchery chinook. The restrictions on the fishery will provide additional angling opportunity with upriver fishery zones, and enables managers to ensure that the fisheries comply with Endangered Species Act restrictions and harvest allocations available for the Snake River. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 10, 2015.

Nate Pamplin
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19500M Freshwater exceptions to statewide rules—Snake River. Notwithstanding the provisions of WAC 220-310-195 and WAC 220-56-180:

(1) Effective April 23, 2015, until further notice, a person may fish for and possess salmon in the following waters of the Snake River from Texas Rapids boat launch (south side of the river approximately 3.5 miles upstream of the mouth of Tucannon River) to the fishing restriction boundary below Little Goose Dam. Minimum size for Chinook is 12 inches in length. This zone includes the area between the juvenile bypass return pipe and Little Goose Dam along the south shoreline of the facility (includes the walkway area locally known as "the wall" in front of the juvenile collection facility). Open Thursday through Saturday each week. Daily limit of six hatchery Chinook, of which not more than one may be an adult Chinook.

(a) All Chinook with the adipose fin intact, and all steelhead, must be released immediately, unharmed.

(b) Hooks must be barbless when fishing for all species during times and in locations open for salmon fishing and retention, and only single barbless hooks are allowed when fishing for sturgeon.

(c) It is unlawful to use any hook larger than 5/8-inch (point of hook to shank) for all species except sturgeon.

(d) Night closure is in effect for salmon and sturgeon.

(e) For all areas open for Chinook, anglers must cease fishing for Chinook when the adult limit has been retained for the day.

(f) Anglers may possess 1 daily limit in fresh form in addition to the 2 daily limits in fresh form allowed by permanent rule.

(2) Effective April 23, 2015, until further notice, a person may fish for and possess salmon in the following waters of the Snake River from the downstream edge of the large power lines crossing the Snake River (just upstream from the West Evans Road on the south shore) upstream about 3.5 miles to the Washington state line (from the east levee of the Greenbelt boat launch in Clarkston northwest across the Snake River to the WA/ID boundary waters marker on the Whitman County shore). Open Thursday through Saturday each week. Daily limit of six hatchery Chinook, of which not more than one may be an adult Chinook. Minimum size for Chinook is 12 inches in length.

(a) All Chinook with the adipose fin intact, and all steelhead, must be released immediately, unharmed.

(b) Hooks must be barbless when fishing for all species during times and in locations open for salmon fishing and retention, and only single barbless hooks are allowed when fishing for sturgeon.

(c) It is unlawful to use any hook larger than 5/8-inch (point of hook to shank) for all species except sturgeon.

(d) Night closure is in effect for salmon and sturgeon.

(e) For all areas open for Chinook, anglers must cease fishing for Chinook when the adult limit has been retained for the day.

(f) Anglers may possess 1 daily limit in fresh form in addition to the 2 daily limits in fresh form allowed by permanent rule.

(3) Effective April 19, 2015, until further notice, a person may fish for and possess salmon in waters of the Snake River from the South Bound Highway 12 Bridge at Pasco upstream about 7 miles to the fishing restriction boundary below Ice Harbor Dam. Open Sunday through Tuesday each week. Daily limit of six hatchery Chinook, of which not more than one may be an adult Chinook. Minimum size for Chinook is 12 inches in length.

(a) All Chinook with the adipose fin intact, and all steelhead, must be released immediately, unharmed.

(b) Hooks must be barbless when fishing for all species during times and in locations open for salmon fishing and retention, and only single barbless hooks are allowed when fishing for sturgeon.

(c) It is unlawful to use any hook larger than 5/8-inch (point of hook to shank) for all species except sturgeon.

(d) Night closure is in effect for salmon and sturgeon.

(e) For all areas open for Chinook, anglers must cease fishing for Chinook when the adult limit has been retained for the day.

(f) Anglers may possess 1 daily limit in fresh form in addition to the 2 daily limits in fresh form allowed by permanent rule.

(4) Effective April 19, 2015, until further notice, a person may fish for and possess salmon in waters of the Snake River from the south shore boat launch (Ilia boat launch) across to the mouth of Almota Creek upstream about four miles to the restricted fishing area below Lower Granite Dam. Open Sunday through Tuesday each week. Daily limit of six hatchery Chinook, of which not more than one may be an adult Chinook. Minimum size for Chinook is 12 inches in length.

(a) All Chinook with the adipose fin intact, and all steelhead, must be released immediately, unharmed.

(b) Hooks must be barbless when fishing for all species during times and in locations open for salmon fishing and retention, and only single barbless hooks are allowed when fishing for sturgeon.

(c) It is unlawful to use any hook larger than 5/8-inch (point of hook to shank) for all species except sturgeon.

(d) Night closure is in effect for salmon and sturgeon.

(e) For all areas open for Chinook, anglers must cease fishing for Chinook when the adult limit has been retained for the day.

(f) Anglers may possess 1 daily limit in fresh form in addition to the 2 daily limits in fresh form allowed by permanent rule.

WSR 15-09-053
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-74—Filed April 10, 2015, 4:30 p.m., effective April 15, 2015]

Effective Date of Rule: April 15, 2015.

Purpose: Allow the use of crossbows to hunt turkeys during the entire 2015 spring general season.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-34200G; and amending WAC 232-28-342.

Reviser's note: The agency appears to be repealing WAC 232-28-34200G. WAC 232-28-34200G does not exist, but appears as filed pursuant to the requirements of RCW 34.08.040.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, and 77.12.150.

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

Reasons for this Finding: This change expands the weapon choices hunters have to hunt wild turkey by adding crossbows as an option which is consistent with recent commission action that otherwise would take effect late in the season. Enacting the rule for the entire season will prevent confusion and potential inadvertent violations by the public. This rule is interim until permanent rules take effect.

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.

J. W. Unsworth
 Director

NEW SECTION

WAC 232-28-34200F 2012-13, 2013-14, 2014-15
Small game and other wildlife seasons and regulations
 Notwithstanding the provisions of WAC 232-28-342, effective April 15, 2015, until further notice:

It is unlawful to hunt turkey with a weapon other than shotgun shooting #4 or smaller shot, bow and arrow, cross-bow, or muzzle loading shotgun shooting #4 or smaller shot.

WSR 15-09-060
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-75—Filed April 14, 2015, 10:32 a.m., effective April 22, 2015, 12:01 a.m.]

Effective Date of Rule: April 22, 2015, 12:01 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500N; and amending WAC 220-310-195.

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

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

Reasons for this Finding: This emergency rule is necessary to assure a safe and successful youth fishing event in Sarg Hubbard Park Pond. Five thousand trout will be planted three days prior to the event to acclimate the fish and assure they bite well. On April 25, 2015, preregistered kids will be allowed to fish during the event. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 14, 2015.

Joe Stohr
 for J. W. Unsworth
 Director

NEW SECTION

WAC 220-310-19500N Exceptions to statewide rules—Sarg Hubbard Park (Reflection Pond). Notwithstanding the provisions of WAC 220-310-195, effective 12:01 a.m. April 22, through 5:00 p.m. April 25, 2015, it is unlawful to fish in Sarg Hubbard Park Pond, except as provided in the sections below:

(1) Open to fishing 8:00 a.m. to 5:00 p.m. April 25, 2015, by juvenile anglers participating in the Yakima Greenway Association's "Kids' Fish-In" event.

(2) The daily limit is reduced to two trout during the youth fishing event.

REPEALER

The following section of the Washington Administrative Code is repealed effective 5:01 p.m. April 25, 2015:

WAC 220-310-19500N Exceptions to statewide rules—
Sarg Hubbard Park Pond (Reflection Pond).

WSR 15-09-063
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-76—Filed April 14, 2015, 11:44 a.m., effective May 6, 2015]

Effective Date of Rule: May 6, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-310-19500P; and amending WAC 220-310-195.

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

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

Reasons for this Finding: This emergency rule is necessary to assure safe and successful fishing events in Columbia Park Pond. Several thousand rainbow trout will be stocked up to three days prior to the events to ensure they will bite while the kids are fishing. During the two events, only those registered will be allowed to fish. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 14, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19500P Exceptions to statewide rules—Columbia Park Pond. Notwithstanding the provisions of WAC 220-310-195, effective 12:01 a.m. May 6, through 3:00 p.m. May 9, 2015, it is unlawful to fish in Columbia Park Pond (Kennewick), except as provided in the subsections below:

(1) Open to fishing 5:00 p.m. to 7:00 p.m. May 8, 2015, by juvenile anglers participating in the "Special Needs Youth Fishing Event."

(2) Open to fishing 9:00 a.m. to 2:30 p.m. May 9, 2015, by juvenile anglers participating in the "Kids' Fishing Day" event.

(3) The daily limit is three trout during the two youth fishing events.

REPEALER

The following section of the Washington Administrative Code is repealed effective 3:01 p.m. May 9, 2015:

WAC 220-310-19500P Exceptions to statewide rules—
Columbia Park Pond.

WSR 15-09-065
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-67—Filed April 14, 2015, 4:29 p.m., effective April 17, 2015]

Effective Date of Rule: April 17, 2015.

Purpose: Amend recreational fishing rules for razor clams.

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

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

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

Reasons for this Finding: Survey results show that adequate razor clams are available for recreational harvest in Razor Clam Areas 1, 3, 4 and 5. Washington department of health has certified clams from these beaches are safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 14, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-56-36000C Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 3, 4, or 5, except as provided for in this section:

(1) Effective 12:01 a.m. April 17, 2015 through 11:59 a.m. April 24, 2015, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(2) Effective 12:01 a.m. April 17, 2015 through 11:59 a.m. April 24, 2015, razor clam digging is permissible in Razor Clam Area 3. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(3) Effective 12:01 a.m. April 18, 2015 through 11:59 a.m. April 19, 2015, razor clam digging is permissible in Razor Clam Area 4. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

(4) Effective 12:01 a.m. April 17, 2015 through 11:59 a.m. April 19, 2015, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 a.m. to 11:59 a.m. each day only.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. April 24, 2015:

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

WSR 15-09-078
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed April 16, 2015, 11:03 a.m., effective April 16, 2015, 11:03 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department of social and health services (DSHS) is amending WAC 388-418-0005 How will I know

what changes to report?, to correct the policy concerning when categorically eligible (CE) Basic Food and food assistance program (FAP) households must report changes in income during the certification period. These amendments are currently in effect via emergency rule making filed on December 26, 2014, as WSR 15-02-010. A public hearing was held March 24, 2015. The permanent rule was filed April 9, 2015, and will be effective May 10, 2015.

DSHS is removing outdated references to long-term care, SSI-related medical, children's medical, pregnancy medical and other medical benefits under this rule.

Citation of Existing Rules Affected by this Order: Amending WAC 388-418-0005.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, 7 U.S.C. § 2015, and 7 C.F.R. 273.12 (a)(5)(v); 2E2SHB 1738, and chapter 15, Laws of 2011; SHB 2069.

Other Authority: 7 C.F.R. 273.12 (a)(5)(v), a household subject to simplified reporting must report when its monthly gross income exceeds the monthly gross income limit for its household size, as defined at § 273.9 (a)(1) which is one hundred thirty percent of the federal poverty guidelines. The household shall use the monthly gross income limit for the household size that existed at the time of its most recent certification or recertification, regardless of any subsequent changes in its household size.

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

Reasons for this Finding: The amendments correct the change of circumstance reporting requirements for Basic Food and FAP CE households to align with federal regulations. Current rules don't require CE households to report income changes during the certification period unless the income increases and exceeds the two hundred percent federal poverty guidelines (also known as FPL). The income limit threshold for reporting changes should be set at one hundred thirty percent FPL.

DSHS is removing outdated references to long-term care, SSI-related medical, children's medical, pregnancy medical and other medical benefits under this rule. The 2E2SHB 1738, Laws of 2011, designated the health care authority as the single state agency responsible for the administration and supervision of Washington's medical assistance programs. HCA recodified medical assistance program rules to Title 182 WAC. Accordingly, the department is eliminating corresponding rules and medical references under Title 388 WAC.

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

Date Adopted: April 15, 2015.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-04-051, filed 1/30/12, effective 3/1/12)

WAC 388-418-0005 How will I know what changes to report? (1) You must report changes to the department based on the kinds of assistance you receive. We inform you of your reporting requirements on letters we send you about your benefits. Follow the steps below to determine the types of changes you must report:

~~((H)) (a) If you receive ((assistance from any of the programs listed in subsection (1)), you must report changes for people in your assistance unit under chapter 388-408 WAC, based on the first program you receive benefits from:~~

~~(a) If you receive long term care benefits such as a home and community based waiver (Basic, Basic Plus, CORE, Community Protection, COPES, New Freedom, Medically Needy), care in a medical institution (nursing home, hospice care center, state veterans home, ICF/MR, RHC) or hospice, you must tell us if you have a change of:~~

- ~~(i) Residence;~~
- ~~(ii) Marital status;~~
- ~~(iii) Living arrangement;~~
- ~~(iv) Income;~~
- ~~(v) Resources;~~
- ~~(vi) Medical expenses; and~~

~~(vii) If we allow you expenses for your spouse or dependents, you must report changes in their income or shelter cost.~~

~~(b) If you receive medical benefits based on age, blindness, disability (SSI related medical), ((or ADATSA benefits,)) you need to tell us if:~~

- ~~(i) You move;~~
- ~~(ii) A family member moves into or out of your home;~~
- ~~(iii) Your resources change; or~~
- ~~(iv) Your income changes. This includes the income of you, your spouse or your child living with you.~~

~~(e) If you receive) cash benefits, you need to tell us if:~~

- ~~(i) You move;~~
- ~~(ii) Someone moves out of your home;~~
- ~~(iii) Your total gross monthly income goes over the:~~
- ~~(A) Payment standard under WAC 388-478-0033 if you receive ABD cash; or~~

~~(B) Earned income limit under WAC 388-478-0035 and 388-450-0165 for all other programs;~~

~~(iv) You have liquid resources more than four thousand dollars; or~~

~~(v) You have a change in employment. Tell us if you:~~

- ~~(A) Get a job or change employers;~~
- ~~(B) Change from part-time to full-time or full-time to part-time;~~

~~(C) Have a change in your hourly wage rate or salary;~~

~~(D) Stop working; or~~

~~((E) See WAC 182-504-0100 for medical care services reporting requirements.))~~

~~((D)) (b) If you are a relative or nonrelative caregiver and receive cash benefits on behalf of a child in your care but not for yourself or other adults in your household, you need to tell us if:~~

- ~~(i) You move;~~
- ~~(ii) The child you are caring for moves out of the home;~~
- ~~(iii) Anyone related to you or to the child you are caring for moves into or out of the home;~~

~~(iv) There is a change in the earned or unearned income of anyone in your child-only means-testing assistance unit, as defined in WAC 388-450-0162 (3)(b). You do not need to report changes in earned income for your dependent children who are in school full-time (see WAC 388-450-0070).~~

~~(v) There is a change in the recipient child's earned or unearned income (see WAC 388-450-0070 for how we count the earned income of a child);~~

~~(vi) The recipient child has liquid resources more than four thousand dollars;~~

~~(vii) A recipient child in the home becomes a foster child; or~~

~~(viii) You legally adopt the recipient child.~~

~~((e) If you receive family medical benefits, you need to tell us if:~~

- ~~(i) You move;~~
- ~~(ii) A family member moves out of your home; or~~
- ~~(iii) If your income goes up or down by one hundred dollars or more a month and you expect this income change will continue for at least two months.))~~

~~(2) If you do not receive cash assistance ((from any of the programs listed in subsection (1));) but you do receive benefits from ((any of the programs listed in subsection (2))) basic food, you must report changes for the people in your assistance unit under chapter 388-408 WAC, ((based on all the benefits you receive.)) and tell us if:~~

~~(a) ((If you receive Basic Food benefits, you need to tell us if:~~

~~(i) If your household is a categorically eligible household as defined under WAC 388-414-0001, tell us if your total gross monthly income is more than two hundred percent of the federal poverty level; or~~

~~(ii) For all other households tell us if your)) Your total monthly income is more than the maximum gross monthly income as described in WAC 388-478-0060; or~~

~~((iii)) (b) Anyone who receives food benefits in your assistance unit and who must meet work requirements under WAC 388-444-0030 has their hours at work go below twenty hours per week.~~

~~((b) If you receive children's medical benefits, you need to tell us if:~~

- ~~(i) You move; or~~
- ~~(ii) A family member moves out of the house.~~

~~(e) If you receive pregnancy medical benefits, you need to tell us if:~~

- ~~(i) You move; or~~
- ~~(ii) You are no longer pregnant.~~

~~(d) If you receive other medical benefits, you need to tell us if:~~

~~(i) You move; or~~

~~(ii) A family member moves out of the home.)~~

WSR 15-09-082
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-70—Filed April 16, 2015, 2:24 p.m., effective April 16, 2015,
2:24 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-20000Z; and amending WAC 220-310-200.

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

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

Reasons for this Finding: This emergency rule establishes the summer-period white sturgeon retention season in Bonneville Reservoir. A total of nine hundred forty-five fish remain on the guideline, which allows for a summer retention season. Catch and release is allowed during nonretention periods, except within the May-July sturgeon spawning sanctuary downstream of The Dalles Dam. This emergency rule is consistent with the joint Washington-Oregon action of April 8, 2015, and conforms Washington state rules with Oregon state rules. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 16, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-20000D Exceptions to statewide rules—Columbia River sturgeon. Notwithstanding the provisions of WAC 220-310-200:

(1) June 19 through June 21, June 26 through June 28, and July 3 through July 5, 2015, it is permissible to retain white sturgeon between 38-inches minimum and 54-inches maximum fork length caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to sturgeon spawning Sanctuary boundary located 1.8 miles downstream of The Dalles Dam.

(2) Effective immediately until further notice, except for the specific dates described in subsection (1) of this section, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to The Dalles Dam. Catch and release is permissible except from May 1 through July 31, 2015 in the sturgeon spawning Sanctuary located from The Dalles Dam downstream 1.8 miles.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-20000Z Exceptions to statewide rules—
Columbia River sturgeon.

WSR 15-09-083
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-77—Filed April 16, 2015, 2:27 p.m., effective April 25, 2015]

Effective Date of Rule: April 25, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500Q; and amending WAC 220-310-195.

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

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

Reasons for this Finding: Upper Wheeler Reservoir is owned and operated by the Wenatchee Heights Reclamation District (WHRD) and has been closed to public access. Washington department of fish and wildlife has made arrangements with WHRD and the Wenatchee Valley Fly Fishers (WVFF) to grant public access to recreational anglers under "Fly Fishing Only" regulations. The agreement includes fish stocking and a land-use agreement by WDFW, and site maintenance by the WVFF. This rule is interim until permanent rules take effect July 1, 2015.

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

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

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

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

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

Date Adopted: April 16, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-19500Q Exceptions to statewide rules—Upper Wheeler Reservoir. Notwithstanding the provisions of WAC 220-310-195, effective April 25 through June 30, 2015, it is permissible to fish in the waters of Upper Wheeler Reservoir subject to the following provisions:

- (1) Fishing is open to fly fishing only.
- (2) Trout: Catch and release only.
- (3) All other game fish: Statewide minimum size and daily limits apply.
- (4) It is unlawful to fish from a floating device equipped with a motor.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 1, 2015:

WAC 220-310-19500Q Exceptions to statewide rules—
Upper Wheeler Reservoir.

WSR 15-09-084
EMERGENCY RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)

[Filed April 16, 2015, 2:38 p.m., effective April 16, 2015, 2:38 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The health care authority (HCA) needs to amend rules, create new rules in order to implement new federal regulations under the federal Patient Protection and Affordable Care Act. This filing is to correctly reference rules that are final January 1, 2014, in the long-term care medical rule in addition to the elimination of the presumptive disability program as an eligibility group. Aging and long-term supports administration is adding a residential waiver program to facilitate discharges from state hospitals.

Citation of Existing Rules Affected by this Order: Repealing WAC 182-515-1500; and amending WAC 182-513-1301, 182-513-1305, 182-513-1315, 182-513-1325, 182-513-1330, 182-513-1340, 182-513-1345, 182-513-1350, 182-513-1363, 182-513-1364, 182-513-1365, 182-513-1366, 182-513-1367, 182-513-1380, 182-513-1395, 182-513-1400, 182-513-1405, 182-513-1415, 182-513-1425, 182-513-1430, 182-513-1450, 182-513-1455, 182-515-1505, 182-515-1506, 182-515-1507, 182-515-1508, 182-515-1509, 182-515-1510, 182-515-1511, 182-515-1512, 182-515-1513, 182-515-1514, and 182-507-0125.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Patient Protection and Affordable Care Act established under Public Law 111-148; and Code of Federal Regulations at 42 C.F.R. § 431, 435, and 457, and at 45 C.F.R. § 155. Section 1917 of the Social Security Act.

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

Reasons for this Finding: Over the last year the agency has been working diligently with client advocates and other stakeholders in crafting the new rules to implement the provisions of the Affordable Care Act, including the expansion of medicaid. Although the permanent rule-making process is nearing completion, the permanent rules will not be effective by the October 1, 2013, deadline due in part to the anticipated receipt of final federal rules governing this process. Hence the need for the emergency adoption of these rules, while the permanent rule-making process is completed.

Number of Sections Adopted in Order to Comply with Federal Statute: New 4, Amended 35, Repealed 1; 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 4, Amended 35, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 4, Amended 35, Repealed 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 16, 2015.

Jason R. P. Crabbe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-13-056, filed 6/15/12, effective 7/1/12)

WAC 182-507-0125 State-funded long-term care services program. (1) The state-funded long-term care services program is subject to caseload limits determined by legislative funding. Services cannot be authorized for eligible persons prior to a determination by the aging and ~~((disability services))~~ long-term supports administration ~~((ADSA))~~ (AL TSA) that caseload limits will not be exceeded as a result of the authorization.

(2) Long-term care services are defined in this section as services provided in one of the following settings:

(a) In a person's own home, as described in WAC 388-106-0010;

(b) Nursing facility, as defined in WAC 388-97-0001;

(c) Adult family home, as defined in RCW 70.128.010;

(d) Assisted living facility, as described in WAC ~~((388-513-1301))~~ 182-513-1301;

(e) Enhanced adult residential care facility, as described in WAC ~~((388-513-1301))~~ 182-513-1301;

(f) Adult residential care facility, as described in WAC ~~((388-513-1301))~~ 182-513-1301.

(3) Long-term care services will be provided in one of the facilities listed in subsection (2)(b) through (f) of this section unless nursing facility care is required to sustain life.

(4) To be eligible for the state-funded long-term care services program described in this section, an adult nineteen years of age or older must meet all of the following conditions:

(a) Meet the general eligibility requirements for medical programs described in WAC ~~((388-503-0505))~~ 182-503-0505 (2) and (3) ~~((a), (b), (c), and (d)))~~ with the exception of subsection (3)(c) and (d) of this section;

(b) Reside in one of the settings described in subsection (2) of this section;

(c) Attain institutional status as described in WAC ~~((388-513-1320))~~ 182-513-1320;

(d) Meet the functional eligibility described in WAC 388-106-0355 for nursing facility level of care;

(e) Not have a penalty period due to a transfer of assets as described in WAC ~~((388-513-1363, 388-513-1364, 388-513-1365, and 388-513-1366))~~ 182-513-1363, 182-513-1364, or 182-513-1365;

(f) Not have equity interest in a primary residence more than the amount described in WAC ~~((388-513-1350 (7)(a)(iii)))~~ 182-513-1350; and

(g) Any annuities owned by the adult or spouse must meet the requirements described in chapter ~~((388-564))~~ 182-516 WAC.

(5) An adult who is related to the supplemental security income (SSI) program as described in WAC ~~((388-475-0050))~~ 182-512-0050 (1), (2), and (3) must meet the financial requirements described in WAC ~~((388-513-1325, 388-513-1330, and 388-513-1350))~~ 182-513-1315.

(6) An adult who does not meet the SSI-related criteria in subsection (2) of this section may be eligible under the family institutional medical program rules described in WAC ~~((388-505-0250 or 388-505-0255))~~ 182-514-0230.

(7) An adult who is not eligible for the state-funded long-term care services program under categorically needy (CN)

rules may qualify under medically needy (MN) rules described in:

(a) WAC ~~((388-513-1395))~~ 182-513-1395 for adults related to SSI; or

(b) WAC ~~((388-505-0255))~~ 182-514-0255 for adults up to age twenty-one related to family institutional medical.

(8) All adults qualifying for the state-funded long-term care services program will receive CN scope of medical coverage described in WAC ~~((388-501-0060))~~ 182-500-0020.

(9) The department determines how much an individual is required to pay toward the cost of care using the following rules:

(a) For an SSI-related individual residing in a nursing home, see rules described in WAC ~~((388-513-1380))~~ 182-513-1380.

(b) For an SSI-related individual residing in one of the other settings described in subsection (2) of this section, see rules described in WAC ~~((388-515-1505))~~ 182-515-1505.

(c) For an individual eligible under the family institutional program, see WAC ~~((388-505-0265))~~ 182-514-0265.

(10) A person is not eligible for state-funded long-term care services if that person entered the state specifically to obtain medical care.

(11) A person eligible for the state-funded long-term care services program is certified for a twelve month period.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1301 Definitions related to long-term care (LTC) services. This section defines the meaning of certain terms used in chapters ~~((388-513))~~ 182-513 and ~~((388-515))~~ 182-515 WAC. Within these chapters, institutional, home and community based (HCB) waiver, and hospice services are referred to collectively as LTC services. Other terms related to LTC services that also apply to other programs are found in the sections in which they are used.

Additional medical definitions that are not specific to LTC services can be found in WAC 182-500-0005 through 182-500-0110 Medical definitions.

Definitions of terms used in certain rules that regulate LTC programs are as follows:

"Adequate consideration" means the reasonable value of the goods or services received in exchange for transferred property approximates the reasonable value of the property transferred.

"Aging and disability services (ADS)" means an umbrella agency for the behavioral health and service integration administration (BHSIA), aging and long-term support administration (AL TSA) and developmental disabilities administration (DDA) within the department of social and health services (DSHS).

"Aging and long-term supports administration (AL TSA)" means an administration within aging and disability services (ADS) of the department of social and health services (DSHS) and includes:

- Home and community services (HCS) that helps low income seniors and adults with disabilities and their families get information, support and services when long-term care is needed; and

• Residential care services (RCS) that regulates nursing facilities (NF), adult family homes (AFH), assisted living facilities (AL), intermediate care facilities for individuals with intellectual disabilities (ICF-ID), and certified community residential service providers and promotes and protects the health, safety, and well-being of individuals living in licensed or certified residential settings.

"**Alternate living facility (ALF)**" means one of the following community residential facilities that are contracted with the department to provide certain services:

(1) Adult family home (AFH), a licensed family home that provides its residents with personal care and board and room for two to six adults unrelated to the person(s) providing the care. Licensed as an adult family home under chapter 70.128 RCW.

(2) Adult residential care facility (ARC) (formerly known as a CCF) is a licensed facility that provides its residents with shelter, food, household maintenance, personal care and supervision. Licensed as an assisted living under chapter 18.20 RCW.

(3) Adult residential rehabilitation center (ARRC) described in WAC 388-865-0235 or adult residential treatment facility (ARTF) described in WAC 388-865-0465 are licensed facilities that provides their residents with twenty-four hour residential care for impairments related to mental illness.

(4) Assisted living facility (AL), a licensed facility for aged and disabled low-income persons with functional disabilities. COPEs eligible clients are often placed in assisted living. Licensed as an assisted living facility under chapter 18.20 RCW.

(5) (~~(Division of)~~) Developmental disabilities (~~((DDD))~~) administration (DDA) group home (GH), a licensed facility that provides its residents with twenty-four hour supervision. Depending on the size, a (~~((DDD))~~) DDA group home may be licensed as an adult family home under chapter 70.128 RCW or an assisted living facility under chapter 18.20 RCW. Group homes provide community residential instruction, supports, and services to two or more clients who are unrelated to the provider.

(6) Enhanced adult residential care facility (EARC), a licensed facility that provides its residents with those services provided in an ARC, in addition to those required because of the client's special needs. Licensed as an assisted living facility under chapter 18.20 RCW.

"**Authorization date**" means the date payment begins for long-term care services described in WAC 388-106-0045.

"**CARE assessment**" means the evaluation process defined in chapter 388-106 WAC used by a department designated social services worker or a case manager to determine the client's need for long-term care services.

"**Clothing and personal incidentals (CPI)**" means the cash payment issued by the department for clothing and personal items for individuals living in an ALF described in WAC ((388-478-0045)) 182-515-1500 or medical institution described in WAC ((388-478-0040)) 182-513-1300.

"**Community options program entry system (COPEs)**" means a medicaid home and community based (HCB) waiver program described in chapter 388-106 WAC that provides an aged or disabled person assessed as needing

nursing facility care with the option to remain at home or in an alternate living facility (ALF).

"**Community spouse (CS)**" means a person who:

(1) Does not reside in a medical institution; and

(2) Is legally married to a client who resides in a medical institution or receives services from a home and community-based (HCB) waiver program. A person is considered married if not divorced, even when physically or legally separated from his or her spouse.

"**Community spouse excess shelter**" means the excess shelter standard is used to calculate whether a community spouse qualifies for the community spouse maintenance allowance because of high shelter costs. The federal maximum standard that is used to calculate the amount is found at: ((<http://www.dshs.wa.gov/manuals/caz/sections/LongTermCare/LTCstandardspna.shtml>)) <http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx>.

"**Community spouse income and family allocation**" means:

(1) The community spouse income standard is used when there is a community spouse. It is used when determining the total allocation for the community spouse from the institutional spouse's income.

(2) The family allocation income standard is used when a dependent resides with the community spouse. This amount is deducted from an institutional spouse's payment for their cost of care to help support the dependent. The federal maximum standard that is used to calculate the amount can be found at: ((<http://www.dshs.wa.gov/manuals/caz/sections/LongTermCare/LTCstandardspna.shtml>)) <http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx>.

"**Community spouse maintenance allocation**" means an amount deducted from an institutional spouse's payment toward their cost of care in order for the community spouse to have enough income to pay their shelter costs. This is a combination of the community spouse income allocation and the community spouse excess shelter calculation. The federal maximum standard that is used to calculate the amount can be found at: <http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx>.

"**Community spouse resource allocation (CSRA)**" means the resource amount the community spouse is allowed. A community spouse resource evaluation is completed to determine if the standard is more than the state standard up to the federal community spouse transfer maximum standard.

"**Community spouse resource evaluation**" means a review of the couple owned at the start of the current period of institutional status. This review may result in a resource standard for the community spouse that is higher than the state standard.

"**Community spouse transfer maximum**" means the federal maximum standard that is used to determine the community spouse resource allocation (CSRA). This standard is found at: ((<http://www.dshs.wa.gov/manuals/caz/sections/LongTermCare/LTCstandardspna.shtml>)) <http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx>.

"**Developmental disabilities administration (DDA)**" means an administration within aging and disability services (ADS) of department of social and health services (DSHS) supporting individuals with developmental disabilities.

"~~((DD))~~ **DDA waiver**" means medicaid waiver programs described in chapter 388-845 WAC that provide home and community-based services as an alternative to an intermediate care facility for the intellectually disabled (ICF-ID) to persons determined eligible for services from ~~((DD))~~ **DDA**.

"**Dependent**" means an individual who is financially dependent upon another for his well being as defined by financial responsibility regulations for the program. For the purposes of long-term care, rules allow allocation in post eligibility to a dependent. If the dependent is eighteen years or older and being claimed as a dependent for income tax purposes, a dependent allocation can be considered. This can include an adult child, a dependent parent or a dependent sibling.

"**Equity**" means the equity of real or personal property is the fair market value (see definition below) less any encumbrances (mortgages, liens, or judgments) on the property.

"**Exception to rule (ETR)**" means a waiver by the secretary's designee to a department policy for a specific client experiencing an undue hardship because of the policy. The waiver may not be contrary to law.

"**Fair market value (FMV)**" means the price an asset may reasonably be expected to sell for on the open market at the time of transfer or assignment.

"**Federal benefit rate (FBR)**" means the basic benefit amount the Social Security administration (SSA) pays to clients who are eligible for the supplemental security income (SSI) program.

"**Home and community based services**" (HCBS) means services provided in the home or a residential setting to individuals assessed by the department.

"**Home and community based (HCB) waiver programs**" means section 1915(c) of the Social Security Act enables states to request a waiver of applicable federal medicaid requirements to provide enhanced community support services to those medicaid beneficiaries who would otherwise require the level of care provided in a hospital, nursing facility or intermediate care facility for the intellectually disabled (ICF-ID).

"**Initial eligibility**" means part one of institutional medical eligibility for long-term care services. Once resource and general eligibility is met, the gross nonexcluded income is compared to three hundred percent of the federal benefit rate (FBR) for a determination of CN or MN coverage.

"**Institutional services**" means services paid for by medicaid or state funds and provided in a medical institution, through a home and community based (HCB) waiver or program of all-inclusive care for the elderly (PACE).

"**Institutional status**" means what is described in WAC ~~((388-513-1320))~~ 182-513-1320.

"**Institutionalized client**" means a client who has attained institutional status as described in WAC ~~((388-513-1320))~~ 182-513-1320.

"**Institutionalized spouse**" means legally married person who has attained institutional status as described in chapter ~~((388-513))~~ 182-513 WAC, and receives services in a medical institution or from a home and community based waiver program described in chapters ~~((388-513))~~ 182-513

and ~~((388-515))~~ 182-515 WAC. A person is considered married if not divorced, even when physically or legally separated from his or her spouse.

"**Legally married**" means persons legally married to each other under provision of Washington state law. Washington recognizes other states' legal and common-law marriages. Persons are considered married if they are not divorced, even when they are physically or legally separated.

"**Likely to reside**" means a determination by the department that a client is reasonably expected to remain in a medical institution for thirty consecutive days. Once made, the determination stands, even if the client does not actually remain in the facility for that length of time.

"**Look-back period**" means the number of months prior to the month of application for LTC services that the department will consider for transfer of assets.

"**Maintenance needs amount**" means a monthly income amount a client keeps as a personal needs allowance or that is allocated to a spouse or dependent family member who lives in the client's home. (See community spouse maintenance allocation and community spouse income and family allocation.)

"**Medicaid personal care (MPC)**" means a medicaid state plan program authorized under RCW 74.09.520. Clients eligible for this program may receive personal care in their own home or in a residential facility. Financial eligibility is based on a client receiving a noninstitutional aged, blind, disabled (ABD) categorically needy (CN) medical program or receiving a modified adjusted gross income (MAGI) based medicaid program.

"**Noninstitutional medical assistance**" means any medical benefits or programs not authorized under chapter ~~((388-513))~~ 182-513 or ~~((388-515))~~ 182-515 WAC. The exception is WAC ~~((388-513-1305))~~ 182-513-1305 noninstitutional SSI-related clients living in an ALF.

"**Participation**" means the amount a client is responsible to pay each month toward the total cost of personal care they receive each month. It is the amount remaining after subtracting allowable deductions and allocations from available monthly income. Individuals receiving services in an ALF pay room and board in addition to calculated participation. Participation is the result of the post-eligibility process used in institutional and HCB waiver eligibility.

"**Penalty period**" means a period of time for which a client is not eligible to receive LTC services due to asset transfers.

"**Personal needs allowance (PNA)**" means a standard allowance for clothing and other personal needs for long-term care clients who live in a medical institution or alternate living facility, or at home.

"**Short stay**" means a person who has entered a medical institution but is not likely to remain institutionalized for thirty consecutive days.

"**Special income level (SIL)**" means the monthly income standard for the categorically needy (CN) program that is three hundred percent of the SSI federal benefit rate (FBR).

"**Spousal impoverishment**" means financial provisions to protect income and assets of the noninstitutional (community spouse) through income and resource allowances. The

spousal allocation process is used to discourage the impoverishment of a spouse due to the need for LTC services by their husband or wife. That law and those that have extended and/or amended it are referred to as spousal impoverishment legislation. (Section 1924 of the Social Security Act.)

"State spousal resource standard" means minimum resource standard allowed for a community spouse. (See community spouse resource transfer maximum.)

"Swing bed" means a bed in a critical access hospital that is contracted to be used as either a hospital or a nursing facility bed based on the need of the individual.

"Third party resource (TPR)" means a resource where the purpose of the payment is for payment of assistance of daily living or medical services or personal care. Third party resources are described in WAC 182-501-0200. The department is considered the payer of last resort as described in WAC 182-502-0100.

"Transfer of a resource or asset" means changing ownership or title of an asset such as income, real property, or personal property by one of the following:

- (1) An intentional act that changes ownership or title; or
- (2) A failure to act that results in a change of ownership or title.

"Transfer date for real property or interest in real property" means:

- (1) The date of transfer for real property is the day the deed is signed by the grantor if the deed is recorded; or
- (2) The date of transfer for real property is the day the signed deed is delivered to the grantee.

"Transfer month" means the calendar month in which resources were legally transferred.

"Uncompensated value" means the fair market value (FMV) of an asset at the time of transfer minus the value of compensation the person receives in exchange for the asset.

"Undue hardship" means the person is not able to meet shelter, food, clothing, or health needs. Clients who are denied or terminated from LTC services due to a transfer of asset penalty or having excess home equity may apply for an undue hardship waiver based on criteria described in WAC ((388-513-1367)) 182-513-1367.

"Value of compensation received" means the consideration the purchaser pays or agrees to pay. Compensation includes:

- (1) All money, real or personal property, food, shelter, or services the person receives under a legally enforceable purchase agreement whereby the person transfers the asset; and
- (2) The payment or assumption of a legal debt the seller owes in exchange for the asset.

"Veterans benefits" means different types of benefits paid by the federal Department of Veterans Affairs (VA). Some may include additional allowances for:

- (1) Aid and attendance for an individual needing regular help from another person with activities of daily living;
- (2) "Housebound" for an individual who, when without assistance from another person, is confined to the home;
- (3) Improved pension, the newest type of VA disability pension, available to veterans and their survivors whose income from other sources (including service connected disability) is below the improved pension amount;

(4) Unusual medical expenses (UME), determined by the VA based on the amount of unreimbursed medical expenses reported by the person who receives a needs-based benefit. The VA can use UME to reduce countable income to allow the person to receive a higher monthly VA payment, a one-time adjustment payment, or both;

(5) Dependent allowance veteran's payments made to, or on behalf of, spouses of veterans or children regardless of their ages or marital status. Any portion of a veteran's payment that is designated as the dependent's income is countable income to the dependent; or

(6) Special monthly compensation (SMC). Extra benefit paid to a veteran in addition to the regular disability compensation to a veteran who, as a result of military service, incurred the loss or loss of use of specific organs or extremities.

"Waiver programs/services" means programs for which the federal government authorizes exceptions to federal medicaid rules. Such programs provide to an eligible client a variety of services not normally covered under medicaid. In Washington state, home and community based (HCB) waiver programs are authorized by the ((division of)) developmental disabilities ((DDD)) administration (DDA), or home and community services (HCS).

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1305 Determining eligibility for SSI-related noninstitutional medical assistance in an alternate living facility (ALF). This section describes how the department defines the monthly income standard and uses it to determine eligibility for noninstitutional medical assistance for a client who lives in a department-contracted ALF. Refer to WAC ((388-478-0045)) 182-515-1500 for the personal needs allowance (PNA) amount that applies in this rule.

(1) The eligibility criteria for noninstitutional medical assistance in an ALF follows SSI-related medical rule described in chapter 182-512 WAC ((182-512-0050 through 182-512-0960)) with the exception of the higher medical standard based on the daily rate described in subsection (3) of this section.

(2) Alternate living facilities ((AFH)-(ALF)) (ALF) include the following:

(a) An adult family home (AFH), a licensed family home that provides its residents with personal care and board and room for two to six adults unrelated to the person(s) providing the care. Licensed as an adult family home under chapters 70.128 RCW and 388-76 WAC;

(b) An adult residential care facility (ARC) (formally known as a CCF) is a licensed facility that provides its residents with shelter, food, household maintenance, personal care and supervision. Licensed as an assisted living facility under chapters 18.20 RCW and 388-78A WAC;

(c) An adult residential rehabilitation center (ARRC) described in WAC 388-865-0235 or adult residential treatment facility (ARTF) described in WAC 388-865-0465. These are licensed facilities that provide its residents with twenty-four hour residential care for impairments related to mental illness;

(d) Assisted living facility (AL), a licensed facility for aged and disabled low-income persons with functional disabilities. COPEs eligible clients are often placed in assisted living. Licensed as an assisted living facility under chapters 18.20 RCW and 388-78A WAC;

(e) ~~(Division of)~~ Developmental disabilities ~~((DDD))~~ administration (DDA) group home (GH), a licensed facility that provides its residents with twenty-four hour supervision. Depending on size of a ~~((DDD))~~ DDA group home may be licensed as an adult family home under chapter 70.128 RCW or a boarding home under chapter 18.20 RCW. Group home means a residence that is licensed as either an assisted living facility or an adult family home by the department under chapters 388-78A or 388-76 WAC. Group homes provide community residential instruction, supports, and services to two or more clients who are unrelated to the provider; and

(f) Enhanced adult residential care facility (EARC), a licensed facility that provides its residents with those services provided in an ARC, in addition to those required because of the client's special needs. Licensed as an assisted living facility under chapter 18.20 RCW.

(3) The monthly income standard for noninstitutional medical assistance under the categorically needy (CN) program has two steps:

(a) The gross nonexcluded monthly income cannot exceed the special income level (SIL) which is three hundred percent of the federal benefit rate (FBR); and

(b) The countable income cannot be greater than the department contracted daily rate times thirty-one days, plus the thirty-eight dollars and eighty-four cents PNA/CPI described in WAC ~~((388-478-0045))~~ 182-513-1300.

(4) The monthly income standard for noninstitutional medical assistance under the medically needy (MN) program equals the private facility daily rate times thirty one days, plus the thirty-eight dollars and eight-four cents PNA/CPI described in WAC ~~((388-478-0045))~~ 182-513-1300. Follow MN rules described in chapter 182-519 WAC.

(5) The department approves CN noninstitutional medical assistance for a period of up to twelve months for a client who is SSI-related as described in WAC 182-512-0050, if:

(a) The client's nonexcluded resources do not exceed the standard described in WAC ~~((388-513-1350))~~ 182-513-1350 (1); and

(b) The client's nonexcluded income does not exceed the CN standard described in subsection (3) of this section. SSI-related program as described in chapter 182-512 WAC.

(6) The department approves MN noninstitutional medical assistance for a period of months described in chapter 182-504 WAC for an SSI-related client, if:

(a) The client's nonexcluded resources do not exceed the standard described in WAC ~~((388-513-1350))~~ 182-513-1350 (1); and

(b) The client satisfies any spenddown liability as described in chapter 182-519 WAC.

(7) ~~((The department determines eligibility for a cash grant for individuals residing in an alternate living facility using the following program rules:~~

(a) WAC 388-400-0005 temporary assistance for needy families (TANF);

~~(b) WAC 388-400-0060 aged, blind, disabled (ABD) cash benefit;~~

~~(c) WAC 388-400-0030 refugee assistance.~~

~~(8) The) A client ~~((described in subsection (7)))~~ residing in an adult family home (AFH) ~~((receives))~~ receiving a grant based on a payment standard described in WAC 388-478-0033 due to an obligation to pay shelter costs to the adult family home. The client keeps a CPI/PNA in the amount of thirty-eight dollars and eighty-four cents described in WAC ~~((388-478-0045))~~ 182-513-1500 and pays the remainder of the grant to the adult family home as room and board.~~

~~((9) The client described in subsection (7) residing in an ALF described in subsections (2)(b), (c), (d), (e), (f) or (g) (all nonadult family home residential settings) keeps the thirty-eight dollars and eighty-four cents CPI amount based on WAC 388-478-0045.~~

~~(10))~~ (8) The client described in subsection (3) of this section and receiving medicaid personal care (MPC) from the department keeps sixty-two dollars and seventy-nine cents as a PNA and pays the remainder of their income to the ALF for room and board and personal care.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1315 Eligibility for long-term care (institutional, home and community based (HCB) waiver, and hospice) services. ~~((This section describes how the department determines a client's eligibility for medical for clients residing in a medical institution, on a waiver, or receiving hospice services under the categorically needy (CN) or medically needy (MN) programs. Also described are the eligibility requirements for these services under the aged, blind, or disabled (ABD) cash assistance, medical care services (MCS) and the state funded long-term care services program described in subsection (11).~~

~~(1) To be eligible for long term care (LTC) services described in this section, a client must:~~

~~(a) Meet the general eligibility requirements for medical programs described in WAC 182-503-0505 (2) and (3)(a) through (g);~~

~~(b) Attain institutional status as described in WAC 388-513-1320;~~

~~(c) Meet functional eligibility described in chapter 388-106 WAC for home and community services (HCS) waiver and nursing facility coverage; or~~

~~(d) Meet criteria for division of developmental disabilities (DDD) assessment under chapter 388-828 WAC for DDD waiver or institutional services;~~

~~(e) Not have a penalty period of ineligibility as described in WAC 388-513-1363, 388-513-1364, or 388-513-1365;~~

~~(f) Not have equity interest in their primary residence greater than the home equity standard described in WAC 388-513-1350; and~~

~~(g) Must disclose to the state any interest the applicant or spouse has in an annuity and meet annuity requirements described in chapter 388-561 WAC;~~

~~(i) This is required for all institutional or waiver services and includes those individuals receiving supplemental security income (SSI).~~

(ii) A signed and completed eligibility review for long term care benefits or application for benefits form can be accepted for SSI individuals applying for long-term care services.

(2) To be eligible for institutional, waiver, or hospice services under the CN program, a client must either:

(a) Be related to the supplemental security income (SSI) program as described in WAC 182-512-0050 (1), (2) and (3) and meet the following financial requirements, by having:

(i) Gross nonexcluded income described in subsection (8)(a) that does not exceed the special income level (SIL) (three hundred percent of the federal benefit rate (FBR)); and

(ii) Countable resources described in subsection (7) that do not exceed the resource standard described in WAC 388-513-1350; or

(b) Be approved and receiving aged, blind, or disabled cash assistance described in WAC 388-400-0060 and meet citizenship requirements for federally funded medicaid described in WAC 388-424-0010; or

(c) Be eligible for CN apple health for kids described in WAC 182-505-0210; or CN family medical described in WAC 182-505-0240; or family and children's institutional medical described in WAC 182-514-0230 through 182-514-0260. Clients not meeting the citizenship requirements for federally funded medicaid described in WAC 388-424-0010 are not eligible to receive waiver services. Nursing facility services for noneitizen children require prior approval by aging and disability services administration (ADSA) under the state funded nursing facility program described in WAC 182-507-0125; or

(d) Be eligible for the temporary assistance for needy families (TANF) program as described in WAC 388-400-0005. Clients not meeting disability or blind criteria described in WAC 182-512-0050 are not eligible for waiver services.

(3) The department allows a client to reduce countable resources in excess of the standard. This is described in WAC 388-513-1350.

(4) To be eligible for waiver services, a client must meet the program requirements described in:

(a) WAC 388-515-1505 through 388-515-1509 for COPES, New Freedom, PACE, and WMIP services; or

(b) WAC 388-515-1510 through 388-515-1514 for DDD waivers.

(5) To be eligible for hospice services under the CN program, a client must:

(a) Meet the program requirements described in chapter 182-551 WAC; and

(b) Be eligible for a noninstitutional categorically needy program (CN) if not residing in a medical institution thirty days or more; or

(c) Reside at home and benefit by using home and community based waiver rules described in WAC 388-515-1505 through 388-515-1509 (SSI-related clients with income over the effective one person MNIL and gross income at or below the 300 percent of the FBR or clients with a community spouse); or

(d) Receive home and community waiver (HCS) or DDD waiver services in addition to hospice services. The client's

responsibility to pay toward the cost of care (participation) is applied to the waiver service provider first; or

(e) Be eligible for institutional CN if residing in a medical institution thirty days or more.

(6) To be eligible for institutional or hospice services under the MN program, a client must be:

(a) Eligible for MN children's medical program described in WAC 182-514-0230, 182-514-0255, or 182-514-0260; or

(b) Related to the SSI program as described in WAC 182-512-0050 and meet all requirements described in WAC 388-513-1395; or

(c) Eligible for the MN SSI-related program described in WAC 182-512-0150 for hospice clients residing in a home setting; or

(d) Eligible for the MN SSI-related program described in WAC 388-513-1305 for hospice clients not on a medically needy waiver and residing in an alternate living facility.

(e) Be eligible for institutional MN if residing in a medical institution thirty days or more described in WAC 388-513-1395.

(7) To determine resource eligibility for an SSI-related client under the CN or MN program, the department:

(a) Considers resource eligibility and standards described in WAC 388-513-1350; and

(b) Evaluates the transfer of assets as described in WAC 388-513-1363, 388-513-1364, or 388-513-1365.

(8) To determine income eligibility for an SSI-related client under the CN or MN program, the department:

(a) Considers income available as described in WAC 388-513-1325 and 388-513-1330;

(b) Excludes income for CN and MN programs as described in WAC 388-513-1340;

(c) Disregards income for the MN program as described in WAC 388-513-1345; and

(d) Follows program rules for the MN program as described in WAC 388-513-1395.

(9) A client who meets the requirements of the CN program is approved for a period of up to twelve months.

(10) A client who meets the requirements of the MN program is approved for a period of months described in WAC 388-513-1395 for:

(a) Institutional services in a medical institution; or

(b) Hospice services in a medical institution.

(11) The department determines eligibility for state funded programs under the following rules:

(a) A client who is eligible for ABD cash assistance program described in WAC 388-400-0060 but is not eligible for federally funded medicaid due to citizenship requirements receives MCS medical described in WAC 182-508-0005. A client who is eligible for MCS may receive institutional services but is not eligible for hospice or HCB waiver services.

(b) A client who is not eligible for ABD cash assistance but is eligible for MCS coverage only described in WAC 182-508-0005 may receive institutional services but is not eligible for hospice or HCB waiver services.

(c) A noneitizen client who is not eligible under subsections (11)(a) or (b) and needs long-term care services may be eligible under WAC 182-507-0110 and 82-507-0125. This

program must be pre-approved by aging and disability services administration (ADSA):

(12) A client is eligible for medicaid as a resident in a psychiatric facility, if the client:

(a) Has attained institutional status as described in WAC 388-513-1320; and

(b) Is under the age of twenty-one at the time of application; or

(c) Is receiving active psychiatric treatment just prior to their twenty-first birthday and the services extend beyond this date and the client has not yet reached age twenty-two; or

(d) Is at least sixty-five years old.

(13) The department determines a client's eligibility as it does for a single person when the client's spouse has already been determined eligible for LTC services.

(14) If an individual under age twenty-one is not eligible for medicaid under SSI-related in WAC 182-512-0050 or ABD cash assistance described in WAC 388-400-0060 or MCS described in WAC 182-508-0005, consider eligibility under WAC 182-514-0255 or 182-514-0260.

(15) Noncitizen clients under age nineteen can be considered for the apple health for kids program described in WAC 182-505-0210 if they are admitted to a medical institution for less than thirty days. Once a client resides or is likely to reside in a medical institution for thirty days or more, the department determines eligibility under WAC 182-514-0260 and must be preapproved for coverage by ADSA as described in WAC 182-507-0125.

(16) Noncitizen clients not eligible under subsection (15) of this section can be considered for LTC services under WAC 182-507-0125. These clients must be preapproved by ADSA.

(17) The department determines a client's total responsibility to pay toward the cost of care for LTC services as follows:

(a) For SSI-related clients residing in a medical institution see WAC 388-513-1380;

(b) For clients receiving HCS CN waiver services see WAC 388-515-1509;

(c) For clients receiving DDD CN waiver services see WAC 388-515-1514; or

(d) For TANF-related clients residing in a medical institution see WAC 182-514-0265.

(18) Clients not living in a medical institution who are considered to be receiving SSI benefits for the purposes of medicaid do not pay service participation toward their cost of care. Clients living in a residential setting do pay room and board as described in WAC 388-515-1505 through 388-515-1509 or WAC 388-515-1514. Groups deemed to be receiving SSI and for medicaid purposes are eligible to receive CN medicaid. These groups are described in WAC 182-512-0880.) This section describes how the medicaid agency or its designee determines a client's eligibility for Washington apple health (WAH) long-term care coverage for clients residing in a medical institution, receiving home and community based waiver services, or receiving hospice services under the categorically needy (CN) or medically needy (MN) programs. Also described are the eligibility requirements for these services under state-funded medical care services

(MCS) program and the state funded long-term care services program.

This chapter includes the following sections:

(1) WAC 182-513-1316, General eligibility requirements for WAH long-term care programs.

(2) WAC 182-513-1317, Income and resource criteria for an institutionalized client.

(3) WAC 182-513-1318, Income and resource criteria for home and community based (HCB) waiver programs and hospice clients.

(4) WAC 182-513-1319, State-funded programs for non-citizen clients.

NEW SECTION

WAC 182-513-1316 General eligibility requirements for WAH long-term care programs. (1) To be eligible for long-term care (LTC) services, a client must:

(a) Meet the general eligibility requirements for medical programs described in WAC 182-503-0505;

(b) Attain institutional status as described in WAC 182-513-1320;

(c) Meet the functional eligibility described in:

(i) Chapter 388-106 WAC for a home and community services (HCS) waiver or nursing facility coverage; or

(ii) Chapter 388-828 WAC for DDA waiver or institutional services; and

(d) Meet either:

(i) SSI-related WAH criteria as described in WAC 182-512-0050; or

(ii) MAGI-based WAH criteria as described in WAC 182-503-0510(2). A client who is eligible for MAGI-based WAH is not subject to the provisions described in subsection (2) of this section.

(2) An SSI-related client, including supplemental security income (SSI) recipients, who needs LTC services must also:

(a) Not have a penalty period of ineligibility as described in WAC 182-513-1363, 182-513-1364, or 182-513-1365;

(b) Not have equity interest in their primary residence greater than the home equity standard described in WAC 182-513-1350;

(c) Disclose to the state any interest the applicant or spouse has in an annuity and meet annuity requirements described in chapter 182-516 WAC.

(3) An SSI recipient must submit a signed health care coverage application form attesting to the provisions described in subsection (2) of this section. A signed and completed eligibility review for long-term care benefits can be accepted for SSI clients applying for long-term care services.

(4) To be eligible for WAH LTC waiver services, a client must also meet the program requirements described in:

(a) WAC 182-515-1505 through 182-515-1509 for COPES, New Freedom PACE, and WMIP services; or

(b) WAC 182-515-1510 through 182-515-1514 for DDA waivers.

(5) A client who is eligible for categorically needy WAH coverage is certified for twelve months.

(6) A client who is eligible for medically needy WAH coverage is approved for a period of months described in WAC 182-513-1395(6) for:

- (a) Institutional services in a medical institution; or
- (b) Hospice services in a medical institution.

(7) The medicaid agency or its designee determines a client's eligibility as it does for a single person when the client's spouse has already been determined eligible for LTC services.

NEW SECTION

WAC 182-513-1317 Income and resource criteria for an institutionalized client. (1) This section provides an overview of the income and resource eligibility rules for a client who lives in an institutional setting. The term "institution" is defined in WAC 182-500-0050.

(2) To determine income eligibility for an SSI-related WAH long-term care (LTC) client under the categorically needy (CN) program, the medicaid agency or its designee:

- (a) Considers income available as described in WAC 182-513-1325 and 182-513-1330;
- (b) Excludes income as described in WAC 182-513-1340;

(c) Compares remaining gross nonexcluded income to the special income level (SIL) (three hundred percent of the federal benefit rate (FBR)). A client's gross income must be equal to or less than the SIL to be eligible for CN coverage.

(3) To determine income eligibility for an SSI-related WAH LTC client under the medically needy (MN) program, the agency or its designee:

- (a) Considers income available as described in WAC 182-513-1325 and 182-513-1330;
- (b) Excludes income as described in WAC 182-513-1340;
- (c) Disregards income as described in WAC 182-513-1345; and
- (d) Follows the income standards and eligibility rules described in WAC 182-513-1395.

(4) To be resource eligible under the SSI-related WAH LTC CN or MN program, the client must:

- (a) Meet the resource eligibility requirements and standards described in WAC 182-513-1350;
- (b) Not have a penalty period of ineligibility due to a transfer of asset as described in WAC 182-513-1363 or 182-513-1364;
- (c) Disclose to the state any interest the client or the client's spouse has in an annuity and meet the annuity requirements described in chapter 182-516 WAC.

(5) The agency or its designee allows an institutionalized client to reduce countable resources in excess of the standard. This is described in WAC 182-513-1350.

(6) A client is eligible for medicaid as a resident in a psychiatric facility, if the client:

- (a) Has attained institutional status as described in WAC 182-513-1320; and
- (b) Is under the age of twenty-one at the time of application; or

(c) Is receiving active psychiatric treatment just prior to their twenty-first birthday and the services extend beyond this date and the client has not yet reached age twenty-two; or

(d) Is at least sixty-five years old.

(7) To determine CN or MN income eligibility for a MAGI-based WAH LTC client, the medicaid agency or its designee follows the rules described in WAC 182-514-0230 through 182-514-0265.

(8) There is no asset test for MAGI-based WAH LTC programs as described in WAC 182-514-0245.

(9) The agency or its designee determines a client's total responsibility to pay toward the cost of care for LTC services as follows:

(a) For SSI-related WAH clients residing in a medical institution see WAC 182-513-1380;

(b) For MAGI-based WAH clients residing in a medical institution see WAC 182-514-0265. Clients who are eligible for the MAGI-based WAH adult medical program described in WAC 182-505-0250 are not required to contribute toward the cost of care. Nursing home care is included in the alternative benefit plan scope of care for these clients.

NEW SECTION

WAC 182-513-1318 Income and resource criteria for home and community based (HCB) waiver programs and hospice clients. (1) This section provides an overview of the income and resource eligibility rules for a client to be eligible for a home and community based (HCB) waiver program or the Washington apple health (WAH) hospice program.

(2) To determine income eligibility for an SSI-related WAH long-term care (LTC) waiver client under the categorically needy (CN) program, the medicaid agency or its designee:

- (a) Considers income available as described in WAC 182-513-1325 and 182-513-1330;
- (b) Excludes income as described in WAC 182-513-1340;

(c) Compares remaining gross non excluded income to:

(i) The special income level (SIL) (three hundred percent of the federal benefit rate (FBR)); or

(ii) For home and community based (HCB) service programs authorized by aging and long-term supports administration (AL TSA), a higher standard is determined following the rules described in WAC 182-514-1508 if a client's income is above the SIL but net income is below the medically needy income level (MNIL).

(3) A client who receives MAGI-based WAH is not eligible for HCB waiver services unless found eligible based on program rules in chapter 182-515 WAC.

(4) There is no WAH HCB waiver medically needy program.

(5) To be resource eligible under the SSI-related WAH LTC CN waiver programs, the client must:

- (a) Meet the resource eligibility requirements and standards described in WAC 182-513-1350;
- (b) Not have a penalty period of ineligibility due to a transfer of asset as described in WAC 182-513-1363, 182-513-1364, or 182-513-1365;

(c) Disclose to the state any interest the client or the client's spouse has in an annuity and meet the annuity requirements described in chapter 182-516 WAC.

(6) The agency or its designee allows an HCB waiver client to use verified unpaid medical expenses to reduce countable resources in excess of the standard. This is described in WAC 182-513-1350.

(7) The agency or its designee determines a client's total responsibility to pay toward the cost of care for LTC services as follows:

(a) For clients receiving HCS CN waiver services see WAC 182-515-1509;

(b) For clients receiving DDA CN waiver services see WAC 182-515-1514.

(8) HCB waiver clients who are "deemed eligible" for SSI benefits as described in WAC 182-512-0880 do not pay service participation toward their cost of personal care. Clients living in a residential setting do pay room and board as described in WAC 182-515-1505 through 182-515-1509 or 182-515-1514.

(9) To be eligible for hospice services under the CN program, a client must:

(a) Meet the program requirements described in chapter 182-551 WAC governing client eligibility for hospice care; and

(b) Be eligible for a noninstitutional CN program if not residing in a medical institution thirty days or more.

(10) A client who is not eligible for a noninstitutional CN program who needs hospice care is eligible for the WAH hospice program if they meet the following criteria:

(a) Meet the hospice program requirements described in chapter 182-551 WAC; and

(b) Reside at home and would be eligible for coverage by using home and community services waiver rules described in WAC 182-515-1505 through 182-515-1509 (SSI-related clients with income over the effective one-person MNIL and gross income at or below the three hundred percent of the FBR or clients with a community spouse); or

(c) Receive WAH HCBS waiver services in addition to hospice services. The client's responsibility to pay toward the cost of care (participation) is applied to the waiver service provider first; or

(d) Be eligible for institutional CN if residing in a medical institution (including a hospice care center) for thirty days or more.

(11) To be eligible for hospice services under the MN program, a client must be:

(a) Eligible for the MN SSI-related program described in WAC 182-512-0150 for hospice clients residing in a home setting; or

(b) Eligible for the MN SSI-related program described in WAC 182-513-1305 for hospice clients not receiving HCBS waiver services who reside in an alternate living facility.

(c) Be eligible for institutional MN if residing in a medical institution thirty days or more described in WAC 182-513-1395.

NEW SECTION

WAC 182-513-1319 State-funded programs for non-citizen clients. (1) This section describes the programs that are available for noncitizen clients who do not meet the citizenship criteria described in WAC 182-503-0530 to be eligible for federally funded Washington apple health (WAH) coverage.

(2) Lawfully residing noncitizen clients who need nursing facility care or care in an alternate living facility may receive long-term care (LTC) coverage if the client meets the eligibility and incapacity criteria of the medical care services (MCS) program described in WAC 182-508-0005.

(3) Clients who receive MCS coverage are not eligible for home and community based (HCB) waiver programs or hospice care.

(4) Noncitizen clients under the age of nineteen who are eligible for the WAH for kids program described in WAC 182-505-0210 are eligible for LTC services if the client is admitted to a medical institution for less than thirty days. Once the client resides or is likely to reside in a medical institution for thirty days or more, the medicaid agency or its designee determines eligibility under WAC 182-514-0260, subject to being preapproved for coverage by aging and long-term supports administration (ALTSA) as described in WAC 182-507-0125.

(5) Noncitizen clients age nineteen or older may be eligible for the state-funded long-term care services WAH program described in WAC 182-507-0125. These clients must be preapproved by ALTSA as the program has enrollment limits. When the program is full, a client who needs LTC services is placed on a waiting list for services. Such an individual is not eligible for WAH waiver programs described in chapter 182-515 WAC.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1325 Determining available income for an SSI-related single client for long-term care (LTC) services (institutional, waiver or hospice). This section describes income the department considers available when determining an SSI-related single client's eligibility for LTC services (institutional, waiver or hospice).

(1) Refer to WAC ((~~388-513-1330~~)) 182-513-1330 for rules related to available income for legally married couples.

(2) The department must apply the following rules when determining income eligibility for SSI-related LTC services:

(a) WAC 182-512-0600 Definition of income;

(b) WAC 182-512-0650 Available income;

(c) WAC 182-512-0700 Income eligibility;

(d) WAC 182-512-0750 Countable unearned income;

(e) WAC 182-514-0840(3) Self-employment income-allowable expenses;

(f) WAC ((~~388-513-1315~~)) 182-513-1315(15), Eligibility for long-term care (institutional, waiver, and hospice) services; and

(g) WAC ((~~388-450-0155, 388-450-0156, 388-450-0160~~)) 182-512-0785, 182-512-0790, 182-512-0795, and 182-509-0155 for sponsored immigrants and how to determine if sponsors' income counts in determining benefits.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1330 Determining available income for legally married couples for long-term care (LTC) services. This section describes income the department considers available when determining a legally married client's eligibility for LTC services.

(1) The department must apply the following rules when determining income eligibility for LTC services:

- (a) WAC 182-512-0600 Definition of income SSI-related medical;
- (b) WAC 182-512-0650 Available income;
- (c) WAC 182-512-0700 Income eligibility;
- (d) WAC 182-512-0750 Countable unearned income;
- (e) WAC 182-512-0840(3) Self-employment income-allowance expenses;
- (f) WAC 182-512-0960, SSI-related medical clients; and
- (g) WAC ((~~388-513-1315~~)) 182-513-1315, Eligibility for long-term care (institutional, waiver, and hospice) services.

(2) For an institutionalized client married to a community spouse who is not applying or approved for LTC services, the department considers the following income available, unless subsection (4) applies:

- (a) Income received in the client's name;
 - (b) Income paid to a representative on the client's behalf;
 - (c) One-half of the income received in the names of both spouses; and
 - (d) Income from a trust as provided by the trust.
- (3) The department considers the following income unavailable to an institutionalized client:
- (a) Separate or community income received in the name of the community spouse; and
 - (b) Income established as unavailable through a court order.

(4) For the determination of eligibility only, if available income described in subsection((s)) (2)(a) through (d) of this section minus income exclusions described in WAC ((~~388-513-1340~~)) 182-513-1340 exceeds the special income level (SIL), then:

- (a) The department follows community property law when determining ownership of income;
- (b) Presumes all income received after marriage by either or both spouses to be community income; (~~and~~)
- (c) Considers one-half of all community income available to the institutionalized client((-)); and
- (d) If the total of ((~~subsection (4)~~)) (c) of this subsection plus the client's own income is over the SIL, follow subsection (2) of this section.

(5) The department considers income generated by a transferred resource to be the separate income of the person or entity to which it is transferred.

(6) The department considers income available to the client not generated by a transferred resource available to the client, even when the client transfers or assigns the rights to the stream of income to:

- (a) The spouse; or
- (b) A trust for the benefit of their spouse.

((~~8~~)) (7) The department evaluates the transfer of a resource described in subsection (5) of this section according

to WAC ((~~388-513-1363, 388-513-1364, and 388-513-1365~~)) 182-513-1363, 182-513-1364, and 182-513-1365 to determine whether a penalty period of ineligibility is required.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1340 Determining excluded income for long-term care (LTC) services. This section describes income the department excludes when determining a client's eligibility and participation in the cost of care for LTC services with the exception described in subsection (31) of this section.

- (1) Crime victim's compensation;
- (2) Earned income tax credit (EITC) for twelve months after the month of receipt;
- (3) Native American benefits excluded by federal statute (refer to WAC ((~~388-450-0040~~)) 182-512-0700);
- (4) Tax rebates or special payments excluded by other statutes;
- (5) Any public agency's refund of taxes paid on real property and/or on food;
- (6) Supplemental security income (SSI) and certain state public assistance based on financial need;
- (7) The amount a representative payee charges to provide services when the services are a requirement for the client to receive the income;
- (8) The amount of expenses necessary for a client to receive compensation, e.g., legal fees necessary to obtain settlement funds;
- (9) ((~~Any portion of a grant, scholarship, or fellowship used to pay tuition, fees, and/or other necessary educational expenses at any educational institution~~)) Education benefits described in WAC 182-509-0335;
- (10) Child support payments received from an absent parent for a child living in the home are considered the income of the child;
- (11) Self-employment income allowed as a deduction by the Internal Revenue Service (IRS);
- (12) Payments to prevent fuel cut-offs and to promote energy efficiency that are excluded by federal statute;
- (13) Assistance (other than wages or salary) received under the Older Americans Act;
- (14) Assistance (other than wages or salary) received under the foster grandparent program;
- (15) Certain cash payments a client receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services;
- (16) Interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement that are left to accumulate and become part of the separately identified burial funds set aside;
- (17) Tax exempt payments received by Alaska natives under the Alaska Native Settlement Act established by P.L. 100-241;
- (18) Compensation provided to volunteers in ACTION programs under the Domestic Volunteer Service Act of 1973 established by P.L. 93-113;

(19) Payments made from the Agent Orange Settlement Fund or any other funds to settle Agent Orange liability claims established by P.L. 101-201;

(20) Payments made under section six of the Radiation Exposure Compensation Act established by P.L. 101-426;

(21) Payments made under the Energy Employee Occupational Compensation Program Act of 2000, (EEOICPA) Pub. L. 106-398;

(22) Restitution payment, and interest earned on such payment to a civilian of Japanese or Aleut ancestry established by P.L. 100-383;

(23) Payments made under sections 500 through 506 of the Austrian General Social Insurance Act;

(24) Payments made from *Susan Walker v. Bayer Corporation, et. al.*, 95-C-5024 (N.D. Ill.) (May 8, 1997) settlement funds;

(25) Payments made from the Ricky Ray Hemophilia Relief Fund Act of 1998 established by P.L. 105-369;

(26) Payments made under the Disaster Relief and Emergency Assistance Act established by P.L. 100-387;

(27) Payments made under the Netherlands' Act on Benefits for Victims of Persecution (WUV);

(28) Payments made to certain survivors of the Holocaust under the Federal Republic of Germany's Law for Compensation of National Socialist Persecution or German Restitution Act;

(29) Interest or dividends received by the client is excluded as income. Interest or dividends received by the community spouse of an institutional individual is counted as income of the community spouse. Dividends and interest are returns on capital investments such as stocks, bond, or savings accounts. Institutional status is defined in WAC ((~~388-513-1320~~) 182-513-1320);

(30) Income received by an ineligible or nonapplying spouse from a governmental agency for services provided to an eligible client, e.g., chore services;

(31) Department of Veterans Affairs benefits designated for:

(a) The veteran's dependent when determining LTC eligibility for the veteran. The VA dependent allowance is considered countable income to the dependent unless it is paid due to unusual medical expenses (UME);

(b) Unusual medical expenses, aid and attendance allowance, special monthly compensation (SMC) and housebound allowance, with the exception described in subsection (32) of this section;

(32) Benefits described in subsection (31)(b) of this section for a client who receives long-term care services are excluded when determining eligibility, but are considered available as a third-party resource (TPR) when determining the amount the client contributes in the cost of care.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1345 Determining disregarded income for institutional or hospice services under the medically needy (MN) program. This section describes income the department disregards when determining a client's eligibility for institutional or hospice services under the

MN program. The department considers disregarded income available when determining a client's participation in the cost of care.

(1) The department disregards the following income amounts in the following order:

(a) Income that is not reasonably anticipated, or is received infrequently or irregularly, when such income does not exceed:

(i) Twenty dollars per month if unearned; or

(ii) Ten dollars per month if earned.

(b) The first twenty dollars per month of earned or unearned income, unless the income paid to a client is:

(i) Based on need; and

(ii) Totally or partially funded by the federal government or a private agency.

(2) For a client who is related to the supplemental security income (SSI) program as described in WAC 182-512-0050(1), the first sixty-five dollars per month of earned income not excluded under WAC ((~~388-513-1340~~) 182-513-1340), plus one-half of the remainder.

(3) Department of Veterans Affairs benefits designated for:

(a) The veteran's dependent when determining LTC eligibility for the veteran. The VA dependent allowance is considered countable income to the dependent unless it is paid due to unusual medical expenses (UME);

(b) Unusual medical expenses, aid and attendance allowance, special monthly compensation (SMC) and housebound allowance, with the exception described in subsection (4) of this section.

(4) Benefits described in subsection (3)(b) of this section for a client who receives long-term care services are excluded when determining eligibility, but are considered available as a third-party resource (TPR) when determining the amount the client contributes in the cost of care.

(5) Income the Social Security Administration (SSA) withholds from SSA Title II benefits for the recovery of an SSI overpayment.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1350 Defining the resource standard and determining resource eligibility for long-term care (LTC) services. This section describes how the department defines the resource standard and countable or excluded resources when determining a client's eligibility for LTC services. The department uses the term "resource standard" to describe the maximum amount of resources a client can have and still be resource eligible for program benefits.

(1) The resource standard used to determine eligibility for LTC services equals:

(a) Two thousand dollars for:

(i) A single client; or

(ii) A legally married client with a community spouse, subject to the provisions described in subsections (9) through (12) of this section; or

(b) Three thousand dollars for a legally married couple, unless subsection (4) of this section applies.

(2) Effective January 1, 2012, if an individual purchases a qualified long-term care partnership policy approved by the Washington insurance commissioner under the Washington long-term care partnership program, the department allows the individual with the long-term care partnership policy to retain a higher resource amount based on the dollar amount paid out by a partnership policy. This is described in WAC (~~388-513-1400~~) 182-513-1400.

(3) When both spouses apply for LTC services the department considers the resources of both spouses as available to each other through the month in which the spouses stopped living together.

(4) When both spouses are institutionalized, the department will determine the eligibility of each spouse as a single client the month following the month of separation.

(5) If the department has already established eligibility and authorized services for one spouse, and the community spouse needs LTC services in the same month, (but after eligibility has been established and services authorized for the institutional spouse), then the department applies the standard described in subsection (1)(a) of this section to each spouse. If doing this would make one of the spouses ineligible, then the department applies subsection (1)(b) of this section for a couple.

(6) When a single institutionalized individual marries, the department will redetermine eligibility applying the rules for a legally married couple.

(7) The department applies the following rules when determining available resources for LTC services:

(a) WAC 182-512-0300, Resource eligibility;

(b) WAC 182-512-0250, How to determine who owns a resource; and

(c) WAC (~~388-470-0060~~) 182-512-0260, Resources of an alien's sponsor.

(8) For LTC services the department determines a client's countable resources as follows:

(a) The department determines countable resources for SSI-related clients as described in chapter 182-512 WAC (~~182-512-0350 through 182-512-0550~~) and resources excluded by federal law with the exception of:

(i) WAC 182-512-0550 pension funds owned by an:

(~~(H)~~) (A) Ineligible spouse. Pension funds are defined as funds held in an individual retirement account (IRA) as described by the IRS code; or

(~~(H)~~) (B) Work-related pension plan (including plans for self-employed individuals, known as Keogh plans).

(ii) WAC 182-512-0350 (1)(b) clients who have submitted an application for LTC services on or after May 1, 2006, and have an equity interest greater than five hundred thousand dollars in their primary residence are ineligible for LTC services. This exception does not apply if a spouse or blind, disabled or dependent child under age twenty-one is lawfully residing in the primary residence. Clients denied or terminated LTC services due to excess home equity may apply for an undue hardship waiver described in WAC (~~388-513-1367~~) 182-513-1367. Effective January 1, 2011, the excess home equity limits increase to five hundred six thousand dollars. On January 1, 2012, and on January 1st of each year thereafter, this standard may be increased or decreased by the percentage increased or decreased in the consumer price

index-urban (CPIU). For current excess home equity standard starting January 1, 2011, and each year thereafter, see (<http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>) <http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx>.

(b) For an SSI-related client one automobile per household is excluded regardless of value if it is used for transportation of the eligible individual/couple.

(i) For an SSI-related client with a community spouse, the value of one automobile is excluded regardless of its use or value.

(ii) A vehicle not meeting the definition of automobile is a vehicle that has been junked or a vehicle that is used only as a recreational vehicle.

(c) For an SSI-related client, the department adds together the countable resources of both spouses if subsections (3), (6), and (9)(a) or (b) of this section apply, but not if subsection (4) or (5) of this section apply.

(d) For an SSI-related client, excess resources are reduced:

(i) In an amount equal to incurred medical expenses such as:

(A) Premiums, deductibles, and coinsurance/copayment charges for health insurance and medicare;

(B) Medically necessary (~~medical~~) care recognized under state law, but not covered under the state's medicaid plan;

(C) Medically necessary (~~medical~~) care covered under the state's medicaid plan incurred prior to medicaid eligibility. Expenses for nursing facility care are reduced at the state rate for the facility that the client owes the expense to.

(ii) As long as the incurred medical expenses:

(A) Were not incurred more than three months before the month of the medicaid application;

(B) Are not subject to third-party payment or reimbursement;

(C) Have not been used to satisfy a previous spend down liability;

(D) Have not previously been used to reduce excess resources;

(E) Have not been used to reduce client responsibility toward cost of care;

(F) Were not incurred during a transfer of asset penalty described in WAC (~~388-513-1363, 388-513-1364, and 388-513-1365~~) 182-513-1363, 182-513-1364, and 182-513-1365; and

(G) Are amounts for which the client remains liable.

(e) Expenses not allowed to reduce excess resources or participation in personal care:

(i) Unpaid expense(s) prior to waiver eligibility to an adult family home (AFH) or assisted living facility is not a medical expense.

(ii) Personal care cost in excess of approved hours determined by the CARE assessment described in chapter 388-106 WAC is not a medical expense.

(f) The amount of excess resources is limited to the following amounts:

(i) For LTC services provided under the categorically needy (CN) program:

(A) Gross income must be at or below the special income level (SIL), 300% of the federal benefit rate (FBR).

(B) In a medical institution, excess resources and income must be under the state medicaid rate based on the number of days in the medical institution in the month.

(C) For CN waiver eligibility, incurred medical expenses must reduce resources within allowable resource limits for CN-waiver eligibility. The cost of care for the waiver services cannot be allowed as a projected expense.

(ii) For LTC services provided under the medically needy (MN) program when excess resources are added to countable income, the combined total is less than the:

(A) State medical institution rate based on the number of days in the medical institution in the month, plus the amount of recurring medical expenses; or

(B) State hospice rate based on the number of days in the medical institution in the month plus the amount of recurring medical expenses, in a medical institution.

(C) For MN waiver eligibility, incurred medical expenses must reduce resources within allowable resource limits for MN-waiver eligibility. The cost of care for the waiver services cannot be allowed as a projected expense.

(g) For a client not related to SSI, the department applies the resource rules of the program used to relate the client to medical eligibility.

(9) For legally married clients when only one spouse meets institutional status, the following rules apply. If the client's current period of institutional status began:

(a) Before October 1, 1989, the department adds together one-half the total amount of countable resources held in the name of:

(i) The institutionalized spouse; or

(ii) Both spouses.

(b) On or after October 1, 1989, the department adds together the total amount of nonexcluded resources held in the name of:

(i) Either spouse; or

(ii) Both spouses.

(10) If subsection (9)(b) of this section applies, the department determines the amount of resources that are allocated to the community spouse before determining countable resources used to establish eligibility for the institutionalized spouse, as follows:

(a) If the client's current period of institutional status began on or after October 1, 1989, and before August 1, 2003, the department allocates the maximum amount of resources ordinarily allowed by law. Effective January 1, 2009, the maximum allocation is one hundred and nine thousand five hundred and sixty dollars. This standard may change annually on January 1st based on the consumer price index. (For the current standard starting January 2009 and each year thereafter, see long-term care standards at (<http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>)) <http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx>); or

(b) If the client's current period of institutional status began on or after August 1, 2003, the department allocates the greater of:

(i) A spousal share equal to one-half of the couple's combined countable resources as of the first day of the month of

the current period of institutional status, up to the amount described in subsection (10)(a) of this section; or

(ii) The state spousal resource standard of forty-eight thousand six hundred thirty-nine dollars (this standard may change every odd year on July 1st). This standard is based on the consumer price index published by the federal bureau of labor statistics. For the current standard starting July 2009 and each year thereafter, see long-term care standards at (<http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>)) <http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx>.

(c) Resources are verified on the first moment of the first day of the month institutionalization began as described in WAC 182-512-0300(1).

(11) The amount of the spousal share described in subsection (10)(b)(i) of this section can be determined anytime between the date that the current period of institutional status began and the date that eligibility for LTC services is determined. The following rules apply to the determination of the spousal share:

(a) Prior to an application for LTC services, the couple's combined countable resources are evaluated from the date of the current period of institutional status at the request of either member of the couple. The determination of the spousal share is completed when necessary documentation and/or verification is provided; or

(b) The determination of the spousal share is completed as part of the application for LTC services if the client was institutionalized prior to the month of application, and declares the spousal share exceeds the state spousal resource standard. The client is required to provide verification of the couple's combined countable resources held at the beginning of the current period of institutional status.

(12) The amount of allocated resources described in subsection (10) of this section can be increased, only if:

(a) A court transfers additional resources to the community spouse; or

(b) An administrative law judge establishes in (~~(a fair)~~) an administrative hearing described in chapter (~~(388-02)~~) 182-526 WAC, that the amount is inadequate to provide a minimum monthly maintenance needs amount for the community spouse.

(13) The department considers resources of the community spouse unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless subsection (6) or (14)(a), (b), or (c) of this section applies.

(14) A redetermination of the couple's resources as described in subsection (8) of this section is required, if:

(a) The institutionalized spouse has a break of at least thirty consecutive days in a period of institutional status; or

(b) The institutionalized spouse's countable resources exceed the standard described in subsection (1)(a) of this section, if subsection (9)(b) of this section applies; or

(c) The institutionalized spouse does not transfer the amount described in subsection(~~(s)~~) (10) or (12) of this section to the community spouse by either:

(i) The end of the month of the first regularly scheduled eligibility review; or

(ii) The reasonable amount of additional time necessary to obtain a court order for the support of the community spouse.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1363 Evaluating the transfer of assets on or after May 1, 2006 for persons applying for or receiving long-term care (LTC) services. This section describes how the department evaluates asset transfers made on or after May 1, 2006, and their ~~((affect))~~ effect on LTC services. This applies to transfers by the client, spouse, a guardian or through an attorney in fact. Clients subject to asset transfer penalty periods are not eligible for LTC services. LTC services for the purpose of this rule include nursing facility services, services offered in any medical institution equivalent to nursing facility services, and home and community-based services furnished under a waiver program. Program of all-inclusive care of the elderly (PACE) and hospice services are not subject to transfer of asset rules. The department must consider whether a transfer made within a specified time before the month of application, or while the client is receiving LTC services, requires a penalty period.

- Refer to WAC ~~((388-513-1364))~~ 182-513-1364 for rules used to evaluate asset transfers made on or after April 1, 2003, and before May 1, 2006.

- Refer to WAC ~~((388-513-1365))~~ 182-513-1365 for rules used to evaluate asset transfer made prior to April 1, 2003.

(1) When evaluating the effect of the transfer of asset made on or after May 1, 2006, on the client's eligibility for LTC services the department counts sixty months before the month of application to establish what is referred to as the "look-back" period.

(2) The department does not apply a penalty period to transfers meeting the following conditions:

(a) The total of all gifts or donations transferred do not exceed the average daily private nursing facility rate in any month;

(b) The transfer is an excluded resource described in WAC ~~((388-513-1350))~~ 182-513-1350 with the exception of the client's home, unless the transfer of the home meets the conditions described in ~~((subsection (2)))~~ (d) of this subsection;

(c) The asset is transferred for less than fair market value (FMV), if the client can provide evidence to the department of one of the following:

(i) An intent to transfer the asset at FMV or other adequate compensation. To establish such an intent, the department must be provided with written evidence of attempts to dispose of the asset for fair market value as well as evidence to support the value (if any) of the disposed asset.

(ii) The transfer is not made to qualify for LTC services, continue to qualify, or avoid Estate Recovery. Convincing evidence must be presented regarding the specific purpose of the transfer.

(iii) All assets transferred for less than fair market value have been returned to the client.

(iv) The denial of eligibility would result in an undue hardship as described in WAC ~~((388-513-1367))~~ 182-513-1367.

(d) The transfer of ownership of the client's home, if it is transferred to the client's:

(i) Spouse; or

(ii) Child, who:

(A) Meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c); or

(B) Is less than twenty-one years old; or

(C) Lived in the home for at least two years immediately before the client's current period of institutional status, and provided verifiable care that enabled the individual to remain in the home. A physician's statement of needed care is required; or

(iii) Brother or sister, who has:

(A) Equity in the home~~((s));~~ and

(B) Lived in the home for at least one year immediately before the client's current period of institutional status.

(e) The asset is transferred to the client's spouse or to the client's child, if the child meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c);

(f) The transfer meets the conditions described in subsection (3), and the asset is transferred:

(i) To another person for the sole benefit of the spouse;

(ii) From the client's spouse to another person for the sole benefit of the spouse;

(iii) To trust established for the sole benefit of the individual's child who meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c);

(iv) To a trust established for the sole benefit of a person who is sixty-four years old or younger and meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c); or

(3) The department considers the transfer of an asset or the establishment of a trust to be for the sole benefit of a person described in subsection (2)(f) of this section, if the transfer or trust:

(a) Is established by a legal document that makes the transfer irrevocable;

(b) Provides that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time during the life of the primary beneficiary; and

(c) Provides for spending all assets involved for the sole benefit of the individual on a basis that is actuarially sound based on the life expectancy of that individual or the term of the trust, whichever is less; and

(d) The requirements in subsection (2)(c) of this section do not apply to trusts described in WAC 388-561-0100 (6)(a) and (b) and (7)(a) and (b).

(4) The department does not establish a period of ineligibility for the transfer of an asset to a family member prior to the current period of long-term care service if:

(a) The transfer is in exchange for care services the family member provided the client;

(b) The client has a documented need for the care services provided by the family member;

(c) The care services provided by the family member are allowed under the medicaid state plan or the department's HCB waiver services;

(d) The care services provided by the family member do not duplicate those that another party is being paid to provide;

(e) The FMV of the asset transferred is comparable to the FMV of the care services provided;

(f) The time for which care services are claimed is reasonable based on the kind of services provided; and

(g) Compensation has been paid as the care services were performed or with no more time delay than one month between the provision of the service and payment.

(5) The department considers the transfer of an asset in exchange for care services given by a family member that does not meet the criteria as described under subsection (4) of this section as the transfer of an asset without adequate consideration.

(6) If a client or the client's spouse transfers an asset within the look-back period without receiving adequate compensation, the result is a penalty period in which the individual is not eligible for LTC services.

(7) If a client or the client's spouse transfers an asset on or after May 1, 2006, the department must establish a penalty period by adding together the total uncompensated value of all transfers made on or after May 1, 2006. The penalty period:

(a) For a LTC services applicant, begins on the date the client would be otherwise eligible for LTC services based on an approved application for LTC services or the first day after any previous penalty period has ended; or

(b) For a LTC services recipient, begins the first of the month following ten-day advance notice of the penalty period, but no later than the first day of the month that follows three full calendar months from the date of the report or discovery of the transfer; or the first day after any previous penalty period has ended; and

(c) Ends on the last day of the number of whole days found by dividing the total uncompensated value of the assets by the statewide average daily private cost for nursing facilities at the time of application or the date of transfer, whichever is later.

(8) If an asset is sold, transferred, or exchanged, the portion of the proceeds:

(a) That is used within the same month to acquire an excluded resource described in WAC ((~~388-513-1350~~) 182-513-1350) does not affect the client's eligibility;

(b) That remain after an acquisition described in ((~~subsection (8)~~) (a) of this subsection) becomes an available resource as of the first day of the following month.

(9) If the transfer of an asset to the client's spouse includes the right to receive a stream of income not generated by a transferred resource, the department must apply rules described in WAC ((~~388-513-1330~~) 182-513-1330) (5) through (7).

(10) If the transfer of an asset for which adequate compensation is not received is made to a person other than the client's spouse and includes the right to receive a stream of income not generated by a transferred resource, the length of the penalty period is determined and applied in the following way:

(a) The total amount of income that reflects a time frame based on the actuarial life expectancy of the client who transfers the income is added together;

(b) The amount described in ((~~subsection (10)~~) (a) of this subsection) is divided by the statewide average daily private cost for nursing facilities at the time of application; and

(c) A penalty period equal to the number of whole days found by following subsection((s)) (7)(a), (b), and (c) of this section.

(11) A penalty period for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless both spouses are receiving LTC services. When both spouses are receiving LTC services;

(a) We divide the penalty between the two spouses.

(b) If one spouse is no longer subject to a penalty (e.g., the spouse is no longer receiving institutional services or is deceased) any remaining penalty that applies to both spouses must be served by the remaining spouse.

(12) If a client or the client's spouse disagrees with the determination or application of a penalty period, that person may request a hearing as described in chapter ((~~388-02~~) 182-526) WAC.

(13) Additional statutes which apply to transfer of asset penalties, real property transfer for inadequate consideration, disposal of realty penalties, and transfers to qualify for assistance can be found at:

(a) RCW 74.08.331 Unlawful practices—Obtaining assistance—Disposal of realty;

(b) RCW 74.08.338 Real property transfers for inadequate consideration;

(c) RCW 74.08.335 Transfers of property to qualify for assistance; and

(d) RCW 74.39A.160 Transfer of assets—Penalties.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1364 Evaluating the transfer of an asset made on or after April 1, 2003 for long-term care (LTC) services. This section describes how the department evaluates the transfer of an asset made on or after April 1, 2003, by a client who is applying or approved for LTC services. The department must consider whether a transfer made within a specified time before the month of application requires a penalty period in which the client is not eligible for these services. Refer to WAC ((~~388-513-1365~~) 182-513-1365) for rules used to evaluate the transfer of an asset made before April 1, 2003. Refer to WAC ((~~388-513-1363~~) 182-513-1363) for rules used to evaluate the transfer of an asset made on or after May 1, 2006.

(1) The department does not apply a penalty period to the following transfers by the client, if they meet the conditions described:

(a) Gifts or donations totaling one thousand dollars or less in any month;

(b) The transfer of an excluded resource described in WAC ((~~388-513-1350~~) 182-513-1350) with the exception of the client's home, unless the transfer of the client's home meets the conditions described in ((~~subsection (1)~~) (d) of this subsection);

(c) The transfer of an asset for less than fair market value (FMV), if the client can provide evidence to the department of one of the following:

(i) An intent to transfer the asset at FMV or other adequate compensation;

(ii) The transfer is not made to qualify for LTC services;

(iii) The client is given back ownership of the asset;

(iv) The denial of eligibility would result in an undue hardship.

(d) The transfer of ownership of the client's home, if it is transferred to the client's:

(i) Spouse; or

(ii) Child, who:

(A) Meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c); or

(B) Is less than twenty-one years old; or

(C) Lived in the home for at least two years immediately before the client's current period of institutional status, and provided care that enabled the client to remain in the home; or

(iii) Brother or sister, who has:

(A) Equity in the home; and

(B) Lived in the home for at least one year immediately before the client's current period of institutional status.

(e) The transfer of an asset, if the transfer meets the conditions described in subsection (4) of this section, and the asset is transferred:

(i) To another person for the sole benefit of the spouse;

(ii) From the client's spouse to another person for the sole benefit of the spouse;

(iii) To trust established for the sole benefit of the client's child who meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c);

(iv) To a trust established for the sole benefit of a person who is sixty-four years old or younger and meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c); or

(f) The asset is transferred to the client's spouse or to the client's child, if the child meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c).

(2) The department does not establish a period of ineligibility for the transfer of an asset to a family member prior to the current period of institutional status, if:

(a) The transfer is in exchange for care services the family member provided the client;

(b) The client has a documented need for the care services provided by the family member;

(c) The care services provided by the family member are allowed under the medicaid state plan or the department's ~~((waived))~~ HCB waiver services;

(d) The care services provided by the family member do not duplicate those that another party is being paid to provide;

(e) The FMV of the asset transferred is comparable to the FMV of the care services provided;

(f) The time for which care services are claimed is reasonable based on the kind of services provided; and

(g) Compensation has been paid as the care services were performed or with no more time delay than one month between the provision of the service and payment.

(3) The department considers the transfer of an asset in exchange for care services given by a family member that

does not meet the criteria as described under subsection (2) of this section as the transfer of an asset without adequate consideration.

(4) The department considers the transfer of an asset or the establishment of a trust to be for the sole benefit of a person described in subsection (1)(e) of this section, if the transfer or trust:

(a) Is established by a legal document that makes the transfer irrevocable;

(b) Provides that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time during the life of the primary beneficiary; and

(c) Provides for spending all assets involved for the sole benefit of the individual on a basis that is actuarially sound based on the life expectancy of that individual or the term of the trust, whichever is less; and

(d) The requirements in ~~((subsection (4)))~~ (c) of this ~~((section))~~ subsection do not apply to trusts described in WAC ~~((388-561-0100))~~ 182-516-0100 (6)(a) and (b).

(5) If a client or the client's spouse transfers an asset within the look-back period described in WAC ~~((388-513-1365))~~ 182-513-1365 without receiving adequate compensation, the result is a penalty period in which the client is not eligible for LTC services. If a client or the client's spouse transfers an asset on or after April 1, 2003, the department must establish a penalty period as follows:

(a) If a single or multiple transfers are made within a single month, then the penalty period:

(i) Begins on the first day of the month in which the transfer is made; and

(ii) Ends on the last day of the number of whole days found by dividing the total uncompensated value of the assets by the statewide average daily private cost for nursing facilities at the time of application.

(b) If multiple transfers are made during multiple months, then the transfers are treated as separate events and multiple penalty periods are established that begin on the latter of:

(i) The first day of the month in which the transfer is made; or

(ii) The first day after any previous penalty period has ended and end on the last day of the whole number of days as described in ~~((subsection (5)))~~ (a)(ii) of this subsection.

(6) If an asset is sold, transferred, or exchanged, the portion of the proceeds:

(a) That is used within the same month to acquire an excluded resource described in WAC ~~((388-513-1350))~~ 182-513-1350 does not affect the client's eligibility;

(b) That remain after an acquisition described in subsection (6)(a) becomes an available resource as of the first day of the following month.

(7) If the transfer of an asset to the client's spouse includes the right to receive a stream of income not generated by a transferred resource, the department must apply rules described in WAC ~~((388-513-1330))~~ 182-513-1330 (5) through (7).

(8) If the transfer of an asset for which adequate compensation is not received is made to a person other than the cli-

ent's spouse and includes the right to receive a stream of income not generated by a transferred resource, the length of the penalty period is determined and applied in the following way:

(a) The total amount of income that reflects a time frame based on the actuarial life expectancy of the client who transfers the income is added together;

(b) The amount described in ~~((subsection (8)))~~ (a) of this subsection is divided by the statewide average daily private cost for nursing facilities at the time of application; and

(c) A penalty period equal to the number of whole days found by following subsection ~~((s))~~ (5)(a) and (b) and ~~((8))~~ (a) and (b) of this subsection is applied that begins on the latter of:

(i) The first day of the month in which the client transfers the income; or

(ii) The first day of the month after any previous penalty period has ended.

(9) A penalty period for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless:

(a) Both spouses are receiving LTC services; and

(b) A division of the penalty period between the spouses is requested.

(10) If a client or the client's spouse disagrees with the determination or application of a penalty period, that person may request a hearing as described in chapter ~~((388-02))~~ 182-526 WAC.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1365 Evaluating the transfer of an asset made on or after March 1, 1997, and before April 1, 2003, for long-term care (LTC) services. This section describes how the department evaluates the transfer of an asset made on or after March 1, 1997, and before April 1, 2003, by a client who is applying or approved for LTC services. The department must consider whether a transfer made within a specified time before the month of application requires a penalty period in which the client is not eligible for these services. Refer to WAC ~~((388-513-1364))~~ 182-513-1364 for rules used to evaluate the transfer of an asset made on or after March 31, 2003. Refer to WAC ~~((388-513-1363))~~ 182-513-1363 for rules used to evaluate the transfer of an asset made on or after May 1, 2006.

(1) The department disregards the following transfers by the client, if they meet the conditions described:

(a) Gifts or donations totaling one thousand dollars or less in any month;

(b) The transfer of an excluded resource described in WAC ~~((388-513-1350))~~ 182-513-1350 with the exception of the client's home, unless the transfer meets the conditions described in ~~((subsection (1)))~~ (d) of this subsection;

(c) The transfer of an asset for less than fair market value (FMV), if the client can provide evidence to the department that satisfies one of the following:

(i) An intent to transfer the asset at FMV or other adequate compensation;

(ii) The transfer is not made to qualify for LTC services;

(iii) The client is given back ownership of the asset;

(iv) The denial of eligibility would result in an undue hardship.

(d) The transfer of ownership of the client's home, if it is transferred to the client's:

(i) Spouse; or

(ii) Child, who:

(A) Meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c); or

(B) Is less than twenty-one years old; or

(iii) A son or daughter, who:

(A) Lived in the home for at least two years immediately before the client's current period of institutional status; and

(B) Provided care that enabled the client to remain in the home; or

(iv) A brother or sister, who has:

(A) Equity in the home, and

(B) Lived in the home for at least one year immediately before the client's current period of institutional status.

(e) The transfer of an asset other than the home, if the transfer meets the conditions described in subsection (4) of this section, and the asset is transferred:

(i) To the client's spouse or to another person for the sole benefit of the spouse;

(ii) From the client's spouse to another person for the sole benefit of the spouse;

(iii) To the client's child who meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c) or to a trust established for the sole benefit of this child; or

(iv) To a trust established for the sole benefit of a person who is sixty-four years old or younger and meets the disability criteria described in WAC 182-512-0050 (1)(b) or (c).

(f) The transfer of an asset to a member of the client's family in exchange for care the family member provided the client before the current period of institutional status, if a written agreement that describes the terms of the exchange:

(i) Was established at the time the care began;

(ii) Defines a reasonable FMV for the care provided that reflects a time frame based on the actuarial life expectancy of the client who transfers the asset; and

(iii) States that the transferred asset is considered payment for the care provided.

(2) When the fair market value of the care described in subsection (1)(f) of this section is less than the value of the transferred asset, the department considers the difference the transfer of an asset without adequate consideration.

(3) The department considers the transfer of an asset in exchange for care given by a family member without a written agreement as described under subsection (1)(f) of this section as the transfer of an asset without adequate consideration.

(4) The transfer of an asset or the establishment of a trust is considered to be for the sole benefit of a person described in subsection (1)(e) of this section, if the transfer or trust:

(a) Is established by a legal document that makes the transfer irrevocable; and

(b) Provides for spending all funds involved for the benefit of the person for whom the transfer is made within a time frame based on the actuarial life expectancy of that person.

(5) When evaluating the effect of the transfer of an asset on a client's eligibility for LTC services received on or after October 1, 1993, the department counts the number of months before the month of application to establish what is referred to as the "look-back" period. The following number of months apply as described:

(a) Thirty-six months, if all or part of the assets were transferred on or after August 11, 1993; and

(b) Sixty months, if all or part of the assets were transferred into a trust as described in WAC ((~~388-561-0100~~)) 182-516-0100.

(6) If a client or the client's spouse transfers an asset within the look-back period without receiving adequate compensation, the result is a penalty period in which the client is not eligible for LTC services. If a client or the client's spouse transfers an asset on or after March 1, 1997, and before April 1, 2003, the department must establish a penalty period as follows:

(a) If a single or multiple transfers are made within a single month, then the penalty period:

(i) Begins on the first day of the month in which the transfer is made; and

(ii) Ends on the last day of the number of whole months found by dividing the total uncompensated value of the assets by the statewide average monthly private cost for nursing facilities at the time of application.

(b) If multiple transfers are made during multiple months, then the transfers are treated as separate events and multiple penalty periods are established that:

(i) Begin on the latter of:

(A) The first day of the month in which the transfer is made; or

(B) The first day after any previous penalty period has ended; and

(ii) End on the last day of the whole number of months as described in ((~~subsection (6))~~) (a)(ii) of this subsection.

(7) If an asset is sold, transferred, or exchanged, the portion of the proceeds:

(a) That is used within the same month to acquire an excluded resource described in WAC ((~~388-513-1350~~)) 182-513-1350 does not affect the client's eligibility;

(b) That remains after an acquisition described in ((~~subsection (7))~~) (a) of this subsection becomes an available resource as of the first day of the following month.

(8) If the transfer of an asset to the client's spouse includes the right to receive a stream of income not generated by a transferred resource, the department must apply rules described in WAC ((~~388-513-1330~~)) 182-513-1330 (5) through (7).

(9) If the transfer of an asset for which adequate compensation is not received is made to a person other than the client's spouse and includes the right to receive a stream not generated by a transferred resource, the length of the penalty period is determined and applied in the following way:

(a) The total amount of income that reflects a time frame based on the actuarial life expectancy of the client who transfers the income is added together;

(b) The amount described in ((~~9~~)) (a) of this subsection is divided by the statewide average monthly private cost for nursing facilities at the time of application; and

(c) A penalty period equal to the number of whole months found by following ((~~subsections (9))~~) (a) and (b) of this subsection is applied that begins on the latter of:

(i) The first day of the month in which the client transfers the income; or

(ii) The first day of the month after any previous penalty period has ended.

(10) A penalty period for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless:

(a) Both spouses are receiving LTC services; and

(b) A division of the penalty period between the spouses is requested.

(11) If a client or the client's spouse disagrees with the determination or application of a penalty period, that person may request a hearing as described in chapter ((~~388-02~~)) 182-526 WAC.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1366 Evaluating the transfer of an asset made before March 1, 1997, for long-term care (LTC) services. This section describes how the department evaluates the transfer of an asset made before March 1, 1997, by a client who is applying or approved for LTC services. The department must consider whether a transfer made within a specified time before the month of application requires a penalty period in which the client is not eligible for these services. Refer to WAC ((~~388-513-1365~~)) 182-513-1365 for rules used to evaluate the transfer of an asset on or after March 1, 1997.

(1) When evaluating the transfer of an asset made before March 1, 1997, the department must apply rules described in WAC ((~~388-513-1365~~)) 182-513-1365 (1) through (4) and (7) through (11) in addition to the rules described in this section.

(2) When evaluating the effect of the transfer of an asset on a client's eligibility for LTC services received before October 1, 1993, the department counts the number of months before the month of application to establish what is referred to as the "look-back" period. The following number of months apply as described:

(a) Thirty months, if the asset was transferred before August 11, 1993; or

(b) Thirty-six months, if the asset was transferred on or after August 11, 1993.

(3) If a client or the client's spouse transferred an asset without receiving adequate compensation before August 11, 1993, the department must establish a penalty period that:

(a) Runs concurrently for transfers made in more than one month in the look-back period; and

(b) Begins on the first day of the month in which the asset is transferred and ends on the last day of the month which is the lesser of:

(i) Thirty months after the month of transfer; or

(ii) The number of whole months found by dividing the total uncompensated value of the assets by the statewide average monthly private cost for nursing facilities at the time of application.

(4) If a client or the client's spouse transferred an asset without receiving adequate compensation on or after August 11, 1993, and before March 1, 1997, the department must establish a penalty period as follows:

(a) If the transfer is made during the look-back period, then the penalty period:

(i) Begins on the first day of the month in which the transfer is made; and

(ii) Ends on the last day of the number of whole months described in ~~((subsection (3)))~~ (b)(ii) of this subsection.

(b) If the transfer is made while the client is receiving LTC services or during a period of ineligibility, then the penalty period:

(i) Begins on the latter of the first day of the month:

(A) In which the transfer is made; or

(B) After a previous penalty period has ended; and

(ii) Ends on the last day of the number of whole months described in ~~((subsection (3)))~~ (b)(ii) of this subsection.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1367 Hardship waivers for long-term care (LTC) services. Clients who are denied or terminated from LTC services due to a transfer of asset penalty (described in WAC ~~((388-513-1363, 388-513-1364 and 388-513-1365))~~ 182-513-1363, 182-513-1364, and 182-513-1365), or having excess home equity (described in WAC ~~((388-513-1350))~~ 182-513-1350) may apply for an undue hardship waiver. Notice of the right to apply for an undue hardship waiver will be given whenever there is a denial or termination based on an asset transfer or excess home equity. This section:

- Defines undue hardship;
- Specifies the approval criteria for an undue hardship request;
- Establishes the process the department follows for determining undue hardship; and
- Establishes the appeal process for a client whose request for an undue hardship is denied.

(1) When does undue hardship exist?

(a) Undue hardship may exist:

(i) When a transfer of an asset occurs between:

(A) Registered domestic partners as described in chapter 26.60 RCW; or

(B) Same-sex couples who were married in states and the District of Columbia where same-sex marriages are legal; and

(C) The transfer would not have caused a period of ineligibility if made between an opposite sex married couple under WAC ~~((388-513-1363))~~ 182-513-1363.

(ii) When a client who transferred the assets or income, or on whose behalf the assets or income were transferred, either personally or through a spouse, guardian or attorney-in-fact, has exhausted all reasonable means including legal remedies to recover the assets or income or the value of the transferred assets or income that have caused a penalty period; and

(iii) The client provides sufficient documentation to support their efforts to recover the assets or income; or

(iv) The client is unable to access home equity in excess of the standard described in WAC ~~((388-513-1350))~~ 182-513-1350; and

(v) When, without LTC benefits, the client is unable to obtain:

(A) Medical care to the extent that his or her health or life is endangered; or

(B) Food, clothing, shelter or other basic necessities of life.

(b) Undue hardship can be approved for an interim period while the client is pursuing recovery of the assets or income.

(2) Undue hardship does not exist:

(a) When the transfer of asset penalty period or excess home equity provision inconveniences a client or restricts their lifestyle but does not seriously deprive him or her as defined in subsection (1)(a)(iii) of this section;

(b) When the resource is transferred to a person who is handling the financial affairs of the client; or

(c) When the resource is transferred to another person by the individual that handles the financial affairs of the client.

~~((4))~~ (3) Undue hardship may exist under subsection (2)(b) and (c) of this section if DSHS has found evidence of financial exploitation.

~~((3))~~ (4) How is an undue hardship waiver requested?

(a) An undue hardship waiver may be requested by:

(i) The client;

(ii) The client's spouse;

(iii) The client's authorized representative;

(iv) The client's power of attorney; or

(v) With the consent of the client or their guardian, a medical institution, as defined in WAC ~~((182-500-0005))~~ 182-500-0050, in which an institutionalized client resides.

(b) Request must:

(i) Be in writing;

(ii) State the reason for requesting the hardship waiver;

(iii) Be signed by the requestor and include the requestor's name, address and telephone number. If the request is being made on behalf of a client, then the client's name, address and telephone number must be included;

(iv) Be made within thirty days of the date of denial or termination of LTC services; and

(v) Returned to the originating address on the denial/termination letter.

~~((4))~~ (5) What if additional information is needed to determine a hardship waiver? ~~((4))~~ A written notice to the client is sent requesting additional information within fifteen days of the request for an undue hardship waiver. Additional time to provide the information can be requested by the client.

~~((5))~~ (6) What happens if my hardship waiver is approved?

(a) The department sends a notice within fifteen days of receiving all information needed to determine a hardship waiver. The approval notice specifies a time period the undue hardship waiver is approved.

(b) Any changes in a client's situation that led to the approval of a hardship must be reported to the department ~~((by the tenth of the month following))~~ within thirty days of the change per WAC ~~((388-418-0007))~~ 182-504-0110.

~~((6))~~ (7) What happens if my hardship waiver is denied?

(a) The department sends a denial notice within fifteen days of receiving the requested information. The letter will state the reason it was not approved.

(b) The denial notice will have instructions on how to request an administrative hearing. The department must receive an administrative hearing request within ninety days of the date of the adverse action or denial.

~~((7))~~ (8) What statute or rules govern administrative hearings? ~~((a))~~ An administrative hearing held under this section is governed by chapters 34.05 RCW and ~~(chapter 388-02)~~ 182-526 WAC and this section. If a provision in this section conflicts with a provision in chapter ~~((388-02))~~ 182-526 WAC, the provision in this section governs.

~~((8))~~ (9) Can the department revoke an approved undue hardship waiver? ~~((a))~~ The department may revoke approval of an undue hardship waiver if any of the following occur:

~~((i))~~ (a) A client, or his or her authorized representative, fails to provide timely information and/or resource verifications as it applies to the hardship waiver when requested by the department per WAC ~~((388-490-0005 and 388-418-0007))~~ 182-503-0050 and 182-504-0120 or 182-504-0125;

~~((ii))~~ (b) The lien or legal impediment that restricted access to home equity in excess of five hundred thousand dollars is removed; or

~~((iii))~~ (c) Circumstances for which the undue hardship was approved have changed.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1380 Determining a client's financial participation in the cost of care for long-term care (LTC) services. This rule describes how the department allocates income and excess resources when determining participation in the cost of care (the post-eligibility process). The department applies rules described in WAC ~~((388-513-1315))~~ 182-513-1315 to define which income and resources must be used in this process.

(1) For a client receiving institutional or hospice services in a medical institution, the department applies all subsections of this rule.

(2) For a client receiving waiver services at home or in an alternate living facility, the department applies only those subsections of this rule that are cited in the rules for those programs.

(3) For a client receiving hospice services at home, or in an alternate living facility, the department applies rules used for the community options program entry system (COPES) for hospice applicants with gross income under the medicaid special income level (SIL) (300% of the federal benefit rate (FBR)), if the client is not otherwise eligible for another non-institutional categorically needy medicaid program. (Note: For hospice applicants with income over the medicaid SIL, medically needy medicaid rules apply.)

(4) The department allocates nonexcluded income in the following order and the combined total of ~~((4))~~ (a), (b), (c),

and (d) of this subsection cannot exceed the effective one-person medically needy income level (MNIL):

(a) A personal needs allowance (PNA) of:

(i) Seventy dollars for the following clients who live in a state veteran's home and receive a needs based veteran's pension in excess of ninety dollars:

(A) A veteran without a spouse or dependent child.

(B) A veteran's surviving spouse with no dependent children.

(ii) The difference between one hundred sixty dollars and the needs based veteran's pension amount for persons specified in ~~((subsection (4)))~~ (a)(i) of this ~~((section))~~ subsection who receive a veteran's pension less than ninety dollars.

(iii) One hundred sixty dollars for a client living in a state veterans' home who does not receive a needs based veteran's pension;

(iv) Forty-one dollars and sixty-two cents for all clients in a medical institution receiving ABD cash assistance.

(v) For all other clients in a medical institution the PNA is fifty-seven dollars and twenty-eight cents.

(vi) Current PNA and long-term care standards can be found at ~~((http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml))~~ http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx.

(b) Mandatory federal, state, or local income taxes owed by the client.

(c) Wages for a client who:

(i) Is related to the supplemental security income (SSI) program as described in WAC 182-512-0050(1); and

(ii) Receives the wages as part of a department-approved training or rehabilitative program designed to prepare the client for a less restrictive placement. When determining this deduction employment expenses are not deducted.

(d) Guardianship fees and administrative costs including any attorney fees paid by the guardian, after June 15, 1998, only as allowed by chapter 388-79 WAC.

(5) The department allocates nonexcluded income after deducting amounts described in subsection (4) of this section in the following order:

(a) Current or back child support garnished or withheld from income according to a child support order in the month of the garnishment if it is for the current month:

(i) For the time period covered by the PNA; and

(ii) Is not counted as the dependent member's income when determining the family allocation amount.

(b) A monthly maintenance needs allowance for the community spouse not to exceed, effective January 1, 2008, two thousand six hundred ten dollars, unless a greater amount is allocated as described in subsection (7) of this section. The community spouse maintenance allowance may change each January based on the consumer price index. Starting January 1, 2008, and each year thereafter the community spouse maintenance allocation can be found in the long-term care standards chart at ~~((http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml))~~ http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx.

The monthly maintenance needs allowance:

(i) Consists of a combined total of both:

(A) One hundred fifty percent of the two person federal poverty level. This standard may change annually on July 1st; and

(B) Excess shelter expenses as described under subsection (6) of this section.

(ii) Is reduced by the community spouse's gross countable income; and

(iii) Is allowed only to the extent the client's income is made available to the community spouse.

(c) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community spouse or institutionalized person who:

(i) Resides with the community spouse: ~~((A))~~ For each child, one hundred and fifty percent of the two-person FPL minus that child's income and divided by three (child support received from a noncustodial parent is considered the child's income). This standard is called the community spouse (CS) and family maintenance standard and can be found at: ~~((<http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>))~~ <http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx>.

(ii) Does not reside with the community spouse or institutionalized person, in an amount equal to the effective one-person MNIL for the number of dependent family members in the home less the dependent family member's income.

(iii) Child support received from a noncustodial parent is the child's income.

(d) Medical expenses incurred by the institutional client and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC ~~((388-513-1350))~~ 182-513-1350.

(e) Maintenance of the home of a single institutionalized client or institutionalized couple:

(i) Up to one hundred percent of the one-person federal poverty level per month;

(ii) Limited to a six-month period;

(iii) When a physician has certified that the client is likely to return to the home within the six-month period; and

(iv) When social services staff documents the need for the income exemption.

(6) For the purposes of this section, "excess shelter expenses" means the actual expenses under ~~((subsection (6)))~~

(b) of this subsection less the standard shelter allocation under ~~((subsection (6)))~~ (a) of this subsection. For the purposes of this rule:

(a) The standard shelter allocation is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard may change annually on July 1st and is found at: ~~((<http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>))~~ <http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx>; and

(b) Shelter expenses are the actual required maintenance expenses for the community spouse's principal residence for:

(i) Rent;

(ii) Mortgage;

(iii) Taxes and insurance;

(iv) Any maintenance care for a condominium or cooperative; and

(v) The food stamp standard utility allowance described in WAC 388-450-0195, provided the utilities are not included in the maintenance charges for a condominium or cooperative.

(7) The amount allocated to the community spouse may be greater than the amount in subsection (6)(b) of this section only when:

(a) A court enters an order against the client for the support of the community spouse; or

(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(8) A client who is admitted to a medical facility for ninety days or less and continues to receive full SSI benefits is not required to use the SSI income in the cost of care for medical services. Income allocations are allowed as described in this section from non-SSI income.

(9) Standards described in this section for long-term care can be found at: ~~((<http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>))~~ <http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx>.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1395 Determining eligibility for institutional or hospice services for individuals living in a medical institution under the medically needy (MN) program. This section describes how the department determines a client's eligibility for institutional or hospice services in a medical institution and for facility care only under the MN program. In addition, this section describes rules used by the department to determine whether a client approved for these benefits is also eligible for noninstitutional medical assistance in a medical institution under the MN program.

(1) To be eligible for institutional or hospice services under the MN program for individuals living in a medical institution, a client must meet the financial requirements described in subsection (5) of this section. In addition, a client must meet program requirements described in WAC ~~((388-513-1315))~~ 182-513-1315; and

(a) Be an SSI-related client with countable income as described in subsection (4)(a) of this section that is more than the special income level (SIL); or

(b) Be a child not described in ~~((subsection (1)))~~ (a) of this subsection with countable income as described in subsection (4)(b) of this section that exceeds the categorically needy (CN) standard for the ~~((children's medical))~~ Washington apple health (WAH) for kids program.

(2) For an SSI-related client, excess resources are reduced by medical expenses as described in WAC ~~((388-513-1350))~~ 182-513-1350 to the resource standard for a single or married individual.

(3) The department determines a client's countable resources for institutional and hospice services under the MN programs as follows:

(a) For an SSI-related client, the department determines countable resources per WAC ~~((388-513-1350))~~ 182-513-1350.

(b) For a child not described in ~~((subsection (3)))~~ (a) of this subsection, no determination of resource eligibility is required.

(4) The department determines a client's countable income for institutional and hospice services under the MN program as follows:

(a) For an SSI-related client, the department reduces available income as described in WAC ~~((388-513-1325 and 388-513-1330))~~ 182-513-1325 and 182-513-1330 by:

(i) Excluding income described in WAC ~~((388-513-1340))~~ 182-513-1340;

(ii) Disregarding income described in WAC ~~((388-513-1345))~~ 182-513-1345; and

(iii) Subtracting previously incurred medical expenses incurred by the client and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC ~~((388-513-1350))~~ 182-513-1350.

(b) For a child not described in ~~((subsection (4)))~~ (a) of this subsection, the department:

(i) Follows the income rules described in WAC 182-505-0210 for the ~~((children's medical))~~ WAH for kids program; and

(ii) Subtracts the medical expenses described in this subsection ~~((4))~~.

(5) If the income remaining after the allowed deductions described in WAC ~~((388-513-1380))~~ 182-513-1380, plus countable resources in excess of the standard described in WAC ~~((388-513-1350))~~ 182-513-1350(1), is less than the department-contracted rate times the number of days residing in the facility the client:

(a) Is eligible for institutional or hospice services in a medical institution, and medical assistance;

(b) Is approved for twelve months; and

(c) Participates income and excess resources toward the cost of care as described in WAC ~~((388-513-1380))~~ 182-513-1380.

(6) If the income remaining after the allowed deductions described in WAC ~~((388-513-1380))~~ 182-513-1380 plus countable resources in excess of the standard described in WAC ~~((388-513-1350))~~ 182-513-1350(1) is more than the department-contracted rate times the number of days residing in the facility the client:

(a) Is not eligible for payment of institutional services; and

(b) Eligibility is determined for medical assistance only as described in chapter 182-519 WAC.

(7) If the income remaining after the allowed deductions described in WAC ~~((388-513-1380))~~ 182-513-1380 is more than the department contracted nursing facility rate based on the number of days the client is in the facility, but less than the private nursing rate plus the amount of medical expenses not used to reduce excess resources the client:

(a) Is eligible for nursing facility care only and is approved for a three or six month based period as described in chapter 182-519 WAC. This does not include hospice in a nursing facility; and

(i) Pays the nursing home at the current state rate;

(ii) Participates in the cost of care as described in WAC ~~((388-513-1380))~~ 182-513-1380; and

(iii) Is not eligible for medical assistance or hospice services unless the requirements in subsection (6)(b) of this section is met.

(b) Is approved for medical assistance for a three or six month base period as described in chapter 182-519 WAC, if:

(i) No income and resources remain after the post eligibility treatment of income process described in WAC ~~((388-513-1380))~~ 182-513-1380.

(ii) Medicaid certification is approved beginning with the first day of the base period.

(c) Is approved for medical assistance for up to three or six months when they incur additional medical expenses that are equal to or more than excess income remaining after the post eligibility treatment of income process described in WAC ~~((388-513-1380))~~ 182-513-1380.

(i) This process is known as spenddown and is described in WAC 182-519-0100.

(ii) Medicaid certification is approved on the day the spenddown is met.

(8) If the income remaining after the allowed deductions described in WAC ~~((388-513-1380))~~ 182-513-1380, plus countable resources in excess of the standard described in WAC ~~((388-513-1350))~~ 182-513-1350 is more than the private nursing facility rate times the number of days in a month residing in the facility, the client:

(a) Is not eligible for payment of institutional services.

(b) Eligibility is determined for medical assistance only as described in chapter 182-519 WAC.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1400 Long-term care (LTC) partnership program (index). Under the long term care (LTC) partnership program, individuals who purchase qualified long-term care partnership insurance policies can apply for long-term care medicaid under special rules for determining financial eligibility. These special rules generally allow the individual to protect assets up to the insurance benefits received from a partnership policy so that such assets will not be taken into account in determining financial eligibility for long-term care medicaid and will not subsequently be subject to estate recovery for medicaid and long-term care services paid. The Washington long term care partnership program is effective on December 1, 2011.

The following rules govern long-term care eligibility under the long-term care partnership program:

(1) WAC ~~((388-513-1405))~~ 182-513-1405 Definitions.

(2) WAC ~~((388-513-1410))~~ 182-513-1410 What qualifies as a LTC partnership policy?

(3) WAC ~~((388-513-1415))~~ 182-513-1415 What assets can't be protected under the LTC partnership provisions?

(4) WAC ~~((388-513-1420))~~ 182-513-1420 Who is eligible for asset protection under a LTC partnership policy?

(5) WAC ~~((388-513-1425))~~ 182-513-1425 When would I not qualify for LTC medicaid if I have a LTC partnership policy that does not have exhausted benefits?

(6) WAC ~~((388-513-1430))~~ 182-513-1430 What change of circumstances must I report when I have a LTC partnership policy paying a portion of my care?

(7) WAC ((~~388-513-1435~~)) 182-513-1435 Will Washington recognize a LTC partnership policy purchased in another state?

(8) WAC ((~~388-513-1440~~)) 182-513-1440 How many of my assets can be protected?

(9) WAC ((~~388-513-1445~~)) 182-513-1445 How do I designate a protected asset and what proof is required?

(10) WAC ((~~388-513-1450~~)) 182-513-1450 How does transfer of assets affect LTC partnership and medicaid eligibility?

(11) WAC ((~~388-513-1455~~)) 182-513-1455 If I have protected assets under a LTC partnership policy, what happens after my death?

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1405 Definitions. For purposes of this section, the following terms have the meanings given them. Additional definitions can be found at chapter ((~~388-500~~)) 182-500 WAC and WAC ((~~388-513-1304~~)) 182-513-1301.

"Issuer" means any entity that delivers, issues for delivery, or provides coverage to, a resident of Washington, any policy that claims to provide asset protection under the Washington long-term care partnership act, chapter 48.85 RCW. Issuer as used in this chapter specifically includes insurance companies, fraternal benefit societies, health care service contractors, and health maintenance organizations.

"Long-term care (LTC) insurance" means a policy described in Chapter 284-83 WAC.

"Long-term care services" means services received in a medical institution, or under a home and community based waiver authorized by home and community services (HCS) or ((~~division of~~)) developmental disabilities administration (DDA). Hospice services are considered long-term care services for the purposes of the long-term care partnership when medicaid eligibility is determined under chapter ((~~388-513 or 388-515~~)) 182-513 or 182-515 WAC.

"Protected assets" means assets that are designated as excluded or not taken into account upon determination of long-term care medicaid eligibility described in WAC ((~~388-513-1315~~)) 182-513-1315. The protected or excluded amount is up to the dollar amount of benefits that have been paid for long-term care services by the qualifying long-term care partnership policy on the medicaid applicant's or client's behalf. The assets are also protected or excluded for the purposes of estate recovery described in chapter ((~~388-527~~)) 182-527 WAC, in up to the amount of benefits paid by the qualifying policy for medical and long-term care services.

"Qualified long-term care insurance partnership" means an agreement between the Centers for Medicare and Medicaid Services (CMS), and the health care authority (HCA) which allows for the disregard of any assets or resources in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a long-term care insurance policy that has been determined by the Washington state insurance commission to meet the requirements of section 1917 (b)(1)(c)(iii) of the act. These policies are described in chapter 284-83 WAC.

"Reciprocity Agreement" means an agreement between states approved under section 6021(b) of the Deficit Reduction Act of 2005, Public Law 109-171 (DRA) under which the states agree to provide the same asset protections for qualified partnership policies purchased by an individual while residing in another state and that state has a reciprocity agreement with the state of Washington.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1415 What assets can't be protected under the LTC partnership provisions? The following assets cannot be protected under a LTC partnership policy.

(1) Resources in a trust described in WAC ((~~388-561-0400~~)) 182-516-0100 (6) and (7).

(2) Annuity interests in which Washington must be named as a preferred remainder beneficiary as described in WAC ((~~388-561-0204~~)) 182-516-0201.

(3) Home equity in excess of the standard described in WAC ((~~388-513-1350~~)) 182-513-1350. Individuals who have excess home equity interest are not eligible for long-term care medicaid services.

(4) Any portion of the value of an asset that exceeds the dollar amount paid out by the LTC partnership policy.

(5) The unprotected value of any partially protected asset (an example would be the home) is subject to estate recovery described in chapter ((~~388-527~~)) 182-527 WAC.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1425 When would I not qualify for LTC medicaid if I have a LTC partnership policy in pay status? You are not eligible for LTC medicaid when the following applies:

(1) The income you have available to pay toward your cost of care described in WAC ((~~388-513-1380~~)) 182-513-1380, combined with the amount paid under the qualifying LTC partnership policy, exceeds the monthly private rate at the institution.

(2) The income you have available to pay toward your cost of care on a home and community based (HCB) waiver described in chapter ((~~388-515~~)) 182-515 WAC, combined with the amount paid under the qualifying LTC partnership policy, exceeds the monthly private rate in a home or residential setting.

(3) You fail to meet another applicable eligibility requirement for LTC medicaid.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1430 What change of circumstances must I report when I have a LTC partnership policy paying a portion of my care? You must report changes described in WAC ((~~388-418-0005~~)) 182-418-0005 plus the following:

(1) You must report and verify the value of the benefits that your issuer has paid on your behalf under the LTC part-

nership policy upon request by the department, and at each annual eligibility review.

(2) You must provide proof when you have exhausted the benefits under your LTC partnership policy.

(3) You must provide proof if you have given away or transferred assets that you have previously designated as protected. Although, there is no penalty for the transfer of protected assets once you have been approved for LTC Medicaid, the value of transferred assets reduces the total dollar amount that is designated as protected and must be verified.

(4) You must provide proof if you have sold an asset or converted a protected asset into cash or another type of asset. You will need to make changes in the asset designation and verify the type of transaction and new value of the asset.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1450 How does transfer of assets affect LTC partnership and Medicaid eligibility? (1) If you transfer an asset within the sixty months prior to the Medicaid application or after Medicaid eligibility has been established, we will evaluate the transfer based on WAC ~~((388-513-1363))~~ 182-513-1363 and determine if a penalty period applies unless:

(a) You have already been receiving institutional services;

(b) Your LTC partnership policy has paid toward institutional services for you; and

(c) The value of the transferred assets has been protected under the LTC partnership policy.

(2) The value of the transferred assets that exceed your LTC partnership protection will be evaluated for a transfer penalty.

(3) If you transfer assets whose values are protected, you lose that value as future protection unless all the transferred assets are returned.

(4) The value of your protected assets less the value of transferred assets equals the adjusted value of the assets you are able to protect.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-513-1455 If I have protected assets under a LTC partnership policy, what happens after my death? Assets designated as protected prior to death are not subject to estate recovery for medical or LTC services paid on your behalf as described in chapter ~~((388-527))~~ 182-527 WAC as long as the following requirements are met:

(1) A personal representative who asserts an asset is protected under this section has the initial burden of providing proof as described in chapter ~~((388-527))~~ 182-527 WAC.

(2) A personal representative must provide verification from the LTC insurance company of the dollar amount paid out by the LTC partnership policy.

(3) If the LTC partnership policy paid out more than was previously designated, the personal representative has the right to assert that additional assets should be protected based on the increased protection. The personal representative must

use the DSHS LTCP asset designation form and send it to the office of financial recovery.

(4) The amount of protection available to you at death through the estate recovery process is decreased by the FMV of any protected assets that were transferred prior to death.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1505 ~~((Long term care home and community based services authorized by home and community services (HCS) and hospice.))~~ Home and community based (HCB) waiver services authorized by home and community services (HCS). ~~((+))~~ This chapter describes the general and financial eligibility requirements for categorically needy (CN) home and community based (HCB) waiver services administered by home and community services (HCS) ~~((and hospice services administered by the health care authority (HCA))).~~ The definitions in WAC 182-513-1100 and chapter 182-500 WAC apply throughout this chapter.

~~((2))~~ (1) The HCB service programs are:

(a) Community options program entry system (COPES);

~~(b) ((Program of all-inclusive care for the elderly (PACE);~~

~~(c) Washington Medicaid integration partnership (WMIP); or~~

~~(d))~~ New Freedom consumer directed services (New Freedom)~~((-~~

~~(3) Roads to community living (RCL) services. For RCL services this chapter is used only to determine your cost of care. Medicaid eligibility is guaranteed for three hundred sixty five days upon discharge from a medical institution.~~

~~(4) Hospice services if you don't reside in a medical institution and:~~

~~(a) Have gross income at or below the special income level (SIL); and~~

~~(b) Aren't eligible for another CN or medically needy (MN) Medicaid program.~~

~~(5) WAC 388-515-1506 describes the general eligibility requirements for HCS CN waivers.~~

~~(6) WAC 388-515-1507 describes eligibility for waiver services when you are eligible for Medicaid using noninstitutional CN rules.~~

~~(7) WAC 388-515-1508 describes the initial financial eligibility requirements for waiver services when you are not eligible for noninstitutional CN Medicaid described in WAC 388-515-1507(1).~~

~~(8) WAC 388-515-1509 describes the rules used to determine your responsibility in the cost of care for waiver services if you are not eligible for Medicaid under a CN program listed in WAC 388-515-1507(1). This is also called element participation or post eligibility); or~~

(c) Residential support waiver (RSW).

(2) WAC 182-515-1506 describes the general eligibility requirements for HCB waiver services authorized by HCS.

(3) WAC 182-515-1507 describes financial requirements for eligibility for HCB waiver services authorized by HCS when a person is eligible for a noninstitutional SSI-related categorically needy (CN) Medicaid program.

(4) WAC 182-515-1508 describes the financial eligibility requirements for HCB waiver services authorized by HCS when a person is not eligible for SSI-related noninstitutional CN medicaid described in WAC 182-515-1507.

(5) WAC 182-515-1509 describes the rules used to determine a person's participation in the cost of care and room and board for HCB waiver services if the person is not eligible under WAC 182-515-1507.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1506 (~~What are the~~) **General eligibility requirements for home and community based (HCB) waiver services authorized by home and community services (HCS)** (~~and hospice?~~). (1) To be eligible for home and community based (HCB) waiver services (~~and hospice you~~) a person must:

(a) Meet the program and age requirements for the specific program:

(i) Community options program entry system (COPEs), per WAC 388-106-0310;

(ii) ~~(PACE, per WAC 388-106-0705;~~

~~(iii) WMIP waiver services, per WAC 388-106-0750;~~

~~(iv)) Residential support waiver (RSW), per WAC 388-106-0310; or~~

~~(iii) New Freedom, per WAC 388-106-1410(;~~

~~(v) Hospice, per chapter 182-551 WAC; or~~

~~(vi) Roads to community living (RCL), per WAC 388-106-0250, 388-106-0255 and 388-106-0260).~~

(b) Meet the disability criteria for the supplemental security income (SSI) program as described in WAC 182-512-0050;

(c) Require the level of care provided in a nursing facility described in WAC 388-106-0355;

(d) Be residing in a medical institution as defined in WAC 182-500-0050, or be likely to be placed in one within the next thirty days without HCB waiver services provided under one of the programs listed in ((subsection (1))) (a) of this subsection;

(e) ~~((Have attained))~~ Attain institutional status as described in WAC ~~((388-513-1320))~~ 182-513-1320;

(f) Be ~~((determined in need of))~~ assessed for HCB waiver services and be approved for a plan of care as described in ~~((subsection (1)))~~ (a) of this subsection;

(g) Be able to live at home with community support services and choose to remain at home, or live in a department-contracted(-

~~(i) Enhanced adult residential care (EARC) facility;~~

~~(ii) Licensed adult family home (AFH); or~~

~~(iii) Assisted living (AL) facility.~~

(h) Not be subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363 through 388-513-1365;

(i) Not have a home with equity in excess of the requirements described in WAC 388-513-1350.

(2) Refer to WAC 388-513-1315 for rules used to determine countable resources, income, and eligibility standards for long-term care services)) alternate living facility described in WAC 182-513-1100.

(2) A person is not eligible for home and community based (HCB) waiver services if the person:

(a) Is subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 182-513-1363;

(b) Has a home with equity in excess of the requirements described in WAC 182-513-1350.

(3) Refer to WAC 182-513-1315 for rules used to determine countable resources, income, and eligibility standards for long-term care services.

~~((3))~~ (4) Current income and resource standard charts are located at: (~~http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.html~~) http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1507 (~~What are the~~) **Financial requirements for home and community based (HCB) waiver services authorized by home and community services (HCS) when ((you are)) a person is eligible for ((a)) an SSI-related noninstitutional categorically needy (CN) medicaid program((?)).** ~~((1) You are eligible for medicaid under one of the following programs:~~

~~(a) Supplemental security income (SSI) eligibility described in WAC 388-474-0001. This includes SSI clients under 1619B status;~~

~~(b) SSI-related CN medicaid described in WAC 182-512-0100 (2)(a) and (b);~~

~~(c) SSI-related health care for workers with disabilities program (HWD) described in WAC 182-511-1000. If you are receiving HWD, you are responsible to pay your HWD premium as described in WAC 182-511-1250;~~

~~(d) Aged, blind, or disabled (ABD) cash assistance described in WAC 388-400-0060 and are receiving CN medicaid.~~

~~(2) You do not have a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363 through 388-513-1365. This does not apply to PACE or hospice services.~~

~~(3) You do not have a home with equity in excess of the requirements described in WAC 388-513-1350.~~

~~(4) You do not have to meet the initial eligibility income test of having gross income at or below the special income level (SIL).~~

~~(5) You do not pay (participate) toward the cost of your personal care services.~~

~~(6) If you live in a department contracted facility listed in WAC 388-515-1506 (1)(g), you pay room and board up to the ADSA room and board standard. The ADSA room and board standard is based on the federal benefit rate (FBR) minus the current personal needs allowance (PNA) for HCS CN waivers in an alternate living facility.~~

~~(a) If you live in an assisted living (AL) facility, enhanced adult residential center (EARC), or adult family home (AFH) you keep a PNA of sixty-two dollars and seventy-nine cents and use your income to pay up to the room and board standard.~~

~~(b) If subsection (6)(a) applies and you are receiving HWD described in WAC 182-511-1000, you are responsible~~

to pay your HWD premium as described in WAC 182-511-1250, in addition to the ADSA room and board standard.

(7) If you are eligible for aged, blind or disabled (ABD) cash assistance program described in WAC 388-400-0060 you do not participate in the cost of personal care and you may keep the following:

(a) When you live at home, you keep the cash grant amount authorized under WAC 388-478-0033;

(b) When you live in an AFH, you keep a PNA of thirty-eight dollars and eighty-four cents, and pay any remaining income and ABD cash grant to the facility for the cost of room and board up to the ADSA room and board standard; or

(c) When you live in an assisted living facility or enhanced adult residential center, you are only eligible to receive an ABD cash grant of thirty-eight dollars and eighty-four cents as described in WAC 388-478-0045, which you keep for your PNA.

(8) Current resource and income standards are located at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(9) (1) A person is financially eligible for HCB waiver services if:

(a) Receiving coverage under one of the following SSI-related CN medicaid programs:

(i) Supplemental security income (SSI) program described in WAC 182-510-0001. This includes SSI clients under 1619B status;

(ii) SSI-related noninstitutional CN program described in chapter 182-512 WAC;

(iii) Washington apple health care for workers with disabilities program (HWD) described in WAC 182-511-1000.

(b) The person does not have a penalty period of ineligibility for the transfer of an asset as described in WAC 182-513-1363; and

(c) The person does not own a home with equity in excess of the requirements described in WAC 182-513-1350.

(2) A person eligible under this section does not pay participation toward the cost of personal care services, but must pay room and board if living in an alternate living facility.

(3) A person that lives in a department-contracted alternate living facility described in WAC 182-513-1100:

(a) Keeps a personal needs allowance (PNA) of sixty-two dollars and seventy-nine cents; and

(b) Pays remaining available income as room and board up to the room and board standard. The room and board standard is the federal benefit rate (FBR) minus sixty-two dollars and seventy-nine cents.

(4) A person who is eligible under the HWD program must pay the HWD premium described in WAC 182-511-1250, in addition to room and board if residing in an alternate living facility.

(5) A person who is eligible for the aged, blind, disabled (ABD) cash assistance program described in WAC 388-400-0060 does not pay participation toward the cost of personal care and keeps the following:

(a) The cash grant amount authorized under WAC 388-478-0033 when living at home;

(b) A PNA of thirty-eight dollars and eighty-four cents, and pays the remaining income and ABD cash grant to the facility for the cost of room and board up to the room and

board standard when living in an adult family home (AFH); or

(c) The cash grant of thirty-eight dollars and eighty-four cents described in WAC 388-400-xxxx when living in an assisted living facility or enhanced adult residential center (EARC).

(6) Current resource, income, PNA and ADSA room and board standards are located at: (<http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardsPNAchart-subfile.shtml>) <http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx>.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1508 ((How does the department determine if you are financially eligible)) Financial requirements for home and community based (HCB) waiver services authorized by home and community services (HCS) ((and hospice)) if ((you are)) a person is not eligible for ((medicaid under a)) SSI-related categorically needy (CN) program listed in WAC ((388-515-1507(1?)) 182-515-1507. (1) If ((you are)) a person is not eligible for ((medicaid under)) a categorically needy (CN) program listed in WAC ((388-515-1507(1))) 182-515-1507, the ((department must)) agency determines ((your)) eligibility for home and community based (HCB) waiver services authorized by home and community services (HCS) using institutional medicaid rules. This section explains how you may qualify using institutional ((medicaid)) rules described in this section.

(2) ((You)) A person must meet ((the));

(a) General eligibility requirements described in WAC ((388-513-1315 and 388-515-1506)) 182-513-1315 and 182-515-1506((-

(3) You must meet);

(b) The following resource requirements:

((a)) (i) Resource limits described in WAC ((388-513-1350)) 182-513-1350.

((b)) (ii) If ((you have)) resources are over the ((standard)) resource limits allowed ((in WAC 388-513-1350)), the ((department)) agency reduces resources over the ((standard)) limit by ((your)) deducting verified unpaid medical expenses described in WAC ((388-513-1350 if you verify these expenses)) 182-513-1350.

((4) You must meet) (c) The following income requirements:

((a) Your) (i) Gross nonexcluded income must be at or below the special income level (SIL) which is three hundred percent of the federal benefit rate (FBR); or

((b) For home and community based (HCB) service programs authorized by HCS your gross nonexcluded income is:

(i) Above the special income level (SIL) which is three hundred percent of the federal benefit rate (FBR); and

(ii) ((Net)) If gross nonexcluded income is above the special income level (SIL), net nonexcluded income is no greater than the effective one-person medically needy income level (MNIL). Net income is calculated by reducing gross nonexcluded income by:

(A) Medically needy (MN) disregards found in WAC ((388-513-1345)) 182-513-1345; and

(B) The average monthly nursing facility state rate ((is five thousand six hundred and twenty six dollars)). This rate ((will be)) is updated annually ((starting)) on October 1st (; 2012 and each year thereafter on October 1. This standard will be updated annually in the long-term care standard section of the EAZ manual described at <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandard-spna.shtml>)).

((5)) (3) The ((department)) agency follows the rules in WAC ((388-515-1325, 388-513-1330, and 388-513-1340)) 182-513-1325, 182-513-1330, and 182-513-1340 to determine available income and income exclusions.

((6)) (4) A person eligible under this section may be required to participate available income toward the cost of care as described in WAC 182-515-1509.

(5) Current resource ((and)), income standards (including the SIL, MNIL and FBR), and the average state nursing facility rate for long-term care are found at: ((<http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>)) <http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx>.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1509 ~~((How does the department determine how much of my income I must pay towards the cost of my care if I am only eligible for home and community based (HCB) services under WAC 388-515-1508?))~~ **Determining a person's financial participation in the cost of care and room and board for home and community based (HCB) waiver services authorized by home and community services (HCS) if not eligible under WAC 182-515-1507.** ~~((If you are only eligible for medicaid under WAC 388-515-1508, the department determines how much you must pay based upon))~~ (1) The agency determines how much a person must pay toward the cost of care for home and community based (HCB) waiver services authorized by home and community services (HCS) when living at home based on the following:

((1-If you are)) (a) A single ((and living)) person who lives at home (as defined in WAC 388-106-0010)((, you)) keeps ((all your income up to the federal poverty level (FPL) for your personal needs allowance (PNA))) a personal needs allowance (PNA) of up to the federal poverty level (FPL) and pays the remainder toward cost of care after allowable deductions described in subsection (3) of this section.

((2-If you are)) (b) A married ((living)) person who lives with their spouse at home (as defined in WAC 388-106-0010)((, you keep all your income up to the effective one-person medically needy income level (MNIL) for your PNA if your spouse lives at home with you. If you are married and living apart from your spouse, you're allowed to keep your income up to the FPL for your PNA.

(3) If you live in an assisted living (AL) facility, enhanced adult residential center (EARC), or adult family home (AFH), you:

(a) Keep a PNA from your gross nonexcluded income. The PNA is sixty-two dollars and seventy-nine cents effective July 1, 2008; and

(b) Pay for your room and board up to the ADSA room and board standard.

(4) In addition to paying room and board, you may also have to pay toward the cost of personal care. This is called your participation. Income that remains after the PNA and any room and board deduction)), keeps a PNA of up to the effective one-person medically needy income level (MNIL) and pays the remainder toward cost of care after allowable deductions described in subsection (3) of this section.

(c) A married person who lives at home and apart from their spouse keeps a PNA of up to the FPL and pays the remainder toward cost of care after allowable deductions described in subsection (3) of this section.

(d) A married couple who receive HCB waiver services are each allowed to keep a PNA of up to the FPL and pays the remainder toward cost of care after allowable deductions described in subsection (3) of this section.

(e) A married couple living at home who receive HCB waiver services and one member of the couple receives services authorized by DDA and the other member receives services authorized by home and community services (HCS) are allowed to keep:

(i) The DDA waiver person retains the SIL as described in WAC 182-515-1514; and

(ii) The HCS waiver person retains the federal poverty level (FPL).

(2) The agency determines how much a person must pay toward the cost of care and room and board when living in a department contracted alternate living facility described in WAC 182-513-1100 based on the following:

A single person or a married person who lives apart from their spouse:

(a) Keeps a PNA of sixty-two dollars and seventy-nine cents effective July 1, 2008;

(b) Pays room and board up to the room and board standard; and

(c) Pays the remainder of gross nonexcluded income toward the cost of care after allowable deductions described in subsection (3) of this section.

(3) If income remains after the PNA and room and board liability described in subsections (1) and (2) of this section, the remaining income must be paid toward the cost of care after it is reduced by allowable deductions in the following order:

(a) ~~((If you are))~~ For a working person, the ((department)) agency allows an earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income(-);

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter 388-79 WAC;

(c) Current or back child support garnished or withheld from your income according to a child support order in the month of the garnishment if it is for the current month. If the ((department)) agency allows this as deduction from ((your)) income, the ((department will)) agency does not count it as

~~((your))~~ the child's income when determining the family allocation amount;

~~(d) A monthly maintenance-needs allowance for ((your)) the community spouse ((not to exceed that in WAC 388-513-1380 (5)(b) unless a greater amount is allocated as described in subsection (e) of this section. This amount:~~

~~(i) Is allowed only to the extent that your income is made available to your community spouse; and~~

~~(ii) Consists of a combined total of both:~~

~~(A) One hundred fifty percent of the two person federal poverty level. This standard may change annually on July 1st and can be found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>; and~~

~~(B) Excess shelter expenses. For the purposes of this section, excess shelter expenses are the actual required maintenance expenses for your community spouse's principal residence. These expenses are determined in the following manner:~~

~~(I) Rent, including space rent for mobile homes, plus;~~

~~(H) Mortgage, plus;~~

~~(HH) Taxes and insurance, plus;~~

~~(IV) Any required payments for maintenance care for a condominium or cooperative, plus;~~

~~(V) The food assistance standard utility allowance (SUA) described in WAC 388-450-0195 provided the utilities are not included in the maintenance charges for a condominium or cooperative, minus;~~

~~(VI) The standard shelter allocation. This standard is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard may change annually on July 1st and can be found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>; and~~

~~(VII) Is reduced by your community spouse's gross countable income.~~

~~(iii) The amount allocated to the community spouse may be greater than the amount in subsection (d)(ii) only when:~~

~~(A) There is a court order approving a higher amount for the support of your community spouse; or~~

~~(B) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress)) as determined using the calculation described in WAC 182-513-1385.~~

~~(e) A monthly maintenance-needs ((amount)) allowance for each minor or dependent child, dependent parent, or dependent sibling of ((your)) the institutionalized person's community or institutionalized spouse((The amount the department allows is based on the living arrangement of the dependent. If the dependent:~~

~~(i) Resides with your community spouse, for each child, one hundred fifty percent of the two person FPL minus that child's income and divided by three (child support received from a noncustodial parent is considered the child's income);~~

~~(ii) Does not reside with the community spouse, the amount is equal to the effective one person MNIL based on the number of dependent family members in the home less their separate income (child support received from a noncustodial parent is considered the child's income)), as determined using the calculation described in WAC 182-513-1385.~~

~~(f) ((Your)) Unpaid medical expenses which have not been used to reduce excess resources. Allowable medical expenses are described in WAC ((388-513-1350)) 182-513-1350 (8)(d).~~

~~(g) The total of the following deductions cannot exceed the SIL (three hundred percent of the FBR):~~

~~(i) Personal needs allowance in subsections (1)((;) and (2) ((and (3)(a) and (b))) of this section; and~~

~~(ii) Earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income in ((sub-section (4))) (a) of this subsection; and~~

~~(iii) Guardianship fees and administrative costs in ((sub-section (4))) (b) of this subsection.~~

~~(4) A person may have to pay third-party resources described in WAC 182-501-0200 in addition to the room and board and participation.~~

~~(5) ((You)) A person must pay ((your)) their provider a total of the combination of the room and board amount, and the cost of personal care services (participation) after all allowable deductions, and any third-party resources.~~

~~(6) ((You may have to pay third party resources described in WAC 182-501-0200 in addition to the room and board and participation. The combination of room and board, participation, and third party resources is the total amount you must pay.~~

~~(7) Current income and resource standards for long term care (including SIL, MNIL, FPL, FBR) are located at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.~~

~~(8) If you are)) When a person lives in multiple living arrangements in a month (an example is a move from an adult family home to a home setting on HCB waiver services), the ((department)) agency allows ((you)) the highest PNA available based on all the living arrangements and services you have in a month.~~

~~((9) Current PNA and ADSA room and board)) (7) Standards described in this section are located at: ((<http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardsPNAchartsfile.shtml>)) <http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx>.~~

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1510 ((Division of)) **Developmental disabilities ((DDD)) administration (DDA) home and community based ((services)) (HCB) waivers.** The ((four)) following five sections ((that follow)) describe the general and financial eligibility requirements for home and community based (HCB) waivers authorized by the ((division of)) developmental disabilities ((DDD) home and community based services (HCB) waivers)) administration (DDA).

(1) The DDA waiver programs are:

(a) Basic Plus;

(b) Core;

(c) Community protection;

(d) Children's intensive in-home behavioral support (CIIBS); and

(e) Informal family support (IFS).

~~((1) WAC 388-515-1511))~~ (2) WAC 182-515-1511 describes the general eligibility requirements ~~((under the DDD-HCBS))~~ for HCB waiver(s) services authorized by DDA.

~~((2) WAC 388-515-1512))~~ (3) WAC 182-515-1512 describes the ~~((financial))~~ general eligibility requirements for ~~((the DDD waivers if you are))~~ HCB waivers authorized by DDA when a person is eligible for ((medicaid under the)) a noninstitutional SSI-related categorically needy (CN) program ((CN)).

~~((3) WAC 388-515-1513))~~ (4) WAC 182-515-1513 describes the ~~((initial))~~ financial eligibility requirements for the ~~((DDD))~~ HCB waiver(s if you are) services authorized by DDA waivers when a person is not eligible for ((medicaid under)) a noninstitutional SSI-related categorically needy (CN) program ((CN) listed in) under WAC ((388-515-1512(1))) 182-515-1512.

~~((4) WAC 388-515-1514))~~ (5) WAC 182-515-1514 describes the ~~((post-eligibility financial requirements for the DDD waivers if you are not eligible for medicaid under a categorically needy program CN listed in))~~ rules used to determine a person's participation in the cost of care and room and board for HCB waiver services authorized by DDA if the person is not eligible under WAC ((388-515-1512)) 182-515-1512(1).

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1511 ((What are the)) General eligibility requirements for home and community based (HCB) waiver services ((under)) authorized by the ((division of)) developmental disabilities ((DDD) home and community based services (HCBS) waivers?) administration (DDA). ~~((1) This section describes the general eligibility requirements for waiver services under the DDD home and community based services (HCBS) waivers.~~

~~(2) The requirements for services for DDD-HCBS waivers are described in chapter 388-845 WAC. The department establishes eligibility for DDD-HCBS waivers.)~~ (1) To be eligible((-you)) for home and community based (HCB) waiver services authorized by DDA, a person must:

(a) Meet the program requirements for the specific program as described in chapter 388-845 WAC;

(b) Be an eligible client of the ((division of)) developmental disabilities ((DDD)) administration (DDA);

~~((b))~~ (c) Meet the disability criteria for the supplemental security income (SSI) program as described in WAC 182-512-0050;

~~((e))~~ (d) Require the level of care provided in an intermediate care facility for the intellectually disabled (ICF/ID);

~~((d))~~ (e) Have attained institutional status as described in WAC ((388-513-1320)) 182-513-1320;

~~((e))~~ (f) Be able to reside in the community and choose to do so as an alternative to living in an ICF/ID;

~~((f) Need waiver services as determined by your)~~ (g) Be assessed for HCB waiver services as determined by the person's plan of care or individual support plan, and:

(i) Be able to live at home with HCB waiver services; or

(ii) Live in a department contracted facility, which includes:

(A) A group home;

(B) Group training home;

(C) Child foster home, group home or staffed residential facility;

(D) Adult family home (AFH); or

(E) Adult residential care (ARC) facility.

(iii) Live in ((your)) their own home with supported living services from a certified residential provider; or

(iv) Live in the home of a contracted companion home provider((-and

~~(g) Be both medicaid eligible under the categorically needy program (CN) and be approved for services by the division of developmental disabilities)).~~

(2) A person is not eligible for home and community based (HCB) waiver services if the person:

(a) Is subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 182-513-1363;

(b) Has a home with equity in excess of the requirements described in WAC 182-513-1350.

(3) Refer to WAC 182-513-1315 for rules used to determine countable resources, income, and eligibility standards for long-term care services.

(4) Current income and resource standard charts are located at: <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1512 ((What are the)) Financial requirements for ((the DDD waiver services if I am eligible for medicaid under the noninstitutional categorically needy program (CN)?) home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA) if a person is eligible for a noninstitutional SSI-related categorically needy (CN) program. ~~((1) You automatically meet income and resource eligibility for DDD waiver services if you are eligible for medicaid under a categorically needy program (CN) under one of the following programs:~~

~~(a) Supplemental security income (SSI) eligibility described in WAC 388-474-0001. This includes SSI clients under 1619B status. These clients have medicaid eligibility determined and maintained by the Social Security Administration;~~

~~(b) Health care for workers with disabilities (HWD) described in WAC 182-511-1000 through 182-511-1250;~~

~~(c) SSI-related (CN) medicaid described in WAC 182-512-0100 (2)(a) and (b) or meets the requirements in WAC 182-512-0880 and is (CN) eligible after the income disregards have been applied;~~

~~(d) CN medicaid for a child as described in WAC 182-505-0210 (1), (2), (7) or (8); or~~

~~(e) Aged, blind or disabled (ABD) cash assistance described in WAC 388-400-0060.~~

(2) If you are eligible for a CN medicaid program listed in subsection (1) above, you do not have to pay (participate)

toward the cost of your personal care and/or habilitation services:

(3) If you are eligible for a CN medicaid program listed in subsection (1) above, you do not need to meet the initial eligibility income test of gross income at or below the special income level (SIL), which is three hundred percent of the federal benefit rate (FBR):

(4) If you are eligible for a CN medicaid program listed in subsection (1), you pay up to the ADSA room and board standard described in WAC 388-515-1507. Room and board and long-term care standards are located at <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(a) If you live in an ARC, AFH or DDD group home, you keep a personal needs allowance (PNA) and use your income to pay up to the ADSA room and board standard. Effective January 1, 2009 the PNA is sixty-two dollars and seventy-nine cents:

(5) If you are eligible for a premium based medicaid program such as health care for workers with disabilities (HWD), you must continue to pay the medicaid premium to remain eligible for that CN-P program: (1) A person is financially eligible for HCB waiver services if:

(a) Receiving coverage under one of the following SSI-related categorically needy (CN) medicaid programs:

(i) Supplemental security income (SSI) program described in WAC 182-510-0001. This includes SSI clients under 1619B status;

(ii) Washington apple health care for workers with disabilities (HWD) described in WAC 182-511-1000 through 182-511-1250;

(iii) SSI-related noninstitutional (CN) program described in chapter 182-512 WAC;

(iv) Washington apple health foster care program described in WAC 182-505-0211 and meets disability requirements described in WAC 182-512-0050.

(b) The person does not have a penalty period of ineligibility for the transfer of an asset as described in WAC 182-513-1363; and

(c) The person does not own a home with equity in excess of the requirements described in WAC 182-513-1350.

(2) A person eligible under this section does not pay participation toward the cost of personal care and habilitation services, but must pay room and board if living in an alternate living facility (ALF) described in WAC 182-513-1100.

(3) A person who lives in a department-contracted ALF:

(a) Keeps a personal needs allowance (PNA) of sixty-two dollars and seventy-nine cents; and

(b) Pays remaining available income as room and board up to the room and board standard. The room and board standard is the federal benefit rate (FBR) minus sixty-two dollars and seventy-nine cents.

(4) A person who is eligible under the HWD program must pay the HWD premium described in WAC 182-511-1250, in addition to room and board if residing in an ALF.

(5) A person who is eligible for the aged, blind, disabled (ABD) cash assistance program described in WAC 388-400-0060 does not pay participation toward the cost of personal care and keeps the following:

(a) The cash grant amount authorized under WAC 388-478-0033 when living at home;

(b) A PNA of thirty-eight dollars and eighty-four cents, and pays the remaining income and ABD cash grant to the facility for the cost of room and board up to the room and board standard when living in an adult family home (AFH); or

(c) The cash grant of thirty-eight dollars and eighty-four cents described in chapter 388-400 WAC when living in an adult residential center (ARC) or DDA group home.

(6) Current resource, income, PNA and room and board standards are located at: <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1513 ((How does the department determine if I am financially eligible for DDD waiver service medical coverage if I am not eligible for medicaid under a categorically needy program (CN) listed in WAC 388-515-1512(1)?) Financial requirements for home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA) if a person is not eligible under WAC 182-515-1512. ((If you are not eligible for medicaid under a categorically needy program (CN) listed in WAC 388-515-1512(1), we must determine your eligibility using institutional medicaid rules. This section explains how you may qualify under this program. You may be required to pay towards the cost of your care if you are eligible under this program. The rules explaining how much you have to pay are listed in WAC 388-515-1514. To qualify, you must meet both the resource and income requirements.

(1) Resource limits are described in WAC 388-513-1350. If you have resources which are higher than the standard allowed, we may be able to reduce resources by your unpaid medical expenses described in WAC 388-513-1350.

(2) You are not subject to a transfer of asset penalty described in WAC 388-513-1363 through 388-513-1365.

(d) Not have a home with equity in excess of the requirements described in WAC 388-513-1350.

(3) Your gross nonexcluded income must be at or below the special income level (SIL) which is three hundred percent of the federal benefit level. The department follows the rules in WAC 388-515-1325, 388-513-1330 and 388-513-1340 to determine available income and income exclusions.

(4) Refer to WAC 388-513-1315 for rules used to determine countable resources, income and eligibility standards for long-term care services.

(5) Current income and resources standards are located at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>;) (1) If a person is not eligible for a categorically needy (CN) program listed in WAC 182-515-1512, the agency determines eligibility for home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA) using institutional rules described in this section.

(2) A person must meet:

(a) General eligibility requirements described in WAC 182-513-1315 and 182-515-1511;

(b) The following resource requirements:

(i) Resource limits described in WAC 182-513-1350.

(ii) If resources are over the resource limits allowed, the agency reduces resources over the limit by deducting verified unpaid medical expenses described in WAC 182-513-1350.

(c) Gross nonexcluded income must be at or below the special income level (SIL) which is three hundred percent of the federal benefit rate (FBR).

(3) The agency follows the rules in WAC 182-513-1325, 182-513-1330, and 182-513-1340 to determine available income and income exclusions.

(4) A person eligible under this section may be required to pay participation toward the cost of care as described in WAC 182-515-1514.

(5) Current resource, income standards (including the SIL and FBR), and the average state nursing facility rate for long-term care are found at: <http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx>.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-515-1514 ((How does the department determine how much of my income I must pay towards the cost of my DDD waiver services if I am not eligible for medicaid under a categorically needy program (CN) listed in WAC 388-515-1512(1)?)) Determining a person's financial participation in the cost of care and room and board for home and community based (HCB) services authorized by developmental disabilities administration (DDA) if not eligible under WAC 182-515-1512. ((If you are not eligible for medicaid under a categorically needy program (CN) listed in WAC 388-515-1512(1), the department determines how much you must pay based upon the following:

(1) If you are an SSI-related client living at home as defined in WAC 388-106-0010, you keep all your income up to the SIL (three hundred percent of the FBR) for your personal needs allowance (PNA):

(2) If you are an SSI-related client and you live in an ARC, AFH or DDD group home, you:

(a) Keep a personal needs allowance (PNA) from your gross nonexcluded income. Effective January 1, 2009 the PNA is sixty-two dollars and seventy-nine cents; and

(b) Pay for your room and board up to the ADSA room and board rate described in <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(3) In addition to paying room and board, you may also have to pay toward the cost of personal care. This is called your participation. Income that remains after the PNA and any room and board deduction described in (2) above, is reduced by allowable deductions in the following order:

(a) If you are working, we allow an earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter 388-79 WAC;

(c) Current or back child support garnished or withheld from your income according to a child support order in the month of the garnishment if it is for the current month. If we allow this as deduction from your income, we will not count it as your child's income when determining the family allocation amount;

(d) A monthly maintenance needs allowance for your community spouse not to exceed that in WAC 388-513-1380 (5)(b) unless a greater amount is allocated as described in subsection (e) of this section. This amount:

(i) Is allowed only to the extent that your income is made available to your community spouse; and

(ii) Consists of a combined total of both:

(A) One hundred fifty percent of the two person federal poverty level. This standard may change annually on July 1st and can be found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>; and

(B) Excess shelter expenses. For the purposes of this section, excess shelter expenses are the actual required maintenance expenses for your community spouse's principal residence. These expenses are determined in the following manner:

(I) Rent, including space rent for mobile homes, plus;

(II) Mortgage, plus;

(III) Taxes and insurance, plus;

(IV) Any required payments for maintenance care for a condominium or cooperative plus;

(V) The food assistance standard utility allowance (SUA) provided the utilities are not included in the maintenance charges for a condominium or cooperative, minus;

(VI) The standard shelter allocation. This standard is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard may change annually on July 1st and can be found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>; and

(VII) Is reduced by your community spouse's gross countable income.

(iii) May be greater than the amount in subsection (d)(ii) only when:

(A) There is a court order approving a higher amount for the support of your community spouse; or

(B) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(e) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of your community or institutionalized spouse. The amount we allow is based on the living arrangement of the dependent. If the dependent:

(i) Resides with your community spouse, for each child, one hundred fifty percent of the two person FPL minus that child's income and divided by three (child support received from a noncustodial parent is considered the child's income);

(ii) Does not reside with the community spouse, the amount is equal to the effective one person MNIL based on the number of dependent family members in the home less

their separate income (child support received from a noncustodial parent is considered the child's income):

(f) ~~Your unpaid medical expenses which have not been used to reduce excess resources. Allowable medical expenses are described in WAC 388-513-1350.~~

(g) ~~The total of the following deductions cannot exceed the SIL (three hundred percent of the FBR):~~

~~(i) Personal needs allowances in subsection (1) for in home or subsection (2)(a) in a residential setting; and~~

~~(ii) Earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income in subsection (3)(a); and~~

~~(iii) Guardianship fees and administrative costs in subsection (3)(b).~~

~~(4) If you are eligible for aged, blind or disabled (ABD) cash assistance described in WAC 388-400-0060 you do not participate in the cost of personal care and you may keep the following:~~

~~(a) When you live at home, you keep the cash grant amount authorized under the ABD cash program;~~

~~(b) When you live in an AFH, you keep a PNA of thirty-eight dollars and eighty-four cents, and pay any remaining income and ABD cash grant to the facility for the cost of room and board up to the ADOSA room and board standard described in <http://www.dshs.wa.gov/manuals/caz/sections/LongTermCare/LTCstandardspna.shtml>; or~~

~~(c) When you live in an ARC or DDD group home, you are only eligible to receive a cash grant of thirty-eight dollars and eighty-four cents which you keep for your PNA.~~

~~(5) You may have to pay third party resources (TPR) described in WAC 182-501-0200 in addition to room and board and the cost of personal care and/or habilitation services (participation) after all allowable deductions have been considered is called your total responsibility. You pay this amount to the ARC, AFH or DDD group home provider.) (1) The agency determines how much a person must pay toward the cost of care for home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA) when living at home based on the following:~~

~~(a) A single person who lives at home (as defined in WAC 388-106-0010), keeps a personal needs allowance (PNA) of up to the special income level (SIL)(three hundred percent of the federal benefit rate) and pays any remaining income toward cost of care after allowable deductions described in subsection (3) of this section.~~

~~(b) A married person who lives with their spouse at home (as defined in WAC 388-106-0010), keeps a PNA of up to the effective one-person medically needy income level (MNIL) and pays the remainder toward cost of care after allowable deductions described in subsection (3) of this section.~~

~~(c) A married person who lives at home and apart from their spouse keeps a PNA of up to the FPL and pays the remainder toward cost of care after allowable deductions described in subsection (3) of this section.~~

~~(d) A married couple who receive HCB waiver services authorized by DDA are each allowed to keep a PNA of up to the SIL and pays the remainder toward cost of care after~~

allowable deductions described in subsection (3) of this section.

(e) A married couple living at home who receive HCB waiver services and one member of the couple receives services authorized by DDA and the other member receives services authorized by home and community services (HCS) are allowed to keep:

(i) The DDA waiver person retains the SIL; and

(ii) The HCS waiver person retains the federal poverty level (FPL) described in WAC 182-515-1509.

(2) The agency determines how much a person must pay toward the cost of care and room and board when living in a department contracted ALF based on the following: A single person or a married person who lives apart from their spouse:

(a) Keeps a PNA of sixty-two dollars and seventy-nine cents effective July 1, 2008; and

(b) Pays room and board up to the room and board standard; and

(c) Pays the remainder toward the cost of care after allowable deductions described in subsection (3) of this section.

(3) If income remains after the PNA and room and board liability described in subsections (1) and (2) of this section, the remaining income must be paid toward the cost of care after it is reduced by allowable deductions in the following order:

(a) For a working person, the agency allows an earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter 388-79 WAC;

(c) Current or back child support garnished or withheld from income according to a child support order in the month of the garnishment if it is for the current month. If the agency allows this as a deduction from income, the agency does not count it as the child's income when determining the family allocation amount;

(d) A monthly maintenance-needs allowance for the community spouse as determined using the calculation described in WAC 182-513-1385;

(e) A monthly maintenance-needs allowance for each minor or dependent child, dependent parent, or dependent sibling of the institutionalized person's community or institutionalized spouse, as determined using the calculation described in WAC 182-513-1385;

(f) Unpaid medical expenses which have not been used to reduce excess resources. Allowable medical expenses are described in WAC 182-513-1350;

(g) The total of the following deductions cannot exceed the SIL:

(i) Personal needs allowance described in subsections (1) and (2) of this section; and

(ii) Earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income in (a) of this subsection; and

(iii) Guardianship fees and administrative costs in (b) of this subsection.

(4) A person may have to pay third-party resources described in WAC 182-501-0200 in addition to the room and board and participation.

(5) A person must pay their provider a total of the combination of the room and board amount, the cost of personal care services (participation) after all allowable deductions, and any third-party resources.

(6) When a person lives in multiple living arrangements in a month (an example is a move from an adult family home to a home setting on HCB waiver services), the agency allows the highest PNA available based on all the living arrangements and services received within the month.

(7) Standards described in this section are located at: <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-515-1500 Payment standard for persons in certain group living facilities.

WSR 15-09-086 EMERGENCY RULES COUNTY ROAD

ADMINISTRATION BOARD

[Filed April 16, 2015, 4:17 p.m., effective April 16, 2015, 4:17 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To provide for the public safety, health or general welfare, the CRABoard may grant an additional extension in some cases for rural arterial program projects if deemed necessary.

Citation of Existing Rules Affected by this Order: Amending WAC 136-167-040.

Statutory Authority for Adoption: Chapter 36.78 RCW.

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

Reasons for this Finding: To provide for the public safety, health or general welfare, the CRABoard may grant an additional extension in some cases for rural arterial program projects if deemed necessary.

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

Number of Sections Adopted at 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: April 16, 2015.

Jay P. Weber
Executive Director

AMENDATORY SECTION (Amending WSR 11-05-005, filed 2/3/11, effective 3/6/11)

WAC 136-167-040 Lapsing of RATA allocation for approved projects. To encourage timely development and construction of approved projects, all projects for which RATA funds have been allocated must meet certain project development milestones. Failure to meet the milestones will result in action by the county road administration board to withdraw RATA funds from the project.

(1) For the purposes of this section, a project will be subject to lapsing and withdrawal of its RATA allocation if:

(a) The project has not begun the preliminary engineering within one year of project approval by the county road administration board; or

(b) The project has not begun construction within six years of the date of project approval by the county road administration board.

(2) A project shall be considered in preliminary engineering if RATA funds have been expended or evidence that non-RATA funds have been expended for preliminary engineering as provided for in RCW 36.75.050. A project shall be considered in construction if:

(a) The construction contract for the work has been advertised for bids as provided for in RCW 36.77.020;

(b) A contract has been awarded under the provisions of the small works roster contract award process; or

(c) If done by county forces, the work has commenced.

(3) If an approved project does not meet a required project development milestone, the county road administration board will, at its next regular meeting, withdraw RATA funds from the project.

(4) At any time up to ten days before such meeting, the county may, in writing, request an extension of the lapse date. The county road administration board may grant such an extension if it finds that the delay in project development was for reasons that were both unanticipated and beyond the control of the county, and subject to the following:

(a) A project extension will be granted one time only and will be no more than two years in length. However, the CRABoard may in its discretion find that to provide for the public safety, health or general welfare, an additional extension is necessary in some cases, and for such cases the CRABoard may allow an additional extension and will determine the duration thereof; and

(b) The county can demonstrate that the project was actively pursued for completion within the original CRAB/county contract terms and can be completed within a two year extension; and

(c) The request for an extension is based on unforeseeable circumstances that the county could not have anticipated at the time the project was submitted for RATA funding; and

(d) An approved time extension will not be grounds for the county to request an increase in the RATA funding of the project; and

(e) The executive director will determine a new lapse date, and all of the requirements listed above under subsections (1) and (2) of this section will apply except that further extensions will not be granted.

(5) The CRABoard may at any time place a moratorium on lapsing of projects that are delayed due to CRAB initiated rescheduling and establish a new lapsing date to fit the CRABoard's programming needs. For those projects given a lapsing moratorium, section four shall be held in abeyance until the new lapsing date.

WSR 15-09-091
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-78—Filed April 17, 2015, 2:07 p.m., effective April 17, 2015,
2:07 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for hardshell clams and oysters.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-35000E and 220-56-38000J; and amending WAC 220-56-350 and 220-56-380.

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

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

Reasons for this Finding: The Oyster Reserves of North Bay (Case Inlet) are subject to a settlement agreement before the state shoreline hearings board (SHB No. 13-022) that limits the clam season on the beach to the months of May and September for 2015 and 2016. The oyster seasons on these beaches coincide with the clam seasons. These rules are interim until permanent rules take effect.

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

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

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

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

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 17, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-56-35000E Clams other than razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-350, effective immediately until further notice, it is unlawful to take, dig for and possess clams, cockles, and mussels taken for personal use from the following public tidelands except during the open periods specified herein:

North Bay: State-owned oyster reserves are open May 1 through May 31, 2015.

NEW SECTION

WAC 220-56-38000J Oysters—Areas and seasons. Notwithstanding the provisions of WAC 220-56-380, effective immediately until further notice, it is unlawful to take and possess oysters taken for personal use from the following public tidelands, except during the open periods specified herein:

North Bay: State-owned oyster reserves are open May 1 through May 31, 2015.

REPEALER

The following sections of the Washington Administrative Code are repealed effective June 1, 2015:

WAC 220-56-35000E Clams other than razor clams—
Areas and seasons.

WAC 220-56-38000J Oysters—Areas and seasons.

WSR 15-09-113
EMERGENCY RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)

[Filed April 21, 2015, 9:13 a.m., effective April 21, 2015, 9:13 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Adding a new section for coverage of telemedicine.

Statutory Authority for Adoption: RCW 41.05.021.

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

Reasons for this Finding: This emergency rule is necessary to continue the current emergency rule adopted under

WSR 15-01-184 to allow for the coverage of telemedicine services while the agency continues to finalize the permanent rule-making process initiated under WSR 13-17-107 (CR-101). The agency finalized the other rule sections which were part of the previous emergency rule filings under WSR 15-03-041. The telemedicine rule was not finalized as it needed further stakeholder input.

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 1, Amended 0, Repealed 0.

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

Date Adopted: April 21, 2015.

Jason R. P. Crabbe
Rules Coordinator

NEW SECTION

WAC 182-531-1730 Telemedicine. (1) Telemedicine is when a health care practitioner uses HIPAA-compliant, interactive, real-time audio and video telecommunications (including web-based applications) to deliver covered services that are within his or her scope of practice to a client at a site other than the site where the provider is located. Using telemedicine enables health care practitioners and the client to interact in real-time communication as if they were having a face-to-face session. Telemedicine allows clients, particularly those in medically underserved areas of the state, improved access to health care services that may not otherwise be available without traveling long distances.

(2) The medicaid agency does not cover the following services as telemedicine:

(a) E-mail, audio only telephone, and facsimile transmissions;

(b) Installation or maintenance of any telecommunication devices or systems; and

(c) Purchase, rental, or repair of telemedicine equipment.

(3) **Originating site.** An originating site is the physical location of the client at the time the health care service is provided. Approved originating sites are:

(a) Clinics;

(b) Community mental health/chemical dependency settings;

(c) Dental offices;

(d) Federally qualified health centers;

(e) Home or natural setting, for applied behavior analysis benefit only;

(f) Hospitals - Inpatient and outpatient;

(g) Offices;

(h) Rural health clinics;

(i) Schools; and

(j) Skilled nursing facilities.

(4) **Distant site.** A distant site is the physical location of the health care professional providing the health care service.

(5) The agency pays a technical administration fee to either the originating site or the distant site, as specified in the agency's program-specific billing instructions.

(6) If a health care professional performs a separately identifiable service for the client on the same day as the telemedicine service, documentation for both services must be clearly and separately identified in the client's medical record.

(7) Billing procedures for telemedicine can be found in the agency's program-specific billing instructions.

WSR 15-09-115

EMERGENCY RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed April 21, 2015, 9:17 a.m., effective April 21, 2015, 9:17 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule creates a habilitative services section (WAC 182-545-400) as required under the Patient Protection and Affordable Care Act. WAC 182-545-900 and 182-551-2110 must be updated to reflect the creation of habilitative services.

Citation of Existing Rules Affected by this Order: Amending 182-545-900 and 182-551-2110.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Patient Protection and Affordable Care Act (Public Law 111-148).

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

Reasons for this Finding: This rule is necessary to create a habilitative services section by January 1, 2014, to timely comply with service requirements in the Patient Protection and Affordable Care Act, and to update related sections to reflect the creation of habilitative services.

Following the adoption of the first emergency filing (WSR 14-02-082), the agency filed CR-101 (WSR 14-02-089) to begin the permanent rule-making process. The agency is currently working with stakeholders to develop the permanent rule and expects to complete the permanent rule-making process in mid-2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 2, 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 1, Amended 2, Repealed 0.

Date Adopted: April 21, 2015.

Jason R. P. Crabbe
Rules Coordinator

NEW SECTION

WAC 182-545-400 Habilitative services. (1) Habilitative services are medically necessary services to assist the client in partially or fully attaining, learning, maintaining, or improving developmental-age appropriate skills that were not fully acquired as a result of a congenital, genetic, or early acquired health condition, and are required to maximize, to the extent practical, the client's ability to function in his or her environment.

(2) Eligibility is limited to clients who are enrolled in the alternative benefits plan defined in WAC 182-501-0060 and who have a diagnosis which is one of the qualifying conditions listed in the medicaid provider guide for habilitative services. Clients enrolled in an agency-contracted managed care organization (MCO) must arrange for habilitative services through their MCO.

(3) The following licensed health professionals may enroll with the agency to provide habilitative services within their scope of practice to eligible clients:

- (a) Psychiatrists;
 - (b) Occupational therapists;
 - (c) Occupational therapy assistants supervised by a licensed occupational therapist;
 - (d) Physical therapists;
 - (e) Physical therapist assistants supervised by a licensed physical therapist;
 - (f) Speech-language pathologists who have been granted a certificate of clinical competence by the American Speech, Hearing and Language Association; and
 - (g) Speech-language pathologists who have completed the equivalent educational and work experience necessary for such a certificate.
- (4) The agency pays for habilitative services that are:
- (a) Covered within the scope of the client's alternative benefit plan under WAC 182-501-0060;
 - (b) Medically necessary;
 - (c) Within currently accepted standards of evidence-based medical practice;
 - (d) Ordered by a physician, physician assistant, or an advanced registered nurse practitioner;
 - (e) Begun within thirty calendar days of the date ordered;
 - (f) Provided by one of the health professionals listed in subsection (3) of this section;
 - (g) Authorized under this chapter, chapters 182-501 and 182-502 WAC, and the agency's published medicaid provider guides and published provider notices;

(h) Billed under this chapter, chapters 182-501 and 182-502 WAC, and the agency's published medicaid provider guides and published provider notices; and

- (i) Provided as part of a habilitative treatment program:
 - (i) In an office or outpatient hospital setting;
 - (ii) In the home, by a home health agency as described in chapter 182-551 WAC; or
 - (iii) In a neurodevelopmental center, as described in WAC 182-545-900.
- (5) For billing purposes under this section:
 - (a) Each fifteen minutes of timed procedure code equals one unit.
 - (b) Each nontimed procedure code equals one unit, regardless of how long the procedure takes.
 - (c) Duplicate services for habilitative services are not allowed for the same client when both providers are performing the same or similar procedure on the same day.
 - (d) The agency does not reimburse a health care professional for habilitative services performed in an outpatient hospital setting when the health care professional is not employed by the hospital. The hospital must bill the agency for the services.
 - (6) For eligible clients twenty years of age and younger, the agency covers unlimited outpatient habilitative services.
 - (7) For eligible clients twenty-one years of age and older, the agency covers limited outpatient habilitative services that include an ongoing management plan for the client or the client's caregiver to support continued client progress. The agency limits outpatient habilitative services as follows:
 - (a) Occupational therapy, per client, per year:
 - (i) Without authorization:
 - (A) One occupational therapy evaluation;
 - (B) One occupational therapy reevaluation at time of discharge; and
 - (C) Twenty-four units of occupational therapy (which equals approximately six hours).
 - (ii) With expedited prior authorization, up to twenty-four additional units of occupational therapy may be available to continue treatment when the client's diagnosis is cerebral palsy and the therapy is required as part of a botulinum toxin injection protocol when botulinum toxin has been authorized by the agency.
 - (b) Physical therapy, per client, per year:
 - (i) Without authorization:
 - (A) One physical therapy evaluation;
 - (B) One physical therapy reevaluation at time of discharge; and
 - (C) Twenty-four units of physical therapy (which equals approximately six hours).
 - (ii) With expedited prior authorization, up to twenty-four additional units of occupational therapy may be available to continue treatment when the client's diagnosis is cerebral palsy and the therapy is required as part of a botulinum toxin injection protocol when botulinum toxin has been authorized by the agency.
 - (c) Speech therapy, per client, per year:
 - (i) Without authorization:
 - (A) One speech language pathology evaluation;
 - (B) One speech language pathology reevaluation at the time of discharge; and

(C) Six units of speech therapy (which equals approximately six hours).

(ii) With expedited prior authorization, up to twenty-four additional units of occupational therapy may be available to continue treatment when:

(A) The client's diagnosis is cerebral palsy and the therapy is required as part of a botulinum toxin injection protocol when botulinum toxin has been authorized by the agency; or

(B) The client has a speech deficit caused by the qualifying condition which requires a speech generating device.

(d) Two durable medical equipment needs assessments, per client, per year. The agency covers devices and other durable medical equipment for habilitative purposes to treat qualified conditions under chapter 182-543 WAC.

(e) Two program units of orthotics management and training of upper and lower extremities, per client, per day.

(f) Two program units for checkout for prosthetic or orthotic use, per established client, per year.

(g) One muscle testing procedure, per client, per day.

(h) One wheelchair-needs assessment, per client, per year.

(8) The agency evaluates requests for outpatient habilitative services that exceed the limitations in this section under WAC 182-501-0169. Prior authorization is required for additional units when:

(a) The criteria for expedited prior authorization do not apply;

(b) The number of available units under the EPA have been used and services are requested beyond the limits; or

(c) The provider requests it as a medically necessary service.

(9) The following services are not covered:

(a) Day habilitation services designed to provide training, structured activities, and specialized services to adults;

(b) Chore services to assist basic needs;

(c) Vocational services;

(d) Custodial services;

(e) Respite;

(f) Recreational care;

(g) Residential treatment;

(h) Social services; and

(i) Educational services of any kind.

AMENDATORY SECTION (Amending WSR 11-21-066, filed 10/17/11, effective 11/17/11)

WAC 182-545-900 Neurodevelopmental centers. (1)

This section describes:

(a) Neurodevelopmental centers that may be reimbursed by the agency;

(b) Clients who may receive covered services at a neurodevelopmental center; and

(c) Covered services that may be provided at and reimbursed to a neurodevelopmental center.

(2) In order to provide and be reimbursed for the services listed in subsection (4) of this section, the agency requires a neurodevelopmental center provider to do all of the following:

(a) Be contracted with the department of health (DOH) as a neurodevelopmental center;

(b) Provide documentation of the DOH contract to the agency; and

(c) Have an approved core provider agreement with the agency.

(3) Clients, twenty years of age or younger, may receive outpatient rehabilitation and habilitative services (occupational therapy, physical therapy, and speech therapy) in agency-approved neurodevelopmental centers.

(4) The agency reimburses neurodevelopmental centers for providing the following services to clients:

(a) Outpatient rehabilitation and habilitative services as described in chapter 182-545 WAC ((182-545-200)); and

(b) Specific pediatric evaluations and team conferences that are:

(i) Attended by the center's medical director; and

(ii) Identified as payable in the agency's billing instructions.

(5) In order to be reimbursed, neurodevelopmental centers must meet the agency's billing requirements in WAC 182-502-0020, 182-502-0100 and 182-502-0150.

AMENDATORY SECTION (Amending WSR 11-21-066, filed 10/17/11, effective 11/17/11)

WAC 182-551-2110 Home health services—Covered specialized therapy. The agency covers specialized therapy ((also known as outpatient rehabilitation)), including outpatient rehabilitation and habilitative services, in an in-home setting by a home health agency. ((See chapter 182-545 WAC outpatient rehabilitation for coverage and limitations.)) Outpatient rehabilitation and habilitative services are described in chapter 182-545 WAC. Specialized therapy is defined in WAC 182-551-2010.

WSR 15-09-122

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Behavioral Health and Service Integration Administration)

[Filed April 21, 2015, 10:28 a.m., effective April 21, 2015, 10:28 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is amending WAC 388-865-0526 as a result of the Washington Supreme Court decision in *In re the Detention of D.W., et al.*, No. 90110-4. This section contains the department's rules for single bed certification which allows for the inpatient treatment of adults and children in facilities that are not certified as inpatient evaluation and treatment facilities. The amendment: (1) Allows residential treatment facilities, psychiatric hospitals, hospitals with a psychiatric unit, and hospitals that can provide timely and appropriate mental health treatment to be recognized for single bed certification; (2) requires that any facility which is the site of a proposed single bed certification confirm that it is willing to provide treatment services; (3) articulates standards that facilities must meet while operating under a single bed certification; and (4) clarifies that the regional support networks retain responsibility for ensuring that the rights of patients are protected while in single bed certifications.

Citation of Existing Rules Affected by this Order:
Amending WAC 388-865-0526.

Statutory Authority for Adoption: RCW 71.05.560, 71.24.035, and 71.34.380.

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

Reasons for this Finding: This emergency rule supercedes the emergency rule filed as WSR 15-01-193 on December 24, 2014. The emergency rule allows for certain appropriate consumers to be certified to facilities that they previously would not have been able to, thus creating new bed opportunities and preventing the inappropriate release of consumers who need involuntary mental health treatment. The department filed a CR-101 under WSR 14-22-016 on October 23, 2014, and continues to work with stakeholders in developing final language which was sent for external review mid-April. The department anticipates filing the CR-102 proposal in May with a June 2015 public hearing for the permanent adoption.

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 1, Repealed 0.

Date Adopted: April 16, 2015.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-02-030, filed 12/30/08, effective 1/30/09)

WAC 388-865-0526 Single bed certification. At the discretion of the ~~((mental health division))~~ department, an exception may be granted to allow timely and appropriate treatment to an adult on a seventy-two hour detention or fourteen-day commitment in a facility that is not certified under WAC 388-865-0500; or for a maximum of thirty days to allow a community facility to provide treatment to an adult on a ninety- or one hundred eighty-day inpatient involuntary commitment order. For involuntarily detained or committed children, the exception may be granted to allow timely and appropriate treatment in a facility not certified under WAC 388-865-0500 until the child's discharge from that setting to the community, or until they transfer to a bed in a children's long-term inpatient program (CLIP).

(1) The regional support network (RSN) or its designee must submit a written request for a single bed certification to the ~~((mental health division prior to the commencement of the order))~~ department. In the case of a child, the facility must submit the written request ~~((directly))~~ to the ~~((mental health division))~~ department. The request must be submitted and approved by the department for a facility to accept an individual for timely and appropriate treatment under this section. If the ~~((DSHS secretary))~~ department has assumed the duties assigned to a nonparticipating ~~((regional support network))~~ RSN, ~~((a single bed certification may be requested by a mental health division designee contracted to provide inpatient authorization or designated crisis response services))~~ an entity designated by the department will perform the functions described in this section.

(2) ~~((The facility receiving the single bed certification must meet all requirements of this section unless specifically waived by the mental health division.))~~

(3) A single bed certification may be issued to the facility for timely and appropriate mental health treatment when the following requirements are met in each instance where such certification is sought for an individual:

(a) The facility that is the site of the proposed single bed certification confirms that it is willing and able to provide directly, or by direct arrangement with other public or private agencies, timely and appropriate mental health treatment to the consumer for whom the single bed certification is sought; and

(b) The request for single bed certification ~~((must describe))~~ describes why the consumer meets at least one of the following criteria:

~~((a))~~ (i) ~~((The consumer requires medical services that are not available at a facility certified under this chapter or a state psychiatric hospital; or~~

~~((b))~~ The consumer is expected to be ready for discharge from inpatient services within the next thirty days and being at a community facility would facilitate continuity of care, consistent with the consumer's individual treatment needs((-);

(ii) The consumer can receive appropriate mental health treatment in a residential treatment facility, as defined in WAC 246-337-005, and the single bed certification will be only to that facility; or

(iii) The consumer can receive appropriate mental health treatment in a hospital with a psychiatric unit, or a hospital that is willing and able to provide timely and appropriate mental health treatment, or a psychiatric hospital, and the single bed certification will apply only to that facility.

(3) In order to provide timely and appropriate mental health treatment, the facility receiving the single bed certification, or the public or private agency the facility has a direct arrangement with to provide mental health treatment, must:

(a) Implement standards for administration that include written procedures to assure that a mental health professional, as defined in RCW 71.05.020 or WAC 388-865-0150, and licensed physicians are available for consultation and communication with both the consumer and the direct patient care staff;

(b) Use a plan of care/treatment. The medical or clinical record must contain documentation that:

(i) An individualized mental health treatment plan was developed, when possible, collaboratively with the consumer. If the consumer is unwilling or unable to participate in development of the plan, documentation must be made in the record. Development of this plan may include participation of a multidisciplinary team, a mental health professional, as defined in RCW 71.05.020 or WAC 388-865-0150, or collaboration with members of the consumer's support system as identified by the consumer.

(ii) A mental health professional, as defined in RCW 71.05.020 or WAC 388-865-0150, has had contact with each involuntarily detained consumer at least daily for the purposes of:

(A) Observation and evaluation; and

(B) Assessing whether the consumer is appropriate for release from involuntary commitment to accept treatment on a voluntary basis.

(c) Have standards for administration and monitoring of medication, including psychiatric medications. Consumers have a right to make an informed decision regarding the use of antipsychotic medication consistent with RCW 71.05.215.

(4) If a consumer requires medical services that are not generally available at a facility certified under this chapter, or at a state psychiatric hospital when a court has ordered a ninety- or one hundred eighty-day inpatient commitment, or at a facility that meets the requirements of subsections (2) and (3) of this section, a single bed certification may be issued to that facility for the consumer as follows:

(a) The single bed certification request must adequately describe why the consumer requires medical services that are not available at a facility certified under this chapter, or at a state psychiatric hospital when a court has ordered a ninety- or one hundred eighty-day inpatient commitment, or at a facility that meets the requirements of subsections (2) and (3) of this section:

(b) The facility that is the site of the requested single bed certification must confirm that it is willing and able to provide the medical services; and

(c) The facility has documented that one of the following has been met:

(i) With the authorization of the hospital, and consistent with any applicable hospital policies and procedures, the RSN assigns a mental health professional to provide the consumer appropriate mental health treatment at the facility, including observation and evaluation, during the period of time the consumer is provided medical services; or

(ii) The hospital provides medical services and a plan that addresses the consumer's mental health treatment needs until the consumer is medically stable and the RSN or its designee identifies an appropriate facility for the consumer that is one of the following:

(A) The hospital providing services;

(B) A facility that is certified as an evaluation and treatment (E&T) facility; or

(C) A facility that can meet the consumer's needs under the single bed certification criteria in this section.

(d) If a qualified medical professional determines that mental health treatment for the consumer is not clinically indicated, the requirements in (c) of this subsection do not apply. When the consumer is determined to be medically sta-

ble, the facility must ensure the requirements in (c) of this subsection are met.

(5) The (~~mental health division director or the director's designee~~) department makes the decision and gives written notification to the requesting entity in the form of a single bed certification. The single bed certification must not contradict a specific provision of federal (~~law~~) or state (~~statute~~) law.

(~~(6)~~) (6) A consumer who receives services under a single bed certification under this section must be transferred to an evaluation and treatment facility if on a seventy-two hour detention or fourteen-day commitment, or to a state hospital if on a ninety- or one hundred eighty-day inpatient commitment, as soon as the attending physician considers the consumer medically stable and a bed becomes available, unless the treating facility consents to continue treatment and continued treatment in the current setting is consistent with the best clinical interests of the consumer.

(7) The (~~mental health division~~) department may make site visits at any time to verify that the terms of the single bed certification are being met. Failure to comply with any term of this exception may result in corrective action. If the (~~mental health division~~) department determines that the violation places consumers in imminent jeopardy, immediate revocation of this exception can occur.

(~~(8)~~) (8) The RSN retains the responsibility for ensuring due process required by RCW 71.24.300 (6)(b).

(9) Neither consumers nor facilities have fair hearing rights as defined under chapter 388-02 WAC regarding single bed certification decisions by (~~mental health division~~) department staff.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

**WSR 15-09-126
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-79—Filed April 21, 2015, 1:53 p.m., effective May 14, 2015]

Effective Date of Rule: May 14, 2015.

Purpose: Amend recreational fishing rules for South Lewis County Park Pond.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-18500T; and amending WAC 220-310-185.

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

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

Reasons for this Finding: This rule change is necessary to ensure a successful kid's fishing event. Several thousand rainbow trout will be stocked in South Lewis County Park

Pond two days prior to the event to acclimate them to assure they will bite while the kids are fishing. During the event, only registered kids will be allowed to fish. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 21, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-310-18500T Exceptions to statewide rules—South Lewis County Park Pond. Notwithstanding the provisions of WAC 220-310-185, effective 12:01 a.m. May 14 through 2:00 p.m. May 16, 2015, it is unlawful to fish in South Lewis County Park Pond, except as provided in the sections below:

(1) Open to fishing 8:00 a.m. to 1:00 p.m. May 16, 2015, by juvenile anglers participating in the kids fishing event.

(2) Daily limit of 5 fish.

REPEALER

The following section of the Washington Administrative Code is repealed effective 2:00 p.m. May 16, 2015:

WAC 220-310-18500T Exceptions to statewide rules—
South Lewis County Park Pond.

**WSR 15-09-128
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-83—Filed April 21, 2015, 2:59 p.m., effective April 21, 2015,
2:59 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule will allow nontreaty commercial fishing opportunities in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relation-

ship with Oregon, and Washington fish and wildlife commission policy guidance for Columbia River fisheries.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000J; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

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

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

Reasons for this Finding: Adjusts the spring select area commercial seasons which were set in January 2015. Harvest of upriver (nonlocal) chinook was unusually high during the winter season. In order to keep the harvest of additional upriver chinook at a minimum, the early portion of the spring season has been modified. The fisheries are consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of January 28 and April 20, 2015. There is insufficient time to promulgate permanent rules.

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

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

Columbia River nontreaty fisheries are monitored very closely to ensure compliance with federal court orders, the ESA, and commission guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. Representatives from the Washington (WDFW) and Oregon (ODFW) departments of fish and wild-

life convene public hearings and take public testimony when considering proposals for new emergency rules. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: April 21, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-33-0100K Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-33-010, WAC 220-33-020, and WAC 220-33-030, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

(1) Deep River Select Area

(a) **Dates:** Open 7:00 PM to 7:00 AM Tuesday and Thursday nights April 28 through May 1, 2015, and Monday and Thursday nights from May 4 through June 12, 2015.

(b) **Area:** From USCG navigation marker #16 upstream to the Highway 4 Bridge.

(c) **Gear:** Gillnets. 9 3/4-inch maximum mesh. Nets are restricted to 100 fathoms in length with no weight restriction on leadline. Use of additional weights or anchors attached directly to the leadline is permissible. It is unlawful to tie off nets to stationary structures. It is unlawful for a net to fully cross a navigation channel. It is unlawful to operate in any river, stream or channel any gillnet longer than three-fourths the width of the stream (WAC 220-20-015)(1)). It is unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in department rule (WAC 220-20-010)(17)).

(d) **Miscellaneous:** Except for transport of fish to the sampling station, it is unlawful to transport or possess fish unless and until WDFW has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by WDFW staff. A sampling station will be established at WDFW's Oneida Road boat ramp, approximately

0.5 miles upstream of the lower Deep River area boundary (USCG navigation marker #16).

(e) **Allowable possession:** Salmon and shad.

(2) Tongue Point/South Channel

(a) **Dates:** April 28 from 3:00 PM to 7:00 PM, Thursday April 30 from 4:00 PM to 8:00 PM. Tuesday night May 5 from 7:00 PM to 11:00 PM. Thursday night May 7 from 7:00 PM to 7:00 AM and Monday and Thursday nights from May 11 through June 12, 2015, 7:00 PM to 7:00 AM.

(b) **Area:**

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

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

(c) **Gear:** Gillnets. 9 3/4-inch maximum mesh. In the **Tongue Point fishing area**, gear is restricted to a maximum net length of 250 fathoms, and weight must not exceed two pounds on any one fathom. In the **South Channel fishing area**, gear is restricted to a maximum net length of 250 fathoms, there is no weight restriction on leadline, and the use of additional weights or anchors attached directly to the leadline is permissible.

(d) **Miscellaneous:** Permanent transportation rules are in effect.

(e) **Allowable possession:** Salmon and shad

(3) Blind Slough/Knappa Slough Select Area

(a) **Dates:** Tuesday and Thursday nights from April 28 through May 1, and Monday and Thursday nights from May 4 through June 12, 2015. Open hours are 7:00 PM to 7:00 AM.

(b) **Area:** Blind Slough and Knappa Slough areas are both open. From May 4 through June 12, 2015, the lower boundary of the Knappa Slough fishing area is extended downstream to boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon Shore (fall season boundary).

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

(d) **Allowable possession:** Salmon and shad

(4) The following provisions apply to all seasons listed above:

(a) **24-hour** quick reporting is in effect for Washington buyers (WAC 220-69-240 (14)(d)). Permanent transportation rules are in effect.

(b) **Multi-Net Rule:** It is permissible to possess onboard a vessel nets not specifically authorized for use in these areas so long as they are properly stored (WAC 220-33-001(2)).

(c) **Lighted Buoys:** Nets fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is fished while attached to a boat, then one lighted buoy on the opposite end of the net from the boat is required.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000J Columbia River seasons below Bonneville. (15-65)

WSR 15-09-129
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-82—Filed April 21, 2015, 3:32 p.m., effective April 21, 2015, 3:32 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for the Kalama River.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-18500V; and amending WAC 220-310-185.

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

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

Reasons for this Finding: The preseason forecast is for one thousand nine hundred adult spring chinook to return to the Kalama in 2015. The Kalama River sport fishery was originally set to close May 1. Inseason fishery monitoring to date gives no indication the actual return will be other than the preseason forecast. Extending the season will provide additional fishing opportunity. To ensure the hatchery escapement goal of four hundred fish will be met, hatchery returns and fishery catches will continue to be closely monitored. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: April 21, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-18500V Freshwater exceptions to statewide rules—Southwest. Notwithstanding the provisions of WAC 220-310-185, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

Kalama River (Cowlitz Co.): Effective immediately until further notice, it is permissible to fish for salmon from the boundary markers at the mouth to 1000 feet below the upper salmon hatchery.

(a) Daily limit of 6 hatchery Chinook of which no more than 1 may be an adult.

(b) Release all salmon other than hatchery Chinook.

(c) Minimum size 12 inches.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 1, 2015:

WAC 220-310-18500V Freshwater exceptions to statewide rules—Southwest.