

WSR 15-22-005
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)
 [Filed October 22, 2015, 8:51 a.m., effective October 27, 2015]

Effective Date of Rule: October 27, 2015.

Purpose: The change to requiring lockable doors in assisted living facilities went into effect on July 1, 2015, when WAC 388-110-222 and 388-110-242 went into effect by emergency rule filing WSR 15-14-082. These emergency rules will expire on October 27, 2015. Since permanent rules will not be in effect by that date, the emergency rules need to be extended. This is the only way that medicaid clients can stay in these facilities and receive payment through community first choice which the legislature directed the department to implement. It is necessary for the immediate health, safety and welfare for those residents so that they can remain in the facility and not have to move.

Statutory Authority for Adoption: RCW 74.39A.010.

Other Authority: RCW 74.39A.010.

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: To comply with federal rules. The department has proceeded with the permanent rule-making process. The department filed a CR-102 as WSR 15-10-105 on May 6, 2015. The department has not filed [a] CR-103P yet since these rules involve coordinating the timing of the effective date with another division.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 2, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 0, Repealed 0.

Date Adopted: September 28, 2015.

Katherine I. Vasquez
 Rules Coordinator

NEW SECTION

WAC 388-110-222 Enhanced adult residential care physical requirements Effective July 1, 2015, the contractor

must ensure that, at the resident's choice, each resident has the ability to lock his/her unit door, unless otherwise indicated in the resident's NSA.

NEW SECTION

WAC 388-110-242 Adult residential care physical requirements Effective July 1, 2015, the contractor must ensure that, at the resident's choice, each resident has the ability to lock his/her unit door, unless otherwise indicated in the resident's NSA.

WSR 15-22-006
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)
 [Filed October 22, 2015, 8:57 a.m., effective October 27, 2015]

Effective Date of Rule: October 27, 2015.

Purpose: The addition of a definition for psychopharmacologic medications, the addition of a new section describing the use of psychopharmacologic medications, and the language clarifying the use of physical restraints went into effect July 1, 2015, with an emergency rule filing which will expire on October 27, 2015. Since the permanent rules will not be in effect by that date, the emergency rules need to be extended. This is the only way that medicaid clients can stay in these facilities and receive payment through community first choice which the legislature directed the department to implement. It is necessary for the immediate health, safety, and welfare for those residents so that they can remain in the facility and not have to move.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-76-11000, 388-76-11004, 388-76-11005, 388-76-11010, 388-76-11015, 388-76-11020, 388-76-11025, 388-76-11030, 388-76-11035 and 388-76-11040; and amending WAC 388-76-10000, 388-76-10655, 388-76-10660, and 388-76-10685.

Statutory Authority for Adoption: Chapter 70.128 RCW.

Other Authority: Chapter 70.128 RCW.

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

Reasons for this Finding: To comply with federal rules. The department has proceeded with the permanent rule-making process. The department filed a CR-102 as WSR 15-10-092 on May 6, 2015. The department has not filed [a] CR-103P yet since these rules involve coordinating the timing of the effective date with another division.

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

Recently Enacted State Statutes: New 1, Amended 4, Repealed 10.

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 4, Repealed 10.

Date Adopted: September 28, 2015.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-03-037, filed 1/12/15, effective 2/12/15)

WAC 388-76-10000 Definitions. "Abandonment" means action or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult:

(1) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain or mental anguish; and

(2) Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) **"Sexual abuse"** means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not consensual.

(b) **"Physical abuse"** means a willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or chemical or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(c) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and

verbal assault that includes ridiculing, intimidating, yelling, or swearing.

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

"Adult family home" means:

(1) A residential home in which a person or an entity is licensed to 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 a licensed operator, resident manager, or caregiver, who resides in the home.

(2) As used in this chapter, the term "entity" includes corporations, partnerships and limited liability companies, and the term "adult family home" includes the person or entity that is licensed to operate an adult family home.

"Affiliated with an applicant" means any person listed on the application as a partner, officer, director, resident manager, or majority owner of the applying entity, or is the spouse or domestic partner of the applicant.

"Applicant" means an individual, partnership, corporation, or other entity seeking a license to operate an adult family home.

"Capacity" means the maximum number of persons in need of personal or special care who are permitted to reside in an adult family home at a given time. The capacity includes:

(1) The number of related children or adults in the home who receive personal or special care and services; plus

(2) The number of residents the adult family home may admit and retain - The resident capacity. The capacity number listed on the license is the "resident capacity."

"Caregiver" means any person eighteen years of age or older responsible for providing direct personal or special care to a resident and who is not the provider, entity representative, a student or volunteer.

"Dementia" is defined as a condition documented through the assessment process required by WAC 388-76-10335.

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

"Department case manager" means the department authorized staff person or designee assigned to negotiate, monitor, and facilitate a care and services plan for residents receiving services paid for by the department.

"Developmental disability" means:

(1) A person who meets the eligibility criteria defined by the division of developmental disabilities under WAC 388-823-0040; or

(2) A person with a severe, chronic disability which is attributable to cerebral palsy or epilepsy, or any other condition, other than mental illness, found to be closely related to mental retardation which results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation, and requires treatment or services similar to those required for these persons (i.e., autism); and

(a) The condition was manifested before the person reached age eighteen;

(b) The condition is likely to continue indefinitely; and

(c) The condition results in substantial functional limitations in three or more of the following areas of major life activities:

- (i) Self-care;
- (ii) Understanding and use of language;
- (iii) Learning;
- (iv) Mobility;
- (v) Self-direction; and
- (vi) Capacity for independent living.

"Direct supervision" means oversight by a person who has demonstrated competency in the basic training and specialty training if required, or who has been exempted from the basic training requirements and is:

- (1) On the premises; and
- (2) Quickly and easily available to the caregiver.

"Domestic partners" means two adults who meet the requirements for a valid state registered domestic partnership as established by RCW 26.60.030 and who have been issued a certificate of state registered domestic partnership.

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

"Financial solvency" means that the applicant or provider is able to meet debts or financial obligations with some money to spare.

"Entity representative" means the individual designated by a provider who is or will be responsible for the daily operation of the adult family home and who meets the requirements of this chapter and chapter 388-112 WAC.

"Home" means adult family home.

"Imminent danger" or **"immediate threat"** means serious physical harm to or death of a resident has occurred, or there is a serious threat to the resident's life, health or safety.

"Indirect supervision" means oversight by a person who:

- (1) Has demonstrated competency in the basic training and specialty training if required; or
- (2) Has been exempted from the basic training requirements; and
- (3) Is quickly and easily available to the care giver, but not necessarily on-site.

"Inspection" means a review by department personnel to determine the health, safety, and well-being of residents, and the adult family home's compliance with this chapter and chapters 70.128, 70.129, 74.34 RCW, and other applicable rules and regulations. The department's review may include an on-site visit.

"Management agreement" means a written, executed agreement between the adult family home and another individual or entity regarding the provision of certain services on behalf of the adult family home.

"Mandated reporter" means an employee of the department, law enforcement, officer, social worker, professional school personnel, individual provider, an employee of a facility, an employee of a social service, welfare, mental

health, adult day health, adult day care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW. For the purpose of the definition of a mandated reporter, **"Facility"** means a residence licensed or required to be licensed under chapter 18.20 RCW (Assisted living facilities), chapter 18.51 RCW (Nursing homes), chapter 70.128 RCW (Adult family homes), chapter 72.36 RCW (Soldiers' homes), chapter 71A.20 RCW (Residential habilitation centers), or any other facility licensed by the department.

"Medical device" as used in this chapter, means any piece of medical equipment used to treat a resident's assessed need.

(1) A medical device is not always a restraint and should not be used as a restraint;

(2) Some medical devices have considerable safety risks associated with use; and

(3) Examples of medical devices with known safety risks when used are transfer poles, Posey or lap belts, and side rails.

"Medication administration" means giving resident medications by a person legally authorized to do so, such as a physician, pharmacist or nurse.

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

"Mental illness" is defined as an Axis I or II diagnosed mental illness as outlined in volume IV of the Diagnostic and Statistical Manual of Mental Disorders (a copy is available for review through the aging and disability services administration).

"Minimal" means violations that result in little or no negative outcome and/or little or no potential harm for a resident.

"Moderate" means violations that result in negative outcome and actual or potential harm for a resident.

"Multiple facility provider" means a provider who is licensed to operate more than one adult family home.

"Neglect" means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

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

"Nurse delegation" means a registered nurse transfers the performance of selected nursing tasks to competent nursing assistants in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the resident.

"Over-the-counter medication" is any medication that can be purchased without a prescriptive order, including but not limited to vitamin, mineral, or herbal preparations.

"Permanent restraining order" means a restraining order and/or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order

may be in force for a specific time period (for example, one year), after which it expires.

"Personal care services" means both physical assistance and/or prompting and supervising the performance of direct personal care tasks as determined by the resident's needs and does not include assistance with tasks performed by a licensed health professional.

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

"Placement agency" is an "elder or vulnerable adult referral agency" as defined in chapter 18.330 RCW and means a business or person who receives a fee from or on behalf of a vulnerable adult seeking a referral to care services or supportive housing or who receives a fee from a care services provider or supportive housing provider because of any referral provided to or on behalf of a vulnerable adult.

"Practitioner" includes a physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant licensed in the state of Washington.

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

"Provider" means:

(1) Any person who is licensed to operate an adult family home and meets the requirements of this chapter; or

(2) Any corporation, partnership, or limited liability company that is licensed under this chapter to operate an adult family home and meets the requirements of this chapter.

"Psychopharmacologic medications" means the class of prescription medications, which includes but is not limited to antipsychotics, antianxiety medications, and antidepressants, capable of affecting the mind, emotions, and behavior.

"Recurring" or "repeated" means that the department has cited the adult family home for a violation of applicable licensing laws or rules and the circumstances of (1) and (2) of this definition are present:

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

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

(3) If the previous violation in (1) or (2) of this definition was pursuant to a law or rule that has changed at the time of the new violation, a citation to the equivalent current law or rule section is sufficient.

"Resident" means any adult unrelated to the provider who lives in the adult family home and who is in need of care. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law.

"Resident manager" means a person employed or designated by the provider to manage the adult family home and who meets the requirements of this chapter.

"Serious" means violations that result in one or more negative outcomes and significant actual harm to residents that does not constitute imminent danger; and/or, there is reasonable predictability of recurring actions, practices, situations or incidents with potential for causing significant harm to a resident.

"Severity" means the seriousness of a violation as determined by actual or potential negative outcomes for residents and subsequent actual or potential for harm. Outcomes include any negative effect on the resident's physical, mental or psychosocial well being (i.e., safety, quality of life, quality of care).

"Significant change" means:

(1) A lasting change, decline or improvement in the resident's baseline physical, mental or psychosocial status;

(2) The change is significant enough so the current assessment and/or negotiated care plan do not reflect the resident's current status; and

(3) A new assessment may be needed when the resident's condition does not return to baseline within a two week period of time.

"Special care" means care beyond personal care services as defined in this section.

"Staff" means any person who:

(1) Is employed or used by an adult family home, directly or by contract, to provide care and services to any resident.

(2) Staff must meet all of the requirements in this chapter and chapter 388-112 WAC.

"Temporary restraining order" means restraining order or order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties before an initial hearing.

"Uncorrected" means the department has cited a violation of WAC or RCW following an inspection and the violation remains uncorrected at the time of a subsequent inspection for the specific purpose of verifying whether such violation has been corrected.

"Unsupervised" means not in the presence of:

(1) Another employee or volunteer from the same business or organization; or

(2) Any relative or guardian of any of the children or individuals with developmental disabilities or vulnerable adults to which the employee, student or volunteer has access during the course of his or her employment or involvement with the business or organization.

"Usable floor space" means resident bedroom floor space exclusive of:

(1) Toilet rooms;

(2) Closets;

(3) Lockers;

(4) Wardrobes;

(5) Vestibules; and

(6) The space required for the door to swing if the bedroom door opens into the resident bedroom.

"Water hazard" means any body of water over twenty-four inches in depth that can be accessed by a resident, and includes but not limited to:

- (1) In-ground, above-ground, and on-ground pools;
- (2) Hot tubs, spas;
- (3) Fixed-in-place wading pools;
- (4) Decorative water features;
- (5) Ponds; or
- (6) Natural bodies of water such as streams, lakes, rivers, and oceans.

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

"Vulnerable adult" includes a person:

- (1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;
- (2) Found incapacitated under chapter 11.88 RCW;
- (3) Who has a developmental disability as defined under RCW 71A.10.020;
- (4) Admitted to any facility;
- (5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW;
- (6) Receiving services from an individual provider; or
- (7) With a functional disability who lives in his or her own home, who is directing and supervising a paid personal aide to perform a health care task as authorized by RCW 74.39.050.

NEW SECTION

WAC 388-76-10463 Medication—Psychopharmacologic For residents who are given psychopharmacologic medications, the adult family home must ensure:

- (1) The resident assessment indicates that a psychopharmacologic medication is necessary to treat the resident's medical symptoms;
- (2) In situations when a psychopharmacological drug is used for a resident, the home must ensure that the:
 - (a) Drug is prescribed by a physician or health care professional with prescriptive authority;
 - (b) Resident's negotiated care plan includes strategies and modifications of the environment and staff behavior to address the symptoms for which the medication is prescribed;
 - (c) Changes in medication only occur when the prescriber decides it is medically necessary; and
 - (d) Resident has given informed consent for its use.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10655 Physical restraints. The adult family home must ensure:

- (1) Each resident's right to be free from physical restraints used for discipline or convenience;
- (2) ~~((Less))~~ Prior to the use of a physical restraint, less restrictive alternatives have been tried and are documented in the resident's negotiated care plan; and

(3) That physical restraints used have been assessed as necessary to treat the resident's medical symptoms and addressed on the resident's negotiated care plan; and

(4) That if physical restraints are used to treat a resident's medical symptoms that the restraints are applied and immediately supervised on-site by a:

- (a) Licensed registered nurse;
- (b) Licensed practical nurse; or
- (c) Licensed physician; and

(d) For the purposes of this subsection, immediate supervised means that the licensed person is in the home and quickly and easily available.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10660 Chemical restraints. (1) For the purposes of this section "chemical restraint" means a ((psycho))~~pharmacologic~~ drug that is ((used)) given for discipline or convenience and not required to treat the resident's medical symptoms.

(2) The adult family home must ensure that each resident is free from chemical restraints(:

~~(a) Each resident is free from chemical restraints used for discipline or convenience;~~

~~(b) The resident assessment indicates that a chemical restraint is necessary to treat the resident's medical symptoms;~~

~~(c) In situations when a psychopharmacological drug is used for a resident, the home must ensure that the:~~

~~(i) Drug is prescribed by a physician or health care professional with prescriptive authority;~~

~~(ii) Resident's negotiated care plan includes strategies and modifications of the environment and staff behavior to address the symptoms for which the medication is prescribed;~~

~~(iii) Changes in medication only occur when the prescriber decides it is medically necessary; and~~

~~(iv) Resident has given informed consent for its use).~~

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10685 Bedrooms. The adult family home must:

(1) Ensure each resident's bedroom is an outside room, which allows entrance of natural light;

(2) Ensure window and door screens:

(a) Do not hinder emergency escape; and

(b) Prevent entrance of flies and other insects.

(3) Ensure each resident, including those using mobility aids such as wheelchairs and walkers has direct, unrestricted, and free access from the bedroom through doors, hallways and corridors to common use areas and other rooms used for care and services including bathrooms;

(4) Make separate bedrooms available for each sex;

(5) Make reasonable efforts to accommodate residents wanting to share the room;

(6) Provide each bedroom with a minimum usable floor space as required in WAC 388-76-10690.

(7) Give each resident the opportunity to have a lock on their door if they chose to unless having a locked door would

be unsafe for the resident and this is documented in the resident's negotiated careplan.

(8) Ensure each bedroom has a closet or a wardrobe, armoire or reasonable facsimile thereof. Neither the closet nor wardrobe/armoire floor space will be considered a part of the room's usable square footage. The home must not remove a closet in order to provide additional floor space.

~~((8))~~ (9) Ensure no more than two residents to a bedroom;

~~((9))~~ (10) Unless the resident chooses to provide their own furniture and bedding, the home must provide each resident a bed thirty-six inches or more wide with:

(a) A clean, comfortable mattress;

(b) A waterproof cover for use when needed or requested by the resident;

(c) Clean sheets and pillow cases;

(d) Adequate clean blankets to meet the needs of each resident; and

(e) Clean pillows.

~~((10))~~ (11) Not use the upper bunk of double-deck beds for a resident's bed;

~~((11))~~ (12) Provide a call bell or intercom system if the provider, entity representative, resident manager or caregiver bedroom is not within hearing distance of each resident bedroom and the system is required by the department;

~~((12))~~ (13) Ensure that members of the household, other than residents, do not share bedrooms with residents; and

~~((13))~~ (14) Ensure a resident does not share a bedroom with a person under eighteen years of age, unless the person is the resident's own child.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-76-11000 Resident protection program—Investigation of reports.
- WAC 388-76-11004 Resident protection program—Individual defined.
- WAC 388-76-11005 Resident protection program—Notice to individual of preliminary finding.
- WAC 388-76-11010 Resident protection program—Notice to others of preliminary finding.
- WAC 388-76-11015 Resident protection program—Disputing a preliminary finding.
- WAC 388-76-11020 Resident protection program—Hearing procedures to dispute preliminary finding.
- WAC 388-76-11025 Resident protection program—Finalizing a preliminary finding.
- WAC 388-76-11030 Resident protection program—Appeal of the initial order or finding.
- WAC 388-76-11035 Resident protection program—Reporting final findings.

WAC 388-76-11040 Resident protection program—Disclosure of investigative and finding information.

WSR 15-22-008 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 15-396—Filed October 22, 2015, 1:09 p.m., effective October 26, 2015]

Effective Date of Rule: October 26, 2015.

Purpose: Amend commercial sea cucumber fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07100M; and amending WAC 220-52-071.

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: A closure is needed in Sea Cucumber District 1 to avoid overharvest of the quota. Harvestable surpluses of sea cucumbers remain in Districts 2W and 5 for commercial harvest. 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: October 22, 2015.

Craig C. Burley
for J. W. Unsworth
Director

NEW SECTION

WAC 220-52-07100N Sea cucumbers Notwithstanding the provisions of WAC 220-52-071, effective October 26, 2015, until further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes except from the Sea Cucumber Districts, Marine Fish/Shellfish Catch Report-

ing Areas and area descriptions as provided for in this section:

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber District 5 Monday through Friday of each week.

(2) Sea cucumber harvest using shellfish diver gear is allowed in the following areas of Sea Cucumber District 2 Monday through Friday of each week: 29, 23A, 23D, and 23C east of a line projected true north from the shoreline at 123 degrees 48.3 minutes west longitude, and west of a line projected true north from the shoreline at 123 degrees 52.7 minutes west longitude.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 26, 2015:

WAC 220-52-07100M Sea cucumbers (15-279)

WSR 15-22-010
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-397—Filed October 22, 2015, 3:01 p.m., effective October 23, 2015]

Effective Date of Rule: October 23, 2015.

Purpose: Amend commercial fishing rules for Puget Sound salmon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-31100S, 220-47-40100K, and 220-47-41100M; and amending WAC 220-47-311, 220-47-401, and 220-47-411.

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 nontreaty share of chum in Puget Sound Salmon Management and Catch Reporting Areas 7 and 7A is expected to be harvested by the date of this closure. 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 3, Amended 0, Repealed 3.

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

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

Date Adopted: October 22, 2015.

Craig C. Burley
for J. W. Unsworth
Director

NEW SECTION

WAC 220-47-31100S Purse seine—Open periods. Notwithstanding the provisions of Chapter 220-47-311 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except as provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas 7 and 7A:

Closes at 12:01 AM October 23

NEW SECTION

WAC 220-47-40100K Reef net—Open periods. Notwithstanding the provisions of Chapter 220-47-401 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except as provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Area 7:

Closes at 12:01 AM October 23

NEW SECTION

WAC 220-47-41100M Gillnet—Open periods. Notwithstanding the provisions of Chapter 220-47-411 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except as provided in this section, provided that unless otherwise amended, all permanent rules remain in effect:

Areas 7 and 7A:

Closes at 12:01 AM October 23

REPEALER

The following sections of the Washington Administrative Code are repealed effective November 8, 2015:

WAC 220-47-31100S Purse seine—Open periods

WAC 220-47-40100K Reef net—Open periods

WAC 220-47-41100M Gillnet—Open periods

WSR 15-22-015
EMERGENCY RULES
BUILDING CODE COUNCIL

[Filed October 23, 2015, 3:08 p.m., effective October 23, 2015, 3:08 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule is being filed for renewal of WSR 15-14-064, originally filed on June 26, 2015. The rule was established to provide regulatory guidance to marijuana processing or extraction facilities. This new industry in Washington state produces marijuana for sale in specially licensed retail stores throughout the state. At this time there are no specific regulations in place to ensure safety in the processing plants or extraction facilities. This rule establishes specific requirements for handling hazardous materials, establish[es] inspection standards, and provides construction and permit requirements to ensure the life/safety of occupants, first responders, and the general public.

Citation of Existing Rules Affected by this Order: Amending WAC 51-54A-0105; and new section WAC 51-54A-3800.

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: These emergency rules provide operational and construction permit requirements for marijuana extraction. Marijuana extraction can involve explosive materials and dangerous process that pose serious risks to public health, safety, and welfare, as illustrated by the 2013 explosion, fire and fatality in Bellevue. These rules provide administrative direction, establish definitions, create requirements for engineering reports and inspections, identify construction requirements and electrical systems, and direct other administrative oversight to protect public safety. The state liquor and cannabis board's WAC 314-55-104 looks to state fire safety and building codes implemented by local fire officials to provide these protections. Given the serious risks posed by activities regulated by this rule, observing permanent rule timing requirements would be contrary to the public interest.

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

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

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

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

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

Date Adopted: June 12, 2015.

David F. Kokot
Chair

AMENDATORY SECTION (Amending WSR 13-04-063, filed 2/1/13, effective 7/1/13)

WAC 51-54A-0105 Permits.

SECTION 105 SCOPE AND GENERAL REQUIREMENTS

105.1.1 Permits required. Any property owner or authorized agent who intends to conduct an operation or business, or install or modify systems and equipment, which is regulated by this code, or to cause any such work to be done shall first make application to the fire code official and obtain the required permit.

105.6.49 Marijuana extraction systems. An operational permit is required to use a marijuana/cannabis extraction system regulated under WAC 314-55-104.

105.7.19 Marijuana extraction systems. A construction permit is required to install a marijuana/cannabis extraction system regulated under WAC 314-55-104.

NEW SECTION

WAC 51-54A-3800 Marijuana processing or extraction facilities.

SECTION 3801—ADMINISTRATION

3801.1 Scope. Marijuana processing or extraction facilities shall comply with this chapter and the International Building Code. The extraction process includes the act of extraction of the oils and fats by use of a solvent, desolventizing of the raw material and production of the miscella, distillation of the solvent from the miscella and solvent recovery. The use, storage, transfilling, and handling of hazardous materials in these facilities shall comply with this chapter, other applicable provisions of this code and the International Building Code.

3801.2 Application. The requirements set forth in this chapter are requirements specific only to marijuana processing and extraction facilities and shall be applied as exceptions or additions to applicable requirements set forth elsewhere in this code.

3801.3 Multiple hazards. Where a material, its use or the process it is associated with poses multiple hazards, all hazards shall be addressed in accordance with Section 5001.1 and other material specific chapters.

3801.4 Existing building or facilities. Existing buildings or facilities used for the processing of marijuana shall comply with this chapter. Existing buildings or facilities used for marijuana extraction shall comply with the requirements of this chapter by July 1, 2016.

3801.5 Permits. Permits shall be required as set forth in Section 105.6 and 105.7.

SECTION 3802—DEFINITIONS

Marijuana extraction facility (MEF): A building used for the solvent-based extraction process of marijuana.

Marijuana extraction equipment (MEE): Equipment or appliances used for the extraction of botanical material such as essential oils, from marijuana.

Marijuana extraction room (MER): The room or space in which the solvent-based extractions occur.

Finding: The results of an inspection, examination, analysis or review.

Observation: A practice or condition not technically non-compliant with other regulations or requirements, but could lead to noncompliance if left unaddressed.

Desolventizing: The act of removing a solvent from a material.

Miscella: A mixture, in any proportion, of the extracted oil or fat and the extracting solvent.

Transfilling: The process of taking a gas source, either compressed or in liquid form (usually in bulk containers), and transferring it into a different container (usually a smaller compressed cylinder).

SECTION 3802—PROCESSING OR EXTRACTION OF MARIJUANA

3802.1 Location. Marijuana processing shall be located in a building complying with the International Building Code and this code. The marijuana extraction process shall be located in a room dedicated to the extraction process. The extraction room shall not be used for any other purpose including storage.

3802.2 Staffing. The extraction process shall be continuously staffed by personnel trained in the extraction process, the transfer of LP-gas where applicable, and all emergency procedures. All staff training records shall be maintained on-site by the owner and made available upon request from the fire code official.

3802.3 Systems, equipment and processes. Systems, equipment, and processes shall be in accordance with Sections 3802.3.1 through 3802.3.3.7.

3802.3.1 Application. Systems, equipment and processes shall include, but are not limited to, vessels, chambers, containers, cylinders, tanks, piping, tubing, valves, fittings, and pumps.

3802.3.2 General requirements. In addition to the requirements in Section 3802, systems, equipment and processes shall also comply with Section 5003.2, other applicable provisions of this code, the International Building Code, and the International Mechanical Code.

3802.3.3 Additional requirements for marijuana extraction. In addition to the requirements of Section 3802.3, marijuana extraction systems, equipment and process shall comply with this section.

3802.3.3.1 General requirements. The requirements set forth in Section 5003.2 shall apply to vessels, chambers, containers, cylinders, tanks, piping, tubing, valves, fittings, and pumps used in the extraction process. The use of ovens in post-process purification or winterization shall comply with Section 3802.3.3.7.

3802.3.3.2 Systems and equipment. Systems or equipment used for the extraction of marijuana/cannabis oils from plant material shall be listed for the specific use. If the system used for extraction of marijuana/cannabis oils and products from plant material is not listed, then the system shall have a designer of record. If the designer of record is not a licensed Washington professional engineer, then the system shall be peer reviewed by a licensed Washington professional engineer. In reviewing the system, the licensed professional engineer shall review and consider any information provided by the system's designer or manufacturer. For systems and equipment not listed for the specific use, a technical report documenting the design or peer review as outlined in Section 3802.3.3.4.2 shall be prepared and submitted to the fire code official for review and approval for systems and equipment used for the extraction of marijuana/cannabis oils and products from plant material. The firm or individual performing the engineering analysis for the technical report shall be approved by the fire code official prior to performing the analysis.

3802.3.3.3 Change of extraction medium. Where the medium of extraction or solvent is changed from the material indicated in the technical report or as required by the manufacturer, the technical report shall be revised at the cost of the facility owner, submitted for review and approval by the fire code official prior to the use of the equipment with the new medium or solvent. If the original engineer of record is not available, then new engineer of record shall comply with Section 3802.3.3.4.1.

3802.3.3.4 Required technical report. The technical report documenting the design or peer review shall be submitted for review and approval by the fire code official prior to the equipment being located or installed at the facility.

3802.3.3.4.1 Approval of the engineer of record. Where a technical report is required to be submitted for review and approval by the fire code official to meet the requirements of 3802.3.3.2, the following actions shall occur:

1. Prior to submittal of the technical report, the engineer shall submit educational background and professional experience specific to the review and approval of system, equipment and processes with like hazards of those associated with the marijuana extraction system to the fire code official.

2. Once the proof of qualifications are found acceptable by the fire code official, the engineer of record shall produce the technical report and the report shall be signed and sealed in accordance with Washington state requirements.

The proof of qualifications shall include documentation indicating the person is a professional engineer licensed in Washington state.

3802.3.3.4.2 Content of technical report and engineering analysis. All, but not limited to, the items listed below shall be included in the technical report.

1. Manufacturer information.
2. Engineer of record information.
3. Date of review and report revision history.
4. Signature page shall include:
 - a. Author of the report;
 - b. Date of report;
 - c. Seal, date and signature of engineer of record performing the design or peer review; and
 - d. Date, signature, and stamp of the professional engineer performing the engineering document review of the report. The engineering document review cannot be performed by the authoring engineer.

5. Model number of the item evaluated. If the equipment is provided with a serial number, the serial number shall be included for verification at time of site inspection.

6. Methodology of the design or peer review process used to determine minimum safety requirements. Methodology shall consider the basis of design, and shall include a code analysis and code path to demonstrate the reason as to why specific code or standards are applicable or not.

7. Equipment description. A list of every component and subassembly (clamp, fittings, hose, quick disconnects, gauges, site glass, gaskets, valves, pumps, vessels, containers, switches, etc.) of the system or equipment, indicating the manufacturer, model number, material, and solvent compatibility. Vendor cut sheets shall be provided.

8. A general flow schematic or general process flow diagram (PFD) of the process. Post-processing or winterization may be included in this diagram. All primary components of the process equipment shall be identified and match the aforementioned list. Operating temperatures, pressures, and solvent state of matter shall be identified in each primary step or component. A piping and instrumentation diagram (PID or PI&D) may be provided but is not required.

9. Analysis of the vessel(s) if pressurized beyond standard atmospheric pressure. Analysis shall include purchased and fabricated components.

10. Structural analysis for the frame system supporting the equipment.

11. Process safety analysis of the extraction system, from the introduction of raw product to the end of the extraction process.

12. Comprehensive process hazard analysis considering failure modes and points of failure throughout the process. This portion of the review should include review of emergency procedure information provided by the manufacturer of the equipment or process and not that of the facility, building or room.

13. Review of the assembly instructions, operational and maintenance manuals provided by the manufacturer.

14. Report shall include findings and observations of the analysis.

15. List of references used in the analysis.

3802.3.3.5 Building analysis. If the technical report, or manufacturers literature indicate specific requirements for the location, room, space or building, where the extraction process is to occur, the engineer of record, as approved in

3802.3.3.4.1 shall review the construction documents of such location, room, space or building and provide a report of their findings and observations to the fire code official.

Analysis shall include:

1. Process safety analysis of the entire process from raw material to finished product.

2. Comprehensive process hazard analysis considering failure modes and points throughout the process. Should include review of emergency procedures as related to the equipment or process, and the facility.

3802.3.3.6 Site inspection. Prior to operation of the extraction equipment, if required by the fire code official, the engineer of record, as approved in 3802.3.3.4.1 shall inspect the site of the extraction process once equipment has been installed for compliance with the technical report and the building analysis. The engineer of record shall provide a report of findings and observations of the site inspection to the fire code official prior to the approval of the extraction process. The field inspection report authored by engineer of record shall include the serial number of the equipment used in the process and shall confirm the equipment installed is the same model and type of equipment identified in the technical report.

3802.3.3.7 Post-process purification and winterization.

Post-processing and winterization involving the heating or pressurizing of the miscella to other than normal pressure or temperature shall be approved and performed in an appliance listed for such use. Domestic or commercial cooking appliances shall not be used. The use of industrial ovens shall comply with Chapter 30.

EXCEPTION: An automatic fire extinguishing system shall not be required for batch-type Class A ovens having less than 3.0 cubic feet of work space.

3802.4 Construction requirements.

3802.4.1 Location. Marijuana extraction shall not be located in any building containing a Group A, E, I or R occupancy.

3802.4.1.1 Extraction room. The extraction equipment and extraction process shall be located in a room dedicated to extraction.

3802.4.2 Egress. Each marijuana extraction room shall be provided with at least one exit, swinging in the direction of travel provided with an automatic closer and panic hardware.

3802.4.2.1 Facility egress. The marijuana extraction room shall not enter directly into an exit, exit passageway, horizontal exit or along the sole egress path from another portion of the building.

3802.4.3 Ventilation. Each marijuana extraction room shall be provided with a dedicated hazardous exhaust system complying with Section 5004.3 for all solvents other than water. The operation of the hazardous exhaust system shall be continuous.

3802.4.4 Control area. Each marijuana extraction room shall be considered a single control area and comply with Section 5003.8.3.

3802.4.5 Ignition source control. Extraction equipment and extraction processes using a hydrocarbon-based liquid or gas solvent shall be provided with ventilation rates for the room to maintain the concentration of flammable constituents in air below 25% of the lower flammability limit of the respective solvent. If not provided with the required ventilation rate, then Class I Division II electrical requirements shall apply to the entire room.

3802.4.6 Interlocks. All electrical components within the extraction room shall be interlocked with the hazardous exhaust system and when provided, the gas detection system. When the hazardous exhaust system is not operational, then light switches and electrical outlets shall be disabled. Activation of the gas detection system shall disable all light switches and electrical outlets.

3802.4.7 Emergency power.

3802.4.7.1 Emergency power for extraction process. Where power is required for the operation of the extraction process, an automatic emergency power source shall be provided. The emergency power source shall have sufficient capacity to allow safe shutdown of the extraction process plus an additional 2 hours of capacity beyond the shutdown process.

3802.4.7.2 Emergency power for other than extraction process. An automatic emergency power system shall be provided for the following items when installed.

3802.4.7.2.1 Required electrical systems.

1. Extraction room lighting;
2. Extraction room ventilation system;
3. Solvent gas detection system;
4. Emergency alarm systems;
5. Automatic fire extinguishing systems.

3802.4.8 Continuous gas detection system. For extraction processes utilizing gaseous hydrocarbon-based solvents, a continuous gas detection system shall be provided. The gas detection threshold shall be no greater than 25% of the LEL/LFL limit of the materials.

3802.4.9 Liquefied-petroleum gases shall not be released to the atmosphere.

3802.5 Carbon dioxide enrichment or extraction. Extraction processes using carbon dioxide shall comply with the section.

3802.5.1 Scope. Carbon dioxide systems with more than 100 pounds of carbon dioxide shall comply with Sections 3802.5 through 3802.5.8. This section is applicable to carbon dioxide systems utilizing compressed gas systems, liquefied-gas system, dry ice, or on-site carbon dioxide generation.

3802.5.2 Permits. Permits shall be required as set forth in Section 105.6 and 105.7.

3802.5.3 Equipment. The storage, use, and handling of liquid carbon dioxide shall be in accordance with Chapter 54 and the applicable requirements of NFPA 55, Chapter 13. Insulated liquid carbon dioxide system shall have pressure relief devices in accordance with NFPA 55.

3802.5.5 Protection from damage. Carbon dioxide systems shall be installed so the storage tanks, cylinders, piping and fittings are protected from damage by occupants or equipment during normal facility operations.

3802.5.7 Signage. At the entrance to each area using or storing carbon dioxide, signage shall be posted indicating the hazard. Signs shall be durable and permanent in nature and not less than 7 inches wide by 10 inches tall. Signs shall bear the "skull and crossbones" emblem with the warning "DANGER! POTENTIAL OXYGEN DEFICIENT ATMOSPHERE." NFPA 704 signage shall be provided at the building main entry and the rooms where the carbon dioxide is used and stored.

3802.5.8 Ventilation. Mechanical ventilation shall be in accordance with the International Mechanical Code and shall comply with all of the following:

1. Mechanical ventilation in the room or area shall be at a rate of not less than 1 cubic foot per minute per square foot.
2. The exhaust system intake shall be taken from a point within 12 inches of the floor.
3. The ventilation system shall be designed to operate at a negative pressure in relation to the surrounding area.

3802.6 Flammable or combustible liquid. The use of a flammable or combustible liquid for the extraction of oils and fats from marijuana shall comply with this section.

3802.6.1 Scope. The use of flammable and combustible liquids for liquid extraction process where the liquid is boiled, distilled, or evaporated shall comply with this section and NFPA 30.

3802.6.2 Location. The process using a flammable or combustible liquid shall be located within a hazardous exhaust fume hood, rated for exhausting flammable vapors. Electrical equipment used within the hazardous exhaust fume hood shall be rated for use in flammable atmospheres. Heating of flammable or combustible liquids over an open flame is prohibited.

Exception: The use of a heating element not rated for flammable atmospheres may be approved where documentation from the manufacturer or an approved testing laboratory indicates it is rated for heating of flammable liquids.

WSR 15-22-016

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 15-398—Filed October 23, 2015, 3:23 p.m., effective October 23, 2015, 3:23 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-36-023.

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: Department staff examined QIN gillnet catch per landing in Area 2A and D through week forty-two from 1996 to 2014. A significant relationship existed between coho catch per landing and Chehalis River Basin total run size. Based on QIN catch per landing in 2015, the relationship predicted a run size of forty-eight thousand three hundred seventeen coho compared to a preseason forecast of nearly one hundred forty-nine thousand.

This preliminary in-season coho update was also plugged into the preseason planning model to examine the effect of actual 2015 treaty and nontreaty fisheries on the potential for reaching the coho escapement goal. Based on a run size of forty-eight thousand three hundred seventeen and the planned fishing schedules, the natural-origin coho escapement was predicted to be twenty-three thousand four hundred seventy-two compared to the goal of twenty-eight thousand five hundred six. That is, the preseason forecast already predicts that the coho escapement goal will be missed by nearly five thousand coho. Because the run size for 2015 now appears to be far below the preseason forecast, there is a reasoned basis for slowing harvest to ensure the overall harvest rate objective is met and to provide some buffer against a serious underescapement of coho.

Based on all this information, an in-season closure of the commercial and recreational fisheries is warranted to help ensure that conservation goals are met. Such an in-season adjustment requires immediate action and cannot wait for the time required to adopt a permanent rule amendment.

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: October 23, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-36-02300C Grays Harbor salmon—Fall fishery. Notwithstanding the provisions of WAC 220-36-023, effective immediately until further notice, it is unlawful to fish for salmon in waters of Grays Harbor for commercial purposes.

WSR 15-22-017 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 15-399—Filed October 23, 2015, 3:24 p.m., effective October 26, 2015, 12:01 a.m.]

Effective Date of Rule: October 26, 2015, 12:01 a.m.

Purpose: Amend recreational salmon fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-620 and 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: Department staff examined QIN gillnet catch per landing in Area 2A and D through week forty-two from 1996 to 2014. A significant relationship existed between coho catch per landing and Chehalis River Basin total run size. Based on QIN catch per landing in 2015, the relationship predicted a run size of forty-eight thousand three hundred seventeen coho compared to a preseason forecast of nearly one hundred forty-nine thousand.

This preliminary in-season coho update was also plugged into the preseason planning model to examine the effect of actual 2015 treaty and nontreaty fisheries on the potential for reaching the coho escapement goal. Based on a run size of forty-eight thousand three hundred seventeen and the planned fishing schedules, the natural-origin coho escapement was predicted to be twenty-three thousand four hundred seventy-two compared to the goal of twenty-eight thousand five hundred six. That is, the preseason forecast already predicts that the coho escapement goal will be missed by nearly five thousand coho. Because the run size for 2015 now appears to be far below the preseason forecast, there is a reasoned basis for slowing harvest to ensure the overall harvest rate objective is met and to provide some buffer against a serious underescapement of coho.

Based on all this information, an in-season closure of the commercial and recreational fisheries is warranted to help ensure that conservation goals are met. Such an in-season adjustment requires immediate action and cannot wait for the time required to adopt a permanent rule amendment.

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: October 23, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 232-28-62000T Coastal salmon—Saltwater seasons. Notwithstanding the provisions of WAC 232-28-620, effective 12:01 a.m. October 26, 2015, until further notice, Marine Area 2.2 is closed to salmon fishing.

NEW SECTION

WAC 220-310-18000D Freshwater exceptions to statewide rules—Coastal. Notwithstanding the provisions of WAC 220-310-180, effective 12:01 a.m. October 26, 2015, until further notice, the following waters are closed to salmon fishing:

- (1) Black River (Grays Harbor/Thurston Co.)
- (2) Chehalis River Lewis/Cowlitz Co.)
- (3) Elk River (Grays Harbor Co.)
- (4) Hoquiam River and all forks (Grays Harbor Co.)
- (5) Humptulips River (Grays Harbor Co.)
- (6) Johns River (Grays Harbor Co.)
- (7) Newaukum River (Lewis Co.)
- (8) Satsop River and all forks (Mason/Grays Harbor Co.)
- (9) Skookumchuck River (Lewis/Thurston Co.)
- (10) Van Winkle Creek (Grays Harbor Co.)
- (11) Wishkah River (Grays Harbor Co.)
- (12) Wynoochee River (Grays Harbor/Jefferson Co.)

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 15-22-018
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-400—Filed October 23, 2015, 3:48 p.m., effective October 25, 2015]

Effective Date of Rule: October 25, 2015.

Purpose: Amend commercial fishing rules for Puget Sound salmon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-40100K.

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: There is a small amount of the nontreaty share of chum in Puget Sound Salmon Management and Catch Reporting Areas 7 and 7A remaining to allow for commercial harvest. 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 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: October 23, 2015.

Joe Stohr
for J. W. Unsworth
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective October 25, 2015:

WAC 220-47-40100K Reef net—Open periods. (15-397)

WSR 15-22-020

EMERGENCY RULES

UNIVERSITY OF WASHINGTON

[Filed October 26, 2015, 9:52 a.m., effective October 26, 2015, 9:52 a.m.]

Effective Date of Rule: Immediately upon filing.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The University of Washington (UW) is adopting a second emergency rule making per RCW 34.05.350(2), while actively pursuing adoption of a permanent rule as evidenced by the proposed rule making CR-102 filed on October 21, 2015, as WSR 15-22-004.

Purpose: Continuing UW's emergency section, WAC 478-120-137 Supplementary provisions regarding sexual misconduct, to comply with amendments to the student assistance general provisions issued under the Higher Education Act (HEA) of 1965, as amended, and to implement the changes made to the Clery Act by the Violence Against Women Reauthorization Act of 2013 (VAWA) (Pub. L. 113-4). These provisions are also necessary to comply with the state legislature's recent adoption of statutes and amendments related to campus sexual violence, chapter 92, Laws of 2015.

Statutory Authority for Adoption: RCW 28B.20.130 and chapter 92, Laws of 2015.

Other Authority: UW *Board of Regents Governance*, Standing Orders, Chapter 8.

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: These amendments (34 C.F.R. Part 668.46) apply to UW as a recipient of federal funds. This emergency section to chapter 478-120 WAC, Student conduct code for the University of Washington, confirms that UW prohibits sexual misconduct (sexual assault, sexual harassment, sexual exploitation, stalking, relationship or dating violence, and domestic violence); clearly defines sexual misconduct and "consent"; clarifies the steps under UW's disciplinary process that apply in cases involving an allegation of sexual misconduct; and makes clear that protective interim measures can be implemented following an allegation of sexual misconduct.

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

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

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

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

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

Date Adopted: October 23, 2015.

Rebecca Goodwin Deardorff
Director of Rules Coordination

NEW SECTION

WAC 478-120-137 Supplementary provisions regarding sexual misconduct. (1) By way of clarification only, it is hereby affirmed that sexual assault, sexual harassment, indecent exposure, sexual exploitation, stalking, domestic violence, and relationship violence all as defined herein (collectively "sexual misconduct") are prohibited conduct and any student who has engaged in sexual misconduct may be subject to the imposition of disciplinary sanctions as described in WAC 478-120-040.

(2) Notwithstanding any other provision of this conduct code, a student may be subject to disciplinary proceedings in connection with any allegation of sexual misconduct that occurs off campus if the university reasonably determines that a significant university interest is affected.

(3) Notwithstanding any other provision of this conduct code, "exceptional circumstances" shall be deemed to exist in all cases involving an allegation of sexual misconduct, and such cases shall be subject to the following supplementary provisions:

(a) The initiating officer will concurrently serve both the accused student and any complainant(s) with a copy of the initiating officer's initial order. For the purposes of this section, "complainant" means a student or another member of the university community who believes that an act of sexual misconduct has been committed against him or her in violation of this conduct code.

(b) Either a complainant or the accused student may appeal such initial order in accordance with WAC 478-120-075, and both the accused student and any complainant shall receive notice of any appeal and notice of any hearing before the faculty appeal board.

(c) If a timely appeal of an initial order issued by the initiating officer is submitted and a request for a formal hearing is made, the faculty appeal board shall conduct a formal hearing in accordance with WAC 478-120-100 and 478-120-115 and the following supplementary provisions shall apply:

(i) Both the accused student and any complainant will have the right to participate as a party in the hearing, including to be represented by counsel and/or be accompanied by an advisor, to call witnesses, to cross-examine witnesses, and to submit documentary evidence. A complainant (with or without counsel and/or an advisor) may attend the formal hearing in its entirety, regardless of whether the complainant decides to participate as a party.

(ii) An accused student and the complainant may not ask questions of each other directly, but may submit written questions to the chair, who will ask any relevant and appropriate questions submitted by these parties. The chair has discretion to accept, reject, or rephrase any question submitted by the accused student or a complainant.

(iii) At the discretion of the chair, and where the rights of the parties will not be prejudiced thereby, all or part of any formal hearing, including the testimony of witnesses, may be conducted by telephone, video, or other electronic means.

(iv) Both the accused student and any complainant shall be concurrently served with all orders issued by the faculty appeal board.

(d) In any matter involving an allegation of sexual misconduct, any complainant shall have the same rights as the accused student to participate as a party in any administrative review under WAC 478-120-105, to appeal a faculty appeal board's initial order to the president of the university under WAC 478-120-125, to participate as a party in any appeal to the president, and to seek reconsideration of a final order under WAC 478-120-135. In the event that a complainant appeals in a timely manner an initial order, such order shall not become final until that appeal is resolved. Any notices or orders issued by the president shall be concurrently served on the accused student and any complainant(s).

(e) Except as otherwise provided in this section, matters involving allegations of sexual misconduct will be subject to all the other applicable provisions of this conduct code.

(4) For the purposes of this section, "sexual misconduct" includes sexual assault, sexual harassment, indecent exposure, sexual exploitation, stalking, domestic violence, and relationship violence, all as defined in subsections (5) through (11) of this section.

(5) For the purposes of this student conduct code "sexual assault" means any sexual contact with another person without (or that exceeds) that person's consent.

(a) For the purposes of this definition, "sexual contact" includes:

(i) Any touching of another person for the purpose of sexual gratification; or

(ii) Any penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ, of another person.

(b) For the purposes of this definition, "consent" means that at the time of and throughout the sexual contact, there are actual words or conduct indicating freely given agreement between the parties to engage in the sexual contact. A determination of whether consent had been given in connection with an incident of sexual contact shall take into account the following:

(i) Past consent does not imply future consent;

(ii) Consent given to one person does not imply consent given to another person;

(iii) Consent to one sexual act does not imply consent to other sexual acts;

(iv) Lack of resistance to sexual contact does not imply consent;

(v) Consent can be withdrawn at any time.

(c) Consent cannot be given by a person who, at the relevant time, cannot understand the facts, nature, extent, or implications of the sexual contact for any reason including, but not limited to, being asleep, unconscious, mentally or physically impaired due to an intellectual or other disability, or mentally or physically incapacitated due to the effects of drugs or alcohol. Indications that a person may be incapacitated by alcohol or drugs and therefore cannot grant consent include, but are not limited to, stumbling, falling down, an inability to stand or walk on their own, slurred speech or incoherent communication, an inability to focus their eyes or confusion about what is happening around them, blacking out, or vomiting. A failure to exhibit any of these behaviors does not necessarily mean that a person is capable of giving consent or is not incapacitated.

(d) Sexual contact is not consensual when force or coercion is threatened or used to gain acquiescence. Force includes the use of physical violence, physical force, threats, or intimidation to overcome resistance or gain agreement to sexual contact. Coercion includes using pressure, deception, or manipulation to cause someone to agree to sexual contact against his or her will, without the use of physical force. Pressure can mean verbal or emotional pressure.

(e) Sexual assault also includes sexual contact with a person who is under the statutory age of consent in accordance with chapter 9A.44 RCW.

(f) Use of alcohol or other drugs is not a valid defense to an allegation of sexual assault.

(6) For the purposes of this conduct code, "sexual harassment" means unwelcome language or conduct of a sexual nature that is sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance or a person's ability to participate in or benefit

from the university's programs, services, opportunities, or activities.

(7) For purposes of this conduct code, "indecent exposure" means the exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm, or is against generally accepted standards of decency. Breast feeding or expressing breast milk is not indecent exposure.

(8) For the purposes of this conduct code, "sexual exploitation" includes:

(a) Taking nonconsensual or abusive advantage of another for one's own sexual benefit, or for the sexual benefit of anyone other than the one being exploited;

(b) Compelling another by threat or force to engage in sexual conduct or activity;

(c) Transmitting, distributing, publishing, or threatening to transmit, distribute, or publish photos, video, or other recordings of a private and sexual nature where such transmission, publication, or distribution is without the consent of the subject(s) and is likely to cause emotional distress to the subject(s);

(d) Taking or making photographs, films, or digital images of the private body parts of another person without that person's consent;

(e) Causing or attempting to cause the impairment of another person to gain nonconsensual sexual advantage over that person;

(f) Prostituting another person;

(g) Knowingly allowing another to surreptitiously watch otherwise consensual sexual activity; or

(h) Taking, making, or directly transmitting nonconsensual video or audio recordings of sexual activity.

(9) For purposes of this conduct code, "stalking" means engaging in a course of conduct that would cause a reasonable person to fear for his or her safety or the safety of others or to suffer substantial emotional distress. "Course of conduct" means two or more acts including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means (including electronic), follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. "Substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.

(10) For purposes of this conduct code, "domestic violence" means the infliction of physical harm, bodily injury, assault, or the fear of imminent physical harm, bodily injury or assault committed against a family or household member, including:

(a) A current or former spouse or intimate partner;

(b) A person with whom the person shares a child in common;

(c) A person with whom one is cohabitating or has cohabitated; or

(d) A person with whom one resides including a roommate, suitemate or housemate.

Domestic violence also includes sexual assault or stalking as defined herein of one family or household member by another family or household member.

(11) For the purposes of this conduct code, "relationship violence," also referred to as "dating violence," means violence, other than domestic violence as defined in subsection (10) of this section, committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, relationship or dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

(12) As in all proceedings under this conduct code, the applicable standard of proof in cases involving sexual misconduct shall be the "preponderance of evidence" standard. This means that, in order for a student to be held responsible for a violation, it must be shown, based on all of the evidence in the record, that it is more likely than not that the student engaged in an act or acts of misconduct. The burden of proof in any hearing rests with the party seeking to establish that the violation occurred.

(13) Following receipt of a report of alleged sexual misconduct, the university may implement interim protective measures including, but not limited to:

(a) A "no-contact directive" prohibiting direct or indirect contact, by any means, with a complainant, an accused student, a reporting student, other specified persons, and/or a specific student organization;

(b) Reassignment of or removal from on-campus housing; or

(c) Changes to class schedules, assignments, or tests.

Interim protective measures will remain in place until an initial order becomes final or a final order is issued. Implementation of any interim measure does not assume any determination of, or create any presumption regarding responsibility for a violation under the student conduct code.

WSR 15-22-022
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-401—Filed October 26, 2015, 1:37 p.m., effective October 28, 2015, 6:30 p.m.]

Effective Date of Rule: October 28, 2015, 6:30 p.m.

Purpose: Amend Puget Sound commercial crab fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-0400G and 220-52-04600N; and amending WAC 220-52-046.

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 closes all state commercial crab fisheries (Region 1, Region 2 East, Region 2 West, Region 3-1, Region 3-2 and Region 3-3). The state has reached the initial allocation in Region 2 East and Region 3-2. The state is closing the remaining regions to preserve allocation for additional openings later in the season. These provisions are in conformity with agreed management plans with applicable tribes, entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. 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: October 26, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

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

(1) Effective 6:30 p.m., Wednesday, October 28, 2015, and until further notice, Crab Management Region 1, Region 3-1 and Region 3-3 are closed. Region 1 includes all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A and 22B. Region 3-1 includes all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 23A and 23B. Region 3-3 includes all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 23C and 29.

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

(a) All of Crab Management Region 2 West. Region 2 West includes all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 25B, 25D and 26A West.

(b) All of Crab Management Region 2 East. Region 2 East includes all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D and 26A East.

(c) All of Crab Management Region 3-2. Region 3-2 includes all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 23D, 25A and 25E.

REPEALER

The following sections of the Washington Administrative code are repealed effective 6:30 p.m. October 28, 2015:

- WAC 220-52-04000G Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts (15-384)
- WAC 220-52-04600N Puget Sound crab fishery—Seasons and areas (15-384)

WSR 15-22-025
EMERGENCY RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)

[Filed October 27, 2015, 9:40 a.m., effective October 27, 2015, 9:40 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amendments to this rule are necessary to clarify that individual and family services (IFS), and community first choice (CFC) option are subject to estate recovery, and to remove Washington medicaid integration partnership because it has been discontinued.

Citation of Existing Rules Affected by this Order: Amending WAC 182-527-2742.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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 department of social and health services (DSHS) implemented the IFS waiver in June of 2015 and the CFC option, effective July 1, 2015. The Washington state legislature directed DSHS to implement this program under SSB 6387 and ESHB 2746. IFS and CFC option are long-term care services funded in part by federal dollars and under federal law are subject to recovery. The health care authority (HCA) must implement emergency rules to comply with federal law and will amend WAC 182-527-2742 which controls DSHS's and HCA's ability to recoup for services subject to recovery. The agency began permanent rule making under WSR 15-14-062, has completed stakeholder review, and is currently preparing the rule for public hearing.

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

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

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

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

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: October 27, 2015.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-20-091, filed 9/29/14, effective 10/30/14)

WAC 182-527-2742 Services subject to recovery.
~~((The medicaid agency or its designee considers the medical services the client received and the dates when the services were provided to the client, to determine whether the client's estate is liable for the cost of medical services provided. Subsection (1) of this section covers liability for medicaid services, subsection (2) of this section covers liability for state-only funded long-term care services (LTC), and subsection (3) of this section covers liability for all other state-only funded services. An estate can be liable under any of these subsections:~~

- ~~(1) The client's estate is liable for:~~
- ~~(a) All medicaid services provided from July 26, 1987, through June 30, 1994;~~
- ~~(b) The following medicaid services provided after June 30, 1994, and before July 1, 1995:~~
- ~~(i) Nursing facility services;~~
- ~~(ii) Home and community-based services; and~~
- ~~(iii) Hospital and prescription drug services provided to a client while receiving nursing facility services or home and community-based services;~~
- ~~(c) The following medicaid services provided after June 30, 1995, and before June 1, 2004:~~
- ~~(i) Nursing facility services;~~
- ~~(ii) Home and community-based services;~~
- ~~(iii) Adult day health;~~
- ~~(iv) Medicaid personal care;~~
- ~~(v) Private duty nursing administered by the aging and long-term support administration (AL TSA) of the department of social and health services (DSHS); and~~
- ~~(vi) Hospital and prescription drug services provided to a client while receiving services described under (c)(i), (ii), (iii), (iv), or (v) of this subsection;~~
- ~~(d) The following services provided on and after June 1, 2004, through December 31, 2009:~~
- ~~(i) All medicaid services, including those services described in subsection (c) of this section;~~
- ~~(ii) Medicare savings programs services for individuals also receiving medicaid;~~
- ~~(iii) Medicare premiums only for individuals also receiving medicaid; and~~
- ~~(iv) Premium payments to managed care organizations;~~
- ~~(e) The following services provided on or after January 1, 2010, through December 31, 2013:~~
- ~~(i) All medicaid services except those described in (d)(ii) and (iii) of this subsection;~~
- ~~(ii) All institutional medicaid services described in (c) of this subsection;~~
- ~~(iii) Premium payments to managed care organizations; and~~

(iv) The client's proportional share of the state's monthly contribution to the centers for medicare and medicaid services (CMS) to defray the costs for outpatient prescription drug coverage provided to a person who is eligible for medicare Part D and medicaid; and

(f) The following services provided after December 31, 2013:

(i) Nursing facility services, including those provided in a developmental disabilities administration (DDA) residential habilitation center (RHC);

(ii) Home and community-based services authorized by AL TSA or DDA, as follows:

(A) Community options program entry system (CO P E S);

(B) New Freedom consumer directed services (NFCDS);

(C) Basic Plus waiver;

(D) CORE waiver;

(E) Community protection waiver;

(F) Children's intensive in-home behavioral support (CIHS) waiver;

(G) Medicaid personal care;

(H) Residential support waiver;

(iii) The portion of the Washington apple health (WAH) managed care premium used to pay for LTC services under the program of all-inclusive care for the elderly (PACE) authorized by AL TSA;

(iv) The portion of the WAH managed care premium used to pay for LTC services under the Washington medicaid integration partnership (WMIP) authorized by AL TSA or DDA;

(v) Roads to community living (RCL) demonstration project;

(vi) Personal care services funded under Title XIX or XXI;

(vii) Private duty nursing administered by AL TSA or DDA;

(viii) Intermediate care facility for individuals with intellectual disabilities (ICF/ID) services provided in either a private community setting or in an RHC; and

(ix) Hospital and prescription drug services provided to a client while receiving services under subsection (1)(f)(i) through (viii) of this section.

(2) The client's estate is liable for all state-only funded LTC services (excluding the services listed in subsection (3)(a) through (d) of this section) and related hospital and prescription drug services provided to:

(a) Clients of the home and community services division of DSHS on and after July 1, 1995; and

(b) Clients of the DDA on and after June 1, 2004.

(3) The client's estate is liable for all state-only funded services provided regardless of the age of the client at the time the services were provided, with the following exceptions:

(a) State-only funded adult protective services (APS);

(b) Supplemental security payment (SSP) authorized by DDA;

(c) Offender reentry community safety program (ORCSP); and

(d) Volunteer chore services.) The agency's payment for the following services is subject to recovery:

(1) State-only funded services, except:

(a) Adult protective services;

(b) Offender reentry community safety program services;

(c) Supplemental security payments authorized by the developmental disabilities administration (DDA); and

(d) Volunteer chore services.

(2) For dates of service after December 31, 2013:

(a) Basic Plus waiver services;

(b) Community first choice services;

(c) Community option program entry system services;

(d) Community protection waiver services;

(e) CORE waiver services;

(f) Hospice services;

(g) Hospital and prescription drug services provided to a client while he or she receives services listed in this subsection;

(h) Intermediate care facility for individuals with intellectual disabilities services provided in either a private community setting or in an RHC;

(i) Individual and family services;

(j) Medicaid personal care services;

(k) New Freedom consumer directed services;

(l) Nursing facility services;

(m) Personal care services funded under Title XIX or XXI;

(n) Private duty nursing administered by aging and long-term support administration (AL TSA) or DDA;

(o) Residential habilitation center services;

(p) Residential support waiver services;

(q) Roads to community living demonstration project services;

(r) The portion of the managed care premium used to pay for AL TSA-authorized LTC services under the program of all-inclusive care for the elderly.

(3) For dates of service beginning January 1, 2010, through December 31, 2013:

(a) Medicaid services;

(b) Premium payments to managed care organizations; and

(c) The client's proportional share of the state's monthly contribution to the centers for medicare and medicaid services to defray the costs for outpatient prescription drug coverage provided to a person who is eligible for medicare Part D and medicaid.

(4) For dates of service beginning June 1, 2004, through December 31, 2009:

(a) Medicaid services;

(b) Medicare premiums only for individuals also receiving medicaid;

(c) Medicare savings programs services for individuals also receiving medicaid; and

(d) Premium payments to managed care organizations.

(5) For dates of service beginning July 1, 1995, through May 31, 2004:

(a) Adult day health services;

(b) Home and community-based services;

(c) Hospital and prescription drug services provided to a client while receiving any of the services in this subsection;

(d) Medicaid personal care services;

(e) Nursing facility services; and

(f) Private duty nursing services.

(6) For dates of service beginning July 1, 1994, through June 30, 1995:

(a) Home and community-based services:

(b) Hospital and prescription drug services provided to a client while receiving nursing facility services or home and community-based services; and

(c) Nursing facility services.

(7) For dates of service beginning July 26, 1987, through June 30, 1994: Medicaid services.

(8) For dates of service through December 31, 2009. If a client was eligible for the medicare savings program (MSP), but not otherwise medicaid eligible, his or her estate is liable only for any sum paid to cover medicare premiums and cost-sharing benefits.

(9) For dates of service on or after January 1, 2010. If a client was eligible for medicaid under chapter 182-517 WAC and the MSP, his or her estate is not liable for any sum paid to cover medical assistance cost-sharing benefits.

WSR 15-22-026
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-402—Filed October 27, 2015, 10:15 a.m., effective October 28, 2015]

Effective Date of Rule: October 28, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62100S and 232-28-62100T; and amending WAC 232-28-621.

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: Washington department of fish and wildlife (WDFW) biologists have continued to assess the most recent monitoring data from Area 10. Puget Sound chum salmon runs are predicted to return as forecast, and WDFW biologists estimate minimal impacts to sublegal Chinook by opening to chum salmon retention in the Marine Area 10 recreational fishery. Anglers must continue to release all Chinook and coho salmon in the Marine Area 10 recreational fishery per the emergency rule WSR 15-21-054 enacted on October 19. 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: October 27, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 232-28-62100T Puget Sound salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-621, effective October 28, 2015 through January 31, 2016, it is permissible to fish for salmon in waters of Marine Area 10. Daily limit of two chum salmon.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 28, 2015:

WAC 232-28-62100S Puget Sound salmon—Saltwater seasons and daily limits. (15-387)

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

WAC 232-28-62100T Puget Sound salmon—Saltwater seasons and daily limit.

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.

WSR 15-22-027
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed October 27, 2015, 10:51 a.m., effective October 29, 2015]

Effective Date of Rule: October 29, 2015.

Purpose: The purpose for this filing is to allow DSHS to continue the individual and family services (IFS) waiver and the community first choice (CFC) program. Both of these were implemented by emergency rules and need to remain active by emergency rules while we continue working with the Centers for Medicare and Medicaid Services (CMS), stakeholders, advocacy groups, and other DSHS administrations to refine the semantics and structure of the text for the CR-102 filing, the comment period, and public hearing.

Citation of Existing Rules Affected by this Order: Amending WAC 388-823-0010 Definitions, 388-825-020 Definitions, 388-825-057 Am I eligible to receive paid services from DDD?, 388-825-0571 What services am I eligible

to receive from DDD if I am under the age of eighteen, have been determined to meet DDD eligibility requirements, and I am in a dependency guardianship or foster care with children's administration?, 388-825-059 How will I know which paid services I will receive?, 388-825-068 What medicaid state plan services may DDD authorize?, 388-825-071 What services am I eligible for if I am enrolled in a DDD home and community based services (HCBS) waiver?, 388-825-083 Is there a comprehensive list of waiver and state-only DDD services?, 388-825-305 What service providers are governed by the qualifications in these rules?, 388-825-310 What are the qualifications for providers?, 388-825-325 What are required skills and abilities for individuals and agencies contracted to provide respite care, personal care services through the medicaid personal care program or the DDD HCBS Basic, Basic Plus, CIIBS, or Core waivers, or attendant care services?, 388-825-330 What is required for agencies to provide care in the home of a person with developmental disabilities?, 388-825-355 Are there any educational requirements for individuals providing respite care, attendant care, or personal care services?, 388-828-1020 What definitions apply to this chapter?, 388-828-1060 What is the purpose of the DDD assessment?, 388-828-1500 When does DDD conduct a reassessment?, 388-828-1520 Where is the DDD assessment and reassessment administered?, 388-828-1540 Who participates in your DDD assessment?, 388-828-8000 What is the purpose of the individual support plan (ISP) module?, 388-831-0065 What if I refuse to participate in the risk assessment?, 388-831-0160 What services may I receive if I refuse placement in the community protection program?, 388-845-0001 Definitions, 388-845-0015 What HCBS waivers are provided by the developmental disabilities administration (DDA)?, 388-845-0020 When were the HCBS waivers effective?, 388-845-0030 Do I meet criteria for HCBS waiver-funded services?, 388-845-0041 What is DDA's responsibility to provide my services under the DDA HCBS waivers administered by DDA?, 388-845-0045 When there is capacity to add people to a waiver, how does DDA determine who will be enrolled?, 388-845-0052 What is the process if I am already on a DDA HCBS waiver and request enrollment onto a different waiver DDA HCBS?, 388-845-0055 How do I remain eligible for the waiver?, 388-845-0060 Can my waiver enrollment be terminated?, 388-845-0100 What determines which waiver I am assigned to?, 388-845-0105 What criteria determine assignment to the community protection waiver?, 388-845-0110 Are there limitations to the waiver services I can receive?, 388-845-0111 Are there limitations regarding who can provide services?, 388-845-0115 Does my waiver eligibility limit my access to DDA nonwaiver services?, 388-845-0200 What waiver services are available to me?, 388-845-0210 Basic Plus waiver services, 388-845-0215 Core waiver services, 388-845-0220 Community protection waiver services, 388-845-0225 Children's intensive in-home behavioral support (CIIBS) waiver services, 388-845-0230 What is the scope of services for the individual and family services waiver?, 388-845-0415 What is assistive technology?, 388-845-0420 Who is a qualified provider of assistive technology?, 388-845-0425 Are there limits to the assistive technology I can receive?, 388-845-0505 Who is a qualified provider of behavior support and consultation?, 388-845-0510 Are

there limits to the behavior support and consultation I can receive?, 388-845-0820 Are there limits to my use of emergency assistance?, 388-845-0900 What are environmental accessibility adaptations?, 388-845-0905 Who is a qualified provider for building these environmental accessibility adaptations?, 388-845-0910 What limitations apply to environmental accessibility adaptations?, 388-845-1015 Are there limits to the extended state plan services I can receive?, 388-845-1040 Are there limits to the individualized technical assistance services I can receive?, 388-845-1110 What are the limits of behavioral health crisis diversion bed services?, 388-845-1150 What are behavioral health stabilization services?, 388-845-1160 Are there limitations to the behavioral health stabilization services that I can receive?, 388-845-1170 What is nurse delegation?, 388-845-1180 Are there limitations to the nurse delegation services that I receive?, 388-845-1300 What are personal care services?, 388-845-1310 Are there limits to the personal care services I can receive?, 388-845-1410 Are there limits to the prevocational services I can receive?, 388-845-1600 What is respite care?, 388-845-1605 Who is eligible to receive respite care?, 388-845-1607 Can someone who lives with me be my respite provider?, 388-845-1620 Are there limits to the respite care I can receive?, 388-845-1660 Are there limitations to the sexual deviancy evaluations I can receive?, 388-845-1700 What is skilled nursing?, 388-845-1710 Are there limitations to the skilled nursing services I can receive?, 388-845-1800 What are specialized medical equipment and supplies?, 388-845-1810 Are there limitations to my receipt of specialized medical equipment and supplies?, 388-845-1840 What is specialized nutrition and specialized clothing?, 388-845-1845 Who are qualified providers of specialized nutrition and specialized clothing?, 388-845-1850 Are there limitations to my receipt of specialized nutrition and specialized clothing?, 388-845-1910 Are there limitations to the specialized psychiatric services I can receive?, 388-845-2000 What is staff/family consultation and training?, 388-845-2005 Who is a qualified provider of staff/family consultation and training?, 388-845-2010 Are there limitations to the staff/family consultation and training I can receive?, 388-845-2160 What is therapeutic equipment and supplies?, 388-845-2170 Are there limitations on my receipt of therapeutic equipment and supplies?, 388-845-2210 Are there limitations to the transportation services I can receive?, 388-845-2260 What are vehicle modifications?, 388-845-2270 Are there limitations to my receipt of vehicle modification services?, 388-845-3000 What is the process for determining the services I need?, 388-845-3055 What is a waiver individual support plan (ISP)?, 388-845-3056 What if I need assistance to understand my individual support plan?, 388-845-3060 When is my individual support plan effective?, 388-845-3061 Can a change in my individual support plan be effective before I sign it?, 388-845-3062 Who is required to sign or give verbal consent to the individual support plan?, 388-845-3063 Can my individual support plan be effective before the end of the month?, 388-845-3065 How long is my plan effective?, 388-845-3070 What happens if I do not sign or verbally consent to my individual support plan (ISP)?, 388-845-3075 What if my needs change? and 388-845-3085 What if my needs exceed what can be provided under the IFS, CIIBS,

Core or Community Protection waiver?; and new sections WAC 388-845-0230 What is the scope of services for the individual and family services waiver?, 388-845-0650 What are community engagement services?, 388-845-0655 Who is a qualified provider of community engagement service?, 388-845-0660 Are there limitations to the community engagement services I can receive?, 388-845-1190 What is peer mentoring?, 388-845-1191 Who are qualified providers of peer mentoring?, 388-845-1192 What limitations are there for peer mentoring?, 388-845-1195 What is person-centered planning facilitation?, 388-845-1196 Who are qualified providers of person-centered planning facilitation?, 388-845-1197 What limitations are there for person-centered planning facilitation?, 388-845-1855 What is specialized clothing?, 388-845-1860 Who are qualified providers of specialized clothing?, 388-845-1865 Are there limitations to my receipt of specialized clothing?, 388-845-2130 What are supported parenting services?, 388-845-2135 Who are qualified providers of supported parenting services?, and 388-845-2140 Are there any limitations on my receipt of supported parenting services?

Statutory Authority for Adoption: SSB 6387 of the 63rd Legislature, 2014 regular session for the IFS waiver and ESHB 2746 of the 63rd legislative 2014 regular session for the CFC waiver.

Other Authority: RCW 71A.12.030, 71A.12.120.

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 purpose for this filing is to allow DSHS to continue IFS waiver and CFC program. Both of these were implemented by emergency rules and need to remain active by emergency rules while we continue working with CMS, stakeholders, advocacy groups, and other DSHS administrations to refine the semantics and structure of the text for the CR-102 filing, the comment period, and public hearing.

Related to IFS waiver: Once SSB 6387 of the 63rd Legislature 2014 regular session was passed, DDA worked on the new required IFS waiver while we concurrently identified and programmed the enhancements needed to our statewide assessment tool "CARE" that would incorporate the waiver into our daily work process. Our intent was to be ready to file the emergency rules and implement the system changes to CARE upon the waiver approval date given to us by CMS. Our advanced preparation paid off and once CMS approved our IFS waiver we were able to file the CR-103E to make those changes to rule effective by emergency on June 1, 2015, which turned out to be a short period of time from when CMS approved the waiver and when the waiver would be effective. Although we had also filed the CR-102 and held a public comment hearing for those emergency rules we find ourselves not able to make those rules effective through the regular process prior to needing the additional changes to some sections in chapter 388-845 WAC by the CMS implementation date for the new CFC program.

Related to CFC program: ESHB 2746 requires DSHS to refinance personal care services and establish a 1915(k) CFC program per §1915(k) of the Social Security Act. To that end,

DSHS has been working to develop a state plan amendment for implementation after CMS approval. This new program also needed modifications to our statewide assessment tool "CARE" and updates to rules of which some sections needing updates are the same sections within chapter 388-845 WAC that have been adopted by emergency but not yet have they completed the regular process to be adopted.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 16, Amended 91, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 16, Amended 91, Repealed 0.

Date Adopted: October 20, 2015.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 15-24 issue of the Register.

WSR 15-22-028

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed October 27, 2015, 10:59 a.m., effective October 28, 2015]

Effective Date of Rule: October 28, 2015.

Purpose: The department is amending and adding new sections to chapter 388-106 WAC to implement the new community first choice option program effective July 1, 2015. In accordance with ESHB 2746, which mandated the department to refinance medicaid personal care services under the community first choice option, the department is establishing and implementing a new 1915(k) state plan program. The purpose of this WAC is to define the scope and eligibility for the new 1915(k) services.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0015, 388-106-0020, 388-106-0033, 388-106-0045, 388-106-0047, 388-106-0050, 388-106-0055, 388-106-0070, and 388-106-0120.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: ESHB 2746, SSB 6387.

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 department is proceeding with the permanent rule process by working on filing the CR-102. This emergency filing supersedes WSR 15-14-085 filed on June 29, 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 13, Amended 9, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 13, Amended 9, Repealed 0.

Date Adopted: October 22, 2015.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 15-23 issue of the Register.

WSR 15-22-029

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed October 27, 2015, 11:00 a.m., effective October 27, 2015]

Effective Date of Rule: October 27, 2015.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: This emergency rule must remain in effect for Washington state to receive enhanced medicaid match (federal funds) from Centers for Medicaid and Medicare Services (CMS) per 42 C.F.R. 441.510.

Purpose: WAC 246-980-140, home care aide (HCA), amending rules to add skills acquisition training to HCAs' scope of practice to align with DSHS's rules so that enhanced medicaid match rate (federal funds) will continue to be received by the state. This emergency rule will supersede the previous emergency rule filed on June 29, 2015, as WSR 15-14-088 set to expire on October 28, 2015. Permanent rules will be adopted by the department.

Citation of Existing Rules Affected by this Order: Amending WAC 246-980-140.

Statutory Authority for Adoption: Chapter 18.88B RCW.

Other Authority: 42 C.F.R. 441.510, ESHB 2746 (2014), SSB 6387 (2014) DSHS state work plan.

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: Under RCW 34.05.350, an agency must find good cause for implementing an emergency rule or amendment. The statutory criteria this rule amendment meets is found under RCW 34.05.350 (1)(b) that states, "That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of rule." This emergency rule meets the criteria per the following:

This emergency rule is in response to a federal deadline for state receipt of federal funds from CMS for Washington state to receive an enhanced medicaid match rate of fifty-six percent beginning July 1, 2015, for state implementation of its community first choice options (CFCO) program. This emergency rule is the second emergency rule and will supersede the first emergency rule that was filed on June 29, 2015, as WSR 15-14-088, which is set to expire on October 28, 2015. This second emergency rule adopts the same amending language as the first emergency rule without material change.

Federal deadline for state receipt of federal funds - the CFCO program is a medicaid Title XIX entitlement program that is a part of the Affordable Care Act. The federal program provides person-centered services within in-home and community-based settings. Services provided - including the skills acquisition services - must be provided in a manner that is prescribed by 42 C.F.R. 441.510 for states choosing to participate in this federal program. The CFCO program allows the state to receive a higher federal medicaid match rate of fifty-six percent versus fifty percent, and based on state legislation passed in 2014 requiring DSHS to participate in the CFCO program, DSHS submitted a formal state plan to CMS outlining all federal objectives that were to be met starting July 1, 2015. DSHS' state plan under Title XIX of the Social Security Act for the CFCO services went into effect July 1, 2015, at which time the medicaid match enhancement rate to Washington state began. The second emergency rule will allow a continuance of this enhanced medicaid match to be received by the state until permanent rules are adopted. The department of health (DOH) and DSHS are working towards permanent rule making.

DOH and DSHS jointly administer the home care aide program under chapters 18.88B and 74.39A RCW. DOH must amend WAC 246-980-140 to allow home care aides to provide skills acquisition training to elderly and vulnerable clients to align with DSHS rule amendments to meet the federal objectives in Washington's formal state plan. For Washington state to qualify for the enhanced federal match, both DOH and DSHS rules needed to be amended by July 1, 2015.

State laws for state receipt of federal funds requiring immediate adoption of rule - in addition, SSB 6387 (chapter 139, Laws of 2014) requires DSHS to increase the number of people served on the CFCO medicaid program by replacing the individual and family services program through an expansion of client caseload beginning June 30, 2015. To implement SSB 6387, DSHS needed to administer the federal CFCO program, which expands HCAs' scope of practice to include skills acquisition training. Amending the DOH home care aide rules supports DSHS' efforts to implement SSB 6387 and the CFCO program.

In addition, ESHB 2746 (chapter 166, Laws of 2014) directed DSHS to refinance its medicaid personal care services for individuals with developmental disabilities and individuals with long-term care needs through the CFCO program by August 30, 2015. DSHS also cites this bill as authorizing their agency to implement the CFCO program, which began 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 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: October 27, 2015.

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 13-19-087, filed 9/18/13, effective 10/19/13)

WAC 246-980-140 Scope of practice for long-term care workers. (1) A long-term care worker performs activities of daily living or activities of daily living and instrumental activities of daily living. A person performing only instrumental activities of daily living is not acting under the long-term care worker scope of practice.

(a) "Activities of daily living" means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, and transfer. This may include fall prevention, skin and body care.

(b) "Instrumental activities of daily living" means activities in the home and community including cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

(2) A long-term care worker documents observations and tasks completed, as well as communicates observations on the day they were performed to clients, family, supervisors, and, if appropriate, health care providers.

(3) A long-term care worker may perform medication assistance as described in chapter 246-888 WAC.

(4) A long-term care worker may perform nurse delegated tasks, to include medication administration, if he or she meets and follows the requirements in WAC 246-980-130.

(5) A long-term care worker may also provide skills acquisition training that allows individuals in their homes, or residential facilities that are licensed and contracted as an adult family home as defined in RCW 70.128.010, or an assisted living facility as defined in RCW 18.20.020, to acquire, maintain, and enhance skills necessary to accomplish ADLs and IADLs more independently.

WSR 15-22-032
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-403—Filed October 27, 2015, 3:45 p.m., effective October 29, 2015, 6:00 a.m.]

Effective Date of Rule: October 29, 2015, 6:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-40-02700E; and amending WAC 220-40-027.

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 needed to allow for a test fishery which will be used to evaluate stock composition and whether scheduled commercial fisheries should open in Willapa Bay. 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: October 27, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-40-02700E Willapa Bay salmon—Fall fishery. Notwithstanding the provisions of WAC 220-40-027, effective 6:00 a.m. to 6:00 p.m. October 29, 2015, it is unlawful to fish in waters of Willapa Bay for commercial purposes, except:

(1) Open only in Willapa Bay Catch Area 2M and only for the vessel "OR764ZM", 2T for the vessel "BRUTE FORCE", and 2U for vessel "WN586Y".

(2) Mesh size must not exceed six and one-half inches stretched.

(3) The vessel must have two operable recovery boxes or one box with two chambers on board.

(a) Each box and chamber must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute.

(b) Each chamber of the recovery box must meet the following dimensions as measured from within the box:

(i) The inside length measurement must be at or within 39-1/2 inches to 48 inches;

(ii) The inside width measurements must be at or within 8 to 10 inches; and

(iii) The inside height measurement must be at or within 14 to 16 inches.

(c) 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 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 opposite the inflow that is at least 1-1/2 inches in diameter. 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 department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river or fresh bay water into each chamber.

(4) All steelhead and wild (unmarked) Chinook must be placed in an operating recovery box which meets the requirements in section (3) prior to being released to the river/bay as set forth in section (5).

(5) All fish placed in recovery boxes must remain until they are not lethargic and not bleeding and must be released to the river/bay prior to landing or docking.

(6) Soak time must not exceed 45 minutes. Soak time is 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.

(7) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(14), reports must be made by 10:00 a.m. the day following landing.

(8) It is unlawful to retain any species other than Coho salmon or hatchery Chinook marked by a healed scar at the site of the adipose fin.

(9) The fisher must take a department observer onboard the vessel while fishing.

(10) The vessels must stop fishing at 6:00 p.m., or when 10 unmarked Chinook or 50 Chum are encountered per boat, whichever comes first.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. October 29, 2015:

WAC 220-40-02700E Willapa Bay salmon—Fall fishery.

WSR 15-22-033 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 15-406—Filed October 27, 2015, 4:34 p.m., effective October 27, 2015, 4:34 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This rule change will enable better understanding of the prevalence of a disease that is impacting an important natural resource [and is] for the welfare of the public who are vested in this important natural resource.

Citation of Existing Rules Affected by this Order: Amending WAC 232-12-286.

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: As part of Washington department of fish and wildlife's (WDFW) ongoing efforts to better understand the prevalence of hoof disease in southwest Washington, WDFW biologists are collecting hooves from harvested elk in this area. Select hunters will be asked to collect the hooves from elk harvested and provide them for examination. The department will engage in permanent rule making regarding this issue.

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 [1], Amended 1 [0], Repealed 1 [0].

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

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

Date Adopted: October 27, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 232-12-28600A Reducing the spread of hoof disease—Unlawful transport of elk hooves. Notwithstanding the provisions of WAC 232-12-286, effective immediately, until further notice, the prohibition against the transport of hooves of harvested elk beyond the site where the animal was killed in Game Management Units 501 through 564, and 642 through 699 does not apply when specifically authorized by the department or when acting as an agent of the depart-

ment in the limited capacity of cooperating with research or management actions regarding hoof disease as directed by the department.

WSR 15-22-036
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-407—Filed October 28, 2015, 11:08 a.m., effective October 28, 2015, 11:08 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial sea cucumber fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220.52.07100N.

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: A closure is needed in Sea Cucumber District 2W to avoid overharvest of the quota. There is no indication of interest in the remaining District 5 quota for commercial harvest. 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 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: October 28, 2015.

J. W. Unsworth
Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07100N Sea cucumbers. (15-396)

WSR 15-22-037
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed October 28, 2015, 11:23 a.m., effective October 28, 2015, 11:23 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The department is amending the following rules to implement a nine percent increase in the payment standards for TANF, SFA, RCA, and CEAP, and increase the maximum earned income limit by nine percent for the TANF, SFA, RCA, PWA, and CEAP programs: WAC 388-478-0020 Payment standards for TANF, SFA, and RCA, 388-478-0035 What are the maximum earned income limits for TANF, SFA, PWA, and RCA?, and 388-436-0050 Determining financial need and benefit amount for CEAP.

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0020, 388-478-0035, and 388-436-0050.

Statutory Authority for Adoption: RCW 74.08.090, 74.08A.230.

Other Authority: State of Washington 2015-17 biennial operating budget (ESSB 6052 207).

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: The Washington state 2015-17 biennial operating budget provides funding to increase the TANF payment standard by nine percent. This increase will provide essential financial supports to needy families and their vulnerable children. The amendments are currently in place via emergency (WSR 15-15-005) which was filed on July 1, 2015. The emergency expires on October 29, 2015. The department is concurrently working on a permanent rule filing process. The CR-102 was filed as WSR 15-19-030 on September 9, 2015. A public hearing is scheduled for October 27, 2015. This second emergency filing is to cover the time frame between the emergency WAC expiration and the effective date of the permanent rule.

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

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

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

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

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: October 22, 2015.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-16-029, filed 7/27/11, effective 8/27/11)

WAC 388-478-0020 Payment standards for TANF, SFA, and RCA. (1) The maximum monthly payment standards for temporary assistance for needy families (TANF), state family assistance (SFA), and refugee cash assistance (RCA) assistance units with obligations to pay shelter costs are:

Assistance Unit Size	Payment Standard	Assistance Unit Size	Payment Standard
1	\$((305)) <u>332</u>	6	\$((736)) <u>802</u>
2	((385)) <u>420</u>	7	((850)) <u>927</u>
3	((478)) <u>521</u>	8	((941)) <u>1,026</u>
4	((562)) <u>613</u>	9	((1,033)) <u>1,126</u>
5	((648)) <u>706</u>	10 or more	((1,123)) <u>1,224</u>

(2) The maximum monthly payment standards for TANF, SFA, and RCA assistance units with shelter provided at no cost are:

Assistance Unit Size	Payment Standard	Assistance Unit Size	Payment Standard
1	\$((185)) <u>202</u>	6	\$((447)) <u>487</u>
2	((235)) <u>256</u>	7	((517)) <u>564</u>
3	((290)) <u>316</u>	8	((572)) <u>623</u>
4	((342)) <u>373</u>	9	((628)) <u>685</u>
5	((394)) <u>429</u>	10 or more	((683)) <u>744</u>

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-478-0035 What are the maximum earned income limits for TANF, SFA, PWA and RCA? To be eligible for temporary assistance for needy families (TANF), state family assistance (SFA), refugee cash assistance (RCA), or a pregnant women assistance (PWA), a family's gross earned income must be below the following levels:

Number of Family Members	Maximum Earned Income Level	Number of Family Members	Maximum Monthly Earned Income Level
1	\$((610)) <u>665</u>	6	\$((1,472)) <u>1,604</u>
2	((770)) <u>839</u>	7	((1,700)) <u>1,853</u>
3	((955)) <u>1,042</u>	8	((1,882)) <u>2,051</u>
4	((1,124)) <u>1,225</u>	9	((2,066)) <u>2,252</u>
5	((1,295)) <u>1,413</u>	10 or more	((2,246)) <u>2,448</u>

AMENDATORY SECTION (Amending WSR 11-16-029, filed 7/27/11, effective 8/27/11)

WAC 388-436-0050 Determining financial need and benefit amount for CEAP. (1) To be eligible for CEAP assistance, the assistance unit's nonexcluded income, minus allowable deductions, must be less than ninety percent of the TANF payment standard for households with shelter costs. The net income limit for CEAP assistance units is:

Assistance Unit Members	Net Income Limit
1	\$((275)) <u>300</u>
2	((346)) <u>377</u>
3	((429)) <u>468</u>
4	((505)) <u>550</u>
5	((582)) <u>634</u>
6	((662)) <u>722</u>
7	((762)) <u>834</u>
8 or more	((847)) <u>923</u>

(2) The assistance unit's allowable amount of need is the lesser of:

(a) The TANF payment standard, based on assistance unit size, for households with shelter costs as specified under WAC 388-478-0020; or

(b) The assistance unit's actual emergent need, not to exceed maximum allowable amounts, for the following items:

Need Item: Maximum allowable amount by assistance unit size:

	1	2	3	4	5	6	7	8 or more
Food	\$((184)) <u>201</u>	\$((235)) <u>256</u>	\$((290)) <u>316</u>	\$((342)) <u>373</u>	\$((394)) <u>429</u>	\$((447)) <u>487</u>	\$((510)) <u>556</u>	\$((564)) <u>615</u>
Shelter	((225)) <u>245</u>	((284)) <u>310</u>	((354)) <u>386</u>	((417)) <u>455</u>	((479)) <u>522</u>	((543)) <u>592</u>	((629)) <u>686</u>	((695)) <u>758</u>
Clothing	((26)) <u>28</u>	((33)) <u>36</u>	((41)) <u>45</u>	((48)) <u>52</u>	((55)) <u>60</u>	((64)) <u>70</u>	((72)) <u>78</u>	((82)) <u>89</u>
Minor Medical Care	((156)) <u>170</u>	((199)) <u>217</u>	((247)) <u>269</u>	((290)) <u>316</u>	((334)) <u>364</u>	((377)) <u>411</u>	((439)) <u>479</u>	((485)) <u>529</u>
Utilities	((76)) <u>83</u>	((96)) <u>105</u>	((119)) <u>130</u>	((139)) <u>152</u>	((161)) <u>175</u>	((184)) <u>201</u>	((213)) <u>232</u>	((235)) <u>256</u>
Household maintenance	((55)) <u>60</u>	((71)) <u>77</u>	((88)) <u>96</u>	((103)) <u>112</u>	((119)) <u>130</u>	((135)) <u>147</u>	((156)) <u>170</u>	((172)) <u>187</u>
Job related transportation	((305)) <u>332</u>	((385)) <u>420</u>	((478)) <u>521</u>	((562)) <u>613</u>	((648)) <u>706</u>	((736)) <u>802</u>	((850)) <u>927</u>	((941)) <u>1,026</u>
Child related transportation	((305)) <u>332</u>	((385)) <u>420</u>	((478)) <u>521</u>	((562)) <u>613</u>	((648)) <u>706</u>	((736)) <u>802</u>	((850)) <u>927</u>	((941)) <u>1,026</u>

(3) The assistance unit's CEAP payment is determined by computing the difference between the allowable amount of need, as determined under subsection (2) of this section, and the total of:

- (a) The assistance unit's net income, as determined under subsection (1) of this section;
- (b) Cash on hand, if not already counted as income; and
- (c) The value of other nonexcluded resources available to the assistance unit.

(4) The assistance unit is not eligible for CEAP if the amount of income and resources, as determined in subsection (3) of this section, is equal to or exceeds its allowable amount of need.

emergency rule as an effort to help achieve those goals. 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: October 28, 2015.

J. W. Unsworth
Director

WSR 15-22-038
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-404—Filed October 28, 2015, 11:25 a.m., effective November 1, 2015]

Effective Date of Rule: November 1, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: 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: Lower Columbia adult coho hatchery returns are behind schedule and broodstock and reintroduction goals may not be met. A conservative daily limit of one hatchery adult has been implemented in this

NEW SECTION

WAC 220-310-18500E Southwest—Freshwater exceptions to statewide rules. Notwithstanding the provisions of WAC 220-310-185, effective November 1, 2015, until further notice it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) The following restrictions apply during the open times in the waters listed in this section:

(a) Daily limit is 6 fish of which no more than 2 may be adults of which no more than 1 may be a hatchery adult coho.

(b) Release all salmon other than hatchery Chinook and hatchery coho.

(c) Wild Chinook may be retained in Deep River and the Lewis River (including North Fork).

- (2) Deep River
- (3) Grays River including West Fork
- (4) Elochoman River
- (5) Cowlitz River
- (6) Toutle River including North Fork
- (7) Green River (Cowlitz County)
- (8) Tilton River
- (9) Mayfield Lake (Reservoir)
- (10) Cispus River
- (11) Lake Scanewa (Cowlitz Falls Reservoir)
- (12) Kalama River
- (13) Lewis River including North Fork
- (14) Washougal River

WSR 15-22-041
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-405—Filed October 28, 2015, 4:18 p.m., effective October 30, 2015]

Effective Date of Rule: October 30, 2015.

Purpose: Amend recreational salmon fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 232-28-62000T and 220-310-18000D; and
 amending WAC 232-28-620 and 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: This emergency closure is needed as in-season run size assessments conducted by Washington department of fish and wildlife indicate that coho run sizes are significantly below preseason forecasts. Conservation objectives may not be achieved for coho if this action is not taken. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 28, 2015.

J. W. Unsworth
 Director

NEW SECTION

WAC 232-28-62000U Coastal salmon—Saltwater seasons. Notwithstanding the provisions of WAC 232-28-620, effective October 30, 2015, until further notice, Marine Area 2.2 and all tributaries is closed to fishing.

NEW SECTION

WAC 220-310-18000E Freshwater exceptions to statewide rules—Coastal. Notwithstanding the provisions of WAC 220-310-180, effective October 30, 2015, until further notice, the following waters are closed to fishing:

(1) Black River (Grays Harbor/Thurston Co.) Including all tributaries.

(2) Chehalis River (Grays Harbor/Thurston/Lewis Co.) Including all tributaries.

(3) Elk River (Grays Harbor Co.) Including all tributaries.

(4) Hoquiam River (Grays Harbor Co.) Including all tributaries.

(5) Humptulips River (Grays Harbor Co.) Including all tributaries.

(6) Johns River (Grays Harbor Co.) Including all tributaries.

(7) Newaukum River (Lewis Co.) Including all tributaries.

(8) Satsop River (Mason/Grays Harbor Co.) Including all tributaries.

(9) Skookumchuck River (Lewis/Thurston Co.) Including all tributaries.

(10) Wishkah River (Grays Harbor Co.) Including all tributaries.

(11) Wynoochee River (Grays Harbor/Jefferson Co.) Including all tributaries.

REPEALER

The following sections of the Washington Administrative Code are repealed effective October 30, 2015:

WAC 232-28-62000T Coastal salmon—Saltwater seasons. (15-399)

WAC 220-310-18000D Freshwater exceptions to statewide rules—Coastal. (15-399)

WSR 15-22-042
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-408—Filed October 28, 2015, 5:06 p.m., effective October 28, 2015, 5:06 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules for Puget Sound salmon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-31100T and 220-47-41100N; and amending WAC 220-47-311 and 220-47-411.

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 nontreaty share of chum in Puget Sound Salmon Management and Catch Reporting Areas 12, 12B and 12C is expected to be harvested by the date of this closure. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: October 29 [28], 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 220-47-31100T Purse seine—Open periods.

Notwithstanding the provisions WAC 220-47-311, effective immediately through November 30, 2015, it is unlawful to fish for, or possess salmon taken for commercial purposes with purse seine gear in Puget Sound Salmon Management and Catch Reporting Areas 12, 12B and 12C.

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

NEW SECTION

WAC 220-47-41100N Gillnet—Open periods Notwithstanding the provisions of WAC 220-47-411, effective immediately through November 30, 2015, it is unlawful to fish for, or possess salmon taken for commercial purposes with gillnet gear in Puget Sound Salmon Management and Catch Reporting Areas 12, 12B and 12C.

REPEALER

The following sections of the Washington Administrative Code are repealed effective December 1, 2015:

WAC 220-47-31100T Purse seine—Open periods.

WAC 220-47-41100N Gillnet—Open periods.

WSR 15-22-043

EMERGENCY RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed October 29, 2015, 8:46 a.m., effective October 29, 2015, 8:46 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The health care authority (HCA) is amending rules and creating 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 were 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 support administration is adding a residential waiver program to facilitate discharges from state hospitals. HCA is also amending and creating rules to implement the community first choice (CFC) option effective July 1, 2015, as directed by the Washington state legislature.

Citation of Existing Rules Affected by this Order: Repealing WAC 182-513-1300, 182-513-1364, 182-513-1365, 182-513-1366 and 182-515-1500; and amending WAC 182-507-0125, 182-512-0960, 182-512-0400, 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, 182-515-1500, 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, and 182-515-1514.

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: The agency has been working 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 per-

manent rule-making process is nearing completion, the permanent rules were delayed due in part to the receipt of final federal rules governing this process. These emergency rules are needed while the permanent rule-making process is being completed. Since the last emergency filing (WSR 15-15-002), the agency finished updating the rules for the roads to community living (RCL) program. RCL was the last remaining piece of this rule making that needed to be completed before the agency conducts external reviews and files the CR-102 for public hearing.

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 16, Amended 36, Repealed 5.

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

Date Adopted: October 29, 2015.

Wendy Barcus
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 14-07-059, filed 3/14/14, effective 4/14/14)

WAC 182-512-0400 SSI-related medical—Vehicles excluded as resources. (1) For SSI-related medical programs, a vehicle is defined as anything used for transportation. In addition to cars and trucks, a vehicle can include boats, snowmobiles, and animal-drawn vehicles.

(2) One vehicle is excluded regardless of its value, if it is used to provide transportation for the ~~((disabled))~~ SSI-related person or a member of the person's household.

(3) ~~((For a person receiving SSI-related institutional coverage who has a community spouse, one vehicle is excluded regardless of its value or its use. See WAC 182-513-1350 (7)(b).))~~

(4)) A vehicle used as the person's primary residence is excluded as the home, and does not count as the one excluded vehicle under subsection (2) ~~((or (3)))~~ of this section.

~~((5) All other vehicles, except those excluded under WAC 182-512-0350 (11) through (14), are treated as nonliquid resources and the equity value is counted toward the resource limit.))~~

AMENDATORY SECTION (Amending WSR 14-07-059, filed 3/14/14, effective 4/14/14)

WAC 182-512-0960 SSI-related medical—Allocating income—~~((How the agency considers income and resources when determining eligibility for a person applying for noninstitutional Washington apple health (WAH) when another household member is receiving institutional WAH))~~ **Determining eligibility for a spouse when the other spouse receives long-term services and supports (LTSS).** ~~((1) The agency follows rules described in WAC 182-513-1315 for a person considered to be in institutional WAH, which means a person who is either residing in a medical institution, or approved for a home and community-based waiver, or approved for the WAH institutional hospice program. The rules in this section describe how the agency considers household income and resources when the household contains both institutional and noninstitutionalized household members.~~

(2) An institutionalized person (adult or child) who is not SSI-related may be considered under the long-term care for families and children programs described in WAC 182-514-0230 through 182-514-0265.

(3) The agency considers the income and resources of spouses as available to each other through the end of the month in which the spouses stopped living together. See WAC 182-513-1330 and 182-513-1350 when a spouse is institutionalized.

(4) The agency considers income and resources separately as of the first day of the month following the month of separation when spouses stop living together because of placement into a boarding home (assisted living, enhanced adult residential center, adult residential center), adult family home (AFH), adult residential rehabilitation center/adult residential treatment facility (ARRC/ARTF), or division of developmental disabilities group home (DDD-GH) facility when:

(a) Only one spouse enters the facility;

(b) Both spouses enter the same facility but have separate rooms; or

(c) Both spouses enter separate facilities.

(5) The agency considers income and resources jointly when both spouses are placed in a boarding home, AFH, ARRC/ARTF, or DDD-GH facility and share a room.

(6) ~~When determining SSI-related WAH categorically needy (CN) or medically needy (MN) eligibility for a community spouse applying for health care coverage, the agency counts:~~

(a) The separate income of the community spouse; plus

(b) One half of any community income received by the community spouse and the institutionalized spouse; plus

(c) Any amount allocated to the community spouse from the institutionalized spouse. The terms "community spouse" and "institutional spouse" are defined in WAC 182-513-1301.

(7) For the purposes of determining the countable income of a community spouse applying for health care coverage as described in subsection (6) of this section, it does not matter whether the spouses reside together or not. Income that is allocated and actually available to a community spouse is considered that person's income.

(8) For the purposes of determining the countable income of a community spouse or children applying for health care coverage under modified adjusted gross income (MAGI)-based family, pregnancy or children's WAH programs, the agency uses the following rules to determine if the income of the institutionalized person is considered in the eligibility calculation:

(a) When the institutionalized spouse or parent lives in the same home with the community spouse and/or children, their income is counted in the determination of household income following the rules for the medical program that is being considered.

(b) When the institutionalized spouse or parent does not live in the same home as the spouse and/or children, only income that is allocated and available to the household is counted.

(9) When determining the countable income of a community spouse applying for health care coverage under the WAH MN program, the agency allocates income from the community spouse to the institutionalized spouse in an amount up to the one-person effective medically needy income level (MNIL) less the institutionalized spouse's income, when:

(a) The community spouse is living in the same household as the institutionalized spouse;

(b) The institutionalized spouse is receiving home and community-based waiver or institutional hospice services described in WAC 182-515-1505; and

(c) The institutionalized spouse has gross income of less than the MNIL.

(10) See WAC 182-506-0015 for rules on how to determine medical assistance units for households that include SSI-related persons. A separate medical assistance unit is always established for persons who meet institutional status described in WAC 182-513-1320.) (1) General information.

(a) This section describes how the agency determines household income and resources when the household con-

tains both institutional and noninstitutional household members.

(b) A separate medical assistance unit is always established for persons who meet institutional status under WAC 182-513-1320. See WAC 182-506-0015 for rules on how to determine medical assistance units for households that include SSI-related people.

(c) The agency follows rules and definitions under chapters 182-513 and 182-515 WAC for a person residing in a medical institution, approved for a home and community based (HCB) waiver, Program of All-Inclusive Care for the Elderly (PACE), roads to community living (RCL), community first choice (CFC), or for the hospice program.

(d) Throughout this section, "home" means "own home" as defined in WAC 388-106-0010.

(e) Eligibility for an institutionalized person who is not SSI-related may be determined under the MAGI-based long-term care program under chapter 182-514 WAC.

(f) The income and resources of each spouse are available to the other through the end of the month in which the spouses stopped living together.

(g) The agency determines income and resources separately starting the first day of the month following the month of separation if spouses stop living together because of placement in an alternate living facility (ALF) and:

(i) Only one spouse enters the ALF;

(ii) Both spouses enter the same ALF but have separate rooms; or

(iii) Both spouses enter separate ALFs.

(h) If spouses share a room in an ALF, the agency determines that they live together.

(2) If the community spouse applies for coverage but the spouse receiving LTSS lives in an institution:

(a) The agency counts income under this chapter, plus any allocation the institutionalized spouse has made available to the community spouse; and

(b) The agency counts resources under this chapter, plus any resources allocated to the community spouse when eligibility for the institutionalized spouse was determined, but that remain in the name of the institutionalized spouse.

(3) If the community spouse applies for coverage while living at home with his or her spouse, and his or her spouse receives HCB waiver, PACE, RCL, or hospice, the agency counts income and resources under this chapter.

(4) If the spousal impoverishment protections community (SIPC) spouse applies for coverage while living at home with his or her spouse, and his or her spouse receives community first choice (CFC), the agency counts income and resources under this chapter.

(5) If the community spouse applies for coverage but his or her spouse receives HCB waiver, PACE, RCL, or hospice in an ALF:

(a) If the community spouse lives at home, in a separate room in the same ALF as his or her spouse, or in a separate ALF:

(i) The agency counts income under this chapter, plus any allocation the institutionalized spouse has made available to the community spouse; and

(ii) The agency counts resources under this chapter, plus any resources allocated to the community spouse when eligi-

bility for the institutionalized spouse was determined, but that remain in the name of the institutionalized spouse.

(b) If the community spouse lives in the same room as his or her spouse, the agency counts income and resources under this chapter.

(6) If the SIPC spouse applies for coverage but his or her spouse receives CFC in an ALF:

(a) If the SIPC spouse lives at home, in a separate room in the same ALF as his or her spouse, or in a separate ALF:

(i) The agency counts income under this chapter; and

(ii) The agency counts resources under this chapter, plus any resources allocated to the SIPC spouse when eligibility for the spousal impoverishment protections institutionalized (SIPI) spouse was determined, but that remain in the name of the SIPI spouse.

(b) If the SIPC spouse lives in the same room as his or her spouse, the agency counts income and resources under this chapter.

(7) If the community spouse is not eligible for categorically needy (CN) coverage:

(a) If the community spouse is not eligible for CN coverage, the agency determines eligibility under the medically needy (MN) program:

(b) The agency allocates income to the institutionalized spouse before comparing the community spouse's income to the medically needy income level (MNIL) if:

(i) The community spouse lives in the same household as the institutionalized spouse;

(ii) The institutionalized spouse is receiving home and community-based waiver services under WAC 182-515-1505 or institutional hospice services under WAC 182-513-1240; and

(iii) The institutionalized spouse has gross income under the MNIL.

(c) The allocation cannot exceed the one-person effective MNIL minus the institutionalized spouse's income.

(8) Modified adjusted gross income (MAGI) determination for households that contain an institutionalized individual.

When determining the countable income of a community spouse or children applying for health care coverage under MAGI-based family, pregnancy, or children's programs, the agency uses rules under WAC 182-506-0010 to determine if the income of the institutionalized person is counted.

NEW SECTION

WAC 182-513-1100 Definitions related to long-term services and supports (LTSS). This section defines the meaning of certain terms used in chapters 182-513, 182-514, and 182-515 WAC. Within these chapters, institutional, home and community based (HCB) waiver, program of all-inclusive care for the elderly (PACE), and hospice in a medical institution are referred to collectively as long-term care (LTC). Long-term services and supports (LTSS) is a broader definition which includes institutional, HCB waiver, and other services such as medicaid personal care (MPC), community first choice (CFC), PACE, and hospice in the community. Additional medical definitions can be found in chapter 182-500 WAC.

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

"Agency" means the Washington state health care authority and includes the agency's designee.

"Aging and long-term support administration (AL TSA)" means the administration by that name within the Washington state department of social and health services (DSHS).

"Alternate living facility (ALF)" is not an institution under WAC 182-500-0050; it is one of the following community residential facilities:

(a) An adult family home (AFH) licensed under chapter 70.128 RCW.

(b) An adult residential care facility (ARC) licensed under chapter 18.20 RCW.

(c) An adult residential rehabilitation center (ARRC) described in WAC 388-865-0235.

(d) An assisted living facility (AL) licensed under chapter 18.20 RCW.

(e) A developmental disabilities administration (DDA) group home (GH) licensed as an adult family home under chapter 70.128 RCW or an assisted living facility under chapter 18.20 RCW.

(f) An enhanced adult residential care facility (EARC) licensed as an assisted living facility under chapter 18.20 RCW.

(g) An enhanced service facility (ESF) licensed under chapter 70.97 RCW.

"Authorization date" means the date payment begins for long-term services and supports (LTSS) described in WAC 388-106-0045.

"Comprehensive assessment reporting evaluation (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 a person's need for long-term services and supports (LTSS).

"Clothing and personal incidentals (CPI)" means the cash payment (described in WAC 388-478-0090, 388-478-0006, and 388-478-0033) issued by the department for clothing and personal items for people living in an ALF or medical institution.

"Community first choice (CFC)" means a medicaid state plan home and community based service developed under the authority of section 1915(k) of the Social Security Act and described in chapter 388-106 WAC.

"Community options program entry system (COPES)" means a medicaid HCB waiver program developed under the authority of section 1915(c) of the Social Security Act described in chapter 388-106 WAC.

"Community spouse (CS)" means the spouse of an institutionalized spouse.

"Community spouse resource allocation (CSRA)" means the resource amount that may be transferred without penalty from:

(a) The institutionalized spouse (IS) to the community spouse (CS); or

(b) The spousal impoverishment protection institutionalized (SIPI) spouse to the spousal impoverishment protection community (SIPC) spouse.

"Community spouse resource evaluation" means the calculation of the total value of the resources owned by a married couple on the first day of the first month of the institutionalized spouse's most recent institutionalization.

"Developmental disabilities administration (DDA) home and community based (HCB) waiver" means a medicaid HCB waiver program developed under the authority of section 1915(c) of the Social Security Act described in chapter 388-845 WAC authorized by DDA.

"Dependent" means an adult child, a parent, or a sibling meeting the definition of a tax dependent under WAC 182-500-0105; or a minor child.

"Developmental disabilities administration (DDA)" means an administration within the Washington state department of social and health services (DSHS).

"Equity" means the fair market value of real or personal property less any encumbrances (mortgages, liens, or judgments) on the property.

"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.

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

"Home and community based (HCB) waiver programs" means programs authorized under Section 1915(c) of the Social Security Act. The waiver authority enables states to waive federal medicaid requirements to provide LTSS to 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).

"Institutionalized individual" means a person who has attained institutional status under WAC 182-513-1320.

"Institutional services" means services paid for by Washington apple health, and provided:

(a) In a medical institution;

(b) Through a home and community based (HCB) waiver; or

(c) Through programs based on HCB waiver rules for post-eligibility treatment of income described in chapter 182-515 WAC.

"Institutionalized spouse" means a person who, regardless of legal or physical separation:

(a) Has attained institutional status under WAC 182-513-1320; and

(b) Is legally married to a person who is not in a medical institution.

"Likely to reside" means the agency reasonably expects a person will remain in a medical institution for thirty consecutive days. Once made, the determination stands, even if the person does not actually remain in the facility for that length of time.

"Long-term care services" see "Institutional services."

"Long-term services and supports" includes institutional and noninstitutional services authorized by AL TSA and DDA.

"Look-back period" means the number of months prior to the month of application that the agency will consider transfers of assets for programs subject to transfer of asset penalties.

"Medicaid personal care (MPC)" means a medicaid state plan program authorized under RCW 74.09.520.

"Most recent continuous period of institutionalization (MRCPI)" means the current period an institutionalized spouse has maintained uninterrupted institutional status when the request for a community spouse resource evaluation is made. Institutional status is described in WAC 182-513-1320.

"Noninstitutional medical assistance" means any Washington apple health medical programs not based on HCB waiver rules in chapter 182-515 WAC, or rules based on residing in an institution thirty days or more.

"Nursing facility level of care (NFLOC)" is described in WAC 388-106-0355.

"Participation" means the amount a person must pay each month toward the cost of long-term care services they receive each month; it is the amount remaining after the post-eligibility process in WAC 182-513-1380, 182-515-1509, and 182-515-1514.

"Penalty period" means the period of time during which a person is not eligible to receive services subject to transfer of asset penalties.

"Personal needs allowance (PNA)" means an amount set aside from a person's income that is intended for clothing and other personal needs. The amount a person is allowed to keep as a PNA depends on whether the person lives in a medical institution, alternate living facility, or at home. Personal needs allowances are found at: <http://hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

"Residential support waiver (RSW)" means a 1915(c) medicaid waiver program authorized under RCW 74.39A.030. Persons eligible for this program may receive long-term care services in a licensed adult family home with a contract to provide specialized behavior services.

"Short stay" means residing in a medical institution for a period of twenty-nine days or less.

"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 within Section 1924 of the Social Security Act that protect income and assets of the community spouse through income and resource allocation. The spousal allocation process is used to discourage the impoverishment of a spouse due to the need for LTSS by their spouse. This includes services provided in a medical institution, HCB waivers authorized under 1915(c) of the Social Security Act, and through December 31, 2018, services authorized under 1915 (i) and (k) of the Social Security Act.

"Spousal impoverishment protections institutionalized (SIPI) spouse" means a legally married person who only qualifies for the noninstitutional categorically needy (CN) Washington apple health SSI-related program because of the spousal impoverishment protections in WAC 182-513-1220.

"Spousal impoverishment protections community (SIPC) spouse" means the spouse of a SIPI spouse.

"State spousal resource standard" means minimum resource standard allowed for a community spouse.

"Third-party resource (TPR)" means funds paid to a person by a third party where the purpose of the funds is for payment of activities of daily living, medical services, or personal care. Third-party resources are described under WAC 182-501-0200.

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

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

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

- (a) The date of transfer for real property is the day the deed is signed by the grantor if the deed is recorded; or
- (b) 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 are 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 a person is not able to meet shelter, food, clothing, or health needs. A person may apply for an undue hardship waiver based on criteria described in WAC 182-513-1367.

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

- (a) 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
- (b) 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:

- (a) Aid and attendance for a person needing regular help from another person with the activities of daily living;
- (b) A person who is housebound;
- (c) 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;
- (d) 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;
- (e) 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

(f) 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. In Washington state, home and community based (HCB) waiver programs are authorized by the developmental disabilities administration (DDA), or home and community services (HCS).

NEW SECTION

WAC 182-513-1200 Long-term services and supports authorized under Washington apple health programs. (1) Certain long-term services and supports (LTSS) programs are available to people eligible for noninstitutional Washington apple health (WAH) coverage who meet the functional requirements for the program based on either:

(a) An assessment for either in-home or residential services in an alternate living facility (ALF); or

(b) Placement in a medical institution.

(2) There are no transfer of asset penalties described in WAC 182-513-1363 for the following noninstitutional LTSS programs:

(a) WAC 182-513-1205 noninstitutional apple health in an ALF. This rule describes the SSI-related CN eligibility criteria for people who are eligible for department-contracted services in an ALF or mental health residential treatment facility (ARTF). It also describes the SSI-related MN eligibility criteria for private-pay clients.

(b) WAC 182-513-1210 Community first choice (CFC) —Overview. This program provides LTSS for both in-home and ALF settings for clients who meet nursing facility level of care.

(c) WAC 182-513-1215 Community first choice (CFC) —Eligibility. This section describes the financial eligibility rules for CFC.

(d) WAC 182-513-1220 Community first choice (CFC) —Spousal impoverishment protections for noninstitutional Washington apple health clients. This section describes how spousal impoverishment protections apply to people who are determined functionally eligible for CFC.

(e) WAC 182-513-1225 Medicaid personal care (MPC). This section describes how a person is financially eligible for personal care services if the person doesn't meet the nursing facility level of care criteria for services under CFC.

(3) There are no transfer of asset penalties under the following programs; however, eligibility is determined using institutional rules described in WAC 182-513-1315 and 182-513-1380 or HCB waiver rules described in chapter 182-515 WAC depending on living arrangement:

(a) WAC 182-513-1230 Program of all-inclusive care for the elderly (PACE). This program provides LTSS under a managed care contract and is available for people who reside in the PACE designated service area.

(b) WAC 182-513-1235 Roads to community living (RCL). This program provides LTSS to people discharging from medical institutions to an in-home or ALF setting.

(c) WAC 182-513-1240 Hospice. This WAC describes the eligibility criteria used for a WAH applicant who has made an election of hospice services, but is not otherwise eligible for a noninstitutional CN or MN program as described in WAC 182-503-0510.

(4) A person who is eligible for CN or MN coverage is eligible for rehabilitation skilled nursing services as part of the benefit package associated with the coverage.

(5) Once a person meets institutional status under WAC 182-513-1320 or no longer meets rehabilitation skilled nursing criteria, the person must be assessed and approved by the department for payment of nursing facility care. Eligibility is redetermined using LTC rules described in WAC 182-513-1315, with the exception of a person who is eligible under a MAGI-based program described in WAC 182-503-0510(2).

NEW SECTION

WAC 182-513-1205 Determining eligibility for non-institutional coverage in an alternate living facility. This section describes the monthly income standard used to determine eligibility for noninstitutional coverage for a person who lives in a department-contracted alternate living facility (ALF) described in WAC 182-513-1100.

(1) The eligibility criteria for noninstitutional Washington apple health (WAH) in an ALF follows SSI-related medical rules described in WAC 182-512-0050 through 182-512-0960 with the exception of the higher income standard described in subsection (2) of this section.

(2) A person is eligible for noninstitutional coverage under the categorically needy (CN) program if the person's gross monthly income after allowable exclusions described in chapter 182-512 WAC:

(a) Does not exceed the special income level (SIL); and

(b) Is less than or equal to the person's assessed state rate at a department contracted facility. To determine the CN standard: $((y \times 31) + \$38.84)$, where "y" is the state daily rate. \$38.84 is based on the cash payment standard for a person living in an ALF setting described in WAC 388-478-0006.

(3) A person is eligible for noninstitutional coverage under the medically needy (MN) program if the person's gross monthly income after allowable exclusions described in chapter 182-512 WAC is less than or equal to the person's private rate at a department-contracted facility. To determine the MN standard: $((z \times 31) + \$38.84)$, where "z" is the facility's private daily rate. To determine MN spenddown liability, see chapter 182-519 WAC.

(4) A person's nonexcluded resources cannot exceed the standard described in WAC 182-512-0010.

(5) The agency approves CN noninstitutional coverage for twelve months.

(6) The agency approves MN noninstitutional coverage for a period of months described in chapter 182-504 WAC for an SSI-related person, provided the person satisfies any spenddown liability as described in chapter 182-519 WAC.

(7) A person receiving medicaid personal care (MPC) or community first choice (CFC) pays all of their income to the ALF except a personal needs allowance of \$62.79.

(8) A person may have to pay third-party resources described in WAC 182-501-0200 in addition to the payment described in this subsection.

NEW SECTION

WAC 182-513-1210 Community first choice (CFC)

—**Overview.** Community first choice (CFC) is a Washington apple health (WAH) state plan benefit authorized under Section 1915(k) of the Social Security Act. It enables the agency and its contracted entities to deliver person-centered home and community based long-term services and supports (LTSS) to Title XIX medicaid eligible people who meet the institutional level of care described in WAC 388-106-0355. See:

- (1) WAC 388-106-0270 through 388-106-0295 for services included within the CFC benefit package.
- (2) WAC 182-513-1215 for financial eligibility for CFC services.

NEW SECTION

WAC 182-513-1215 Community first choice (CFC)

—**Eligibility.** (1) An applicant who is determined functionally eligible for community first choice (CFC) services under WAC 388-106-0270 through 388-106-0295 is financially eligible to receive CFC services if the applicant is:

- (a) Eligible for a noninstitutional Washington apple health program which provides categorically needy (CN) or alternative benefit plan (ABP) scope of care;
 - (b) A spousal impoverishment protections institutional (SIPI) spouse under WAC 182-513-1230; or
 - (c) Determined eligible for a home and community based (HCB) waiver program under chapter 182-515 WAC.
- (2) An applicant whose only coverage is through one of the following programs is not eligible for CFC:
- (a) Medically needy program under WAC 182-519-0100;
 - (b) Premium-based children's program under WAC 182-505-0215;
 - (c) Medicare savings programs under WAC 182-517-0300;
 - (d) Family planning program under WAC 182-505-0115;
 - (e) Take charge program under WAC 182-532-0720;
 - (f) Medical care services program under WAC 182-508-0005;
 - (g) Pregnant minor program under WAC 182-505-0117;
 - (h) Alien emergency medical program under WAC 182-507-0110 through 182-507-0120;
 - (i) State-funded long-term care for noncitizens program under WAC 182-507-0125; or
 - (j) Kidney disease program under chapter 182-540 WAC.
- (3) Transfer of asset penalties under WAC 182-513-1363 does not apply to CFC applicants, unless the applicant is applying for long-term services and supports that are only available through one of the HCB waivers under chapter 182-515 WAC.

(4) Post-eligibility treatment of income rules does not apply if eligible under subsection (1)(a) or (b) of this section.

People who reside in a residential facility do pay up to the room and board standard. The room and board amount is based on the effective one-person medically needy income level (MNIL) minus the residential personal needs allowance (PNA) except when eligibility is based on the rules in WAC 182-513-1205.

(5) Post-eligibility treatment of income rules does apply if eligible under subsection (1)(c) of this section and receiving a HCB waiver service.

(6) A person may have to pay third-party resources described in WAC 182-501-0200 in addition to the room and board and participation.

(7) PNA, MNIL, and room and board standards are located at: <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

NEW SECTION

WAC 182-513-1220 Community first choice (CFC)

—**Spousal impoverishment protections for noninstitutional Washington apple health clients.** (1) The agency determines eligibility using spousal impoverishment protections under this section, when an applicant:

- (a) Is married to, or marries a person not in a medical institution;
- (b) Meets institutional level of care and eligibility for community first choice (CFC) services under WAC 388-106-0270 through 388-106-0295;
- (c) Is ineligible for a noninstitutional categorically needy (CN) SSI-related program due to spousal deeming rules under WAC 182-512-0920, or due to exceeding the resource limit in WAC 182-512-0010, or both;
- (d) Is ineligible for SSI-related noninstitutional medical assistance in an ALF due to combined spousal resources exceeding the resource limit in WAC 182-512-0010; and
- (e) Meets the aged, blindness, or disability criteria under WAC 182-512-0050.

(2) The agency determines countable income using the SSI-related income rules under chapter 182-512 WAC but uses only the applicant's separate income and not the income of his or her spouse.

(3) The agency determines countable resources using the SSI-related resource rules under chapter 182-512 WAC:

- (a) For the applicant/recipient the resource standard is two thousand dollars.
- (b) For the spouse of the applicant/recipient, resources must be at or below the spousal resource transfer maximum resource standard on the first day of each month.

(c) The resources of the spousal impoverishment protections community (SIPC) spouse are unavailable to the spousal impoverishment protections institutionalized (SIPI) spouse the month after eligibility for CFC services is established unless subsection (8) of this section applies.

(4) The CFC recipient has until the end of the month of the first regularly scheduled eligibility review to transfer joint resources in excess of two thousand dollars to his or her spouse.

(5) If the applicant lives at home and the applicant's separate countable income is at or below the SSI categorically needy income level (CNIL) and the applicant is resource eli-

gible, the applicant is a SIPI spouse and is eligible for noninstitutional CN coverage and CFC services.

(6) If the applicant lives in an alternate living facility (ALF) and the applicant's separate countable income is at or below the standard under WAC 182-513-1205(2) and the applicant is resource eligible, the applicant is a SIPI spouse and is eligible for non-institutional CN coverage and CFC services.

(7) If the applicant is employed and the applicant's separate countable income is at or below the standard under WAC 182-511-1060, the applicant is a SIPI spouse and is eligible for noninstitutional CN coverage and CFC services.

(8) Once a person no longer receives CFC services, eligibility is redetermined without using spousal impoverishment protection under WAC 182-504-0125.

(9) If the applicant's separate countable income is above the standards described in subsections (5), (6), and (7) of this section, the applicant is not eligible for CFC services under this section.

(10) The spousal impoverishment protections described in this section are time-limited and expire on December 31, 2018.

(11) Standards described in this section are located at: <http://hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

NEW SECTION

WAC 182-513-1225 Medicaid personal care (MPC).

(1) Medicaid personal care (MPC) is a state-plan benefit available to a person who is determined functionally eligible for MPC services under WAC 388-106-0200 through 388-106-0235.

(2) A person is financially eligible for MPC services if the person is eligible for a noninstitutional categorically needy (CN) or alternative benefit plan (ABP) Washington apple health program.

(3) MPC services may be provided to a person who resides in their own home, in a department-contracted adult family home (AFH), or in a licensed assisted living facility that is contracted with the department of social and health services to provide adult residential care services.

(4) A person who resides in an alternate living facility (ALF) listed in subsection (3) of this section:

(a) Keeps a personal needs allowance (PNA) of \$62.79; and

(b) Pays room and board up to the statewide room and board amount, unless CN eligibility is determined using rules under WAC 182-513-1205.

(5) A person who receives aged, blind, disabled (ABD) cash assistance in an adult family home keeps a clothing and personal incidentals (CPI) of \$38.84 and pays the rest of his or her cash grant and other available income towards room and board.

(6) A person who receives MPC services under the workers with disabilities program described in chapter 182-511 WAC must pay his or her health care for workers with disabilities (HWD) premium in addition to room and board, if residing in a residential setting.

(7) A person may have to pay third-party resources described in WAC 182-501-0200 in addition to room and board.

(8) Current PNA and room and board standards are located at: <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

NEW SECTION

WAC 182-513-1230 Program of all-inclusive care for the elderly (PACE).

(1) The program of all-inclusive care for the elderly (PACE) provides long-term services and supports (LTSS), medical, mental health, and chemical dependency treatment through a department-contracted managed care plan using a personalized plan of care for each enrollee.

(2) Program rules governing functional eligibility for PACE are listed under WAC 388-106-0700, 388-106-0705, 388-106-0710, and 388-106-0715.

(3) A person is PACE eligible if the person:

(a) Is age:

(i) Fifty-five or older and disabled under WAC 182-512-0050; or

(ii) Sixty-five or older.

(b) Meets nursing facility level of care under WAC 388-106-0355;

(c) Lives in a designated PACE service area;

(d) Meets financial eligibility requirements under this section; and

(e) Agrees to receive services exclusively through the PACE provider and the PACE provider's network of contracted providers.

(4) Although PACE is not a home and community based (HCB) waiver program, financial eligibility is determined using the HCB waiver rules under WAC 182-515-1505 when living at home or in an alternate living facility (ALF), with the following exceptions:

(a) PACE enrollees are not subject to the transfer of asset provisions described in WAC 182-513-1363; and

(b) PACE enrollees may reside in a medical institution thirty days or longer and still remain eligible for PACE services. The eligibility rules for institutional coverage are under WAC 182-513-1315 and 182-513-1380.

(5) A person may have to pay third-party resources described in WAC 182-501-0200 in addition to the room and board and participation.

NEW SECTION

WAC 182-513-1235 Roads to community living

(1) Roads to community living (RCL) is a demonstration project, funded by a "money follows the person" grant originally authorized under Section 6071 of the Deficit Reduction Act of 2005 (P.L. 109-171) and extended through the Patient Protection and Affordable Care Act (P.L. 111-148).

(2) Program rules governing functional eligibility for RCL are described in WAC 388-106-0250 through 388-106-0265. RCL services may be authorized by home and community services (HCS) or the developmental disabilities administration (DDA).

(3) A person must have a continuous stay of at least ninety days in a qualified institutional setting (hospital, nursing home, residential habilitation center) to be eligible for RCL. The ninety-day count excludes days paid solely by medicare, must include at least one day of medicaid paid inpatient services, and the person must be eligible to receive medicaid on the day of discharge.

(4) Once a person is discharged to home or a residential setting under RCL, the person remains continuously eligible for medical coverage for a period of three hundred sixty-five days unless the person:

- (a) Returns to an institution for thirty days or longer;
- (b) Is incarcerated in a public jail or prison;
- (c) No longer wants the RCL services;
- (d) Moves out-of-state; or
- (e) Dies.

(5) A person may receive RCL services under any federally funded categorically needy (CN), medically needy (MN), alternative benefit plan (ABP), noninstitutional medical, or home and community based (HCB) waiver program.

(6) Changes in income and resources during the continuous eligibility period do not affect eligibility for RCL services. Changes in income and deductions may affect the amount a person must pay toward the cost of care.

(7) A person approved for RCL is not subject to transfer of asset provisions under WAC 182-513-1363 during the continuous eligibility period, but transfer penalties may apply if the person needs HCB waiver or institutional services once the continuous eligibility period has ended.

(8) A person who is not otherwise eligible for a noninstitutional program who accesses RCL services using HCB waiver rules under chapter 182-515 WAC must pay participation toward the cost of RCL services. Cost of care calculations are described in:

- (a) WAC 182-515-1509 for home and community services (HCS); and
- (b) WAC 182-515-1514 for development disabilities administration (DDA) services.

(9) At the end of the continuous eligibility period, the agency redetermines a person's eligibility for other programs under WAC 182-504-0125.

NEW SECTION

WAC 182-513-1240 Hospice. (1) General information.

(a) The hospice program provides palliative care to people who elect to receive hospice services and are certified as terminally ill by their physician.

(b) Program rules governing election of hospice are under chapter 182-551 WAC.

(c) A person may revoke a hospice election at any time by signing a revocation statement.

(d) Personal needs allowance and income and resource standards for hospice and home and community based (HCB) waiver programs are located at: <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

(2) When hospice is a covered service.

(a) A person who receives coverage under a categorically needy (CN), medically needy (MN), or alternative ben-

efit plan (ABP) program is eligible for hospice services as part of the program specific benefit package.

(b) A person who receives coverage under the alien emergency medical (AEM) program under WAC 182-507-0110 may be eligible for payment for hospice services if pre-approved by the agency.

(3) The hospice program.

(a) A person who is not otherwise eligible for a CN, MN, or ABP noninstitutional program may be eligible for CN coverage for hospice services using home and community based (HCB) waiver rules under WAC 182-515-1505.

(b) When a person is only eligible for hospice using HCB waiver rules, the agency follows rules under WAC 182-515-1505 through 182-515-1509, and institutional rules under WAC 182-513-1315, except that:

(i) A person on the hospice program is not subject to the transfer of asset provisions under WAC 182-513-1363;

(ii) A person on the hospice program may reside in a medical institution, including a hospice care center, thirty days or longer and remain eligible for hospice services; and

(iii) A person residing at home on hospice with gross income over the special income limit (SIL) is not eligible for CN coverage. The rules under WAC 182-515-1508 (2)(c)(ii) apply only to people who receive an HCB waiver service. If gross income is over the SIL, the agency determines eligibility under WAC 182-519-0100.

(c) A person eligible for hospice using HCB waiver rules may be required to participate income and third-party resources (TPR) under WAC 182-501-0200 toward the cost of hospice services. The cost of care calculation is described in WAC 182-515-1509.

(d) A person may receive HCB waiver services in addition to hospice services. The person's responsibility to participate income and TPR toward the cost of care is applied to the HCB waiver service provider first.

(4) Hospice in a medical institution:

(a) A person who elects hospice who resides in a medical institution for thirty days or longer and has income:

(i) Equal to or less than the SIL is eligible for CN coverage. Eligibility for institutional hospice is determined under WAC 182-513-1315.

(ii) Over the SIL is eligible for MN coverage under WAC 182-513-1245.

(b) A person eligible for hospice in a medical institution may have to pay participation toward the cost of nursing facility or hospice care center services. The cost of care calculation is described in WAC 182-513-1380.

(5) Changes in coverage. The agency redetermines a person's eligibility under WAC 182-504-0125 if the person:

(a) Revokes hospice and is only eligible for coverage using HCB waiver rules described in subsection (3) of this section; or

(b) Loses eligibility under a CN, MN, or ABP program.

NEW SECTION

WAC 182-513-1245 Medically needy hospice in a medical institution. (1) General information.

(a) To be eligible for hospice when living in a medical institution under the SSI-related medically needy (MN) program, a person must:

(i) Meet program requirements under WAC 182-513-1315;

(ii) Have gross nonexcluded income in excess of the special income level (SIL) but below the monthly department-contracted rate in the institution;

(iii) Meet the financial requirements of subsection (4) or (5) of this section; and

(b) Elect hospice under chapter 182-551 WAC.

(2) Financial eligibility information.

(a) The agency determines a person's resource eligibility, excess resources, and medical expense deductions using WAC 182-513-1350.

(b) The agency determines a person's countable income by:

(i) Excluding income under WAC 182-513-1340;

(ii) Determining available income under WAC 182-513-1325 or 182-513-1330;

(iii) Disregarding income under WAC 182-513-1345; and

(iv) Deducting medical expenses that were not used to reduce excess resources under WAC 182-513-1350.

(3) Determining the department-contracted daily rate in an institution, and the institutional medically needy income level (MNIL).

(a) The agency determines the department-contracted daily rate in an institution and the institutional MNIL based on the living arrangement, and whether the person is entitled to medicare payment for hospice services.

(b) When the person resides in a hospice care center:

(i) If entitled to medicare payment for hospice services, the department-contracted daily rate is the state daily hospice care center rate. The institutional MNIL is calculated by multiplying the department-contracted daily rate by 30.42.

(ii) If not entitled to medicare payment for hospice services, the department-contracted daily rate is the state daily hospice care center rate, plus the state daily hospice rate. The institutional MNIL is calculated by multiplying the department-contracted daily rate by 30.42.

(c) When the person resides in a nursing facility:

(i) If entitled to medicare payment for hospice services, the department-contracted daily rate is ninety-five percent of the nursing facility's state daily rate. The institutional MNIL is calculated by multiplying the department-contracted daily rate by 30.42.

(ii) If not entitled to medicare payment for hospice services, the department-contracted daily rate is ninety-five percent of the nursing facility's state daily rate, plus the state daily hospice rate. The institutional MNIL is calculated by multiplying the department-contracted daily rate by 30.42.

(4) Eligibility for payment of institutional hospice services and the MN program.

(a) If a person's countable income plus excess resources is less than, or equal to, the department-contracted daily rate, under subsection (3) of this section, times the number of days residing in the facility, the person:

(i) Is eligible for payment of institutional hospice services;

(ii) Is approved MN coverage for a twelve-month certification period; and

(b) Pays income and excess resources towards the cost of care under WAC 182-513-1380.

(5) Eligibility for institutional MN spenddown.

(a) If a person's countable income is more than the department-contracted daily rate times the number of days residing in the facility, but less than the private rate for the same period, the person:

(i) Is not eligible for payment of institutional hospice services; and

(ii) Is eligible for the MN spenddown program for a three- or six-month base period when qualifying medical expenses meet a person's spenddown liability.

(b) Spenddown liability is calculated by subtracting the institutional MNIL from the person's countable income for each month in the base period. The values from each month are added together to determine the spenddown liability.

(c) Qualifying medical expenses used to meet the spenddown liability are described in WAC 182-519-0110, with the following exception: Only costs for hospice services above the department-contracted daily rate times the number of days residing in the facility are qualifying medical expenses.

(6) Eligibility for MN spenddown.

(a) If a person's countable income is more than the private rate times the number of days residing in the facility, the person is not eligible for payment of institutional hospice services and institutional MN spenddown; and

(b) Eligibility for MN spenddown is determined under chapter 182-519 WAC.

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, waiver, and hospice) services.~~) **General eligibility requirements for Washington apple health long-term care programs.** ((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 noncitizen 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 noncitizen 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 182-507-0125. 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 agency determines a person's eligibility for long-term care coverage for people residing in a medical institution, receiving home and community based (HCB) waiver services, or receiving hospice services under the categorically needy (CN) or medically needy (MN) programs. Also described are the eligibility requirements under the 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 Washington apple health long-term care programs.

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

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

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

NEW SECTION

WAC 182-513-1316 General eligibility requirements for Washington apple health long-term care programs.

(1) To be eligible for long-term care (LTC) services, a person must:

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

(b) Attain institutional status under WAC 182-513-1320;

(c) Meet the functional eligibility under:

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

(ii) Chapter 388-828 WAC for developmental disabilities administration (DDA) home and community based (HCB) waiver or institutional services; and

(d) Meet either:

(i) SSI-related criteria under WAC 182-512-0050; or

(ii) MAGI-based criteria under WAC 182-503-0510(2), if residing in a medical institution. A person who is eligible for MAGI-based coverage is not subject to the provisions described in subsection (2) of this section.

(2) A supplemental security income (SSI) person or an SSI-related person who needs LTC services must also:

(a) Not have a penalty period of ineligibility under WAC 182-513-1363;

(b) Not have equity interest in his or her primary residence greater than the home equity standard under WAC 182-513-1350; and

(c) Disclose to the state any interest the applicant or spouse has in an annuity, which must meet annuity requirements under 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 people applying for long-term care services.

(4) To be eligible for HCB waiver services, a person must also meet the program requirements under:

(a) WAC 182-515-1505 through 182-515-1509 for HCS HCB waivers; or

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

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

NEW SECTION

WAC 182-513-1317 Income and resource criteria for an institutionalized person. (1) This section provides an overview of the income and resource eligibility rules for a person who lives in an institutional setting.

(2) To determine income eligibility for an SSI-related long-term care (LTC) applicant under the categorically needy (CN) program, the agency:

(a) Considers income available under WAC 182-513-1325 and 182-513-1330;

(b) Excludes income under WAC 182-513-1340 and chapter 182-512 WAC;

(c) Compares remaining gross nonexcluded income to the special income level (SIL). A person'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 LTC client under the medically needy (MN) program, the agency follows the income standards and eligibility rules under WAC 182-513-1395.

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

(a) Meet the resource eligibility requirements under WAC 182-513-1350;

(b) Not have a penalty period of ineligibility due to a transfer of asset under WAC 182-513-1363;

(c) Disclose to the state any interest the person or his or her spouse has in an annuity, which must meet the annuity requirements under chapter 182-516 WAC.

(5) A person is eligible for medicaid as a resident in eastern or western state hospital if the person:

(a) Has attained institutional status under WAC 182-513-1320; and

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

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

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

(6) To determine long-term care CN or MN income eligibility for a person eligible under a MAGI-based program, the agency follows the rules under chapter 182-514 WAC.

(7) There is no asset test for MAGI-based LTC programs under WAC 182-514-0245.

(8) The agency determines a person's total responsibility to pay toward the cost of care for LTC services as follows:

(a) For an SSI-related person residing in a medical institution, see WAC 182-513-1380;

(b) For an SSI-related person on a home and community based waiver, see chapter 182-515 WAC.

NEW SECTION

WAC 182-513-1318 Income and resource criteria for home and community based (HCB) waiver programs and hospice. (1) This section provides an overview of the income and resource eligibility rules for a person to be eligible for a home and community based (HCB) waiver program described in chapter 182-515 WAC or the hospice program under WAC 182-513-1240 and 182-513-1245.

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

(a) Considers income available under WAC 182-513-1325 and 182-513-1330;

(b) Excludes income under WAC 182-513-1340;

(c) Compares remaining gross nonexcluded 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 182-515-1508 if a client's income is above the SIL but net income is below the medically needy income level (MNIL).

(3) A person who receives MAGI-based coverage is not eligible for HCB waiver services unless found eligible based on program rules in chapter 182-515 WAC.

(4) To be resource eligible under the SSI-related LTC CN HCB waiver programs, the person must:

(a) Meet the resource eligibility requirements and standards under WAC 182-513-1350;

(b) Not have a penalty period of ineligibility due to a transfer of asset under WAC 182-513-1363;

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

(5) The agency allows an HCB waiver person to use verified unpaid medical expenses to reduce countable resources in excess of the standard under WAC 182-513-1350.

(6) The agency determines a person's total responsibility to pay toward the cost of care for LTC services as follows:

(a) For people receiving HCS HCB waiver services, see WAC 182-515-1509;

(b) For people receiving DDA HCB waiver services, see WAC 182-515-1514.

(7) HCB waiver recipients who are "deemed eligible" for SSI benefits under WAC 182-512-0880 do not pay participation toward their cost of personal care. People living in a residential setting do pay room and board under WAC 182-515-1505 through 182-515-1509 or 182-515-1514.

(8) To be eligible for hospice services under the CN program, see WAC 182-513-1240.

(9) To be eligible for hospice services in a medical institution under the MN program, see WAC 182-513-1245.

NEW SECTION

WAC 182-513-1319 State-funded programs for non-citizens. (1) This section describes the state-funded programs that are available for noncitizens who do not meet the citizen-

ship criteria under WAC 182-503-0535 for federally funded coverage.

(2) Lawfully residing noncitizens who need nursing facility care or care in an alternate living facility may receive coverage for long-term care (LTC) services if the person meets the eligibility and incapacity criteria of the medical care services (MCS) program under WAC 182-508-0005.

(3) People who receive MCS coverage are not eligible for home and community based (HCB) waiver programs or hospice care.

(4) Noncitizens under age nineteen who are eligible for the Washington apple health for kids program under WAC 182-505-0210 are eligible for LTC services if the person is admitted to a medical institution for less than thirty days. Once the person resides or is likely to reside in a medical institution for thirty days or more, the agency determines eligibility under WAC 182-514-0260.

(5) Noncitizens age nineteen or older may be eligible for the state-funded long-term care services program described in WAC 182-507-0125. A person must be preapproved by ALTA for this program due to enrollment limits.

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

WAC 182-513-1320 Determining institutional status for long-term care (LTC) services. ~~((1) Institutional status is an eligibility requirement for long-term care services (LTC) and institutional medical programs. To attain institutional status, you must:~~

~~(a) Be approved for and receiving home and community based waiver services or hospice services; or~~

~~(b) Reside or based on a department assessment is likely to reside in a medical institution, institution for mental diseases (IMD) or inpatient psychiatric facility for a continuous period of:~~

~~(i) Thirty days if you are an adult eighteen and older;~~

~~(ii) Thirty days if you are a child seventeen years of age or younger admitted to a medical institution; or~~

~~(iii) Ninety days if you are a child seventeen years of age or younger receiving inpatient chemical dependency or inpatient psychiatric treatment.~~

~~(2) Once the department has determined that you meet institutional status, your status is not affected by:~~

~~(a) Transfers between medical facilities; or~~

~~(b) Changes from one kind of long-term care services (waiver, hospice or medical institutional services) to another.~~

~~(3) If you are absent from the medical institution or you do not receive waiver or hospice services for at least thirty consecutive days, you lose institutional status.)) (1) To attain institutional status, a person must be approved for and receive:~~

(a) Home and community based (HCB) waiver services under chapter 182-515 WAC; or

(b) Roads to community living (RCL) services under WAC 182-513-1235; or

(c) Program of all-inclusive care for the elderly (PACE) under WAC 182-513-1230; or

(d) Hospice services under WAC 182-513-1240(3); or

(e) Reside, or based on a department assessment, be likely to reside in a medical institution, institution for mental diseases (IMD), or inpatient psychiatric facility for thirty consecutive days.

(2) Once the agency has determined that the person meets institutional status, the person's status is not affected if the person:

(a) Transfers between medical facilities; or

(b) Changes from one kind of long-term care services (HCB waiver, RCL, PACE, hospice or medical institutional services) to another.

(3) A person loses institutional status if he or she is absent from a medical institution, or does not receive HCB waiver, RCL, PACE, or hospice services, for more than twenty-nine consecutive days.

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))~~ agency 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))~~ agency 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)))~~ 182-512-0840(3) Self-employment income-allowable expenses;

(f) WAC ~~((388-513-1315(15)))~~ 182-513-1315, Eligibility for long-term care (institutional, HCB 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 (institutional HCB waiver and hospice). This section describes income the ~~((department))~~ agency considers available when determining a legally married client's eligibility for LTC services.

(1) The ~~((department))~~ agency 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 ((elient's))—Allocating income—Determining eligibility for a spouse when the other spouse receives long-term services and supports (LTSS); and

(g) WAC ((388-513-1315;)) 182-513-1315 Eligibility for long-term care (institutional, HCB waiver, and hospice) services.

(2) For an institutionalized ((elient married to a community spouse who is not applying or approved for LTC services, the department)) spouse, the agency considers the following income available, unless subsection (4) applies:

(a) Income received in the ((elient's)) institutionalized spouse's name;

(b) Income paid to a representative on the ((elient's)) institutionalized spouse'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)) agency considers the following income unavailable to an institutionalized ((elient)) spouse:

(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)) agency 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 ((elient)) spouse; and

(d) If the total of ((subsection (4))) (c) of this subsection plus the ((elient's)) institutionalized spouse's own income is over the SIL, follow subsection (2) of this section; do not determine available income using this subsection.

(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)) The agency considers a stream of income, not generated by a transferred resource, available to the ((elient not generated by a transferred resource available to the elient)) institutionalized spouse, even when the ((elient)) institutionalized spouse transfers or assigns the rights to the stream of income to:~~

(a) The community spouse; or

(b) A trust for the benefit of ((their)) the community spouse.

~~((8) The department)) (6) The agency evaluates ((the transfer of a resource described in subsection (5) according to WAC 388-513-1363, 388-513-1364, and 388-513-1365 to determine whether a penalty period of ineligibility is required)) income and resource transfers under WAC 182-513-1363.~~

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)) agency excludes when determining a ((elient's)) person'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 ((elient)) person to receive the income;

(8) The amount of expenses necessary for a ((elient)) person 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 ((elient)) person 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))~~ institutionalized individual is excluded as income. Interest or dividends received by the community spouse of an institutionalized individual is counted as income of the community spouse. Dividends and interest are returns on capital investments such as stocks, bonds, 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))~~ person, 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))~~ person 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))~~ institutionalized individual contributes in the cost of care.

(33) Any other income excluded by federal law.

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))~~ agency disregards when determining a ~~((client's))~~ person's eligibility for institutional or hospice services under the MN program. The ~~((department))~~ agency considers disregarded income available when determining a ~~((client's))~~ person's participation in the cost of care.

(1) The ~~((department))~~ agency 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))~~ person is:

(i) Based on need; and

(ii) Totally or partially funded by the federal government or a private agency.

(2) For a ~~((client))~~ person 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))~~ person 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))~~ person 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 SSI-related 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.

(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 (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, 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 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:

(I) Ineligible spouse. Pension funds are defined as funds held in an individual retirement account (IRA) as described by the IRS code; or

(II) 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. Effective January 1, 2011, the excess home equity limits increase to five hundred six thousand dollars. On January 1, 2012 and on January 1 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.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml).

(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) apply, but not if subsection (4) or (5) 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) Necessary medical care recognized under state law, but not covered under the state's medicaid plan;

(C) 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; 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>); 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>.

(e) 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 (10)(b)(i) 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 hearing described in chapter 388-02 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) 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), if subsection (9)(b) applies; or

(c) The institutionalized spouse does not transfer the amount described in subsections (10) or (12) 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.) (1) General information.

(a) This section describes how the agency defines the resource standard and countable or excluded resources when determining a person's eligibility for SSI-related LTC services.

(b) The agency uses the term "resource standard" to describe the maximum amount of resources a person can have and still be resource eligible for program benefits.

(c) For a person not related to SSI, the agency applies the program specific resource rules to determine eligibility.

(d) Institutional resource standards are found at: <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.

(2) Resource standards.

(a) The resource standard for the following people is two thousand dollars:

(i) A single person; or

(ii) A legally married institutionalized spouse. (Determine the amount of resources allocated to the community spouse under WAC 182-513-1355.)

(b) The resource standard for a legally married couple is three thousand dollars, unless subsection (3)(b)(ii) of this section applies.

(c) The resource standard for a person with a qualified long-term care partnership policy under WAC 182-513-1400 may be higher based on the dollar amount paid out by a partnership policy.

(d) Determining the amount of resources that can be allocated to the community spouse when determining resource eligibility is under WAC 182-513-1355.

(3) Availability of resources.

(a) General. The agency applies the following rules when determining available resources for LTC services:

(i) WAC 182-512-0300 SSI-related medical—Resources eligibility;

(ii) WAC 182-512-0250 SSI-related medical—Ownership and availability of resources; and

(iii) WAC 182-512-0260 SSI-related medical—How to count a sponsor's resources.

(b) Married couples.

(i) When both spouses apply for LTC services, the agency considers the resources of both spouses available to each other through the month in which the spouses stopped living together.

(ii) When both spouses are institutionalized, the agency determines the eligibility of each spouse as a single person the month following the month of separation.

(iii) If the agency 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 institutionalized spouse, then the agency applies the standard described in subsection (2)(a) of this section to each spouse. If doing this would make one of the spouses ineligible, then the agency applies subsection (2)(b) of this section for a couple.

(iv) The agency considers resources of the community spouse unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless (v) or (vi) of this subsection applies.

(v) When a single institutionalized person marries, the agency redetermines eligibility applying the rules for a legally married couple.

(vi) A redetermination of the couple's resources under this section is required if:

(A) The institutionalized spouse has a break of at least thirty consecutive days in a period of institutional status;

(B) The institutionalized spouse's countable resources exceed the standard under subsection (2)(a) of this section, if WAC 182-513-1355 (1)(b) applies; or

(C) The institutionalized spouse does not transfer the amount, under WAC 182-513-1355 (2) or (4), 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.

(4) Countable resources.

(a) The agency determines countable resources using the following sections:

(i) WAC 182-512-0350 SSI-related medical—Property and contracts excluded as resources;

(ii) WAC 182-512-0400 SSI-related medical—Vehicles excluded as resources;

(iii) WAC 182-512-0450 SSI-related medical—Life insurance excluded as a resource; and

(iv) WAC 182-512-0500 SSI-related medical—Burial funds, contracts and spaces excluded as resources.

(b) The agency determines excluded resources based on federal law and WAC 182-512-0550 SSI-related medical—All other excluded resources, with the following exceptions:

(i) For institutional and HCB waiver programs, pension funds owned by a nonapplying spouse are counted toward the resource standard.

(ii) WAC 182-512-0350 (1)(b), one home. For long-term services and supports (LTSS), one home is excluded only if it meets the home equity limits of subsection (8) of this section.

(c) The agency adds together the countable resources of both spouses if subsections (3)(b)(i) and (iv) apply, but not if subsection (3)(b)(ii) or (iii) apply. For a person with a community spouse, see WAC 182-513-1355.

(5) Excess resources.

(a) For LTC programs, a person may reduce resources over the standard by allowing deductions for incurred medical expenses as described in subsection (6) of this section;

(b) The amount of excess resources is limited to the following amounts:

(i) For LTC services provided under the categorically needy (CN) program:

(A) Gross nonexcluded income must be at or below the special income level (SIL).

(B) In a medical institution, excess resources and gross nonexcluded income must be under the state medicaid rate based on the number of days in the medical institution in the month.

(C) For HCB waiver eligibility, incurred medical expenses must reduce resources within allowable resource standards. The cost of care for the HCB waiver services cannot be allowed as a projected expense.

(ii) For LTC services provided under the medically needy (MN) program, see:

(A) WAC 182-513-1395 for LTC programs; and

(B) WAC 182-513-1245 for hospice.

(6) Allowable medical expenses.

(a) The following incurred medical expenses are allowed to reduce excess resources:

(i) Premiums, deductibles, and coinsurance or copayment charges for health insurance and medicare;

(ii) Medically necessary care recognized under state law, but not covered under the state's medicaid plan;

(iii) Medically necessary 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 specific facility that is owed the expense.

(b) To be allowed, the medical expense must meet the following criteria. The expense:

(i) Was not incurred more than three months before the month of the medicaid application;

(ii) Is not subject to third-party payment or reimbursement;

(iii) Has not been used to satisfy a previous spenddown liability;

(iv) Has not previously been used to reduce excess resources;

(v) Has not been used to reduce participation;

(vi) Was not incurred during a transfer of asset penalty under WAC 182-513-1363; and

(vii) Is an amount for which the person remains liable.

(7) Nonallowable medical expenses. The following expenses are not allowed to reduce excess resources:

(a) Unpaid expenses prior to HCB waiver eligibility to an adult family home (AFH) or assisted living facility;

(b) Personal care cost in excess of approved hours determined by the CARE assessment described in chapter 388-106 WAC; and

(c) Expenses excluded by federal law.

(8) Excess home equity.

(a) A person with an equity interest in his or her primary residence in excess of the home equity limit is ineligible for long-term services and supports (LTSS) unless one of the following persons lawfully resides in the home:

(i) The applicant's spouse; or

(ii) A blind, disabled, or dependent child under age twenty-one.

(b) The home equity provision applies to all applications for LTSS received on or after May 1, 2006.

(c) A person's equity interest equals the fair market value of the home minus encumbrances.

(d) Effective January 1, 2015, the excess home equity limit is five hundred fifty-two thousand dollars. On January 1, 2016, and on January 1 of each year thereafter, this standard may change by the percentage in the consumer price index-urban (CPIU).

(e) A person who is denied or terminated LTC services due to excess home equity may apply for an undue hardship waiver under WAC 182-513-1367.

NEW SECTION

WAC 182-513-1355 Determining the amount of resources allocated to the community spouse when determining resource eligibility for long-term services and supports (LTSS) under WAC 182-513-1350. (1) For legally married people when only one spouse meets institutional status, the following rules apply. If the person's current period of institutional status began:

(a) Before October 1, 1989, the agency adds together one-half the total amount of countable resources held in the name of:

(i) The institutionalized spouse; and

(ii) Both spouses.

(b) On or after October 1, 1989, the agency adds together the total amount of nonexcluded resources held in the name of:

(i) Either spouse; and

(ii) Both spouses.

(2) If subsection (1)(b) of this section applies, the agency determines the amount of resources allocated to the community spouse, before determining countable resources used to establish eligibility for the institutionalized spouse under WAC 182-513-1350, as follows:

(a) If the person's current period of institutional status began on or after October 1, 1989, and before August 1, 2003, the agency allocates the maximum amount of resources ordinarily allowed by law; or

(b) If the person's current period of institutional status began on or after August 1, 2003, the agency 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 (2)(a) of this section; or

(ii) The state spousal resource standard.

(c) Resources are verified on the first moment of the first day of the month institutionalization began under WAC 182-512-0300(1).

(3) The amount of the spousal share described in subsection (2)(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 LTSS is determined. The following rules apply to the determination of the spousal share:

(a) Prior to an application for LTSS, 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 LTSS if the person was institutionalized prior to the month of application, and declares the spousal share exceeds the state spousal resource standard. The person is required to provide verification of the couple's combined countable resources held at the beginning of the current period of institutional status.

(4) The amount of allocated resources described in subsection (2) 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 an administrative hearing under chapter 182-526 WAC, that the amount is inadequate to provide a minimum monthly maintenance needs amount for the community spouse.

(5) The institutionalized spouse has until the end of the month of the first regularly scheduled eligibility review to

transfer joint resources in excess of two thousand dollars to his or her community spouse

(6) Standards in this section 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 182-513-1363 Evaluating the transfer of assets ((on or after May 1, 2006 for persons)) for people 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 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 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 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 with the exception of the client's home, unless the transfer of the home meets the conditions described in subsection (2)(d).

(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.

(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, 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), 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 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) 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 does not affect the client's eligibility;~~

~~(b) That remain after an acquisition described in subsection (8)(a) 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 (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) 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 subsections (7)(a), (b), and (c).~~

~~(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 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.)~~

~~(1) When determining a person's eligibility for long-term care (LTC) services, the agency must evaluate the effect of an asset transfer made within the sixty-month period before the month that the person:~~

~~(a) Attained institutional status, or would have attained institutional status; and~~

~~(b) Has applied for LTC services.~~

~~(2) The agency must evaluate all transfers for recipients of LTC services made on or after the month the recipient attained institutional status.~~

~~(3) The agency establishes a period of ineligibility during which the person is not eligible for LTC services if the person, the person's spouse, or someone acting on behalf of either:~~

~~(a) Transfers an asset within the time period described in subsection (1) or (2) of this section; and~~

~~(b) Does not receive adequate compensation for the asset, unless the transfer meets one of the conditions in subsection (4)(a) through (g) of this section.~~

~~(4) The agency does not apply a period of ineligibility because of an uncompensated transfer if:~~

~~(a) The total of all transfers in a month does not exceed the average daily private nursing facility rate in that month;~~

~~(b) The transfer is an excluded resource under WAC 182-513-1350 with the exception of a home, unless the transfer of the home meets the conditions described in (d) of this subsection;~~

~~(c) The asset is transferred for less than fair market value (FMV), and the person can establish one of the following:~~

~~(i) An intent to transfer the asset at FMV. To establish such an intent, the agency must be provided with convincing evidence of the attempt to dispose the asset for FMV;~~

(ii) The transfer is not made to qualify for medicaid, continue to qualify for medicaid, or avoid estate recovery. Convincing evidence must be presented regarding the specific purpose of the transfer;

(iii) All assets transferred for less than FMV have been returned to the person or his or her spouse;

(iv) The denial of eligibility would result in an undue hardship under WAC 182-513-1367;

(d) The asset transferred is a home, if the home is transferred to the person's:

(i) Spouse;

(ii) Child who meets the disability criteria under WAC 182-512-0050 (1)(b) or (c);

(iii) Child who is less than age twenty-one; or

(iv) Child who lived in the home and provided care, if:

(A) The child lived in the person's home for at least two years;

(B) The child provided verifiable care during the time period in (d)(iv)(A) of this subsection for at least two years;

(C) The period of care described in (d)(iv)(B) of this subsection is immediately before the person's current period of institutional status;

(D) The care was not paid for by medicaid;

(E) The care enabled the person to remain in his or her home; and

(F) The person provided physician's documentation that the in-home care was necessary to prevent the person's current period of institutional status; or

(v) Sibling, who has lived in and has had an equity interest in the home for at least one year immediately before the date the person became an institutionalized individual.

(e) The asset is transferred to the person's spouse; or to the person's child, if the child meets the disability criteria under WAC 182-512-0050 (1)(b) or (c);

(f) The transfer is to a family member prior to the current period of institutional status, and all the following conditions are met. If all the following conditions are not met, the transfer is an uncompensated transfer:

(i) The transfer is in exchange for care services the family member provided to the person;

(ii) The person had a documented need for the care services provided by the family member;

(iii) The care services provided by the family member are allowed under the medicaid state plan or the department's home and community based waiver services;

(iv) The care services provided by the family member do not duplicate those that another party is being paid to provide;

(v) The FMV of the asset transferred is comparable to the FMV of the care services provided;

(vi) The time for which care services are claimed is reasonable based on the kind of services provided; and

(vii) The assets were transferred as the care services were performed, or with no more time delay than one month between the provision of the service and the transfer.

(g) The transfer meets the conditions described in subsection (5) of this section, and the asset is transferred:

(i) To another party for the sole benefit of the person's spouse;

(ii) From the person's spouse to another party for the sole benefit of the spouse;

(iii) To a trust established for the sole benefit of the person's child who meets the disability criteria under WAC 182-512-0050 (1)(b) or (c);

(iv) To a trust established for the sole benefit of a person who is age sixty-four or younger who meets the disability criteria under WAC 182-512-0050 (1)(b) or (c).

(5) The agency determines the transfer of an asset or the establishment of a trust to be for the sole benefit of a person described in subsection (4)(g) of this section, if the transfer or trust is established by a legal document that makes the transfer irrevocable, and the document:

(a) Provides that only the person's spouse, blind or disabled child, or another disabled person can benefit from the assets transferred; and

(b) Provides for spending all assets involved for the sole benefit of the person who is actuarially sound, based on the life expectancy of that person or the term of the document, whichever is less, unless the document is a trust that meets the conditions under WAC 182-516-0100 (6)(a), (b), (7)(a), or (b).

(6) The period of ineligibility described in subsection (3) of this section is calculated by:

(a) Adding together the total uncompensated value of all transfers under subsection (3) of this section; and

(b) Dividing the total in (a) of this subsection by the statewide average daily private cost for nursing facilities at the time of application or the date of transfer, whichever is later. The result is the length, in days rounded down to the nearest whole day, of the period of ineligibility;

(7) The period of ineligibility calculated in subsection (6) of this section begins:

(a) For a LTC services applicant: The date the person would be otherwise eligible for LTC services, but for the transfer, based on an approved application for LTC services or the first day after any previous period of ineligibility has ended; or

(b) For a LTC services recipient: The first of the month following ten-day advance notice of the period of ineligibility, 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 period of ineligibility has ended; and

(8) The period of ineligibility ends after the number of whole days, calculated in subsection (6) of this section, elapse from the date the period of ineligibility began in subsection (7) of this section.

(9) If the transfer is to the person's spouse, and it includes the right to receive an income stream, the agency determines availability of the income stream under WAC 182-513-1330 (5) and (6).

(10) If the transfer of an asset for which adequate compensation is not received is made to someone other than the person's spouse and includes the right to receive a stream of income not generated by the transferred asset, the length of the period of ineligibility is calculated and applied in the following way:

(a) The amount of reasonably anticipated future monthly income, after the transfer, is multiplied by the actuarial life expectancy (in months) of the person who owned the income.

The actuarial life expectancy is based on age of the person in the month the transfer occurs;

(b) The amount in (a) of this subsection is divided by the statewide average daily private cost for nursing facilities at the time of application or the date of transfer, whichever is later. The result is the length, in days rounded down to the nearest whole day, of the period of ineligibility; and

(c) The period of ineligibility will begin under subsection (7) of this section and end under subsection (8) of this section.

(11) A period of ineligibility for the transfer of an asset that is applied to one spouse is not applied to the other spouse, unless both spouses have attained institutional status. When both spouses are institutionalized, the agency divides the penalty equally between the two spouses. If one spouse is no longer subject to a period of ineligibility, the remaining period of ineligibility that applied to both spouses will be applied to the other spouse.

(12) If a person or his or her spouse disagrees with the determination or application of a period of ineligibility, that person may request a hearing under chapter 182-526 WAC.

(13) Additional statutes that 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—Penalties;

(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 182-513-1367 Hardship waivers for long-term care (LTC) services. ~~((Clients))~~ People 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), 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))~~ person 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))~~ person provides sufficient documentation to support their efforts to recover the assets or income; or

(iv) The ~~((client))~~ person 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))~~ person 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))~~ person; or

(c) When the resource is transferred to another person by the individual that handles the financial affairs of the ~~((client))~~ person.

~~((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))~~ person;

(ii) The ~~((client's))~~ person's spouse;

(iii) The ~~((client's))~~ person's authorized representative;

(iv) The ~~((client's))~~ person's power of attorney; or

(v) With the consent of the ~~((client or their))~~ person or his or her guardian, a medical institution, as defined in WAC ~~((182-500-0005))~~ 182-500-0050, in which an institutionalized ~~((client))~~ person 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))~~ person, then the ~~((client's))~~ person'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? ~~((a))~~ A written notice to the ~~((client))~~ person 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))~~ person.

~~((5))~~ (6) What happens if my hardship waiver is approved?

(a) The ~~((department))~~ agency 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))~~ person's situation that led to the approval of a hardship must be reported to the ~~((department by the tenth of the month following))~~ agency 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))~~ agency 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))~~ agency 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))~~ agency revoke an approved undue hardship waiver? ~~((a))~~ The ~~((department))~~ agency may revoke approval of an undue hardship waiver if any of the following occur:

~~((i))~~ (a) A ~~((client))~~ person, 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))~~ agency 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))~~ person's financial participation in the cost of care for long-term care (LTC) services. This rule describes how the ~~((department))~~ agency allocates income and excess resources when determining participation in the cost of care (the post-eligibility process). The ~~((department))~~ agency 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))~~ person receiving institutional or hospice services in a medical institution, the ~~((department))~~ agency applies all subsections of this rule.

(2) For a ~~((client))~~ person receiving waiver services at home or in an alternate living facility, the ~~((department))~~ agency applies only those subsections of this rule that are cited in the rules for those programs.

(3) For a ~~((client))~~ person receiving hospice services at home, or in an alternate living facility, the ~~((department))~~ agency applies rules used for the community options program entry system (COPEs) for hospice applicants with gross income under the medicaid special income level (SIL) (three hundred percent of the federal benefit rate (FBR)), if the ~~((client))~~ person is not otherwise eligible for another noninstitutional categorically needy medicaid program. (Note: For hospice applicants with income over the medicaid SIL, medically needy medicaid rules apply.)

(4) The ~~((department))~~ agency 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))~~ people 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))~~ person 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))~~ people in a medical institution receiving aged, blind, disabled, (ABD) or temporary assistance for needy families (TANF) cash assistance.

(v) For all other ~~((clients))~~ people 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/ez/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))~~ person.

(c) Wages for a ~~((client))~~ person 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))~~ an agency-approved training or rehabilitative program designed to prepare the ~~((client))~~ person 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))~~ agency 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/eam/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))~~ person'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/eam/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))~~ institutionalized individual 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))~~ person 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) less the standard shelter allocation under subsection (6)(a). 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/eam/sections/LongTermCare/LTCstandardspna.shtml>; 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) 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))~~ person 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.

(7) A person may have to pay third-party resources described in WAC 182-501-0200 in addition to the participation.

(8) A person is only responsible to participate up to the state rate for cost of care. If long-term care insurance pays a portion of the state rate cost of care, a person only participates the difference up to the state rate cost of care.

(9) Standards described in this section for long-term care can be found at: (<http://www.dshs.wa.gov/manuals/eam/sections/LongTermCare/LTCstandardspna.shtml>) <http://www.hca.wa.gov/medicaid/Eligibility/Pages/index.aspx>.

NEW SECTION

WAC 182-513-1385 Determining the spousal and dependent allocation allowed in post-eligibility treatment of income for Washington apple health long-term care (LTC) programs. (1) This section describes the calculation to determine the monthly maintenance-needs allowance in post-eligibility treatment of income for long-term care (LTC)

programs for a community spouse or dependents of the institutionalized individual.

(2) The community spouse maintenance-needs allowance is found in the institutional section of the Washington apple health income and resource standards chart located at <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx> unless a greater amount is allocated as described in subsection (4) of this section. The allowance may change each January based on the consumer price index.

(3) The community spouse maintenance-needs allowance:

(a) Is allowed only to the extent that the institutionalized spouse's income is made available to the community spouse; and

(b) Consists of a combined total of both:

(i) One hundred fifty percent of the two-person federal poverty level (FPL). (This standard may change annually on July 1st); and

(ii) Excess shelter expenses. Excess shelter expenses are the actual required maintenance expenses for the community spouse's principal residence. To determine this amount:

(A) Add:

(I) Rent, including space rent for mobile homes;

(II) Mortgage;

(III) Real property taxes;

(IV) Homeowner's insurance;

(V) Required maintenance fees for a condominium, cooperative, or homeowner's association that are recorded in a covenant;

(VI) The food assistance standard utility allowance (SUA) under WAC 388-450-0195 minus the cost of any utilities that are included in (b)(ii)(A)(V) of this subsection.

(B) Subtract the standard shelter allocation from the total in (b)(ii)(A) of this subsection. The standard shelter allocation is thirty percent of one hundred fifty percent of the two-person FPL. This standard may change annually on July 1st.

(c) The total of (b) of this subsection is reduced by the community spouse's gross countable income.

(4) The amount allocated to the community spouse may be greater than the amount determined in subsection (3) of this section only if:

(a) There is a court order approving a higher amount for the support of the community spouse; or

(b) An administrative law judge determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(5) The agency determines monthly maintenance-needs allowance for dependents of the institutionalized individual or his or her spouse. The amount the agency allows depends on whether the dependent resides with the community spouse.

(a) For each dependent who resides with the community spouse:

(i) Subtract the dependent's income from one hundred fifty percent of the two-person FPL;

(ii) Divide the amount determined in (a)(i) of this subsection by three;

(iii) The remainder is the amount that can be allocated to the dependent.

(b) For each dependent who does not reside with the community spouse:

(i) The agency determines the effective MNIL standard based on the number of dependent family members in the home;

(ii) Subtracts the dependent's separate income;

(iii) The difference is the amount that can be allocated to the dependents.

(c) Child support received from a noncustodial parent is considered the child's income.

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~~) people living in (~~an~~) medical institutions under the SSI-related 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). In addition, a client must meet program requirements described in WAC 388-513-1315; and~~

~~(a) Be an SSI-related client with countable income as described in subsection (4)(a) that is more than the special income level (SIL); or~~

~~(b) Be a child not described in subsection (1)(a) with countable income as described in subsection (4)(b) that exceeds the categorically needy (CN) standard for the children's medical program.~~

~~(2) For an SSI-related client, excess resources are reduced by medical expenses as described in WAC 388-513-1350 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.~~

~~(b) For a child not described in subsection (3)(a), 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 by:~~

~~(i) Excluding income described in WAC 388-513-1340;~~

~~(ii) Disregarding income described in WAC 388-513-1345; 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.

(b) For a child not described in subsection (4)(a), the department:

(i) Follows the income rules described in WAC 182-505-0210 for the children's medical program; and

(ii) Subtracts the medical expenses described in subsection (4).

(5) If the income remaining after the allowed deductions described in WAC 388-513-1380, plus countable resources in excess of the standard described in WAC 388-513-1350(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.

(6) If the income remaining after the allowed deductions described in WAC 388-513-1380 plus countable resources in excess of the standard described in WAC 388-513-1350(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 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; and

(iii) Is not eligible for medical assistance or hospice services unless the requirements in (6)(b) 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.

(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.

(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, plus countable resources

in excess of the standard described in WAC 388-513-1350 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. (1) General information. To be eligible for institutional services when living in a medical institution under the SSI-related medically needy (MN) program, a person must:

(a) Meet program requirements described in WAC 182-513-1315;

(b) Have gross nonexcluded income in excess of the special income level (SIL); and

(c) Meet the financial requirements of subsection (3) or (4) of this section.

(2) Financial eligibility information.

(a) The agency determines a person's resource eligibility, excess resources, and medical expense deductions using WAC 182-513-1350.

(b) The agency determines a person's countable income by:

(i) Excluding income described in WAC 182-513-1340;

(ii) Determining available income described in WAC 182-513-1325 or 182-513-1330;

(iii) Disregarding income described in WAC 182-513-1345; and

(iv) Deducting medical expenses that were not used to reduce excess resources described in WAC 182-513-1350.

(c) For the purposes of this section only, "remaining income" means all gross nonexcluded income remaining after the post-eligibility calculation described in WAC 182-513-1380.

(3) Eligibility for payment of institutional services and the MN program.

(a) If a person's remaining income plus excess resources is less than, or equal to, the department contracted daily rate times the number of days residing in the facility, the person:

(i) Is eligible for payment of institutional services and the MN program; and

(ii) Is approved for a twelve-month certification period.

(b) The person must pay income and excess resources towards the cost of care as described in WAC 182-513-1380.

(4) Eligibility for payment of institutional services and MN spenddown. If a person's remaining income is more than the department contracted daily rate times the number of days residing in the facility, but less than the private nursing facility rate for the same period, the person:

(a) Is eligible for payment of institutional services at the department contracted rate; and

(i) Is approved for a three- or six-month base period;

(ii) Pays income and excess resources towards the department contracted cost of care as described in WAC 182-513-1380; and

(b) Is eligible for the MN program for the same three- or six-month base period when the total of additional medical expenses incurred during the base period exceeds:

(i) The total remaining income for all months of the base period; minus

(ii) The total department contracted rate for all months of the base period.

(5) If a person has excess resources and his or her remaining income is more than the department-contracted daily rate times the number of days residing in the facility, the person is not eligible for payment of institutional services and the MN program.

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))~~ people 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))~~ person 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))~~ 182-513-1100.

"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)) 182-504-0105 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 partnership policy upon request by the ((department)) agency, 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 182-513-1445 How do I designate a protected asset and what proof is required? (1) Complete a DSHS LTCP asset designation form listing assets and the full fair market value that are earmarked as protected at the time of initial application for LTC medicaid.

(a) The full fair market value (FMV) of real property or interests in real property will be based on the current assessed value for property tax purposes for real property. A profes-

sional appraisal by a licensed appraiser can establish the current value if the assessed value is disputed.

(b) The value of a life estate in real property is determined using the life estate tables found in: ((<http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCOAppendix2.shtml>)) <http://www.hca.wa.gov/medicaid/manual/Pages/65-310.aspx>.

(c) If you own an asset with others, you can designate the value of your ((pro-rata)) pro rata equity share.

(d) If the dollar amount of the benefits paid under a LTCP policy is greater than the fair market value of all assets protected at the time of the application for long-term care medicaid you may designate additional assets for protection under this section. The DSHS LTCP asset designation form must be submitted with the updated assets indicated along with proof of the current value of designated assets.

(e) The value of your assets protected for you under your LTC partnership policy do not carry over to your spouse should they need medicaid long-term care services during your lifetime or after your death. If your surviving spouse has their own LTC partnership policy he or she may designate assets based on the dollar amount paid under his or her own policy.

(f) Assets designated as protected under this subsection will not be subject to transfer penalties described in WAC ((388-513-1363)) 182-513-1363.

(2) Proof of the current fair market value of all protected assets is required at the initial application and each annual review.

(3) Submit current verification from the issuer of the LTCP policy of the current dollar value paid toward long-term care benefits. This verification is required at application and each annual eligibility review.

(4) Any individual or the personal representative of the individual's estate who asserts that an asset is protected has the initial burden of:

(a) Documenting and proving by clear and convincing evidence that the asset or source of funds for the asset in question was designated as protected;

(b) Demonstrating the value of the asset and the proceeds of the asset beginning from the time period the LTC partnership has paid out benefits to the present; and

(c) Documenting that the asset or proceeds of the asset remained protected at all times.

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.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-513-1300 Payment standard for persons in medical institutions.

WAC 182-513-1301 Definitions related to long-term care (LTC) services.

WAC 182-513-1305 Determining eligibility for noninstitutional medical assistance in an alternate living facility (ALF).

WAC 182-513-1364 Evaluating the transfer of an asset made on or after April 1, 2003 for long-term care (LTC) services.

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.

WAC 182-513-1366 Evaluating the transfer of an asset made before March 1, 1997 for long-term care (LTC) services.

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. ~~((+))~~ 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 client 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?)) general eligibility.** (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)) 388-106-0338.

(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)) under (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))—Financial eligibility if 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);~~

(e) ~~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 home and community based (HCB) waiver services if:

(a) Receiving coverage under one of the following supplemental security income (SSI)-related categorically needy (CN) medicaid programs:

(i) SSI program under WAC 182-510-0001. This includes SSI clients under Section 1619B of the Social Security Act;

(ii) SSI-related noninstitutional CN program under chapter 182-512 WAC;

(iii) Health care for workers with disabilities program (HWD) under chapter 182-511 WAC.

(b) The person does not have a penalty period of ineligibility for the transfer of an asset under 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 who 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 under 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 under WAC 388-478-0006 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/testandardsPNAchart-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 for)) Home and community based (HCB) waiver services authorized by home and community services (HCS) ((and hospice if you are not eligible for medicaid under a categorically needy (CN) program listed in WAC 388-515-1507(1)?))—Financial eligibility using SSI-related institutional rules. (1) If ((you are)) a person is not eligible for ((medicaid under)) a categorically needy (CN) program ((listed in)) under 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)) a person 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.

(3) You must meet the following resource requirements:

(a) Resource limits described in WAC 388-513-1350.

(b) If you have resources over the standard allowed in WAC 388-513-1350, the department reduces resources over the standard by your unpaid medical expenses described in WAC 388-513-1350 if you verify these expenses.

(4) You must meet)) under WAC 182-513-1315 and 182-515-1506;

(b) The resource requirements under WAC 182-513-1350;

(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)) under WAC 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 updated annually starting October 1, 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/LTCstandardspna.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?))~~ **Home and community based (HCB) waiver services authorized by home and community services (HCS) —Client financial responsibility.** ~~((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 of his or her gross nonexcluded income 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 his or her 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)) (under WAC 388-106-0010), keeps a PNA of up to the effective one-person medically needy income level (MNIL) and pays the remainder of his or her gross nonexcluded income 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 his or her spouse keeps a PNA of up to the FPL and pays the remainder of his or her gross nonexcluded income toward cost of care after allowable deductions described in subsection (3) of this section.

(d) A married couple who receive HCB HCS waiver services are each allowed to keep a PNA of up to the FPL and pays the remainder of each of their gross nonexcluded income toward cost of care after allowable deductions described in subsection (3) of this section.

(e) A married couple living at home where each person receives HCB waiver services, one authorized by developmental disabilities administration (DDA) and the other authorized by HCS is allowed the following:

(i) The DDA waiver person pays toward his or her cost of care under WAC 182-515-1512 or 182-515-1514; and

(ii) The HCS waiver person retains the federal poverty level (FPL) and pays the remainder of his or her gross nonexcluded income toward cost of care after allowable deductions under subsection (3) of this section.

(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 under WAC 182-513-1100 based on the following:

A single person or a married person who lives apart from his or her spouse:

(a) Keeps a PNA of sixty-two dollars and seventy-nine cents;

(b) Pays 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; 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 gross nonexcluded 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))~~ the person's 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 in WAC 182-513-1385;

(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;~~

~~(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) 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, institutionalized person's community spouse, or institutionalized person's 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))~~ Incurred 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 special income level (SIL ~~((three hundred percent of the FBR)))~~:

(i) ~~((Personal needs allowance))~~ The PNA allowed in subsection~~((s))~~ (1)~~((;))~~ or (2) ~~((and (3)(a) and (b)))~~ of this section; and

(ii) The earned income deduction ~~((of the first sixty-five dollars plus one-half of the remaining earned income in subsection (4)))~~ in (a) of this subsection; and

(iii) The guardianship fees and administrative costs in ~~((subsection (4)))~~ (b) of this subsection.

(4) A person may have to pay third-party resources described under WAC 182-501-0200 in addition to the room and board and participation.

(5) ~~((You))~~ A person must pay ~~((your provider the combination of))~~ his or her provider the sum of the room and board amount, and the cost of personal care services 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))~~ A person is responsible only to participate up to the state rate for cost of care. If long-term care insurance pays a portion of the state rate cost of care, a person participates only the difference up to the state rate cost of care.

(7) 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 services))~~, the ~~((department))~~ agency allows ~~((you))~~ the highest PNA available based on all the living arrangements and services ~~((you have))~~ the person has in a month.

~~((9) Current PNA and ADSA room and board))~~ (8) 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))~~ **Home and community based (HCB) waiver services authorized by developmental disabilities** ~~((DDD) home and community based services waivers))~~ **administration (DDA)**. 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 com-~~

munity based services (HCBS) 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) Individual and family services (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(4)))~~ 182-515-1512.

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 the division of))~~ **authorized by developmental disabilities** ~~((DDD home and community based services (HCBS) waivers?))~~ **administration (DDA) —General eligibility.** ~~((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 the developmental disabilities administration (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)))~~ 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))~~ under WAC 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) A group training home;

(C) A child foster home, group home, or staffed residential facility;

(D) An adult family home (AFH); or

(E) An adult residential care (ARC) facility.

(iii) Live in ~~((your))~~ his or her 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 under WAC 182-513-1363;

(b) Has a home with equity in excess of the requirements under 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) —Financial eligibility 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 under WAC 182-510-0001. This includes SSI clients under 1619B status;

(ii) Health care for workers with disabilities (HWD) under WAC 182-511-1000 through 182-511-1250;

(iii) SSI-related noninstitutional (CN) program under chapter 182-512 WAC;

(iv) The foster care program under WAC 182-505-0211 and meeting 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 under WAC 182-513-1363; and

(c) The person does not own a home with equity in excess of the requirements under WAC 182-513-1350.

(2) A person eligible under this section does not pay participation toward the cost of services, but must pay room and board if living in an alternate living facility (ALF) under 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 stan-

ard 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 under 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 under WAC 388-400-0060 does not pay participation toward the cost of services 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 authorized under WAC 388-478-0006 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)?) Home and community based (HCB) waiver services authorized by the developmental disabilities administration (DDA)—Financial eligibility using institutional rules. ((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/LongTerm>

Care/LTCstandardspna.shtml)) (1) If a person is not eligible for a categorically needy (CN) program under 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 under WAC 182-513-1315 and 182-515-1511;

(b) The resource requirements under WAC 182-513-1350.

(c) Gross nonexcluded income must be at or below the special income level (SIL).

(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 under WAC 182-515-1514.

(5) Current resource, income standards 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)?) Home and community based (HCB) services authorized by developmental disabilities administration (DDA)—Client financial responsibility. ((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 ADSA room and board standard described in <http://www.dshs.wa.gov/manuals/eaz/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 SIL.

(b) A single person who lives at home on roads to community living authorized by DDA keeps a PNA up to the SIL and pays the remainder of his or her gross nonexcluded income toward cost of care after allowable deductions described in subsection (3) of this section.

(c) A married person who lives with his or her spouse at home (as defined in WAC 388-106-0010) keeps a PNA of up to the SIL and pays the remainder of his or her gross nonexcluded income toward cost of care after allowable deductions described in subsection (3) of this section.

(d) A married couple living at home where each person receives HCB waiver services, one authorized by DDA and the other authorized by home and community services (HCS) is allowed the following:

(i) The DDA waiver person retains the SIL as a PNA and pays the remainder of his or her gross nonexcluded income

towards his or her cost of care after allowable deductions in subsection (3) of this section; and

(ii) The HCS waiver person pays toward his or her cost of care under WAC 182-515-1507 or 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 his or her 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. The room and board standard is the federal benefit rate (FBR) minus sixty-two dollars and seventy-nine cents; 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 in WAC 182-513-1385;

(d) A monthly maintenance-needs allowance for the community spouse as determined using the calculation under WAC 182-513-1385;

(e) A monthly maintenance-needs allowance for each minor or dependent child, dependent parent, dependent sibling of the institutionalized person, institutionalized person's community spouse, or institutionalized person's institutionalized spouse, as determined using the calculation described in WAC 182-513-1385;

(f) Incurred 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) The PNA described in subsection (1) or (2) of this section;

(ii) The earned income deduction in (a) of this subsection; and

(iii) The 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 his or her provider the sum of the room and board amount, the cost of services after all allowable deductions, and any third-party resources.

(6) A person is only responsible to participate up to the state rate for cost of care. If long-term care insurance pays a portion of the state rate cost of care, a person participates only the difference up to the state rate cost of care.

(7) When a person lives in multiple living arrangements in a month, the agency allows the highest PNA available based on all the living arrangements and services received within the month.

(8) 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 15-22-055
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-409—Filed October 29, 2015, 3:45 p.m., effective October 29, 2015, 3:45 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial sea cucumber fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07100P; and amending WAC 220-52-071.

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: A harvestable surplus of sea cucumbers remains in District 5 to allow for commercial harvest. 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: October 29, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-52-07100P Sea cucumbers. Notwithstanding the provisions of WAC 220-52-071, effective November 2, 2015, until further notice, it is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided below:

Sea cucumber harvest using shellfish diver gear is permissible in Sea Cucumber District 5 from Monday, November 2, 2015 through Friday, November 6, 2015.

REPEALER

The following section of the Washington Administrative Code is repealed effective November 7, 2015:

WAC 220-52-07100P Sea cucumbers.

WSR 15-22-059
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-410—Filed October 30, 2015, 1:32 p.m., effective November 1, 2015]

Effective Date of Rule: November 1, 2015.

Purpose: Amend recreational fishing rules for Cases Pond.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-18000F; 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: The Washington department of fish and wildlife will increase winter recreational opportunity in inland waters throughout the Puget Sound region by stocking more than one hundred twenty-five thousand catchable-size (ten to twelve inches) or larger rainbow trout. Changes to rules are needed to provide for the additional opportunity enabled by the stocking. 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: October 30, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-18000F Freshwater exceptions to statewide rules—Coast. Notwithstanding the provisions of WAC 220-310-180, effective November 1 through December 31, 2015, it is permissible for all anglers to fish in waters of Cases Pond (Pacific Co.) with the following restrictions:

- (1) Daily limit of 10 trout.
- (2) No size restriction.

REPEALER

The following section of the Washington Administrative Code is repealed effective January 1, 2016:

WAC 220-310-18000F Freshwater exceptions to statewide rules—Coast.

**WSR 15-22-060
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-411—Filed October 30, 2015, 1:46 p.m., effective November 1, 2015]

Effective Date of Rule: November 1, 2015.

Purpose: Amend recreational fishing rules for Puget Sound salmon.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62100U; and amending WAC 232-28-621.

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: Test fishery data collected during the last two weeks of October in Marine Area 9 indicate a high abundance of juvenile (sublegal-size) Chinook

salmon and a high risk of reaching the allowable limit of total Chinook encounters early in the Area 9 winter mark-selective Chinook fishery. Puget Sound coho run sizes are below pre-season forecasts; therefore, nonretention of coho will be required beginning November 1, 2015. 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: October 30, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 232-28-62100U Puget Sound salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-621, effective November 1 through November 30, 2015:

Marine Area 9 - It is unlawful to fish for or possess Chinook and coho salmon. Daily limit of two chum salmon.

REPEALER

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

WAC 232-28-62100U Puget Sound salmon—Saltwater seasons and daily limits.

**WSR 15-22-063
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-412—Filed October 30, 2015, 5:02 p.m., effective November 3, 2015]

Effective Date of Rule: November 3, 2015.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-620 and 220-310-180.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Washington department of fish and wildlife examined hatchery rack returns, commercial fishery catch and sampling data, test fishery data, and spawning ground data. In-season run size projections from these data suggest that the natural-origin coho run size will be approximately fifty percent of the escapement goal. At that run size, most of the allowable coho impacts have been utilized. Because the run size for 2015 now appears to be far below the preseason forecast, there is a reasoned basis for significantly reducing harvest to ensure the overall harvest rate objective is met. Based on all this information, an in-season modification of the commercial and recreational salmon fisheries is warranted to help ensure that conservation goals are met. Such an in-season adjustment requires immediate action and cannot wait for the time required to adopt a permanent rule amendment.

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: October 30, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 232-28-62000V Coastal salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-620, effective November 3, 2015, until further notice, it is unlawful to take, fish for, or possess salmon taken by angling for personal use in Marine Area 2-1 (Willapa Bay).

NEW SECTION

WAC 220-310-18000G Freshwater exceptions to statewide rules—Coast. Notwithstanding the provisions of WAC 220-310-180, effective November 3, 2015, until further notice:

(1) Selective gear rules in effect in all Willapa Bay tributaries.

(2) It is unlawful to take, fish for, or possess salmon taken by angling for personal use in Willapa Bay tributaries except:

(a) Naselle River (Pacific/Wahkiakum counties): Open for salmon only from the Highway 4 Bridge to the Crown Mainline (Salme) Bridge. Daily limit 2. Release all salmon except chum and hatchery coho.

(b) Willapa River (Pacific County): Open for salmon only from the Highway 6 Bridge to Fork Creek. Daily limit 2. Release all salmon except chum and hatchery coho.

(c) Fork Creek (Pacific County): Open for salmon. Salmon daily limit 2. Release all salmon except chum and hatchery coho.

(d) North Nemah River (Pacific County): Open for salmon immediately through November 30. Salmon daily limit 1. Release all salmon except chum.

WSR 15-22-064
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-413—Filed October 31, 2015, 6:23 p.m., effective October 31, 2015, 6:23 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for Cases Pond.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-18000F and 220-310-18000H; 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 as the department of fish and wildlife is planting trout in Cases Pond this fall and opening to all anglers to provide additional family fishing opportunities.

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: October 31, 2015.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-310-18000H Freshwater exceptions to statewide rules—Coast. Notwithstanding the provisions of WAC 220-310-180, effective November 1 through December 31, 2015, it is permissible for all anglers to fish in waters of Cases Pond (Pacific Co.).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-18000F Freshwater exceptions to statewide rules—Coast. (15-410)

The following section of the Washington Administrative Code is repealed effective January 1, 2016:

WAC 220-310-18000H Freshwater exceptions to statewide rules—Coast.

WSR 15-22-069
EMERGENCY RULES
DEPARTMENT OF HEALTH

[Filed November 2, 2015, 12:02 p.m., effective November 2, 2015, 12:02 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 246-296 WAC, Drinking water state revolving fund loan program (DWSRF), the rule is necessary to award loans to public water systems due to an emergency event that results in an immediate threat to public health and safety. This emergency rule is adopted in response to anticipated flooding events in multiple parts of the state.

Citation of Existing Rules Affected by this Order: Amending WAC 246-296-010, 246-296-020, 246-296-050, and 246-296-070.

Statutory Authority for Adoption: RCW 70.119A.170.

Other Authority: Safe Drinking Water 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.

Reasons for this Finding: The Administrative Procedure Act allows the department of health (department) to adopt an emergency rule as follows:

(1) If an agency for good cause finds:

(a) 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;

(b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; or

(c) In order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

The agency may dispense with those requirements and adopt, amend, or repeal the rule on an emergency basis. The agency's finding and a concise statement of the reasons for its finding shall be incorporated in the order for adoption of the emergency rule or amendment filed with the office of the code reviser under RCW 34.05.380 and with the rules review committee.

An emergency rule is necessary to amend chapter 246-296 WAC, Drinking water state revolving fund loan program, to include requirements for water systems to obtain a low-interest or no-interest loan specifically for emergency recovery activities due to a loss of critical drinking water services or facilities. The existing rule establishes eligibility, priority, and selection criteria for infrastructure loans for addressing problems such as:

- Replacing aging infrastructure;
- Installing treatment to remove contaminants; and
- Restructuring at-risk water systems.

The rule does not identify specific criteria or requirements for awarding loans due to an emergency event. Currently, public water systems are required to meet eligibility requirements that in some cases are impossible for water system[s] to meet in response to an emergency event. WAC 246-296-100(2), requires a loan applicant to have a current department-approved water system plan (WSP) that includes the proposed project. Because a water system cannot foresee an emergency project before it happens, the water system would not be able to include the project within its WSP. To meet this requirement, a water system would have to submit a WSP update and include the proposed project for department review and approval. At a minimum, the timeframe to get an approved WSP in place is six months. The planning, and department review and approval timeframe is well outside the acceptable norm for responding to and recovering from an emergency event, and may result in a failure to protect public health.

This emergency rule is adopted in response to anticipated flooding events in multiple parts of the state. To protect public health and safety by making emergency funds available to public water systems in Washington state, the department must immediately adopt a rule.

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 4, 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 4, Repealed 0.

Date Adopted: October 29, 2015.

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 12-01-077, filed 12/19/11, effective 2/1/12)

WAC 246-296-010 Purpose and scope. The purpose of this chapter is to:

(1) Establish a funding program for public water system infrastructure improvements that increase a public water system's ability to provide safe and reliable drinking water and improve public health protection;

(2) Establish eligibility criteria for public water systems to receive funding including, but not limited to, proper operation, management, and maintenance consistent with federal DWSRF capacity requirements;

(3) Provide additional financial assistance to eligible disadvantaged communities;

(4) Provide DWSRF loans in response to an emergency;

(5) Use a portion of the EPA capitalization grant for set-aside activities according to federal law;

~~((5))~~ (6) Establish that sound financial practices and ongoing oversight are in place to manage the DWSRF in perpetuity;

~~((6))~~ (7) Establish requirements for public water systems to receive a DWSRF loan including, but not limited to, planning requirements; being resource efficient, sustainable, and environmentally sound; ~~((and~~

~~(7))~~ (8) Establish requirements for public water systems to receive a DWSRF loan in response to an emergency; and

(9) Establish the responsibilities of the department, the board, and commerce, for administering the DWSRF loan program.

AMENDATORY SECTION (Amending WSR 12-01-077, filed 12/19/11, effective 2/1/12)

WAC 246-296-020 Definitions, abbreviations, and acronyms. The definitions, abbreviations, and acronyms in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "**Affordability**" means a community's ability, on a per household basis, to pay for rate increases that result from a DWSRF loan project.

(2) "**Application**" means the DWSRF loan request form provided by the department.

(3) "**Application package**" means the DWSRF loan application form(s), requirements, terms of assistance, and

related information created by the department, the board, and commerce.

(4) "**Board**" means the Washington state public works board.

(5) "**Borrower**" means the person that has legal and financial responsibility for the DWSRF loan.

(6) "**Capitalization grant**" means an award by EPA of funds to a state for the DWSRF and other purposes as authorized in Section 1452 of the SDWA.

(7) "**Commerce**" means the Washington state department of commerce.

(8) "**Construction completion report**" means a form provided by the department and completed for each specific construction project to document:

(a) Project construction in accordance with chapter 246-290 WAC and general standards of engineering practice;

(b) Physical capacity changes;

(c) Satisfactory test results; and

(d) The completed form is stamped with an engineer's seal, and signed and dated by a professional engineer.

(9) "**Default**" means failure to meet a financial obligation such as a DWSRF loan payment.

(10) "**Department**" means the Washington state department of health.

(11) "**Disadvantaged community**" means the service area of a proposed project within a public water system where the project will result in:

(a) Water rates that are more than one and one-half percent of the MHI of the service area; or

(b) Restructuring, when one or more public water systems are having financial difficulties.

(12) "**DWSRF (drinking water state revolving fund)**" means the program that meets the requirements of RCW 70.119A.170 to administer federal funds and other funds deposited in a dedicated account used to finance public water system infrastructure improvements and drinking water program activities.

(13) "**DWSRF loan**" means an agreement between the board and the borrower in which the DWSRF provides funds for eligible assistance and the borrower agrees to repay the principal sum, applicable interest, and DWSRF loan fee to the DWSRF.

(14) "**DWSRF loan fee**" means a nonrefundable fee that is charged on all DWSRF loans, including DWSRF loans for which all or part of the principal is forgiven.

(15) "**Ecology**" means the Washington state department of ecology.

(16) "**Eligible public water system**" means a Group A community public water system, either privately or publicly owned, or a nonprofit Group A noncommunity public water system.

(17) "**Emergency**" means an event such as a natural disaster or other unforeseen or unavoidable circumstances that causes damage or disrupts normal public water system operations and requires immediate action to protect public health and safety. A failure to maintain, replace, reconstruct, upgrade, or make necessary infrastructure improvements does not constitute an emergency.

(18) "**EPA**" means the United States Environmental Protection Agency.

~~((18))~~ (19) **"Green project"** means a public water system infrastructure improvement project that includes water efficiency, energy efficiency, or environmental innovations as follows:

(a) Water efficiency projects use improved technologies and practices to deliver equal or better service with less water, including preventing water loss and reducing customer demand to protect water resources;

(b) Energy efficiency projects use improved technologies and practices to reduce energy consumption or produce cleaner energy for use in water treatment;

(c) Environmentally innovative projects use new or innovative approaches to manage water resources in a more environmentally sustainable way. Projects that are considered environmentally innovative include those that:

(i) Prevent or remove pollution;

(ii) Help a community adapt to climate change through water resource protection programs; or

(iii) Result in other proven, sustainable environmental benefits.

~~((19))~~ (20) **"Group A public water system"** means a public water system providing service such that it meets the definition of a public water system provided in the 1996 amendments to the federal Safe Drinking Water Act, P.L. 104-182, Section 101(b).

A Group A public water system is further defined as a community or noncommunity public water system.

(a) "Community public water system" means any Group A public water system providing service to fifteen or more service connections used by year-round residents for one hundred eighty or more days within a calendar year, regardless of the number of people, or regularly serving at least twenty-five people year-round more than one hundred eighty days per year, as defined in chapter 246-290 WAC.

(b) "Noncommunity public water system" means a Group A public water system that is not a community public water system. Noncommunity public water systems are further defined as:

(i) "Nontransient noncommunity public water system" means a public water system that serves twenty-five or more of the same nonresidential people for one hundred eighty or more days within a calendar year.

(ii) "Transient noncommunity public water system" means a public water system that serves:

(A) Twenty-five or more different people each day for sixty or more days within a calendar year;

(B) Twenty-five or more of the same people each day for sixty or more days, but less than one hundred eighty days within a calendar year; or

(C) One thousand or more people for two or more consecutive days within a calendar year.

~~((20))~~ (21) **"Group B public water system"** means a public water system that is not a Group A public water system. A public water system is classified as a Group B public water system if it serves fewer than fifteen service connections, and:

(a) Fewer than twenty-five people; or

(b) Twenty-five or more people per day for less than sixty days per year provided the public water system does not

serve one thousand or more people for two or more consecutive days.

~~((21))~~ (22) **"Individual water supply system"** means any water system that is not subject to chapter 246-290 or 246-291 WAC; and provides water to either one single-family residence, or to a system with four or fewer connections, all of which serve residences on the same farm.

~~((22))~~ (23) **"IUP (intended use plan)"** means the federally required document prepared each year by the department identifying the intended uses of the DWSRF funds and describing how those uses support the DWSRF goals.

~~((23))~~ (24) **"Loan closeout"** means a loan agreement is complete when the loan is repaid in full.

~~((24))~~ (25) **"MHI (median household income)"** means the midpoint or the average of two midpoints in the range of household incomes in the project's service area. The median divides the list of households in a service area into two parts; half of the households exceed the median, and half of the households are below the median.

~~((25))~~ (26) **"Multiple benefit"** means projects that address more than one type of health risk.

~~((26))~~ (27) **"Municipality"** means a city, town, special purpose district, or municipal corporation established according to the applicable laws of this state.

~~((27))~~ (28) **"NEPA"** means the National Environmental Policy Act of 1969, 42 United States Code 4321 et seq., PL-91-190.

~~((28))~~ (29) **"Nonprofit organization"** means an entity that has a federal tax exempt status identification number.

~~((29))~~ (30) **"Owner"** means any agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, person, or any other entity that holds as property a public water system.

~~((30))~~ (31) **"Person"** means any individual, corporation, company, association, society, firm, partnership, joint stock company, or any governmental agency, or the authorized agents of these entities.

~~((31))~~ (32) **"Principal forgiveness"** means that a reduction of up to fifty percent of the total loan amount is not required to be paid back by the borrower. For a DWSRF emergency loan, principal forgiveness is a reduction of up to seventy-five percent of the total loan amount. Principal forgiveness is applied when the project is complete.

~~((32))~~ (33) **"Project report"** means a department-approved document the borrower or borrower's agency develops under WAC 246-290-110.

~~((33))~~ (34) **"Public water system"** means any public water system providing water for human consumption through pipes or other constructed conveyances, excluding water systems serving only one single-family residence and water systems with four or fewer connections, all of which serve residences on the same farm. This includes:

(a) Collection, treatment, storage, and distribution facilities under control of the owner, or owner's authorized agent, primarily used in connection with the public water system; and

(b) Collection or pretreatment storage facilities not under the control of the owner, or owner's authorized agent, but primarily used in connection with the public water system.

~~((34))~~ (35) **"Receivership"** means the voluntary or involuntary transfer of ownership and operation of a public water system according to chapter 7.60 RCW and RCW 43.70.195.

~~((35))~~ (36) **"Regional benefit"** means project improvements that affect more than one public water system.

~~((36))~~ (37) **"Restructuring"** means changing public water system ownership, including, but not limited to:

(a) Consolidation of two or more existing public water systems into a single public water system;

(b) Transfer of ownership; or

(c) Receivership.

~~((37))~~ (38) **"SDWA (Safe Drinking Water Act)"** means Public Law 93-523, including all amendments.

~~((38))~~ (39) **"SEPA"** means the State Environmental Policy Act under chapter 43.21C RCW.

~~((39))~~ (40) **"Set-aside"** means the use of a portion of DWSRF funds allotted to the state for a range of specific SDWA-related activities under Section 1452 of the SDWA, to fund new programs, and for other drinking water program activities.

~~((40))~~ (41) **"SERP (state environmental review process)"** means the NEPA-like environmental review process adopted by Washington state to comply with the requirements of 40 C.F.R. 35.3140. SERP combines the SEPA review with additional elements to comply with federal requirements.

~~((41))~~ (42) **"Surface water"** means a body of water open to the atmosphere and subject to surface runoff.

~~((42))~~ (43) **"Sustainable"** means able to continue a benefit into the future as a result of appropriate public water system design, processes, operations, governance, and maintenance.

~~((43))~~ (44) **"SWSMP (small water system management program)"** means a document for a small nonexpanding Group A public water system developed and approved under WAC 246-290-105.

~~((44))~~ (45) **"System capacity"** means a public water system's operational, technical, managerial, and financial capability to achieve and maintain ongoing compliance with all relevant local, state, and federal plans and regulations.

~~((45))~~ (46) **"Transfer of ownership"** means to change legal ownership of a public water system from one person to another.

~~((46))~~ (47) **"Water right"** means a legal authorization, such as a permit, claim, or other authorization, on record with or accepted by the department of ecology, authorizing the beneficial use of water in accordance with all applicable state laws.

~~((47))~~ (48) **"WFI (water facilities inventory)"** means a department form summarizing a public water system's characteristics.

~~((48))~~ (49) **"WSP (water system plan)"** means a document that a Group A community public water system submits to the department as required under WAC 246-290-100. The plan addresses a public water system's capacity to comply with relevant local, state, and federal plans and regulations, describes the public water system's present and future needs, and establishes eligibility for funding under this chapter.

AMENDATORY SECTION (Amending WSR 12-01-077, filed 12/19/11, effective 2/1/12)

WAC 246-296-050 DWSRF loan terms. (1) The board may approve a DWSRF loan for a project that will not serve a disadvantaged community at or below market interest rates for a maximum of twenty years from project completion.

(2) The board may approve a DWSRF loan for projects that will serve disadvantaged communities:

(a) At an interest rate set at or below market interest rates for up to thirty years, as long as the DWSRF loan does not exceed the useful life of the project; ~~((or))~~

(b) That qualifies for principal forgiveness for up to fifty percent of the principal DWSRF loan amount; or

(c) That qualifies for principal forgiveness for up to seventy-five percent of the principal DWSRF loan amount for an emergency loan.

(3) A project is considered complete when the department approves the construction completion report.

(4) The borrower shall begin repaying the principal and interest no later than one year after the project is complete.

(5) The department and the board shall:

(a) Set terms that secure repayment of the debt and maintain a financially sound DWSRF program in perpetuity; and

(b) Publish specific rates and contract terms in the annual application package.

AMENDATORY SECTION (Amending WSR 12-01-077, filed 12/19/11, effective 2/1/12)

WAC 246-296-070 Eligible projects and project-related costs. (1) Projects eligible for a DWSRF loan include those that:

(a) Address or prevent violations of applicable federal, state, and local drinking water requirements;

(b) Replace aging infrastructure to help a public water system comply with applicable federal, state, and local drinking water requirements to improve public health protection;

(c) Improve system capacity of a public water system to help assure sustainable drinking water; ~~((or))~~

(d) Promote increased water or energy efficiency, green projects, or innovation that will improve environmental sustainability and protect public health; or

(e) Respond to an emergency.

(2) Specific project-related costs eligible for a DWSRF loan include, but are not limited to, those that:

(a) Improve a public water system's treatment, transmission, distribution, source, or storage;

(b) Restructure water supplies or public water systems that have system capacity difficulties;

(c) Retroactively finance municipal projects that:

(i) Are for surface water treatment;

(ii) Address groundwater under the direct influence of surface water;

(iii) Address volatile organic or inorganic chemicals; or

(iv) Are required by department or EPA order;

(d) Acquire real property if needed to meet or maintain compliance with regulations or increase public health protection;

(e) Pay for planning or design that is directly related to a DWSRF eligible project;

(f) Finance the costs of restructuring for a publicly owned public water system;

(g) Acquire, build, or repair reservoirs, including clear wells, that are part of the treatment process and located on the same property as the treatment facility;

(h) Acquire, build, or repair distribution reservoirs; or

(i) Are associated with a department-approved green project.

NEW SECTION

WAC 246-296-105 DWSRF emergency loans. (1)

When the department determines an emergency exists and emergency funding is available, the department may award a DWSRF emergency loan to an eligible public water system that meets the requirements of this chapter, except that the department may waive one or more of the DWSRF loan requirements under WAC 246-296-100, 246-296-120, 246-296-130, 246-296-140, and 246-296-150.

(2) An applicant must submit a completed emergency application package to the department to be considered for a DWSRF emergency loan.

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: November 3, 2015.

Joe Stohr
for J. W. Unsworth
Director

WSR 15-22-084
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 15-414—Filed November 3, 2015, 8:59 a.m., effective November 3, 2015, 8:59 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-18000G; 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: Washington department of fish and wildlife examined hatchery rack returns, commercial fishery catch and sampling data, test fishery data, and spawning ground data. In-season run size projections from these data suggest that the natural-origin coho run size will be approximately fifty percent of the escapement goal. At that run size, most of the allowable coho impacts have been utilized. Because the run size for 2015 now appears to be far below the pre-season forecast, there is a reasoned basis for significantly reducing harvest to ensure the overall harvest rate objective is met. Based on all this information, an in-season modification of the commercial and recreational salmon fisheries is warranted to help ensure that conservation goals are met. This emergency rule corrects an error in [the] WSR 15-22-063 filing.

NEW SECTION

WAC 220-310-18000I Freshwater exceptions to statewide rules—Coast. Notwithstanding the provisions of WAC 220-310-180, effective immediately until further notice:

(1) Selective gear rules in effect in all Willapa Bay tributaries.

(2) It is unlawful to take, fish for, or possess salmon taken by angling for personal use in Willapa Bay tributaries except:

(a) Naselle River (Pacific/Wahkiakum counties): Open for salmon only from the Highway 401 Bridge to the Crown Mainline (Salme) Bridge. Daily limit 2. Release all salmon except chum and hatchery coho.

(b) Willapa River (Pacific County): Open for salmon only from the Highway 6 Bridge to Fork Creek. Daily limit 2. Release all salmon except chum and hatchery coho.

(c) Fork Creek (Pacific County): Open for salmon. Salmon daily limit 2. Release all salmon except chum and hatchery coho.

(d) North Nemah River (Pacific County): Open for salmon immediately through November 30. Salmon daily limit 1. Release all salmon except chum.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-18000G Freshwater exceptions to statewide rules—Coast. (15-412)

**WSR 15-22-108
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 15-415—Filed November 4, 2015, 11:45 a.m., effective January 1, 2016]

Effective Date of Rule: January 1, 2016.

Purpose: This rule change will amend the cougar harvest rates in GMUs 101, 105, 108, 111, 113, 117, 121, 145, 149, 154, 162, 163, 166, 169, 172, 175, 178, 181, 186, 204, 218, 231, 242, 243, 249, 251, 328, 329, and 335.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-297.

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: During the April 2015 fish and wildlife commission meeting, the Washington department of fish and wildlife (WDFW) proposed a twelve to sixteen percent cougar harvest rate for the 2015-2016, 2016-2017 and 2017-2018 hunting seasons. After discussion, the commission proposed and voted to adopt an amendment changing the harvest rate to seventeen to twenty-one percent for all three hunting seasons in fourteen hunt areas.

Following the April 2015 meeting, the commission received two letters that requested it rescind the decision to increase the harvest guidelines for the fourteen hunt areas and return to a twelve to sixteen percent harvest guideline. During a May 1, 2015, conference call, the commission discussed the request and reviewed its rule-making process. The commission concluded that the rule amendment in question was consistent with the Administrative Procedure Act, chapter 34.05 RCW, and the commission's action was within its authority to adopt a final rule that was not substantially different from the proposed rule. Consequently, the commission did not rescind its April decision. On May 1, 2015, the department filed the rule amendment with the code reviser in the form approved by the commission on April 10. However, given the controversial nature of the issue, the commission directed WDFW to provide a recommendation for the 2016-2017 and 2017-2018 cougar hunting seasons at the March-April 2016 commission meetings.

On June 30, 2015, the fish and wildlife commission received a petition from the Humane Society of the United States, Conservation Northwest, Center for Biological Diversity, Mountain Lion Foundation, Wolf Haven International, The Cougar Fund, The Lands Council, Predator Defense, Kettle Range Conservation Group, and Gary Koehler, Ph.D. The petition requested that the commission initiate rule making to reverse its decision to increase the cougar harvest guidelines in fourteen hunt areas of Washington state to seventeen to twenty-one percent, and change the harvest guidelines back to the twelve to sixteen percent recommended by WDFW in April 2015.

During its August 21, 2015, conference call, the commission voted to deny the petition. The commission continued with the direction to WDFW staff to evaluate the harvest guidelines for the 2016-2017 and 2017-2018 hunting seasons for the March-April 2016 commission meetings.

In September, the Humane Society of the United States appealed to the governor the commission's denial of the Humane Society's rule-making petition. After reviewing the petition and the process followed by the fish and wildlife commission, the governor, on October 19, 2015, directed the commission to amend WAC 232-28-297 and restore the harvest rate to the twelve to sixteen percent harvest guideline. The governor also directed the commission to initiate rule making to address the harvest guidelines moving forward in permanent rule.

This emergency rule will return the harvest guideline to twelve to sixteen percent for the 2015-2016 cougar hunting season as directed by the governor. An emergency rule is needed because there is insufficient time to promulgate permanent rules for the 2015-2016 cougar hunting season. The department plans to engage in permanent rule making, as directed by the governor, with a public hearing anticipated in March 2016.

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: November 4, 2015.

J. W. Unsworth
Director

NEW SECTION

WAC 232-28-29700S 2015-2016, 2016-2017, and 2017-2018 Cougar hunting seasons and regulations. Notwithstanding the provisions of WAC 232-28-297, effective January 1, 2016 until further notice, the cougar harvest guidelines for the Game Management Units listed below are as follows, provided that, unless otherwise amended, all other provisions of the permanent rule remain in effect:

Hunt Area	Harvest Guideline
GMU 101	7-9
GMU 105	2
GMUs 108, 111	5-6
GMU 113	4-6
GMU 117	6-8

Hunt Area	Harvest Guideline
GMU 121	5-6
GMUs 149, 154, 162, 163	4-6
GMUs 145, 166, 175, 178	3-4
GMUs 169, 172, 181, 186	3-4
GMU 204	6-8
GMUs 218, 231	4-6
GMUs 242, 243	4-6
GMUs 249, 251	5-6
GMUs 328, 329, 335	6-8