

WSR 18-13-011
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed June 7, 2018, 10:20 a.m., effective June 7, 2018]

Effective Date of Rule: June 7, 2018.

Purpose: The department is adopting emergency rules to implement Part I of SSB 6334 (chapter 150, Laws of 2018). The effective date of Part I of the act is June 7, 2018.

Part I of SSB 6334 amended various statutes dealing with medical child support obligations as required under the final rule entitled flexibility, efficiency, and modernization in child support enforcement programs ("final rule"), which was published on December 20, 2016, in the Federal Register, Volume 81, Number 244, on page 93492. Under the final rule, 45 C.F.R. 303.31 (a)(2) defines "health care coverage" to include "fee for service, health maintenance organization, preferred provider organization, and other types of private health insurance and public health care coverage under which medical services could be provided to the dependent child(ren)."

The statutory change introduces new terminology, but does not change the way that medical support obligations are established, either in court or in the administrative process. However, there are changes in the policies and procedures regarding how the division of child support (DCS) enforces medical support obligations, most notably that an obligated parent can satisfy his or her health care coverage obligation by enrolling the child or children in public health care coverage. In Washington, "public health care coverage" means medicaid and the other programs included in the apple health program.

At the same time the department adopts emergency rules, the department is filing a CR-101 Preproposal notice of inquiry, to commence the permanent rule-making process under chapter 34.05 RCW.

Citation of Rules Affected by this Order: Amending WAC 388-14A-1020, 388-14A-3312, 388-14A-3324, 388-14A-3925, 388-14A-4100, 388-14A-4110, 388-14A-4111, 388-14A-4112, 388-14A-4120, 388-14A-4160, 388-14A-4175, 388-14A-4180, and 388-14A-6300.

Statutory Authority for Adoption: Part I of SSB 6334 (chapter 150, Laws of 2018), effective date June 7, 2018; RCW 26.09.105, 26.18.170, 26.23.050, 34.05.220 (1)(a), 34.05.350(1), 74.08.090, 74.20.040(9).

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 department is implementing Part I of SSB 6334 (chapter 150, Laws of 2018), which takes effect on June 7, 2018.

Part I of SSB 6334 amended various statutes dealing with medical child support obligations as required under the

final rule entitled flexibility, efficiency, and modernization in child support enforcement programs ("final rule"), which was published on December 20, 2016, in the Federal Register, Volume 81, Number 244, on page 93492. Under the implementation schedule for the final rule, 45 C.F.R. 303.31 (a)(2) was required to be implemented on or before July 1, 2018. In light of that requirement, the Washington legislature passed SSB 6334 and made Part I of the bill effective on June 7, 2018. Other parts of the bill take effect January 1, 2019.

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 13, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 13, Repealed 0.

Date Adopted: June 5, 2018.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-01-075, filed 12/18/12, effective 1/18/13)

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

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

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

"Accessible coverage" means health (~~insurance~~) care coverage which provides primary care services to the children with reasonable effort by the (~~custodian~~) custodial parent.

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

"Acknowledged father" means a man who has established a father-child relationship under RCW 26.26.300 through 26.26.375.

"Adjudicated parent" means a person who has been adjudicated by a court of competent jurisdiction to be the parent of a child.

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

rent support and/or a support debt. Administrative orders include:

- (1) An order entered under chapter 34.05 RCW;
- (2) An agreed settlement or consent order entered under WAC 388-14A-3600; and
- (3) A support establishment notice which has become final by operation of law.

"Agency" means the Title IV-D provider of a state or tribe, or the central authority of another country. In Washington, this is the division of child support (DCS) within the department of social and health services (DSHS).

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

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

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

"Annual fee" means the twenty-five dollar annual fee charged between October 1 and September 30 each year, required by the Federal Deficit Reduction Act of 2005 and RCW 74.20.040.

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

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

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

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

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

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

"Cash medical support" ~~((is a term used in RCW 26.09.105 and certain federal regulations to refer to amounts paid by an obligated parent to the other parent or to the state in order to comply with the medical support obligation stated in a child support order))~~ means a combination of:

- (1) A parent's monthly payment toward the premium paid for coverage provided by a public entity or by another parent, which represents the obligated parent's proportionate share of the premium paid, but no more than twenty-five percent of the obligated parent's basic support obligation; and
- (2) A parent's proportionate share of uninsured medical expenses.

"Central authority" means the agency designated by a government to facilitate support enforcement with a foreign reciprocating country (FRC) pursuant to section 459A of the federal Social Security Act.

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

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

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

"Controlling order" means the only order issued or, where multiple orders exist, the order determined by a tribunal to control prospective current support pursuant to the Uniform Interstate Family Support Act (UIFSA), chapter 26.21A RCW.

"Controlling order state" means the state in which the only order was issued or, where multiple orders exist, the state in which the order determined by a tribunal to control prospective current support pursuant to the UIFSA was issued.

"Country" means a foreign country (or a political subdivision thereof) declared to be a Foreign Reciprocating Country (FRC) under 42 U.S.C. 659A and any foreign country (or political subdivision thereof) with which the state has entered into a reciprocal arrangement for the establishment and enforcement of support obligations to the extent consistent with federal law pursuant to 42 U.S.C. 659A.

"Court order" means a judgment, decree or order of a Washington state superior court, or a court of comparable jurisdiction of an Indian tribe or another state or country.

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

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

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

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

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

"Dependent child" means a person:

- (1) Seventeen years of age or younger who is not self-supporting, married, or a member of the United States armed forces;
- (2) Eighteen years of age or older for whom a court order requires support payments past age eighteen;

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

"Determination of parentage" means the establishment of the parent-child relationship by the signing of a valid acknowledgment of paternity under RCW 26.26.300 through 26.26.375 or adjudication by the court.

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

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

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

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

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

"Domestic partner" means a state registered domestic partner as defined in chapter 26.60 RCW.

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

- (1) Wages or salary;
- (2) Commissions and bonuses;
- (3) Periodic payments under pension plans, retirement programs, and insurance policies of any type;
- (4) Disability payments under Title 51 RCW;
- (5) Unemployment compensation under RCW 50.40.-020, 50.40.050 and Title 74 RCW;
- (6) Gains from capital, labor, or a combination of the two; and
- (7) The fair value of nonmonetary compensation received in exchange for personal services.

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

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

- (1) Partnerships and associations;
- (2) Trusts and estates;
- (3) Joint stock companies and insurance companies;
- (4) Domestic and foreign corporations;
- (5) The receiver or trustee in bankruptcy; and
- (6) The trustee or legal representative of a deceased person.

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

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

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

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

"Foreign order" means a court or administrative order entered by a tribunal other than one in the state of Washington, including an order entered by a tribunal in an Indian tribe or another state or country.

"Foreign reciprocating country" or FRC means a country which the federal government has declared to be a foreign reciprocating country, which means that the foreign country has established, or undertakes to establish, procedures for the establishment and enforcement of duties of support owed to custodial parents who are residents of the United States, and that such procedures are substantially in conformity with the standards prescribed under title IV-D of the federal Social Security Act.

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

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

- (1) The representation of the existence or the nonexistence of a fact;
- (2) The representation's materiality;
- (3) The representation's falsity;
- (4) The speaker's knowledge that the representation is false;
- (5) The speaker's intent that the representation should be acted on by the person to whom it is made;
- (6) Ignorance of the falsity on the part of the person to whom it is made;
- (7) The latter's:
 - (a) Reliance on the truth of the representation;
 - (b) Right to rely on it; and
 - (c) Subsequent damage.

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

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

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

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

"Health care coverage" means fee for service, health maintenance organization, preferred provider organization,

and other types of private health insurance and public health care coverage under which medical services could be provided to a dependent child or children. These services include, but are not limited to: Medical/surgical (inpatient, outpatient, physician) care, medical equipment (crutches, wheel chairs, prosthesis, etc.), pharmacy products, optometric care, dental care, orthodontic care, preventive care, mental health care, and physical therapy. The term "health care coverage" includes, but is not limited to, health insurance coverage.

~~"Health insurance" ((means insurance coverage for all medical services related to an individual's general health and well being. These services include, but are not limited to: Medical/surgical (inpatient, outpatient, physician) care, medical equipment (crutches, wheel chairs, prosthesis, etc.); pharmacy products, optometric care, dental care, orthodontic care, preventive care, mental health care, and physical therapy. Health insurance coverage does not include medical assistance provided under chapter 74.09 RCW)) or "health insurance coverage" is another term for, and included in the definition of, "health care coverage." Health insurance coverage includes any coverage under which medical services are provided by an employer or a union whether that coverage is provided through a self-insurance program, under the employee retirement income security act of 1974, a commercial insurer pursuant to chapters 48.20 and 48.21 RCW, a health care service contractor pursuant to chapter 48.44 RCW, or a health maintenance organization pursuant to chapter 48.46 RCW, and the state through chapter 41.05 RCW.~~

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

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

"Income" includes:

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

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

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

"Initiating agency" or "initiating jurisdiction" means a state or Tribal IV-D agency or the central authority of

another country, as defined in this rule, in which an individual has applied for or is receiving services.

"Intergovernmental IV-D case" means a IV-D case in which the noncustodial parent lives and/or works in a different jurisdiction than the custodial parent and child(ren) that has been referred by an initiating agency to a responding agency for services. An intergovernmental IV-D case may include any combination of referrals between states, tribes, and countries. An intergovernmental IV-D case also may include cases in which a state agency is seeking only to collect support arrearages, whether owed to the family or assigned to the state.

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

"Medical assistance" means medical benefits under Title XIX of the federal Social Security Act provided to families as an alternative or supplement to TANF. This term includes public health care coverage, which is called apple health in Washington state.

"Medical expenses," for the purpose of establishing support obligations under RCW 26.09.105, 74.20A.055 and 74.20A.056, or for the purpose of enforcement action under chapters 26.23, 74.20 and 74.20A RCW, including the notice of support debt and the notice of support owed, means medical costs incurred on behalf of a child, which include:

- Medical services related to an individual's general health and well-being, including but not limited to, medical/surgical care, preventive care, mental health care and physical therapy; and
- Prescribed medical equipment and prescribed pharmacy products;
- Health care coverage, such as coverage under a health insurance plan, including the cost of premiums for coverage of a child;
- Dental, orthodontic, and optometrical costs incurred on behalf of a child; and
- Copayments and/or deductibles incurred on behalf of a child.

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

"Medical support" ((means any combination)) consists of ((the following)):

(1) Health ~~((insurance))~~ care coverage ((for a dependent child)), which may be health insurance coverage or public health care coverage; and

(2) ~~((Amounts owed by one parent to the other parent as a monthly payment toward the premium paid by the other parent for health insurance coverage for a dependent child;))~~ Cash medical support, which consists of:

~~((3) Amounts owed by a noncustodial parent to the state as a) (a) A parent's monthly payment toward the ((cost of managed care)) premium paid for coverage ((for the child by the state, if the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment)) provided by a public entity or by another parent, which represents the obligated parent's proportionate share of the premium paid, but no more than twenty-five percent of the obligated parent's basic support obligation; and~~

~~((4) Amounts owed by one parent to the other parent as his or her)) (b) A parent's proportionate share of uninsured medical expenses ~~((for a dependent child)).~~~~

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

~~(=~~
~~•)) premiums paid ~~((by the other)) for coverage provided by a public entity or by another parent ~~((for insurance coverage for the child; or~~~~~~

~~• Amounts paid for managed care coverage for the child by the state, if the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment.~~

~~This contribution)), which is based on the obligated parent's proportionate share of the premium paid, but ~~((may not exceed)) no more than twenty-five percent of the obligated parent's basic support obligation.~~~~

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

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

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

"Obligated parent" means a parent who is required under a child support order to provide medical support, which could include health ~~((insurance)) care coverage or to reimburse the other parent for his or her share of uninsured medical expenses for a dependent child.~~ The obligated parent could be either the NCP or the CP.

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

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

"Parent" means an individual who has established a parent-child relationship under RCW 26.26.101.

"Parent-child relationship" means the legal relationship between a child and a parent of the child. The term includes the mother-child relationship and the father-child relationship.

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

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

"Past support" means support arrears.

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

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

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

"Physical custodian" means custodial parent (CP).

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

"Premium" means the amount paid for coverage provided by a public entity or by another parent for a child covered by a child support order. This term may also mean "cost of coverage."

"Presumed parent" means a person who, by operation of law under RCW 26.26.116, is recognized as the parent of a child until that status is rebutted or confirmed in a judicial proceeding.

"Private insurance" ~~((means)) is a term used in this chapter to refer to accessible health insurance for a child provided by a parent without the need for service of a national medical support notice, and does not include public health ~~((insurance)) care coverage~~ provided by the state ~~((without a contribution from either parent)).~~~~

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

"Public health care coverage," sometimes called "state purchased health care," means state-financed or federally financed medical coverage, whether or not there is an assignment of rights. For children residing in Washington state, public health care coverage is called apple health; this includes coverage through the department of social and health services or the health care authority, except for coverage under chapter 41.05 RCW. For children residing outside of Washington, this includes coverage through another state's agencies that administer state purchased health care programs.

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

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

(1) Mailing a support establishment notice to the noncustodial parent in the manner described in WAC 388-14A-3105;

(2) Referral to a sheriff or other server of process, or to a locate service or department employee for locate activities;

(3) Tracing activity such as:

(a) Checking local telephone directories and attempts by telephone or mail to contact the custodial parent, relatives of the noncustodial parent, past or present employers, or the post office;

(b) Contacting state agencies, unions, financial institutions or fraternal organizations;

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

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

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

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

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

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

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

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

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

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

"Responding agency" or **"responding jurisdiction"** means the agency that is providing services in response to a referral from an initiating agency in an intergovernmental IV-D case.

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

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

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

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

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

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

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

"Superior court order" means a judgment, decree or order of a Washington state superior court, or of a court of comparable jurisdiction in an Indian tribe or another state or country.

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

(1) Delinquent support;

(2) A debt for the payment of expenses for the reasonable or necessary care, support and maintenance including uninsured medical expenses, birth costs, child care costs, and special child rearing expenses of a dependent child or other person;

(3) A debt under RCW 74.20A.100 or 74.20A.270; or

(4) Accrued interest, fees, or penalties charged on a support debt, and attorney's fees and other litigation costs awarded in an action under Title IV-D to establish or enforce a support obligation.

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

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

"Support money" means money paid to satisfy a support obligation, whether it is called child support, spousal support, alimony, maintenance, (~~(enforcement of)~~) reimbursement for uninsured medical expenses, health (~~(insurance)~~) care coverage, or birth costs.

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

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

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

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

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

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

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

"Title IV-D agency" or **"IV-D agency"** means the division of child support, which is the agency responsible for car-

rying out the Title IV-D plan in the state of Washington. Also refers to the Washington state support registry (WSSR).

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

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

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

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

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

"Tribunal" means a state court, tribal court, administrative agency, or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage, and includes such courts, agencies or entities in other states or countries.

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

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

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

"Uninsured medical expenses," ~~((+))~~ for the purpose of establishing or enforcing support obligations, means:

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

(2) Premiums, copayments, or deductibles incurred on behalf of a child.

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

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

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

"WSSR" is the Washington state support registry.

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

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-3312 The division of child support serves a notice of support owed to establish a fixed dollar amount owed by either parent for medical support. (1) Depending on the specific requirements of the child support order, and only if the case meets the criteria set out in WAC 388-14A-4111, the division of child support (DCS) may serve a notice of support owed under RCW 26.23.110, WAC 388-14A-3310 and this section:

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

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

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

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

(b) On the NCP in order to establish as a sum certain and collect the NCP's monthly payment toward the premium paid by the state for managed care coverage for the child, if the child receives (~~state-financed medical~~) public health care coverage (~~(through the department under chapter 74.09 RCW for which)~~) in the state of Washington, whether or not there is an assignment of rights.

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

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

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

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

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

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

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

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

(5) DCS may serve a notice of support owed on the NCP under subsection (1)(b) of this section without regard to the CP's status as a parent or party to the order, if the child receives (~~state-financed medical~~) public health care cover-

age ((through the department under chapter 74.09 RCW for which)) in the state of Washington, whether or not there is an assignment of rights.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) When either party asks DCS to serve a notice of support owed under this section to establish the other party's proportionate share of uninsured medical expenses as a sum certain amount and the medical expenses include premiums for health ((insurance)) care coverage for the child(ren) covered by the order, DCS reviews the order to determine whether it provides for a monthly payment toward the premium when the obligated parent does not have insurance available through his or her employer or union.

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

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

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

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

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

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

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

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

(12) DCS may not collect for medical premium costs claimed by the requesting party through either the monthly payment toward the premium or the reimbursement of uninsured medical expenses if the obligated parent is providing

accessible health (~~(insurance)~~) care coverage for the child. The obligated parent is only required to pay those costs if he or she is not providing accessible health (~~(insurance)~~) care coverage for the child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(21) If both the CP and the NCP request that DCS serve a notice of support owed under this section on the other party, those notices remain separate and may not be combined.

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

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

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

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) If the administrative law judge (ALJ) determines that the uninsured medical expenses claimed by the party seeking

reimbursement do not amount to at least five hundred dollars, the ALJ:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 13-01-075, filed 12/18/12, effective 1/18/13)

WAC 388-14A-3925 Who can ask to modify an administrative support order? (1) The division of child support (DCS), the custodial parent (CP) or the noncustodial parent (NCP) may file a petition and request a hearing to prospectively modify an administrative order for child support. The request must be in writing and must state:

- (a) Any circumstances that have changed;
- (b) Any relief requested; and
- (c) The proposed new support amount.

(2) The petitioning party must file the request for modification with DCS.

(3) Acting as a responding jurisdiction, DCS may file a petition to prospectively modify an administrative order for child support on behalf of an initiating jurisdiction in an inter-governmental case.

(4) DCS serves a copy of the request for modification and notice of hearing on all other parties by first class mail at their address last known to DCS.

(5) DCS, the administrative law judge (ALJ), or the department review judge:

(a) Prospectively modifies orders according to the terms of chapter 26.19 RCW and RCW 74.20A.059; and

(b) May only modify an order issued by a tribunal in another state according to the terms of RCW 26.21A.550.

(6) A request to add a requirement for the custodial parent (CP) to provide health ((~~insurance~~)) care coverage, or to add a provision in the order to include the CP's share of uninsured medical expenses, is not by itself a sufficient basis for modification of the order.

(7) If the nonpetitioning party fails to appear at the hearing, the ALJ issues a default order based on the Washington state child support schedule and the worksheets submitted by the parties, considering the terms set out in the request for modification.

(8) If the petitioning party fails to appear at the hearing, the ALJ enters an order dismissing the petition for modification.

((8)) (9) If the petition for modification does not comply with the requirements of subsection (1)(a) and (b) of this section, the ALJ may:

(a) Dismiss the petition; or

(b) Continue the hearing to give the petitioning party time to amend according to WAC 388-14A-3275 or to complete the petition.

(10) The ALJ may set the effective date of modification as the date the order is issued, the date the request was made, or any time in between. If an effective date is not set in the order, the effective date is the date the modification order is entered.

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-4100 How does the division of child support enforce my obligation to provide health ((~~insurance~~)) care coverage for my children? (1) If a child support order requires a parent to provide health ((~~insurance~~)) care coverage for the children, the division of child support (DCS)

attempts to enforce that requirement according to the terms of the order.

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

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

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

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

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

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

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

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

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

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

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

(7) When DCS is enforcing a Washington support order entered prior to May 13, 1989, unless the support order specifies differently, the obligated parent must provide health insurance for the dependent child(ren) if coverage is available or becomes available through the obligated parent's employment or union:

(a) For a maximum of twenty-five dollars per month, if the order specifies that the obligated parent must provide coverage only if it is available at a reasonable cost; or

(b) For any premium amount whatsoever, if the order does not specify reasonable cost.

(8) DCS serves a notice of intent to enforce a health ((insurance)) care coverage obligation if the support order:

(a) Requires the obligated parent either to provide health ((insurance)) care coverage or prove that coverage is not available; and

(b) Does not inform the obligated parent that failure to provide health ((insurance)) care coverage or prove it is not available may result in enforcement of the order without notice to the obligated parent.

(9) DCS serves the notice of intent to enforce a health ((insurance)) care coverage obligation on the obligated parent by certified mail, return receipt requested, or by personal service.

(10) The notice advises the obligated parent that he or she must submit proof of coverage, proof that coverage is not available, or proof that the obligated parent has applied for coverage, within twenty days of the date of service of the notice.

(11) The notice advises the obligated parent that, if health ((insurance)) care coverage is not yet available, the obligated parent must immediately notify DCS if health ((insurance)) care coverage becomes available through the obligated parent's employer or union.

(12) When DCS enforces an obligated parent's health ((insurance)) care coverage obligation, such enforcement may include asking the employer and the plan administrator to enroll the obligated parent in a health insurance plan available through the employer.

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-4110 If my support order requires me to provide medical support for my children, what do I have to do?

(1) Once a support order is entered requiring medical support, the obligated parent must take the following actions within twenty days:

(a) Provide health ((insurance)) care coverage; and

(b) Provide proof of coverage to the other parent and to the division of child support (DCS), such as:

(i) The name of the insurer providing the health insurance coverage or the type of public health care coverage provided by the obligated parent;

(ii) The names of the beneficiaries covered;

(iii) The policy number;

(iv) That coverage is current; and

(v) The name and address of the obligated parent's employer.

(2) If private, union or employer-provided health insurance coverage that is accessible to the children named in the order is available, the obligated parent must:

(a) Provide for coverage for the children without waiting for an open enrollment period, as provided under RCW 48.01.235 (4)(a); and

(b) Submit proof of coverage as outlined in subsection (1)(b) above.

(3) If health insurance is not immediately available to the obligated parent, as soon as health insurance becomes available, the obligated parent must:

(a) Provide for coverage for the children named in the order; and

(b) Submit proof of coverage as outlined in subsection (1)(b) above.

(4) ~~((Medical assistance provided by the department under chapter 74.09 RCW does not substitute))~~ Providing public health care coverage for the children satisfies an obligated parent's requirement to provide for health ((insurance)) care coverage, as long as the obligated parent also covers the children under any insurance available through his or her employer or union which is provided at no cost to the obligated parent.

(5) DCS may serve a notice of support owed for medical support under WAC 388-14A-3312 to establish either or both of the following:

(a) Either parent's share of uninsured medical expenses owed to the other parent; or

(b) Either parent's monthly payment toward the premium paid for coverage by the other parent or the state, if:

(i) Health insurance coverage is not available through the parent's employer or union or is not otherwise provided; and

(ii) The support order provides for the payment of a monthly payment toward the premium when the obligated parent does not provide coverage.

(6) See WAC 388-14A-4165 for a description of what happens when the combined total of a noncustodial parent's current support obligation, arrears payment and health insurance premiums to be withheld by the employer exceeds the fifty per cent limitation for withholding.

(7) Both parents must notify DCS any time there is a change to the health ((insurance)) care coverage for the children named in the order.

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

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-4111 When may DCS decline a request to enforce a medical support obligation?

The division of child support (DCS) may decline to enforce a medical support obligation using the remedies available under RCW 26.09.105, 26.18.170 and 26.23.110 if one or more of the following apply:

(1) The medical support obligation is imposed by a child support order that was not entered in a court or administrative forum of the state of Washington;

(2) The department of social and health services is not paying public assistance or providing foster care services;

(3) The party requesting enforcement of the medical support obligation does not have an open IV-D case with DCS for the child;

(4) The party requesting enforcement of the medical support obligation is not a parent of the child for whom the medical support obligation was established;

(5) The party is requesting reimbursement of the obligated parent's proportionate share of medical premium costs, and the obligated parent is currently providing accessible health ((insurance)) care coverage for the child;

(6) The party requesting enforcement of the medical support obligation is not a former recipient of public assistance as described in WAC 388-14A-2000 (2)(d);

(7) DCS has not received a request for services from a child support agency in another state or a child support agency of an Indian tribe or foreign country;

(8) The party requesting enforcement of the medical support obligation has not applied for full support enforcement services;

(9) The party requesting enforcement of the medical support obligation does not qualify as a party who can receive child support enforcement services from DCS under WAC 388-14A-2000;

(10) The case does not meet the requirements for provision of support enforcement services from DCS under WAC 388-14A-2010;

(11) DCS denies the application under WAC 388-14A-2020;

(12) The party requesting enforcement of the medical support obligation does not provide proof of payment, any required forms, and/or the declaration under penalty of perjury required under WAC 388-14A-3312;

(13) The case meets one or more of the reasons set out in WAC 388-14A-4112(2) that DCS does not enforce a custodial parent's obligation to provide medical support.

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-4112 When does the division of child support enforce a custodial parent's obligation to provide medical support? (1) A noncustodial parent (NCP) may file an application for full child support enforcement services and specifically request that the division of child support (DCS) enforce the medical support obligation of the custodial parent (CP). WAC 388-14A-4111 describes when DCS may accept or decline a request to enforce a medical support obligation.

(2) DCS does not enforce the CP's medical support obligation unless the NCP files an application for nonassistance support enforcement services under WAC 388-14A-2000 (2)(c). The NCP must specify whether he or she is requesting that DCS enforce the CP's obligation to provide:

(a) The CP's proportionate share of uninsured medical expenses;

(b) Health ~~((insurance))~~ care coverage (including the possibility of a monthly payment toward the premium paid by the NCP for coverage of the children when appropriate); or

(c) Both.

(3) A medical support obligation includes providing health ~~((insurance))~~ care coverage or contributing a monthly payment toward the premium paid for coverage when appropriate, and paying a proportionate share of any uninsured medical expenses for the children.

(a) DCS may enforce the CP's obligation to pay a proportionate share of any uninsured medical expenses for the children under WAC 388-14A-3312.

(b) DCS may decide whether it is appropriate to enforce the CP's obligation to provide health ~~((insurance))~~ care cover-

age or contribute a monthly payment toward the premium paid for coverage under subsection (4) of this section.

(4) DCS does not enforce a custodial parent's obligation to provide health ~~((insurance))~~ care coverage or pay a monthly payment toward the premium paid for coverage when:

(a) The support order does not include a medical support obligation which includes providing health ~~((insurance))~~ care coverage or paying monthly payment toward the premium paid for coverage for the CP.

(b) The NCP is already providing health ~~((insurance))~~ care coverage for the children covered by the order.

(c) The amount that the CP would have to pay for the premium for health ~~((insurance))~~ care coverage exceeds the NCP's monthly support obligation for the children.

(d) The children are covered by health ~~((insurance))~~ care coverage provided by someone else.

(e) The children are receiving medicaid or another kind of public health care coverage.

(f) The children are receiving TANF.

(g) The CP does not reside in Washington state.

(h) The CP is a tribal member living on or near the reservation.

(i) The CP is receiving child support enforcement services through a tribal IV-D program.

(5) DCS does not enforce a CP's obligation to pay a proportionate share of medical expenses incurred by an NCP when(=

~~(a))~~ the support order does not include an obligation for the CP to pay a proportionate share of uninsured medical expenses(~~=or~~

~~(b) The NCP is already providing health insurance coverage for the children covered by the order).~~

(6) If none of the conditions under subsection (4) exist, DCS may enforce the CP's obligation to provide health insurance coverage when the CP has health insurance available at a reasonable cost through the CP's employer or union.

(7) A "reasonable cost" for health insurance coverage is defined as twenty-five percent of the basic support obligation for the children covered by the order, unless the support order provides a different limitation.

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-4120 DCS uses the National Medical Support Notice to enforce an obligation to provide health insurance coverage. (1) The division of child support (DCS) uses a notice of enrollment called the National Medical Support Notice (NMSN) to enforce an obligated parent's obligation to provide health insurance coverage under chapter 26.18 RCW.

(2) DCS sends the NMSN to the obligated parent's employer in one of the following ways:

(a) In the same manner as a summons in a civil action,

(b) By certified mail, return receipt requested,

(c) By regular mail, or

(d) By electronic means as provided in WAC 388-14A-4040 (1)(d).

(3) DCS sends the NMSN without notice to the obligated parent, who could be either the noncustodial parent (NCP) or the custodial parent (CP) when:

(a) A court or administrative order requires the obligated parent to provide ~~((insurance))~~ coverage for a dependent child;

(b) The obligated parent fails to provide health insurance (either by not covering the child or by letting the coverage lapse) or fails to provide proof of coverage;

(c) The requirements of RCW 26.23.050 are met; and

(d) DCS has reason to believe that coverage is available through the obligated parent's employer or union.

(4) If sending the NMSN does not result in coverage for the child, DCS may seek to enforce the obligated parent's medical support obligation by other means, as provided in RCW 26.18.170 and WAC 388-14A-4100.

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

WAC 388-14A-4160 Are there any limits on the amount an obligated parent may be required to pay for health insurance premiums? (1) The National Medical Support Notice (NMSN) advises the employer of any limitations on the amount an obligated parent may be required to pay for health insurance premiums to cover the children.

(2) Often the support order which contains the health insurance obligation determines the limitation on premium amounts, or states that there is no limitation. See WAC 388-14A-4100 for a discussion of premium limitation amounts.

(3) The premium limitation amount stated in the NMSN:

(a) Describes the premium amount required to cover the children named in the notice; and

(b) ~~((Does not))~~ May include any amounts required to cover the obligated parent, if DCS requires the employer or plan administrator to enroll the obligated parent in a health care coverage plan in order to obtain coverage for the obligated parent's children.

(4) Even if the medical insurance premium is within the limits set by the order or by WAC 388-14A-4100, the fifty percent limitation on withholding found in RCW 26.23.-060(3) still applies. See WAC 388-14A-4165 for a description of what happens when the fifty percent limitation is exceeded.

(5) When calculating the fifty percent limitation for withholding purposes:

(a) The premium attributable to coverage for the children is always included in this calculation; but

(b) The premium attributable to coverage for the obligated parent is included only when DCS requires the employer or plan administrator to enroll the obligated parent in a health insurance plan in order to obtain coverage for the obligated parent's children. See also WAC 388-14A-4165(3).

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-4175 Who is required to notify the division of child support when ~~((insurance))~~ health care coverage for the children ends? (1) Once the division of child support (DCS) has notified an employer that a parent is

obligated by a support order to provide health insurance coverage for the children named in the order, the National Medical Support Notice (NMSN) or other notice of enrollment remains in effect as specified in WAC 388-14A-4170.

(2) If coverage for the children is terminated, the employer must notify DCS within thirty days of the date coverage ends.

(3) A parent who is required by a child support order to provide health ~~((insurance))~~ care coverage for his or her children must notify DCS and the other parent within thirty days of the date coverage for the children ends. This requirement applies whether the obligated parent is the custodial parent or the noncustodial parent.

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-4180 When must the division of child support communicate with the ~~((DSHS medicaid purchasing administration))~~ health care authority? (1) The division of child support (DCS) must inform the ~~((DSHS medicaid purchasing administration (MPA)))~~ health care authority (HCA) of the existence of a new or modified court or administrative order for child support when the order includes a requirement for medical support. ~~((MPA is the part of DSHS which))~~ The health care authority provides services for the state of Washington under Title XIX of the federal Social Security Act.

(2) DCS must provide ~~((MPA))~~ HCA with the following information:

(a) Title IV-A case number, Title IV-E foster care case number, medicaid number or the individual's Social Security number;

(b) Name of the obligated parent;

(c) Social Security number of the obligated parent;

(d) Name and Social Security number of the child(ren) named in the order;

(e) Home address of the obligated parent;

(f) Name and address of the obligated parent's employer;

(g) Information regarding the obligated parent's health insurance policy; and

(h) Whether the child(ren) named in the order are covered by the policy.

(3) DCS must periodically communicate with ~~((MPA))~~ HCA to determine if there have been any lapses (stops and starts) in the obligated parent's health ~~((insurance))~~ care coverage for medicaid applicants.

(4) Before DCS may serve a notice of support owed under WAC 388-14A-3312 (1)(b) to establish an obligated parent's monthly payment toward the premium paid by the state for coverage, ~~((MPA))~~ HCA must provide information regarding the premium paid for each child covered by the notice.

(a) DCS distributes to ~~((MPA))~~ HCA any collections based on the obligation established under WAC 388-14A-3312 (1)(b) when the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment.

(b) Such collections are retained by ~~((the department))~~ HCA to reimburse the state, subject to the limitations in WAC 388-14A-2035(4).

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-6300 Duty of the administrative law judge in a hearing to determine the amount of a support obligation. (1) A support order entered under this chapter must conform to the requirements set forth in RCW 26.09.105, 26.18.170, and 26.23.050. The administrative law judge (ALJ) must comply with the DSHS rules on child support and include a Washington state child support schedule worksheet when entering a support order.

(2) In hearings held under this chapter to contest a notice and finding of financial responsibility or a notice and finding of parental responsibility or other notice or petition, the ALJ must determine:

(a) The noncustodial parent's obligation to provide support under RCW 74.20A.057;

(b) The names and dates of birth of the children covered by the support order;

(c) The net monthly income of the noncustodial parent (NCP) and the other parent of the child;

(d) The NCP's share of the basic support obligation and any adjustments to that share, according to his or her circumstances;

(e) Each parent's proportionate share of costs such as ~~((health care))~~ uninsured medical expenses, day care and special child rearing expenses;

(f) If requested by a party, the NCP's proportionate share of costs such as ~~((health care))~~ uninsured medical expenses or day care expenses in a sum certain amount per month;

(g) A statement that either or both parents are obligated to provide medical support under RCW 26.09.105 and 26.18.170, as provided in subsection (3) of this section, including but not limited to notice that if proof of health ~~((insurance))~~ care coverage or proof that the coverage is unavailable is not provided to DCS within twenty days, DCS may seek direct enforcement through the obligated parent's employer or union without further notice to the parent;

(h) The NCP's accrued debt and order payments toward the debt in a monthly amount to be determined by the division of child support (DCS);

(i) The NCP's current and future monthly support obligation as a sum certain amount per month, and also as a "per month per child" amount if appropriate under WAC 388-14A-3200(4) and 388-14A-4800, and order payments in that amount.

(3) In determining the medical support obligation of the parents, the ALJ must:

(a) Require both parents to provide medical support for the children covered by the order. Medical support includes both:

(i) The obligation to provide health ~~((insurance))~~ care coverage for the children;

(A) If coverage that can be extended to cover the children is or becomes available through the obligated parent's employer or union((-);

(B) If the obligated parent can enroll the children in public health care coverage; or

(C) To make a monthly contribution toward the premium paid for coverage by the other parent or the state when coverage is not available; and

(ii) The obligation to pay his or her proportionate share of uninsured medical expenses.

(b) Determine whether one (but not both) of the parents should be excused from the obligation to provide coverage or contribute to a premium.

(i) The ALJ must state the reasons for excusing a parent from the coverage obligation.

(ii) The ALJ may not excuse that parent from the obligation to contribute his or her proportionate share of uninsured medical expenses.

(4) Having made the determinations required in subsection (2) above, the ALJ must order the NCP to make payments to the Washington state support registry (WSSR).

(5) The ALJ must allow DCS to orally amend the notice at the hearing to conform to the evidence. The ALJ may grant a continuance, when necessary, to allow the NCP or the CP additional time to present rebutting evidence or argument as to the amendment.

(6) The ALJ may not require DCS to produce or obtain information, documents, or witnesses to assist the NCP or CP in proof of defenses to liability. However, this rule does not apply to relevant, nonconfidential information or documents that DCS has in its possession.

(7) In a hearing held on a notice of support owed served on the NCP under WAC 388-14A-3310 or 388-14A-3311, the ALJ must comply with WAC 388-14A-3323 and 388-14A-3325 to determine, depending on what was requested in the notice:

(a) Whether a condition precedent in the order to begin or adjust the support obligation was met;

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

(c) Any accrued arrears;

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

(e) The amount of the NCP's share of daycare or child care expenses for the children, including:

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

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

(8) In a hearing held on a notice of support owed served on either the NCP or the CP issued under WAC 388-14A-3312, the ALJ must determine either or both of the following, depending on what was requested in the notice:

(a) The amount owed by the obligated parent to the other for unreimbursed medical expenses;

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

(9) Except as provided in WAC 388-14A-3324, the ALJ does not specify how the amounts owed by the obligated parent should be paid.

(10) In the event that DCS has served a notice of support owed under WAC 388-14A-3312 on both the NCP and the CP, the ALJ must issue a separate administrative order for each notice issued, and may not set off the debts against each other.

WSR 18-14-009

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed June 22, 2018, 9:13 a.m., effective June 22, 2018, 9:13 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This department is amending WAC 388-106-0905(3) to correct an eligibility error for medical care services (MCS) that occurred during the implementation of the community first choice program. At that time, the department changed the eligibility for medicaid personal care to exclude nursing facility level of care (NFLOC), which inadvertently changed the eligibility for MCS. The emergency rule restores NFLOC eligibility for MCS. Without this rule change, vulnerable people with no other options for care may be harmed.

Citation of Rules Affected by this Order: Amending WAC 388-106-0905.

Statutory Authority for Adoption: RCW 74.08.090.

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: See purpose statement above.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 21, 2018.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-03-038, filed 1/12/15, effective 2/12/15)

WAC 388-106-0905 Am I eligible to receive medical care services (MCS) residential care services? You are eligible to receive MCS-funded residential care services if:

(1) You meet financial eligibility requirements for medical care services (MCS), described in WAC 182-508-0005;

(2) You are not eligible for services under COPES, or MPC; and

(3) You are assessed in CARE and meet the functional criteria outlined in WAC ((388-106-0210(2))) 388-106-0210(3) or WAC 388-106-0355(1).

WSR 18-14-018

EMERGENCY RULES

DEPARTMENT OF HEALTH

[Filed June 25, 2018, 4:48 p.m., effective July 1, 2018]

Effective Date of Rule: July 1, 2018.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Effective July 1, 2018, Section 10002, of 2ESHB 1388 (chapter 201, Laws of 2018) transfers authority and responsibility for behavioral health agency licensing and certification from the department of social and health services (DSHS) to the department of health (department). This state law requires the immediate adoption of the rule because rules written by DSHS cannot be enforced by the department. Emergency rules are needed to implement ESHB [ESSB] 6491. The immediate adoption of rules is necessary to enable the certification of agencies to provide assisted outpatient substance use disorder treatment for certain individuals. The Immediate adoption of this new chapter is necessary for the preservation of the safety of individuals receiving services and observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest. (RCW 34.05.350).

Purpose: Chapter 246-341 WAC, Behavioral health services administrative requirements. The department is adopting a new chapter of rules regarding the licensing and certification of behavioral health services. The authority for behavioral health agency licensing and certification transfers from DSHS to the department effective July 1, 2018. These emergency rules establish the licensure and certification of behavioral health agencies who provide mental health, substance use disorder, and problem and pathological gambling services transferred over from DSHS. These rules also add a new certification for assisted outpatient behavioral health services that were created by ESSB 6491 (chapter 291, Laws of 2018), effective April 1, 2018.

These emergency rules are substantially the same as the "single set" of licensing and certification rules in chapter 388-877 WAC filed by the DSHS division of behavioral health and recovery as WSR 18-06-043 that are being repealed by DSHS as a result of 2ESHB 1388. These rules replace the sections in chapter 388-877 WAC that refer to licensing and certification of behavioral health agencies.

The following is a summary of the differences between the emergency rules compared to the "single set" of rules in chapter 388-877 WAC:

1. Changed all WAC title and chapter numbers and internal references from WAC 388-877-XXXX to 246-341-XXXX. For example, WAC 388-877-0100 became 246-341-0100.
2. Changed the names of state organizations throughout the document consistent with the transfer of authority under 2ESHB 1388.
3. Removed specific information about the DSHS grievance process and added cross-references to health care authority (HCA) rules in chapter 182-538D WAC.
4. Added a new certification for assisted outpatient behavioral health treatment as described in ESSB 6491.
5. Adjusted definitions to reflect duties transferred to DOH and HCA.
6. Changed information about where and how to send in licensure applications.
7. Changed how the department sends a behavioral health agency a statement of deficiencies report.
8. Added a statement that indicates that the department may summarily suspend an agency's license or certification when an immediate danger to public health, safety, or welfare requires emergency action.
9. Updated the directions on how to appeal a decision made by the department regarding licensure or certification.
10. Added a cross reference to requirements for adult secure withdrawal management and stabilization services in the youth section that was inadvertently left out of the DSHS single set but was in rule prior to April 2018.
11. Added an exemption for state psychiatric hospitals, United States Veterans Administration facilities, and other federal facilities for inpatient behavioral health services that was inadvertently left out of the DSHS single set but was in rule prior to April 2018.

HCA is adopting rules to replace sections in chapter 388-877 WAC regarding behavioral health organization grievance processes.

For more information about behavioral health agencies, see the DOH web site at www.doh.wa.gov/BHI.

Citation of Rules Affected by this Order: New WAC 246-341-0100, 246-341-0110, 246-341-0200, 246-341-0300, 246-341-0305, 246-341-0310, 246-341-0315, 246-341-0320, 246-341-0325, 246-341-0330, 246-341-0335, 246-341-0340, 246-341-0342, 246-341-0345, 246-341-0350, 246-341-0355, 246-341-0360, 246-341-0365, 246-341-0370, 246-341-0400, 246-341-0410, 246-341-0420, 246-341-0425, 246-341-0430, 246-341-0500, 246-341-0510, 246-341-0515, 246-341-0520, 246-341-0600, 246-341-0605, 246-341-0610, 246-341-0620, 246-341-0640, 246-341-0650, 246-341-0700, 246-341-0702, 246-341-0704, 246-341-0706, 246-341-0708, 246-341-0710, 246-341-0712, 246-341-0714, 246-341-0716, 246-341-0718, 246-341-0720, 246-341-0722, 246-341-0724, 246-341-0726, 246-341-0728, 246-341-0730, 246-341-0732, 246-341-0734, 246-341-0736, 246-341-0738, 246-341-0740, 246-341-0742, 246-341-0744, 246-341-0746, 246-341-0748, 246-341-0750, 246-341-0752, 246-341-0754, 246-341-0800, 246-341-0805, 246-341-0810, 246-341-0815, 246-341-0820, 246-341-0900, 246-341-0905, 246-341-0910, 246-341-0915, 246-341-0920,

246-341-1000, 246-341-1005, 246-341-1010, 246-341-1015, 246-341-1020, 246-341-1025, 246-341-1100, 246-341-1102, 246-341-1104, 246-341-1106, 246-341-1108, 246-341-1110, 246-341-1112, 246-341-1114, 246-341-1116, 246-341-1118, 246-341-1120, 246-341-1122, 246-341-1124, 246-341-1126, 246-341-1128, 246-341-1130, 246-341-1132, 246-341-1134, 246-341-1136, 246-341-1138, 246-341-1140, 246-341-1142, 246-341-1144, 246-341-1146, 246-341-1148, 246-341-1150, 246-341-1152, 246-341-1154, 246-341-1156, and 246-341-1158.

Statutory Authority for Adoption: 2ESHB 1388 (chapter 201, Laws of 2018).

Other Authority: ESSB 6491 (chapter 291, Laws of 2018).

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: 2ESHB 1388, (chapter 201, Laws of 2018), transfers authority and responsibility for behavioral health agency licensing and certification from DSHS to the department on July 1, 2018. Because the law transfers authority to adopt rules to the department on the same day the department must begin enforcing them, emergency rules are required to preserve continuity of certification and licensing functions of behavioral health agencies.

Additionally, Section 3 of ESSB 6491 requires that a petition requesting the court to enter an order for up to ninety days less restrictive alternative treatment (for assisted outpatient substance use disorder (SUD) treatment) to include, "the name of an agency or facility which agreed to assume the responsibility of providing less restrictive alternative treatment if the petition is granted by the court." Rules are needed immediately to enable the certification of agencies to provide assisted outpatient SUD treatment for these individuals. Without this new certification in rule, there will be no agencies certified to provide this new treatment category, which could potentially lead to individuals being inappropriately housed in a locked, secure inpatient facility for longer than the court deems necessary or being released due to the lack of a department-certified outpatient SUD facility able to receive these individuals. In addition, public funding for these less restrictive alternative SUD treatment services only becomes available to pay for placement on July 1, 2018, according to appropriations in ESSB 6032 section 213 (1)(zz). Under RCW 34.05.350, observing the time requirements of notice and opportunity to comment on proposed permanent rules would be contrary to the public interest, making emergency rules necessary.

The department is also filing a notice under RCW 34.05.310 of its intent 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 108, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 108, Amended 0, Repealed 0.

Date Adopted: June 22, 2018.

John Wiesman, DrPH, MPH
Secretary

Chapter 246-341 WAC

BEHAVIORAL HEALTH SERVICES ADMINISTRATIVE REQUIREMENTS

SECTION ONE—BEHAVIORAL HEALTH SERVICES—PURPOSE AND SCOPE

NEW SECTION

WAC 246-341-0100 Behavioral health services—

Purpose and scope. (1) The rules in this chapter provide a single set of rules for agencies to follow that provide any one or more of the following behavioral health services:

- (a) Mental health services;
 - (b) Substance use disorder services;
 - (c) Co-occurring services (services to individuals with co-existing mental health and substance use disorders); and
 - (d) Problem and pathological gambling;
- (2) These rules establish the following for agencies that provide behavioral health services:
- (a) Licensure and certification requirements;
 - (b) Agency administrative requirements;
 - (c) Agency personnel requirements; and
 - (d) Agency clinical policies and procedures.

NEW SECTION

WAC 246-341-0110 Behavioral health services—

Available certifications. A behavioral health agency licensed by the department may become certified to provide one or more of the mental health, substance use disorder, and problem and pathological gambling services listed below:

- (1) Outpatient:
 - (a) Individual mental health treatment services;
 - (b) Brief mental health intervention treatment services;
 - (c) Group mental health therapy services;
 - (d) Family therapy mental health services;
 - (e) Rehabilitative case management mental health services;
 - (f) Psychiatric medication mental health services and medication support services;
 - (g) Day support mental health services;

(h) Mental health outpatient services provided in a residential treatment facility (RTF);

(i) Recovery support: Supported employment mental health services;

(j) Recovery support: Supported employment substance use disorder services;

(k) Recovery support: Supportive housing mental health services;

(l) Recovery support: Supportive housing substance use disorder services;

(m) Recovery support: Peer support mental health services;

(n) Recovery support: Wraparound facilitation mental health services;

(o) Recovery support: Applied behavior analysis (ABA) mental health services;

(p) Consumer-run recovery support: Clubhouse mental health services;

(q) Substance use disorder level one outpatient services;

(r) Substance use disorder level two intensive outpatient services;

(s) Substance use disorder assessment only services;

(t) Substance use disorder alcohol and drug information school services;

(u) Substance use disorder information and crisis services;

(v) Substance use disorder emergency service patrol services;

(w) Substance use disorder screening and brief intervention services; and

(x) Problem and pathological gambling services.

(2) Involuntary and court-ordered outpatient services:

(a) Less restrictive alternative (LRA) or conditional release support behavioral health services;

(b) Emergency involuntary detention designated crisis responder (DCR) mental health and substance use disorder services;

(c) Substance use disorder counseling services subject to RCW 46.61.5056; and

(d) Driving under the influence (DUI) substance use disorder assessment services.

(3) Crisis mental health services:

(a) Crisis mental health telephone support services;

(b) Crisis mental health outreach services;

(c) Crisis mental health stabilization services; and

(d) Crisis mental health peer support services.

(4) Opioid treatment program (OTP) services.

(5) Withdrawal management, residential substance use disorder treatment, and mental health inpatient services:

(a) Withdrawal management facility services;

(i) Withdrawal management services - Adult;

(ii) Withdrawal management services - Youth;

(iii) Secure withdrawal management and stabilization services - Adult; and

(iv) Secure withdrawal management and stabilization services - Youth.

(b) Residential substance use disorder treatment services:

(i) Intensive substance use disorder inpatient services;

(ii) Recovery house services;

- (iii) Long-term treatment services; and
- (iv) Youth residential services.
- (c) Mental health inpatient services:
 - (i) Evaluation and treatment services - Adult;
 - (ii) Evaluation and treatment services - Youth;
 - (iii) Child long-term inpatient program services;
 - (iv) Crisis stabilization unit services;
 - (v) Triage - Involuntary services;
 - (vi) Triage - Voluntary services; and
 - (vii) Competency evaluation and restoration treatment services.

SECTION TWO—BEHAVIORAL HEALTH SERVICES—DEFINITIONS

NEW SECTION

WAC 246-341-0200 Behavioral health services—

Definitions. The definitions in this section contain words and phrases used for behavioral health services.

"Absentee coverage" means the temporary replacement a clubhouse provides for the clubhouse member who is currently employed in a time-limited, part-time community job managed by the clubhouse.

"Administrator" means the designated person responsible for the operation of either the licensed treatment agency, or certified treatment service, or both.

"Adult" means an individual eighteen years of age or older. For purposes of the medicaid program, adult means an individual twenty-one years of age or older.

"ASAM criteria" means admission, continued service, and discharge criteria for the treatment of substance use disorders as published by the American Society of Addiction Medicine (ASAM).

"Assessment" means the process of obtaining all pertinent bio-psychosocial information, as identified by the individual, and family and collateral sources, for determining a diagnosis and to plan individualized services and supports.

"Authority" means the Washington state health care authority.

"Background check" means a search for criminal history record information that includes nonconviction data. A background check may include a national fingerprint-based background check, including a Federal Bureau of Investigation criminal history search.

"Behavioral health" means the prevention, treatment of, and recovery from any or all of the following disorders: Substance use disorders, mental health disorders, or problem and pathological gambling disorders.

"Behavioral health agency" or "agency" means an entity licensed by the department to provide behavioral health services.

"Behavioral health organization" or "BHO" means any county authority or group of county authorities or other entity recognized by the health care authority in contract in a defined region.

"Branch site" means a physically separate licensed site, governed by a parent organization, where qualified staff provides certified treatment services.

"Care coordination" means a process-oriented activity to facilitate ongoing communication and collaboration to meet multiple needs of an individual. Care coordination includes facilitating communication between the family, natural supports, community resources, and involved providers and agencies, organizing, facilitating and participating in team meetings, and providing for continuity of care by creating linkages to and managing transitions between levels of care.

"Certified" or "certification" means the status given by the department to provide substance use disorder, mental health, and problem and pathological gambling program-specific services.

"Certified problem gambling counselor" is an individual certified gambling counselor (WSCGC) or a nationally certified gambling counselor (NCGC), certified by the Washington State Gambling Counselor Certification Committee or the International Gambling Counselor Certification Board to provide problem and pathological gambling treatment services.

"Change in ownership" means one of the following:

(a) The ownership of a licensed behavioral health agency changes from one distinct legal owner to another distinct legal owner;

(b) The type of business changes from one type to another, such as, from a sole proprietorship to a corporation; or

(c) The current ownership takes on a new owner of five per cent or more of the organizational assets.

"Chemical dependency professional" or "CDP" means a person credentialed by the department as a chemical dependency professional (CDP) under chapter 246-811 WAC.

"Child," "minor," and "youth" mean:

(a) An individual under the age of eighteen years; or

(b) An individual age eighteen to twenty-one years who is eligible to receive and who elects to receive an early and periodic screening, diagnostic, and treatment (EPSDT) medicaid service. An individual age eighteen to twenty-one years who receives EPSDT services is not considered a "child" for any other purpose.

"Child mental health specialist" means a mental health professional with the following education and experience:

(a) A minimum of one hundred actual hours (not quarter or semester hours) of special training in child development and the treatment of children with serious emotional disturbance and their families; and

(b) The equivalent of one year of full-time experience in the treatment of seriously emotionally disturbed children and their families under the supervision of a child mental health specialist.

"Clinical record" means either a paper, or electronic file, or both that is maintained by the behavioral health agency and contains pertinent psychological, medical, and clinical information for each individual served.

"Clinical supervision" means regular and periodic activities performed by a professional licensed or certified under Title 18 RCW practicing within their scope of practice. Clinical supervision includes review of assessment, diagnostic formulation, treatment planning, progress toward completion of care, identification of barriers to care, continuation of ser-

vices, authorization of care, and the direct observation of the delivery of clinical care.

"Clubhouse" means a community-based, recovery-focused program designed to support individuals living with the effects of mental illness, through employment, shared contributions, and relationship building. A clubhouse operates under the fundamental principle that everyone has the potential to make productive contributions by focusing on the strengths, talents, and abilities of all members and fostering a sense of community and partnership.

"Community mental health agency" means the same as "behavioral health agency."

"Community relations plan" means a plan to minimize the impact of an opioid treatment program as defined by the Center for Substance Abuse Guidelines for the Accreditation of Opioid Treatment Programs, section 2.C.(4).

"Community support services" means services authorized, planned, and coordinated through resource management services including, at a minimum:

(a) Assessment, diagnosis, emergency crisis intervention available twenty-four hours, seven days a week;

(b) Prescreening determinations for persons who are mentally ill being considered for placement in nursing homes as required by federal law;

(c) Screening for patients being considered for admission to residential services;

(d) Diagnosis and treatment for children who are mentally or severely emotionally disturbed discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment (EPSDT) program;

(e) Investigation, legal, and other nonresidential services under chapter 71.05 RCW;

(f) Case management services;

(g) Psychiatric treatment including medication supervision;

(h) Counseling;

(i) Psychotherapy;

(j) Assuring transfer of relevant patient information between service providers;

(k) Recovery services; and

(l) Other services determined by behavioral health organizations.

"Complaint" means an alleged violation of licensing or certification requirements under chapters 71.05, 71.12, 71.24, 71.34 RCW, and this chapter, which has been authorized by the department for investigation.

"Consent" means agreement given by an individual after the person is provided with a description of the nature, character, anticipated results of proposed treatments and the recognized serious possible risks, complications, and anticipated benefits, including alternatives and nontreatment, that must be provided in a terminology that the person can reasonably be expected to understand.

"Consultation" means the clinical review and development of recommendations by persons with appropriate knowledge and experience regarding activities or decisions of clinical staff, contracted employees, volunteers, or students.

"Co-occurring disorder" means the co-existence of both a mental health and a substance use disorder. Co-occurring

treatment is a unified treatment approach intended to treat both disorders within the context of a primary treatment relationship or treatment setting.

"Crisis" means an actual or perceived urgent or emergent situation that occurs when an individual's stability or functioning is disrupted and there is an immediate need to resolve the situation to prevent a serious deterioration in the individual's mental or physical health, or to prevent the need for referral to a significantly higher level of care.

"Critical incident" means any one of the following events:

(a) Any death, serious injury, or sexual assault that occurs at an agency that is licensed by the department;

(b) Alleged abuse or neglect of an individual receiving services, that is of a serious or emergency nature, by an employee, volunteer, licensee, contractor, or another individual receiving services;

(c) A natural disaster, such as an earthquake, volcanic eruption, tsunami, urban fire, flood, or outbreak of communicable disease that presents substantial threat to facility operation or client safety;

(d) A bomb threat;

(e) Theft or loss of data in any form regarding an individual receiving services, such as a missing or stolen computer, or a missing or stolen computer disc or flash drive;

(f) Suicide attempt at the facility;

(g) An error in program-administered medication at an outpatient facility that results in adverse effects for the individual and requires urgent medical intervention; and

(h) Any media event regarding an individual receiving services, or regarding a staff member or owner(s) of the agency.

"Cultural competence" or "culturally competent" means the ability to recognize and respond to health-related beliefs and cultural values, disease incidence and prevalence, and treatment efficacy. Examples of culturally competent care include striving to overcome cultural, language, and communications barriers, providing an environment in which individuals from diverse cultural backgrounds feel comfortable discussing their cultural health beliefs and practices in the context of negotiating treatment options, encouraging individuals to express their spiritual beliefs and cultural practices, and being familiar with and respectful of various traditional healing systems and beliefs and, where appropriate, integrating these approaches into treatment plans.

"Deemed" means a status that may be given to a licensed behavioral health agency as a result of the agency receiving accreditation by a recognized behavioral health accrediting body which has a current agreement with the department.

"Department" means the Washington state department of health.

"Designated crisis responder" or "DCR" means a mental health professional appointed by the county or the BHO who is authorized to conduct investigations, detain persons up to seventy-two hours at the proper facility, and carry out the other functions identified in chapters 71.05 and 71.34 RCW. To qualify as a designated crisis responder, a person must complete substance use disorder training specific to the duties of a designated crisis responder.

"Disability" means a physical or mental impairment that substantially limits one or more major life activities of the individual and the individual:

- (a) Has a record of such an impairment; or
- (b) Is regarded as having such impairment.

"Early and periodic screening, diagnosis and treatment" or "EPSDT" means a comprehensive child health medicaid program that entitles individuals age twenty and younger to preventive care and treatment services. These services are outlined in chapter 182-534 WAC.

"Governing body" means the entity with legal authority and responsibility for the operation of the behavioral health agency, to include its officers, board of directors or the trustees of a corporation or limited liability company.

"Grievance" means the same as defined in WAC 182-538D-0655.

"HIV/AIDS brief risk intervention" means a face-to-face interview with an individual to help the individual assess personal risk for HIV/AIDS infection and discuss methods to reduce infection transmission.

"Individual" means a person who applies for, is eligible for, or receives behavioral health services from an agency licensed by the department.

"Less restrictive alternative (LRA)" means court ordered outpatient treatment in a setting less restrictive than total confinement.

"Licensed" or "licensure" means the status given to behavioral health agencies by the department under its authority to license and certify mental health and substance use disorder programs under chapters 71.05, 71.12, 71.34, and 71.24 RCW and its authority to certify problem and pathological gambling treatment programs under RCW 43.20A.890.

"Medical necessity" or "medically necessary" is a term for describing a required service that is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent the worsening of conditions in the recipient that endanger life, or cause suffering or pain, or result in illness or infirmity, or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the person requesting service. Course of treatment may include mere observation or, where appropriate, no treatment at all.

"Medical practitioner" means a physician, advance registered nurse practitioner (ARNP), or certified physician assistant. An ARNP and a midwife with prescriptive authority may perform practitioner functions related only to specific specialty services.

"Medication administration" means the direct application of a medication or device by ingestion, inhalation, injection or any other means, whether self-administered by a resident, or administered by a guardian (for a minor), or an authorized health care provider.

"Mental health disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on a person's cognitive or volitional functions.

"Mental health professional" or "MHP" means a designation given by the department to an agency staff member or

an attestation by the licensed behavioral health agency that the person meets the following:

(a) A psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner (ARNP), psychiatric nurse, or social worker as defined in chapters 71.05 and 71.34 RCW;

(b) A person who is licensed by the department as a mental health counselor or mental health counselor associate, marriage and family therapist, or marriage and family therapist associate;

(c) A person with a master's degree or further advanced degree in counseling or one of the social sciences from an accredited college or university who has at least two years of experience in direct treatment of persons with mental illness or emotional disturbance, experience that was gained under the supervision of a mental health professional recognized by the department or attested to by the licensed behavioral health agency;

(d) A person who meets the waiver criteria of RCW 71.24.260, and the waiver was granted prior to 1986; or

(e) A person who had an approved waiver to perform the duties of a mental health professional (MHP), that was requested by the behavioral health organization (BHO) and granted by the mental health division prior to July 1, 2001.

"Minor" means the same as "child."

"Off-site" means the provision of services by a provider from a licensed behavioral health agency at a location where the assessment or treatment is not the primary purpose of the site, such as in schools, hospitals, long-term care facilities, correctional facilities, an individual's residence, the community, or housing provided by or under an agreement with the agency.

"Outpatient services" means behavioral health treatment services provided to an individual in a nonresidential setting. A residential treatment facility (RTF) may become certified to provide outpatient services.

"Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment.

"Peer counselor" means the same as defined in WAC 182-538D-0200.

"Probation" means a licensing or certification status resulting from a finding of deficiencies that requires immediate corrective action to maintain licensure or certification.

"Problem and pathological gambling" means one or more of the following disorders:

(a) "Pathological gambling" means a mental disorder characterized by loss of control over gambling, progression in preoccupation with gambling and in obtaining money to gamble, and continuation of gambling despite adverse consequences;

(b) "Problem gambling" is an earlier stage of pathological gambling that compromises, disrupts, or damages family or personal relationships or vocational pursuits.

"Progress notes" means permanent written or electronic record of services and supports provided to an individual documenting the individual's participation in, and response

to, treatment, progress in recovery, and progress toward intended outcomes.

"Recovery" means the process in which people are able to live, work, learn, and participate fully in their communities.

"Relocation" means a physical change in location from one address to another.

"Remodeling" means expanding existing office space to additional office space at the same address, or remodeling interior walls and space within existing office space to a degree that accessibility to or within the facility is impacted.

"Secretary" means the secretary of the department of health.

"Service area" means the geographic area covered by each behavioral health organization (BHO) for which it is responsible.

"Short-term facility" means a facility licensed and certified by the department of health under RCW 71.24.035 which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization. Length of stay in a short-term facility is less than fourteen days from the day of admission.

"State minimum standards" means minimum requirements established by rules adopted by the secretary and necessary to implement this chapter for delivery of behavioral health services.

"Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances.

"Summary suspension" means the immediate suspension of either a facility's license or program-specific certification or both by the department pending administrative proceedings for suspension, revocation, or other actions deemed necessary by the department.

"Supervision" means the regular monitoring of the administrative, clinical, or clerical work performance of a staff member, trainee, student, volunteer, or employee on contract by a person with the authority to give direction and require change.

"Suspend" means termination of a behavioral health agency's license or program specific certification to provide behavioral health treatment program service for a specified period or until specific conditions have been met and the department notifies the agency of the program's reinstatement of license or certification.

"Triage facility" means a short-term facility or a portion of a facility licensed and certified by the department under RCW 71.24.035 that is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual. A triage facility must meet department residential treatment facility standards and may be structured as either a voluntary or involuntary placement facility or both.

"Triage involuntary placement facility" means a triage facility that has elected to operate as an involuntary facility and may, at the direction of a peace officer, hold an individual for up to twelve hours. A peace officer or designated cri-

sis responder may take or cause the person to be taken into custody and immediately delivered to the triage facility. The facility may ask for an involuntarily admitted individual to be assessed by a mental health professional for potential for voluntary admission. The individual has to agree in writing to the conditions of the voluntary admission.

"Triage voluntary placement facility" means a triage facility where the individual may elect to leave the facility of their own accord, at any time. A triage voluntary placement facility may only accept voluntary admissions.

"Tribal authority" means, for the purposes of behavioral health organizations and RCW 71.24.300 only, the federally recognized Indian tribes and the major Indian organizations recognized by the secretary as long as these organizations do not have a financial relationship with any behavioral health organization that would present a conflict of interest.

"Vulnerable adult" has the same meaning as defined in chapter 74.34 RCW.

"Withdrawal management" means services provided during the initial period of care and treatment to an individual intoxicated or incapacitated by substance use.

"Work-ordered day" means a model used to organize clubhouse activities during the clubhouse's normal working hours. Members and staff are organized into one or more work units which provide meaningful and engaging work essential to running the clubhouse. Activities include unit meetings, planning, organizing the work of the day, and performing the work that needs to be accomplished to keep the clubhouse functioning. Members and staff work side-by-side as colleagues. Members participate as they feel ready and according to their individual interests. While intended to provide members with working experience, work in the clubhouse is not intended to be job-specific training, and members are neither paid for clubhouse work nor provided artificial rewards. Work-ordered day does not include medication clinics, day treatment, or other therapy programs.

"Youth" means the same as "child."

SECTION THREE—BEHAVIORAL HEALTH SERVICES—AGENCY LICENSURE AND CERTIFICATION

NEW SECTION

WAC 246-341-0300 Agency licensure and certification—General information. The department licenses agencies to provide behavioral health treatment services. To gain and maintain licensure, an applicant must meet the requirements of this chapter, applicable local and state rules, and state and federal statutes. In addition, the applicant must meet the applicable specific program requirements for all behavioral health services certified by the department.

(1) An applicant currently accredited by a national accreditation agency recognized by and having a current agreement with the department may be eligible for licensing through deeming. See WAC 246-341-0310.

(2) An agency must report to the department any changes that occur following the initial licensing or certification process. The department may request a copy of additional disclosure statements or background inquiries if there is reason to

believe that offenses specified under RCW 43.43.830 have occurred since the original application was submitted.

(3) The department may grant an exemption or waiver from compliance with specific licensing or program certification requirements if the exemption does not violate an existing state, federal, or tribal law.

(a) To request an exemption to a rule in this chapter, the applicant must:

- (i) Submit the request in writing to the department;
- (ii) Assure the exemption request does not jeopardize the safety, health, or treatment of an individual; and
- (iii) Assure the exemption request does not impede fair competition of another service agency.

(b) The department approves or denies an exemption request in writing and requires the agency to keep a copy of the decision.

(c) Appeal rights under WAC 246-341-0370 do not apply to exemption to rule decisions.

(4) In the event of an agency closure or the cancellation of a program-specific certification, the agency must provide each individual currently being served:

(a) Notice of the agency closure or program cancellation at least thirty days before the date of closure or program cancellation;

(b) Assistance with relocation; and

(c) Information on how to access records to which the individual is entitled.

(5) If an agency certified to provide any behavioral health service closes, the agency must ensure all individual clinical records are kept and managed for at least six years after the closure before destroying the records in a manner that preserves confidentiality. In addition:

(a) The closing agency must notify the department that the agency will do one of the following:

(i) Continue to retain and manage all individual clinical records; or

(ii) Arrange for the continued storage and management of all individual clinical records.

(b) The closing agency must notify the department in writing and include the name of the licensed agency or entity storing and managing the records, provide the method of contact, such as a telephone number, electronic address, or both, and provide the mailing and street address where the records will be stored.

(c) When a closing agency that has provided substance use disorder services arranges for the continued storage and management of clinical records by another entity, the closing agency must enter into a specific qualified services organization agreement with a department licensed agency or other entity. See 42 C.F.R. Part 2, Subpart B.

(d) When any agency or entity storing and maintaining individual clinical records receives an authorized request for a record, the record must be provided to the requester within a reasonable period of time.

NEW SECTION

WAC 246-341-0305 Agency licensure and certification—Application. To apply for licensure to provide any behavioral health service, an applicant must submit an initial

application to the department that is signed by the agency's administrator. The applicant must also apply for and have the department certify any specific behavioral health program services the agency wishes to provide.

(1) The application must include the following:

(a) A copy of the applicant's master business license that authorizes the organization to do business in Washington state;

(b) A list of the specific program services for which the applicant is seeking certification;

(c) A copy of the report of findings from a background check of the administrator and any owner of five percent or more of the organizational assets;

(d) The physical address of any agency operated facility where behavioral health services will be provided;

(e) A statement assuring the applicant meets Americans with Disabilities Act (ADA) standards and that the facility is:

(i) Suitable for the purposes intended;

(ii) Not a personal residence; and

(iii) Approved as meeting all building and safety requirements.

(f) A copy of the policies and procedures specific to the agency;

(g) A copy of a current department residential treatment facility certificate if the applicant is providing substance use disorder residential treatment or mental health residential treatment; and

(h) Payment of associated fees.

(2) The department conducts an on-site review as part of the initial licensing or certification process (see WAC 246-341-0320).

NEW SECTION

WAC 246-341-0310 Agency licensure and certification—Deeming. (1) If an agency is currently accredited by a national accreditation organization that is recognized by and has a current agreement with the department, the department must deem the agency to be in compliance with state standards for licensure and certification.

(2) To be considered for deeming, an agency must submit a request to the department signed by the agency's administrator.

(3) Deeming will be in accordance with the established written agreement between the accrediting agency and the department.

(4) Specific licensing and certification requirements of any:

(a) State rule may only be waived through a deeming process consistent with the established written agreement between the accrediting agency and the department.

(b) State or federal law will not be waived through a deeming process.

(5) An agency operating under a department-issued provisional license or provisional program-specific certification is not eligible for deeming.

(6) An agency:

(a) Must provide to the department a copy of any reports regarding accreditation from the accrediting agency;

(b) Must meet the requirements in WAC 246-341-0325 and 246-341-0345 before adding any additional service(s); and

(c) Is not eligible for deeming until the service(s) has been reviewed by the accrediting agency.

(7) Any branch site added to an existing agency:

(a) Must meet the requirements in WAC 246-341-0340; and

(b) Is not eligible for deeming until the site has been reviewed by the accrediting agency.

NEW SECTION

WAC 246-341-0315 Agency licensure and certification—Renewals. A department issued license and certification of behavioral health services expires twelve months from its effective date. To renew a license or certification, an agency must submit a renewal request signed by the agency's designated official.

(1) The original renewal request must:

(a) Be received by the department before the expiration date of the agency's current license; and

(b) Include payment of the specific renewal fee (see WAC 246-341-0365).

(2) The department may conduct an on-site review as part of the renewal process (see WAC 246-341-0320).

NEW SECTION

WAC 246-341-0320 Agency licensure and certification—On-site reviews and plans of correction. To obtain and maintain a department-issued license and to continue to provide department-certified behavioral health services, each agency is subject to an on-site review to determine if the agency is in compliance with the minimum licensure and certification standards.

(1) A department review team representative(s) conducts an entrance conference with the agency and an on-site review that may include:

(a) A review of:

(i) Agency policies and procedures;

(ii) Personnel records;

(iii) Clinical records;

(iv) Facility accessibility;

(v) The agency's internal quality management plan, process, or both, that demonstrates how the agency evaluates program effectiveness and individual participant satisfaction; and

(vi) Any other information, including the criteria in WAC 246-341-0335 (1)(b), that the department determines to be necessary to confirm compliance with the minimum standards of this chapter; and

(b) Interviews with:

(i) Individuals served by the agency; and

(ii) Agency staff members.

(2) The department review team representative(s) concludes an on-site review with an exit conference that includes a discussion of findings.

(3) The department will send the agency a statement of deficiencies report that will include instructions and time frames for submission of a plan of correction.

(4) The department requires the agency to correct the deficiencies listed on the plan of correction:

(a) By the negotiated time frame agreed upon by the agency and the department review team representative; or

(b) Immediately if the department determines health and safety concerns require immediate corrective action.

NEW SECTION

WAC 246-341-0325 Agency licensure and certification—Approvals and provisional approvals. (1) The department grants an initial or provisional license or program-specific certification to an agency when:

(a) The application and agency policy and procedures submitted meet the requirements of WAC 246-341-0305(1);

(b) An on-site review is conducted under WAC 246-341-0320 and the agency corrects any noted deficiencies within the agreed upon time frame; and

(c) The department determines the agency is in compliance with the licensure and program-specific certification standards.

(2) The agency must post the department-issued license and certification(s) in a conspicuous place on the facility's premises, and, if applicable, on the agency's branch site premises.

(3) See WAC 246-341-0330 for license and program-specific certification effective dates.

(4) See WAC 246-341-0315 for agency requirements for renewing licensure.

NEW SECTION

WAC 246-341-0330 Agency licensure and certification—Effective dates. An agency's license and any behavioral health services certification is effective for up to twelve months from the effective date, subject to the agency maintaining compliance with the minimum license and program-specific certification standards in this chapter.

NEW SECTION

WAC 246-341-0335 Agency licensure and certification—Denials, suspensions, revocations, and penalties. (1) The department will deny issuing or renewing an agency's license or specific program certification(s), place an agency on probation, or suspend, or revoke an agency's license or specific program certification for any of the following reasons:

(a) The agency fails to meet requirements in this chapter.

(b) The agency fails to cooperate or disrupts department representatives during an on-site survey or complaint investigation.

(c) The agency fails to assist the department in conducting individual interviews with either staff members or individuals receiving services, or both.

(d) The agency owner or agency administrator:

(i) Had a license or specific program certification issued by the department subsequently denied, suspended, or revoked;

(ii) Was convicted of child abuse or adjudicated as a perpetrator of a founded child protective services report;

(iii) Was convicted of abuse of a vulnerable adult or adjudicated as a perpetrator of substantiated abuse of a vulnerable adult;

(iv) Obtained or attempted to obtain a health provider license, certification, or registration by fraudulent means or misrepresentation;

(v) Committed, permitted, aided or abetted the commission of an illegal act or unprofessional conduct as defined under RCW 18.130.180;

(vi) Demonstrated cruelty, abuse, negligence, misconduct, or indifference to the welfare of a patient or displayed acts of discrimination;

(vii) Misappropriated patient (individual) property or resources;

(viii) Failed to meet financial obligations or contracted service commitments that affect patient care;

(ix) Has a history of noncompliance with state or federal rules in an agency with which the applicant has been affiliated;

(x) Knowingly, or with reason to know, made a false statement of fact or failed to submit necessary information in:

(A) The submitted application or materials attached; or

(B) Any matter under department investigation.

(xi) Refused to allow the department access to view records, files, books, or portions of the premises relating to operation of the program;

(xii) Willfully interfered with the preservation of material information or attempted to impede the work of an authorized department representative;

(xiii) Is currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in transactions involving certain federal funds (this also applies to any person or business entity named in the agency's application for licensure or certification);

(xiv) Does not meet background check requirements;

(xv) Fails to provide satisfactory application materials;

or

(xvi) Advertises the agency as certified when licensing or certification has not been granted, or has been revoked or canceled.

(e) The department determines there is imminent risk to health and safety.

(f) The agency's licensure or specific program certification is in probationary status and the agency fails to correct the noted health and safety deficiencies within the agreed-upon time frames.

(2) The department may deny issuing or renewing an agency's license or specific program certification, place an agency on probation, or suspend or revoke an agency's license or specific program certification for any of the following reasons:

(a) The agency voluntarily cancels licensure or certification.

(b) The agency fails to pay the required license or certification fees.

(c) The agency stops providing the services for which the agency is certified.

(d) The agency fails to notify the department before changing ownership.

(e) The agency fails to notify the department before relocating its licensed location.

(3) The department sends a written notice to deny, suspend, revoke, or modify the licensure or certification status including the reason(s) for the decision and the agency's right to appeal a department decision according to the provisions of RCW 43.70.115, chapter 34.05 RCW, and chapter 246-10 WAC.

(4) The department may summarily suspend an agency's license or certification of a behavioral health service when an immediate danger to the public health, safety, or welfare requires emergency action.

(5) If an agency fails to comply with the requirements of this chapter, the department may:

(a) Assess fees to cover costs of added licensing and program-specific certification activities, including when the department determines a corrective action is required due to a complaint or incident investigation;

(b) Stop referral(s) of an individual who is a program recipient of either a state or federally funded program or both; and

(c) Notify the authority, the behavioral health organization (BHO) and/or local media of stopped referrals, suspensions, revocations, or nonrenewal of the agency's license or program-specific certification(s).

NEW SECTION

WAC 246-341-0340 Agency licensure and certification—Adding a branch site. To add a branch site, an existing licensed behavioral health agency must notify the department and submit an application that lists the behavioral health services to be provided and that is signed by the agency's designated official.

(1) The agency must also submit the following:

(a) A statement assuring the branch site meets Americans with Disabilities Act (ADA) standards and that the facility is appropriate for providing the proposed services;

(b) A written declaration that a current copy of agency policies and procedures is accessible to the branch site and that the policies and procedures have been revised to accommodate the differences in business and clinical practices at that site; and

(c) Payment of fees (see WAC 246-341-0365).

(2) Each nonresident branch facility is subject to review by the department to determine if the facility is:

(a) Suitable for the purposes intended;

(b) Not a personal residence; and

(c) Approved as meeting all building and safety requirements.

NEW SECTION

WAC 246-341-0342 Agency licensure and certification—Off-site locations. (1) A behavioral health agency that provides outpatient services at an established off-site location(s) must:

(a) Maintain a list of each established off-site location where services are provided; and

- (b) Include, for each established off-site location:
 - (i) The name and address of the location the services are provided;
 - (ii) The primary purpose of the off-site location;
 - (iii) The service(s) provided; and
 - (iv) The date off-site services began at that location.

(2) An agency providing in-home services or services in a public setting must:

(a) Implement and maintain a written protocol of how services will be offered in a manner that promotes individual, staff member, and community safety; and

(b) For the purpose of emergency communication and as required by RCW 71.05.710, provide a wireless telephone or comparable device to any mental health professional who makes home visits to individuals.

(3) An agency must:

(a) Maintain an individual's confidentiality at the off-site location;

(b) Securely transport confidential information and individual records between the licensed agency and the off-site location, if applicable;

(c) Ensure the type of behavioral health service offered at each off-site location is certified by the department; and

(d) Ensure the behavioral health services provided at off-site locations meet the requirements of all applicable local, state, and federal rules and laws.

NEW SECTION

WAC 246-341-0345 Agency licensure and certification—Adding a new service. To add a new behavioral health service, a licensed behavioral health agency must request and submit an abbreviated application that lists the additional behavioral health service(s) it seeks to provide and is signed by the agency's designated official.

(1) The application must include the following:

(a) The name of the administrator providing management or supervision of services;

(b) The physical address or addresses of the agency-operated facility or facilities where the new service(s) will be provided;

(c) A description of the agency's policies and procedures relating to the new service(s);

(d) The name and credentials of each staff member providing the new service(s); and

(e) Payment of fees (see WAC 246-341-0365).

(2) The agency is subject to an on-site review under WAC 246-341-0320 before the department:

(a) Certifies the new behavioral health service(s); and

(b) Issues a new license that lists the added service(s).

NEW SECTION

WAC 246-341-0350 Agency licensure and certification—Change in ownership. (1) When a licensed behavioral health agency changes ownership, the department requires:

(a) A new license application (see WAC 246-341-0305);

(b) Payment of fees (see WAC 246-341-0365); and

(c) A statement regarding the disposition and management of clinical records in accordance with applicable state and federal laws.

(2) The agency must receive a new license under the new ownership before providing any behavioral health service.

NEW SECTION

WAC 246-341-0355 Agency licensure and certification—Change in location. (1) When a licensed behavioral health agency relocates to another address, the department requires:

(a) The agency to notify the department in writing of the new address;

(b) A new license application (see WAC 246-341-0305); and

(c) Payment of fees (see WAC 246-341-0365).

(2) The agency:

(a) Is subject to an on-site review under WAC 246-341-0320 when changing locations.

(b) Must receive a new license under the new location's address before providing any behavioral health service at that address.

NEW SECTION

WAC 246-341-0360 Agency licensure and certification—Facility remodel. When a licensed behavioral health agency changes the accessibility of the facility by remodeling, the department requires the agency to:

(1) Notify the department in writing of the facility remodel at least thirty days before the day the remodeling begins; and

(2) Submit a floor plan documenting accessibility and maintenance of confidentiality during and after the remodel.

NEW SECTION

WAC 246-341-0365 Agency licensure and certification—Fee requirements. (1) Payment of licensing and specific program certification fees required under this chapter must be included with the initial application, renewal application, or with requests for other services.

(2) Payment of fees must be made by check, bank draft, electronic transfer, or money order made payable to the department.

(3) The department may refund one-half of the application fee if an application is withdrawn before certification or denial.

(4) Fees will not be refunded when licensure or certification is denied, revoked, or suspended.

(5) The department charges the following fees for approved substance use disorder treatment programs:

Application fees for agency certification for approved substance use disorder treatment programs	
New agency application	\$1,000
Branch agency application	\$500

Application fees for agency certification for approved substance use disorder treatment programs	
Application to add one or more services	\$200
Application to change ownership	\$500
Initial and annual certification fees for withdrawal management, residential, and nonresidential services	
Withdrawal management and residential services	\$100 per licensed bed, per year, for agencies not renewing certification through deeming
	\$50 per licensed bed, per year, for agencies renewing certification through deeming per WAC 246-341-0310
Nonresidential services	\$750 per year for agencies not renewing certification through deeming
	\$200 per year for agencies certified through deeming per WAC 246-341-0310
Complaint/critical incident investigation fees	
All agencies	\$1,000 per substantiated complaint investigation and \$1,000 per substantiated critical incident investigation that results in a requirement for corrective action

(6) Agency providers must annually complete a declaration form provided by the department to indicate information necessary for establishing fees and updating certification information. Required information includes, but is not limited to:

(a) The number of licensed withdrawal management and residential beds; and

(b) The agency provider's national accreditation status.

(7) The department charges the following fees for approved mental health treatment programs:

Initial licensing application fee for mental health treatment programs	
Licensing application fee	\$1,000 initial licensing fee
Initial and annual licensing fees for agencies not deemed	
Annual service hours provided:	Initial and annual licensing fees:
0-3,999	\$728
4,000-14,999	\$1,055
15,000-29,999	\$1,405
30,000-49,999	\$2,105
50,000 or more	\$2,575

Initial licensing application fee for mental health treatment programs	
Annual licensing fees for deemed agencies	
Deemed agencies licensed by the department	\$500 annual licensing fee
Complaint/critical incident investigation fee	
All residential and nonresidential agencies	\$1,000 per substantiated complaint investigation and \$1,000 per substantiated critical incident investigation that results in a requirement for corrective action

(8) Agencies providing nonresidential mental health services must report the number of annual service hours provided based on the department's current published "Service Encounter Reporting Instructions for BHOs" and the "Consumer Information System (CIS) Data Dictionary for BHOs."

(a) Existing licensed agencies must compute the annual service hours based on the most recent state fiscal year.

(b) Newly licensed agencies must compute the annual service hours by projecting the service hours for the first twelve months of operation.

(9) Agencies providing inpatient evaluation and treatment services and competency evaluation and restoration treatment services must pay the following certification fees:

(a) Ninety dollars initial certification fee, per bed; and

(b) Ninety dollars annual certification fee, per bed.

NEW SECTION

WAC 246-341-0370 Agency licensure and certification—Appealing a department decision. An agency may appeal a decision made by the department regarding agency licensure or certification of a behavioral health service according to WAC 246-341-0335.

SECTION FOUR—BEHAVIORAL HEALTH SERVICES—AGENCY ADMINISTRATION

NEW SECTION

WAC 246-341-0400 Agency administration—Governing body requirements. An agency's governing body is responsible for the conduct and quality of the behavioral health services provided. The agency's governing body must:

(1) Assure there is an administrator responsible for the day-to-day operation of services;

(2) Maintain a current job description for the administrator, including the administrator's authority and duties; and

(3) Notify the department within thirty days of changes of the administrator.

NEW SECTION

WAC 246-341-0410 Agency administration—Administrator key responsibilities. (1) The agency administrator is responsible for the day-to-day operation of the

agency's provision of certified behavioral health treatment services, including:

- (a) All administrative matters;
 - (b) Individual care services; and
 - (c) Meeting all applicable rules, policies, and ethical standards.
- (2) The administrator must:
- (a) Delegate to a staff person the duty and responsibility to act in the administrator's behalf when the administrator is not on duty or on call;
 - (b) Ensure administrative, personnel, and clinical policies and procedures are adhered to and kept current to be in compliance with the rules in this chapter, as applicable;
 - (c) Employ sufficient qualified personnel to provide adequate treatment services and facility security;
 - (d) Ensure all persons providing clinical services are credentialed for their scope of practice as required by the department;
 - (e) Identify at least one person to be responsible for clinical supervision duties;
 - (f) Ensure that there is an up-to-date personnel file for each employee, trainee, student, volunteer, and for each contracted staff person who provides or supervises an individual's care; and
 - (g) Ensure that personnel records document that Washington state patrol background checks consistent with chapter 43.43 RCW have been completed for each employee in contact with individuals receiving services.
- (3) The administrator must ensure the agency develops and maintains a written internal quality management plan/process that:
- (a) Addresses the clinical supervision and training of clinical staff;
 - (b) Monitors compliance with the rules in this chapter, and other state and federal rules and laws that govern agency licensing and certification requirements; and
 - (c) Continuously improves the quality of care in all of the following:
 - (i) Cultural competency;
 - (ii) Use of evidence based and promising practices; and
 - (iii) In response to:
 - (A) Critical incidents;
 - (B) Complaints; and
 - (C) Grievances and appeals.

NEW SECTION

WAC 246-341-0420 Agency administration—Policies and procedures. Each agency licensed by the department to provide any behavioral health service must develop, implement, and maintain administrative policies and procedures to meet the minimum requirements of this chapter. The policies and procedures must demonstrate the following, as applicable:

- (1) Ownership. Documentation of the agency's governing body, including a description of membership and authorities, and documentation of the agency's:
 - (a) Articles and certificate of incorporation and bylaws if the owner is a corporation;

- (b) Partnership agreement if the owner is a partnership; or

- (c) Sole proprietorship if one person is the owner.

(2) Licensure. A copy of the agency's master business license that authorizes the organization to do business in Washington state that lists all addresses where the entity performs services.

(3) Organizational description. An organizational description detailing all positions and associated licensure or certification, updated as needed.

(4) Agency staffing and supervision. Documentation that shows the agency has staff members who provide treatment in accordance to regulations relevant to their specialty or specialties and registration, certification, licensing, and trainee or volunteer status.

(5) Interpreter services for individuals with limited-English proficiency (LEP) and individuals who have sensory disabilities. Documentation that demonstrates the agency's ability to provide or coordinate services for individuals with LEP and individuals who have sensory disabilities. This means:

- (a) Certified interpreters or other interpreter services must be available for individuals with limited-English-speaking proficiency and individuals who have sensory disabilities; or

- (b) The agency must have the ability to effectively provide, coordinate or refer individuals in these populations for appropriate assessment or treatment.

(6) Reasonable access for individuals with disabilities. A description of how reasonable accommodations will be provided to individuals with disabilities.

(7) Nondiscrimination. A description of how the agency complies with all state and federal nondiscrimination laws, rules, and plans.

(8) Fee schedules. A copy of the agency's current fee schedules for all services must be available on request.

(9) Funding options for treatment costs. A description of how the agency works with individuals to address the funding of an individual's treatment costs, including a mechanism to address changes in the individual's ability to pay.

(10) State and federal rules on confidentiality. A description of how the agency implements state and federal rules on individuals' confidentiality consistent with the service or services being provided.

(11) Reporting and documentation of suspected abuse, neglect, or exploitation. A description how the agency directs staff to report and document suspected abuse, neglect, or exploitation of a child or vulnerable adult consistent with chapters 26.44 and 74.34 RCW.

(12) Protection of youth. Documentation of how the agency addresses compliance with program-specific rules and the protection of youth participating in group or residential treatment with adults.

(13) Completing and submitting reports. A description of how the agency directs staff to:

- (a) Complete and submit in a timely manner, all reports required by entities such as the courts, department of corrections, department of licensing, the department of social and health services, the health care authority, and the department of health; and

(b) Include a copy of the report(s) in the clinical record and document the date submitted.

(14) Reporting the death of an individual seeking or receiving services. A description of how the agency directs staff to report to the department or behavioral health organization (BHO), as applicable, within one business day the death of any individual which occurs on the premises of a licensed agency.

(15) Reporting critical incidents. A description of how the agency directs staff to report to the department or BHO, as applicable, within one business day any critical incident that occurs involving an individual, and actions taken as a result of the incident.

(16) A smoking policy. Documentation that a smoking policy consistent with chapter 70.160 RCW (smoking in public places), is in effect.

(17) Outpatient evacuation plan. For a nonresidential agency, an evacuation plan for use in the event of a disaster or emergency that addresses:

- (a) Different types of disasters or emergencies;
- (b) Placement of posters showing routes of exit;
- (c) The need to mention evacuation routes at public meetings;
- (d) Communication methods for individuals, staff, and visitors, including persons with a visual or hearing impairment or limitation;

(e) Evacuation of mobility impaired individuals; and

(f) Evacuation of children if child care is offered.

(18) Individual rights. A description of how the agency has individual participation rights and policies consistent with WAC 246-341-0600.

(19) Individual complaints and grievances. A description of how the agency addresses an individual's:

(a) Right to report an alleged violation of chapters 71.05, 71.12, 71.24, 71.34 RCW, and this chapter consistent with WAC 246-341-0605;

(b) Grievance or appeal consistent with WAC 182-538D-0654 through 182-538D-0680.

NEW SECTION

WAC 246-341-0425 Agency administration—Individual clinical record system. Each agency licensed by the department to provide any behavioral health service must:

(1) Maintain a comprehensive clinical record system that includes policies and procedures that protect an individual's personal health information;

(2) Ensure that the individual's personal health information is shared or released only in compliance with applicable state and federal law;

(3) If maintaining electronic individual clinical records:

(a) Provide secure, limited access through means that prevent modification or deletion after initial preparation;

(b) Provide for a backup of records in the event of equipment, media, or human error; and

(c) Provide for protection from unauthorized access, including network and internet access;

(4) Retain an individual's clinical record, including an electronic record, for a minimum of six years after the discharge or transfer of any individual;

(5) Retain a youth's or child's individual clinical record, including an electronic record, for at least six years after the most recent discharge, or at least three years following the youth's or child's eighteenth birthday; and

(6) Meet the access to clinical records requirements in WAC 246-341-0650.

NEW SECTION

WAC 246-341-0430 Agency administration—Treatment facility requirements. Each agency licensed by the department to provide any behavioral health service must ensure that its treatment facility:

(1) Is not a personal residence;

(2) Has adequate private space for personal consultation with an individual, staff charting, and therapeutic and social activities, as appropriate;

(3) Has secure storage of active or closed confidential records; and

(4) Has separate secure, locked storage of poisonous external chemicals and caustic materials.

SECTION FIVE—BEHAVIORAL HEALTH SERVICES—PERSONNEL

NEW SECTION

WAC 246-341-0500 Personnel—Agency policies and procedures. Each agency licensed by the department to provide any behavioral health service must develop, implement, and maintain personnel policies and procedures. The policies and procedures must meet the minimum requirements of this chapter and include the following, as applicable:

(1) Background checks. Identification of how the agency conducts Washington state background checks on each agency employee in contact with individuals receiving services, consistent with RCW 43.43.830 through 43.43.842.

(2) Excluded provider list. A description of how the agency conducts a review of the list of excluded individuals/entities (LEIE) searchable database (found on the Office of Inspector General, U.S. Department of Health and Human Services web site at <http://oig.hhs.gov>) for each employee in contact with individuals receiving services, to include a procedure on how the agency:

(a) Reviewed the LEIE database at the time of the employee's hire and annually thereafter; and

(b) Assured the employee is not currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in transactions involving certain federal funds.

(3) Drug free workplace. Identification of how the agency provides for a drug free work place that includes:

(a) Agency program standards of prohibited conduct; and

(b) Actions to be taken in the event a staff member misuses alcohol or other drugs.

(4) Supervision. Identification of how supervision is provided to assist program staff and volunteers to increase their skills, and improve quality of services to individuals and families.

(5) Staff training. A description of how the agency provides training within thirty days of an employee's hire date and annually thereafter.

NEW SECTION

WAC 246-341-0510 Personnel—Agency record requirements. Each agency licensed by the department to provide any behavioral health service must maintain a personnel record for each person employed by the agency.

(1) The personnel record must contain all of the following:

(a) Documentation of annual training, including documentation that the employee successfully completed training on cultural competency.

(b) A signed and dated commitment to maintain patient (individual) confidentiality in accordance with state and federal confidentiality requirements.

(c) A record of an orientation to the agency that includes all of the following:

(i) An overview of the agency's policies and procedures.

(ii) The duty to warn or to take reasonable precautions to provide protection from violent behavior when an individual has communicated an actual imminent threat of physical violence against a reasonably identifiable victim or victims. Taking reasonable precautions includes notifying law enforcement as required and allowed by law.

(iii) Staff ethical standards and conduct, including reporting of unprofessional conduct to appropriate authorities.

(iv) The process for resolving client complaints and grievances.

(d) A copy of the staff member's valid current credential issued by the department for their scope of practice.

(2) Staff members who have received services from the agency must have personnel records that:

(a) Are separate from clinical records; and

(b) Have no indication of current or previous service recipient status.

NEW SECTION

WAC 246-341-0515 Personnel—Agency staff requirements. Each agency licensed by the department to provide one or more behavioral health service must ensure that all of the following staff requirements are met:

(1) An agency providing mental health services must ensure all of the following:

(a) Each mental health service is provided by qualified staff members who meet the following for their scope of practice and services provided:

(i) Professional standards, including documented coursework, continuing education, and training;

(ii) Clinical supervision requirements; and

(iii) Licensure and credentialing requirements.

(b) Each staff member working directly with an individual receiving mental health services receives:

(i) Clinical supervision from a mental health professional who has received documented training and competence in clinical supervision approved by the department; and

(ii) Annual violence prevention training on the safety and violence prevention topics described in RCW 49.19.030.

(c) Staff access to consultation with a psychiatrist, physician, physician assistant, advanced registered nurse practitioner (ARNP), or psychologist who has at least one year's experience in the direct treatment of individuals who have a mental or emotional disorder.

(2) An agency providing substance use disorder treatment services must ensure all of the following:

(a) All substance use disorder assessment and counseling services are provided by a chemical dependency professional (CDP), or a department-credentialed chemical dependency professional trainee (CDPT) under the supervision of an approved supervisor.

(b) There is a designated clinical supervisor who:

(i) Is a CDP;

(ii) Is an approved supervisor who meets the requirements of chapter 246-811 WAC; and

(iii) Has not committed, permitted, aided, or abetted the commission of an illegal act or unprofessional conduct as defined under RCW 18.130.180.

(c) Each chemical dependency professional trainee has at least one approved supervisor who meets the qualifications in WAC 246-811-049. An approved supervisor must decrease the hours of individual contact by twenty percent for each full-time CDPT supervised.

(d) Each staff member that provides individual care has a copy of an initial tuberculosis (TB) screen or test and any subsequent screenings or testing in their personnel file.

(e) All staff members are provided annual training on the prevention and control of communicable disease, bloodborne pathogens, and TB, and document the training in the personnel file.

(3) An agency providing problem and pathological gambling services must ensure all of the following:

(a) All problem and pathological gambling treatment services are provided by:

(i) A certified Washington state, national, or international gambling counselor who is credentialed by the department under chapter 18.19, 18.83, or 18.225 RCW; or

(ii) An individual credentialed by DOH under chapter 18.19, 18.83, or 18.225 RCW, under the supervision of a certified problem gambling counselor, in training to become a certified problem gambling counselor.

(b) Before providing problem and pathological treatment services, an individual in training to become a certified problem gambling counselor must have a minimum of:

(i) At least one thousand five hundred hours of professionally supervised postcertification or postregistration experience providing mental health or substance use disorder treatment services; and

(ii) Thirty hours of unduplicated gambling specific training, including the basic training; one of the following state, national, or international organizations must approve the training:

(A) Washington state gambling counselor certification committee;

(B) National or international gambling counselor certification board; or

(C) The department.

(c) An individual who meets subsection (3)(b)(ii) of this section must complete training to become a certified problem and pathological gambling counselor within two years of beginning problem and pathological gambling clinical practice.

(d) All staff members in training to become a certified problem gambling counselor must receive clinical supervision. The clinical supervisor must:

(i) Hold a valid international gambling counselor certification board-approved clinical consultant credential, a valid Washington state certified gambling counselor II certification credential, or a valid national certified gambling counselor II certification credential; and

(ii) Complete training on gambling specific clinical supervision approved by a state, national, or international organization including, but not limited to, the:

(A) Washington state gambling counselor certification committee;

(B) National or international gambling counselor certification board; or

(C) The department.

NEW SECTION

WAC 246-341-0520 Personnel—Agency requirements for supervision of trainees, interns, volunteers, and students. Each agency licensed by the department to provide any behavioral health service must ensure the following supervision requirements are met for trainees, interns, volunteers, and students:

(1) Each trainee, intern, volunteer, and student passes a background check;

(2) Each trainee, intern, volunteer, and student who receives training at an agency must be assigned a supervisor who has been approved by the agency administrator or designee. The assigned supervisor:

(a) Must be credentialed by the department for their scope of practice;

(b) Is responsible for all individuals assigned to the trainee or intern they supervise; and

(c) Must review clinical documentation with the trainee or intern as part of the supervision process; and

(3) The agency must obtain and retain a confidentiality statement signed by the trainee, intern, volunteer, and student and the person's academic supervisor, if applicable.

SECTION SIX—BEHAVIORAL HEALTH SERVICES —CLINICAL

NEW SECTION

WAC 246-341-0600 Clinical—Individual rights. (1) Each agency licensed by the department to provide any behavioral health service must develop a statement of individual participant rights applicable to the service categories the agency is licensed for, to ensure an individual's rights are protected in compliance with chapters 71.05, 71.12, and 71.34 RCW. In addition, the agency must develop a general statement of individual participant rights that incorporates at a minimum the following statements. "You have the right to:"

(a) Receive services without regard to race, creed, national origin, religion, gender, sexual orientation, age or disability;

(b) Practice the religion of choice as long as the practice does not infringe on the rights and treatment of others or the treatment service. Individual participants have the right to refuse participation in any religious practice;

(c) Be reasonably accommodated in case of sensory or physical disability, limited ability to communicate, limited-English proficiency, and cultural differences;

(d) Be treated with respect, dignity and privacy, except that staff may conduct reasonable searches to detect and prevent possession or use of contraband on the premises;

(e) Be free of any sexual harassment;

(f) Be free of exploitation, including physical and financial exploitation;

(g) Have all clinical and personal information treated in accord with state and federal confidentiality regulations;

(h) Review your clinical record in the presence of the administrator or designee and be given an opportunity to request amendments or corrections;

(i) Receive a copy of agency grievance system procedures according to WAC 182-538D-0654 through 182-538D-0680 upon request and to file a grievance with the agency, or behavioral health organization (BHO), if applicable, if you believe your rights have been violated; and

(j) Submit a report to the department when you feel the agency has violated a WAC requirement regulating behavioral health agencies.

(2) Each agency must ensure the applicable individual participant rights described in subsection (1) of this section are:

(a) Provided in writing to each individual on or before admission;

(b) Available in alternative formats for individuals who are visually impaired;

(c) Translated to the most commonly used languages in the agency's service area;

(d) Posted in public areas; and

(e) Available to any participant upon request.

(3) Each agency must ensure all research concerning an individual whose cost of care is publicly funded is done in accordance with chapter 388-04 WAC, protection of human research subjects, and other applicable state and federal rules and laws.

(4) In addition to the requirements in this section, each agency providing services to medicaid recipients must ensure an individual seeking or participating in behavioral health treatment services, or the person legally responsible for the individual is informed of their medicaid rights at time of admission and in a manner that is understandable to the individual or legally responsible person.

(5) The grievance system rules in WAC 182-538D-0654 through 182-538D-0680 apply to an individual who receives behavioral health services funded through a federal medicaid program or sources other than a federal medicaid program.

NEW SECTION

WAC 246-341-0605 Complaint process. (1) Any person may submit a report to the department of an alleged violation of licensing and certification laws and rules.

(2) Health care professionals credentialed by the department must comply with the mandatory reporting requirements in chapters 18.130 RCW and 246-16 WAC.

(3) If the department determines a report should be investigated, the report becomes a complaint. If the department conducts a complaint investigation, agency representatives must cooperate to allow department representatives to:

(a) Examine any part of the facility at reasonable times and as needed;

(b) Review and evaluate agency records including, but not limited to:

(i) An individual's clinical record and personnel file; and
(ii) The agency's policies, procedures, fiscal records, and any other documents required by the department to determine compliance and to resolve the complaint; and

(c) Conduct individual interviews with staff members and individuals receiving services.

(4) An agency or agency provider must not retaliate against any:

(a) Individual or individual's representative for making a report with the department or being interviewed by the department about a complaint;

(b) A witness involved in the complaint issue; or

(c) An employee of the agency.

(5) The department may assess a fee under RCW 43.70.-250, or deny, suspend, or modify a license or certification under RCW 43.70.115, if:

(a) Any allegation within the complaint is substantiated; or

(b) The department's finding that the individual or individual's representative, a witness, or employee of the agency experienced an act of retaliation by the agency as described in subsection (4) of this section during or after a complaint investigation.

NEW SECTION

WAC 246-341-0610 Clinical—Assessment. Each agency licensed by the department to provide any behavioral health service is responsible for an individual's assessment.

(1) The assessment must be:

(a) Conducted in person; and

(b) Completed by a professional appropriately credentialed or qualified to provide one or more of the following services as determined by state and federal law: Substance use disorder, mental health, and problem and pathological gambling.

(2) The assessment must document that the clinician conducted an age-appropriate, strengths-based psychosocial assessment that considered current needs and the patient's relevant history according to best practices. Such information may include, if applicable:

(a) Identifying information;

(b) Presenting issues;

(c) Medical provider's name or medical providers' names;

(d) Medical concerns;

(e) Medications currently taken;

(f) Mental health history;

(g) Substance use history, including tobacco;

(h) Problem and pathological gambling history;

(i) An assessment of any risk of harm to self and others, including suicide, homicide, and a history of self-harm;

(j) A referral for provision of emergency/crisis services must be made if indicated in the risk assessment;

(k) Legal history, including information that a person is or is not court-ordered to treatment or under the supervision of the department of corrections;

(l) Employment and housing status;

(m) Treatment recommendations or recommendations for additional program-specific assessment; and

(n) A diagnostic assessment statement, including sufficient data to determine a diagnosis supported by the current and applicable Diagnostic and Statistical Manual of Mental Disorders (DSM-5).

(3) Agencies providing substance use disorder services must ensure the assessment includes:

(a) A statement regarding the provision of an HIV/AIDS brief risk intervention, and any referral made; and

(b) A placement decision, using ASAM criteria dimensions when the assessment indicates the individual is in need of substance use disorder services.

(4) Behavioral health agencies can apply for an exemption from the assessment requirements in this section if the agency is following similar documentation requirements of an evidence-based, research-based, or state-mandated program that provides adequate protection for patient safety. See WAC 246-341-0300 for information about the exemption process.

NEW SECTION

WAC 246-341-0620 Clinical—Individual service plan. Each agency licensed by the department to provide any behavioral health service is responsible for an individual's service plan as follows:

(1) The individual service plan must:

(a) Be completed or approved by a professional appropriately credentialed or qualified to provide one or more of the following services:

(i) Mental health;

(ii) Substance use disorder; and

(iii) Problem and pathological gambling services.

(b) Address issues identified by the individual or, if applicable, the individual's parent(s) or legal representative;

(c) Be in a terminology that is understandable to the individual and the individual's family;

(d) Document that the plan was mutually agreed upon and a copy was made available to the individual;

(e) Contain measurable goals or objectives, or both, and interventions; and

(f) Be updated to address applicable changes in identified needs and achievement of goals.

(2) An agency that provides any behavioral health service must ensure the individual service plan:

(a) Is initiated during the first individual session following the assessment with at least one goal identified by the individual or if applicable, the individual's parent or legal representative; and

(b) Documents that the plan was reviewed and updated to reflect any changes in the individual's treatment needs, or as requested by the individual or, if applicable, the individual's parent or legal representative.

(3) If the individual service plan includes assignment of work to an individual, the assignment must have therapeutic value and meet all the requirements in subsection (1) of this section.

(4) Behavioral health agencies may apply for an exemption from the individual service plan requirements in this section if the agency is following similar documentation requirements of an evidence-based, research-based, or state-mandated program that provides adequate protection for patient safety. See WAC 246-341-0300 for information about the exemption process.

(5) Behavioral health agencies providing substance use disorder services must review the individual service plan to determine the need for continued services using ASAM criteria.

NEW SECTION

WAC 246-341-0640 Clinical—Additional record content. Each agency licensed by the department to provide any behavioral health service is responsible for an individual's clinical record content. The clinical record must include:

(1) Documentation the individual received a copy of counselor disclosure requirements as required for the counselor's credential;

(2) Demographic information;

(3) An assessment;

(4) Documentation of the individual's response when asked if:

(a) The individual is under department of corrections (DOC) supervision;

(b) The individual is under civil or criminal court ordered mental health or substance use disorder treatment; and

(c) There is a court order exempting the individual participant from reporting requirements. A copy of the court order must be included in the record if the participant claims exemption from reporting requirements.

(5) Documentation that the agency is in compliance with RCW 71.05.445 regarding mental health services for individuals under department of corrections supervision;

(6) Documentation the individual was informed of applicable federal and state confidentiality requirements;

(7) Documentation of confidential information that has been released without the consent of the individual under:

(a) RCW 70.02.050;

(b) The Health Insurance Portability and Accountability Act (HIPAA); and

(c) RCW 70.02.230 and 70.02.240 if the individual received mental health treatment services.

(8) Documentation that any mandatory reporting of abuse, neglect, or exploitation consistent with chapters 26.44 and 74.34 RCW has occurred;

(9) If treatment is not court-ordered, documentation of informed consent to treatment by the individual or individual's parent, or other legal representative;

(10) If treatment is court-ordered, a copy of the order;

(11) Medication records, if applicable;

(12) Laboratory reports, if applicable;

(13) Properly completed authorizations for release of information, if applicable;

(14) Copies of applicable correspondence;

(15) Discharge information as follows:

(a) A discharge statement if the individual left without notice;

(b) Discharge information for an individual who did not leave without notice, completed within seven working days of the individual's discharge, including:

(i) The date of discharge;

(ii) Continuing care plan;

(iii) Legal status, and if applicable; and

(iv) Current prescribed medication.

(c) When an individual is transferring to another service provider, documentation that copies of documents pertinent to the individual's course of treatment were forwarded to the new service provider with the individual's permission.

(16) A copy of any report required by entities such as the courts, department of corrections, department of licensing, and the department of health, and the date the report was submitted;

(17) Progress notes must include the date, time, duration, participant's name, response to interventions, and a brief summary of the session and the name and credential of the staff member who provided it;

(18) Documentation of coordination with any systems or organizations the individual identifies as being relevant to treatment, with the individual's consent or if applicable, the consent of the individual's parent or legal representation; and

(19) A crisis plan, if one has been developed.

NEW SECTION

WAC 246-341-0650 Clinical—Access to clinical records. Each agency licensed by the department to provide any behavioral health service must:

(1) Provide access to an individual's clinical record at the request of the individual or, if applicable, the individual's designated representative, or legal representative, or both. The agency must:

(a) Ensure that any material confidential to another person, agency, or provider is not redisclosed.

(b) Make the clinical record available to the requester within fifteen days of the request.

(c) Allow appropriate time and privacy for the review.

(d) Have a clinical staff member available to answer questions.

(e) Assure the charge for duplicating or searching the record is at a rate not higher than the "reasonable fee" as defined in RCW 70.02.010.

(2) Make an individual's clinical record available to department staff as required for department program review.

(3) If the agency maintains electronic individual clinical records, the agency must:

(a) Make the clinical record available, in paper form if requested; and

(b) Meet the criteria in subsections (1) and (2) of this section.

(4) When an individual receiving mental health services is under the supervision of the department of corrections (DOC), make information available to DOC, in accordance with RCW 71.05.445. The information released does not require the consent of the individual.

SECTION SEVEN—OUTPATIENT SERVICES

NEW SECTION

WAC 246-341-0700 Outpatient services—General.

Outpatient behavioral health services are intended to improve or reduce symptoms and help facilitate resolution of situational disturbances for individuals in the areas of relationships, employment, and community integration.

(1) Outpatient services include the following:

(a) Individual mental health treatment services;

(b) Brief mental health intervention treatment services;

(c) Group mental health therapy services;

(d) Family therapy mental health services;

(e) Rehabilitative case management mental health services;

(f) Psychiatric medication mental health services and medication support;

(g) Day support mental health services;

(h) Mental health outpatient services provided in a residential treatment facility (RTF);

(i) Recovery support services including:

(i) Supported employment mental health and substance use disorder services;

(ii) Supportive housing mental health and substance use disorder services;

(iii) Peer support mental health services;

(iv) Wraparound facilitation mental health services;

(v) Applied behavior analysis (ABA) mental health services; and

(vi) Consumer-run clubhouse mental health services.

(j) Level one outpatient substance use disorder services;

(k) Level two intensive outpatient substance use disorder services;

(l) Substance use disorder assessment only services;

(m) Alcohol and drug information school;

(n) Substance use disorder information and crisis services;

(o) Substance use disorder emergency service patrol services;

(p) Substance use disorder screening and brief intervention services; and

(q) Problem and pathological gambling services.

(2) A behavioral health agency that provides outpatient services must:

(a) Be licensed by the department as a behavioral health agency; and

(b) Meet the applicable program-specific requirements for each outpatient behavioral health services provided.

NEW SECTION

WAC 246-341-0702 Outpatient services—Individual mental health treatment services.

(1) Individual mental health treatment services are services designed to assist an individual in attaining the goals identified in the individual service plan. The treatment services are conducted with the individual and any natural supports as identified by the individual.

(2) An agency certified to provide individual treatment services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650.

NEW SECTION

WAC 246-341-0704 Outpatient services—Brief mental health intervention treatment services.

(1) Brief mental health intervention treatment services are solution-focused and outcome-oriented cognitive and behavioral interventions, intended to resolve situational disturbances. These services do not require long-term treatment, are generally completed in six months or less, and do not include ongoing care, maintenance, or monitoring of the individual's current level of function or assistance with self-care or life skills training.

(2) An agency certified to provide brief mental health intervention treatment services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650.

NEW SECTION

WAC 246-341-0706 Outpatient services—Group mental health therapy services.

Group mental health therapy services are provided to an individual in a group setting to assist the individual in attaining the goals described in the individual service plan. In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650, an agency certified to provide group mental health services must:

(1) Have a written description of each group's purpose;

(2) Ensure group therapy services are provided with a staff ratio of one staff member for every sixteen individuals;

(3) Ensure any group containing more than twelve individuals has at least one facilitator or cofacilitator that is an appropriately credentialed professional; and

(4) Ensure group notes are recorded in each individual's clinical record and include the requirements of WAC 246-341-0640(15) for discharge information.

NEW SECTION

WAC 246-341-0708 Outpatient services—Family therapy mental health services.

(1) Family therapy mental

health services are services provided for the direct benefit of an individual, with either family members, or other relevant persons, or both, in attendance, with the consent of the individual.

(2) Interventions must identify and build competencies to strengthen family functioning in relationship to the individual's identified goals. The individual may or may not be present.

(3) An agency certified to provide family therapy mental health services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650.

NEW SECTION

WAC 246-341-0710 Outpatient services—Rehabilitative case management mental health services. Rehabilitative case management mental health services are services that meet the ongoing assessment, facilitation, care coordination and advocacy for options and services to meet an individual's needs through communication and available resources, to promote quality and effective outcomes during and following a hospitalization.

(1) Rehabilitative case management services support individual employment, education, and participation in other daily activities appropriate to the individual's age, gender, and culture, and assist individuals in resolving crises in the least restrictive setting.

(2) Rehabilitative case management services include specific rehabilitative services provided to:

(a) Assist in an individual's discharge from an inpatient facility; and

(b) Minimize the risk of readmission to an inpatient setting.

(3) An agency certified to provide rehabilitative case management services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650.

NEW SECTION

WAC 246-341-0712 Outpatient services—Psychiatric medication mental health services and medication support. Psychiatric medication mental health services are a variety of activities related to prescribing and administering medication, including monitoring an individual for side effects and changes as needed. These services may only be provided with one of the outpatient mental health services in WAC 246-341-0700 (1)(a) through (e). An agency providing psychiatric medication services may also provide medication support services, described in subsections (2) and (3) of this section.

(1) An agency providing psychiatric medication services must:

(a) Ensure that medical direction and responsibility are assigned to a:

(i) Physician who is licensed to practice under chapter 18.57 or 18.71 RCW, and is board-certified or board-eligible in psychiatry;

(ii) Psychiatric advanced registered nurse practitioner (ARNP); or

(iii) Physician assistant working with a supervising psychiatrist.

(b) Ensure that the services are provided by a prescriber licensed by the department who is practicing within the scope of that practice;

(c) Ensure that all medications are administered by staff practicing within the scope of their practice;

(d) Have a process by which the medication prescriber informs either the individual, the legally responsible party, or both, and, as appropriate, family members, of the potential benefits and side effects of the prescribed medication(s);

(e) Must ensure that all medications maintained by the agency are safely and securely stored, including assurance that:

(i) Medications are kept in locked cabinets within a well-lit, locked and properly ventilated room;

(ii) Medications kept for individuals on medication administration or self-administration programs are clearly labeled and stored separately from medication samples kept on-site;

(iii) Medications marked "for external use only" are stored separately from oral or injectable medications;

(iv) Refrigerated food or beverages used in the administration of medications are kept separate from the refrigerated medications by the use of trays or other designated containers;

(v) Syringes and sharp objects are properly stored and disposed of;

(vi) Refrigerated medications are maintained at the required temperature; and

(vii) Outdated medications are disposed of in accordance with the regulations of the state board of pharmacy and no outdated medications are retained.

(2) An agency providing psychiatric medication services may utilize a physician or ARNP without board eligibility in psychiatry if unable to employ or contract with a psychiatrist. In this case, the agency must ensure that:

(a) Psychiatrist consultation is provided to the physician or ARNP at least monthly; and

(b) A psychiatrist is accessible to the physician or ARNP for emergency consultation.

(3) Medication support services occur face-to-face and:

(a) Include one-on-one cueing, observing, and encouraging an individual to take medication as prescribed;

(b) Include reporting any pertinent information related to the individual's adherence to the medication back to the agency that is providing psychiatric medication services; and

(c) May take place at any location and for as long as it is clinically necessary.

(4) An agency providing medication support services must:

(a) Ensure that the staff positions responsible for providing either medication monitoring, or delivery services, or both, are clearly identified in the agency's medication support services policy;

(b) Have appropriate policies and procedures in place when the agency providing medication support services

maintains or delivers medication to the individual that address:

- (i) The maintenance of a medication log documenting medications that are received, prescribed, and dispensed;
 - (ii) Reasonable precautions that need to be taken when transporting medications to the intended individual and to assure staff safety during the transportation; and
 - (iii) The prevention of contamination of medication during delivery, if delivery is provided.
- (c) Ensure that the individual's clinical record contains the individual service plan, including documentation of medication support services.

NEW SECTION

WAC 246-341-0714 Outpatient services—Day support mental health services. (1) Day support mental health services provide a range of integrated and varied life skills training. Day support services are designed to assist an individual in the acquisition of skills, retention of current functioning, or improvement in the current level of functioning, appropriate socialization, and adaptive coping skills.

(2) Services include training in basic living and social skills, and educational, vocational, prevocational, and day activities. Day support services may include therapeutic treatment.

(3) An agency certified to provide day support services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650.

NEW SECTION

WAC 246-341-0716 Outpatient services—Mental health outpatient services provided in a residential treatment facility (RTF). A residential treatment facility (RTF) may provide outpatient mental health treatment services to an individual with a mental disorder. An agency that operates an RTF that provides mental health treatment services must:

- (1) Ensure that the facility is licensed by the department under chapter 246-337 WAC; and
- (2) Be certified for and provide the following:
 - (a) Rehabilitative case management services (see WAC 246-341-0710);
 - (b) Less restrictive alternative (LRA) support services (see WAC 246-341-0805) if serving individuals on an LRA court order or conditional release; and
 - (c) Psychiatric medication services and medication support services (see WAC 246-341-0712).

NEW SECTION

WAC 246-341-0718 Outpatient services—Recovery support—General. Recovery support services are intended to promote an individual's socialization, recovery, self-advocacy, development of natural support, and maintenance of community living skills.

- (1) Recovery support services include:
 - (a) Supported employment services;
 - (b) Supportive housing services;
 - (c) Peer support services;

- (d) Wraparound facilitation services;
- (e) Applied behavior analysis (ABA) services; and
- (f) Consumer-run clubhouse services.

(2) An agency that provides any recovery support service may operate through an agreement with a licensed behavioral health agency that provides certified outpatient behavioral health services listed in WAC 246-341-0700. The agreement must specify the responsibility for initial assessments, the determination of appropriate services, individual service planning, and the documentation of these requirements. Subsections (3) through (5) of this section list the abbreviated requirements for assessments, staff, and clinical records.

(3) When providing any recovery support service, a behavioral health agency must:

(a) Have an assessment process to determine the appropriateness of the agency's services, based on the individual's needs and goals;

(b) Refer an individual to a more intensive level of care when appropriate; and

(c) With the consent of the individual, include the individual's family members, significant others, and other relevant treatment providers as necessary to provide support to the individual.

(4) An agency providing recovery support services must ensure:

(a) Each staff member working directly with an individual receiving any recovery support service has annual violence prevention training on the safety and violence prevention topics described in RCW 49.19.030; and

(b) The staff member's personnel record documents the training.

(5) An agency providing any recovery support service must maintain an individual's clinical record that contains:

(a) Documentation of the following:

(i) The name of the agency or other sources through which the individual was referred;

(ii) A brief summary of each service encounter, including the date, time, and duration of the encounter; and

(iii) Names of participant(s), including the name of the individual who provided the service.

(b) Any information or copies of documents shared by, or with, a behavioral health agency certified for outpatient mental health services.

NEW SECTION

WAC 246-341-0720 Outpatient services—Recovery support—Supported employment mental health and substance use disorder services. Supported employment mental health and substance use disorder services assist in job search, placement services, and training to help individuals find competitive jobs in their local communities.

(1) An agency that provides certified supported employment services must meet the general requirements for recovery support services in WAC 246-341-0718.

(2) A behavioral health agency that provides supported employment services must have knowledge of and provide individuals access to employment and education opportunities by coordinating efforts with one or more entities that provide other rehabilitation and employment services, such as:

(a) The department of social and health services' division of vocational rehabilitation (DVR), which provides supported employment under WAC 388-891-0840 by community rehabilitation program contract as described in WAC 388-892-0100;

(b) The department of social and health services' community services offices;

(c) Community, trade, and technical colleges;

(d) The business community;

(e) WorkSource, Washington state's official site for online employment services;

(f) Washington state department of employment security; and

(g) Organizations that provide job placement within the community.

(3) A behavioral health agency that provides supported employment services must:

(a) Ensure all staff members who provide direct services for employment are knowledgeable and familiar with services provided by the department's division of vocational rehabilitation;

(b) Conduct and document a vocational assessment in partnership with the individual that includes work history, skills, training, education, and personal career goals;

(c) Assist the individual to create an individualized job and career development plan that focuses on the individual's strengths and skills;

(d) Assist the individual to locate employment opportunities that are consistent with the individual's skills, goals, and interests;

(e) Provide and document any outreach, job coaching, and support at the individual's worksite when requested by the individual or the individual's employer; and

(f) If the employer makes a request, provide information regarding the requirements of reasonable accommodations, consistent with the Americans with Disabilities Act (ADA) of 1990 and Washington state antidiscrimination law.

NEW SECTION

WAC 246-341-0722 Outpatient services—Recovery support—Supportive housing mental health and substance use disorder services. Supportive housing mental health and substance use disorder services support an individual's transition to community integrated housing and support the individual to be a successful tenant in a housing arrangement.

(1) An agency that provides certified supportive housing services must meet the general requirements for recovery support services in WAC 246-341-0718.

(2) A behavioral health agency that provides supportive housing services must have knowledge of and provide housing related collaborative activities to assist individuals in identifying, coordinating, and securing housing or housing resources with entities such as:

(a) Local homeless continuum of care groups or local homeless planning groups;

(b) Housing authorities that operate in a county or city in the behavioral health organization's (BHO) regional service area;

(c) Community action councils that operate in a county or region in the BHO's regional service area;

(d) Landlords of privately owned residential homes; and

(e) State agencies that provide housing resources.

(3) A behavioral health agency that provides supportive housing services must:

(a) Ensure all staff members who provide direct services for supportive housing are knowledgeable and familiar with fair housing laws;

(b) Conduct and document a housing assessment in partnership with the individual that includes housing preferences, affordability, and barriers to housing;

(c) Conduct and document a functional needs assessment in partnership with the individual that includes independent living skills and personal community integration goals;

(d) Assist the individual to create an individualized housing acquisition and maintenance plan that focuses on the individual's choice in housing;

(e) Assist the individual to locate housing opportunities that are consistent with the individual's preferences, goals, and interests;

(f) Provide any outreach, tenancy support, and independent living skill building supports at a location convenient to the individual;

(g) Provide the individual with information regarding the requirements of the Fair Housing Act, Americans with Disabilities Act (ADA) of 1990, and Washington state antidiscrimination law, and post this information in a public place in the agency; and

(h) Ensure the services are specific to each individual and meant to assist in obtaining and maintaining housing in scattered-site, clustered, integrated, or single-site housing as long as the individual holds a lease or sublease.

NEW SECTION

WAC 246-341-0724 Outpatient services—Recovery support—Peer support mental health services. (1) Peer support mental health services provide a wide range of activities to assist an individual in exercising control over their own life and recovery process through:

(a) Developing self-advocacy and natural supports;

(b) Maintenance of community living skills;

(c) Promoting socialization; and

(d) The practice of peer counselors sharing their own life experiences related to mental illness to build alliances that enhance the individual's ability to function.

(2) An agency that provides certified peer support services must meet the general requirements for recovery support services in WAC 246-341-0718.

(3) An agency providing peer support services must ensure peer support counselors:

(a) Are recognized by the authority as a "peer counselor" as defined in WAC 182-538D-0200; and

(b) Provide peer support services:

(i) Under the supervision of a mental health professional; and

(ii) Within the scope of the peer counselor's training and department of health credential.

(4) An agency providing peer support services must document the frequency, duration, and expected outcome of all peer support services in the individual service plan.

NEW SECTION

WAC 246-341-0726 Outpatient services—Recovery support—Wraparound facilitation mental health services. Wraparound facilitation mental health services address the complex emotional, behavior, and social issues of an identified individual twenty years of age or younger, and the individual's family.

(1) Wraparound facilitation services are:

(a) Provided to an individual who requires the services of a mental health provider and one or more child serving systems;

(b) Focused and driven by the needs of the identified family and the family's support community; and

(c) Provided in partnership with the individual, the individual's family, and the individual's mental health provider.

(2) In addition to meeting the general requirements for recovery support services in WAC 246-341-0718, an agency providing certified wraparound facilitation services must employ or contract with:

(a) A mental health professional (MHP) who is responsible for oversight of the wraparound facilitation services;

(b) A facilitator who has completed department-approved wraparound facilitation training and:

(i) Has a master's degree with at least one year of experience working in social services;

(ii) Has a bachelor's degree with at least two years of experience working in social services; or

(iii) Is an individual with lived experience that is documented in the personnel file.

(c) A staff member certified to provide a child and adolescent needs and strengths (CANS) assessment.

(3) In addition to the staff requirements in subsection (2) of this subsection, an agency must ensure the following individuals are available to assist in the planning and provision of wraparound facilitation services, as needed:

(a) An employee or volunteer youth partner, actively involved in defining the agency's services; and

(b) An employee or volunteer family partner, actively involved in defining the agency's services.

(4) All wraparound facilitation services:

(a) Must include the identified individual, the individual's family, and the individual's mental health provider; and

(b) May include additional support partners as team members including, but not limited to, all of the following:

(i) Natural supports. Natural supports include community members, friends, and extended family members identified by either the individual, the individual's family, or both, to be active participants in the individual's support network.

(ii) System supports. System supports are representatives from systems that currently offer support to the identified individual or that offer support services to the individual's adult care giver, which directly affects the individual.

(iii) Peer supports. Peer supports are individuals who have personally and actively participated in wraparound

facilitation services and who offer support to families currently working with the wraparound teams.

(5) An agency must document the following:

(a) The development of a wraparound plan that:

(i) Includes:

(A) A complete list of participants and their contact information;

(B) A list of next steps or follow-up information from the initial meeting; and

(C) The schedule of child and family team (CFT) meetings.

(ii) Describes the individual's and the individual's family's vision for the future stated in their own language;

(iii) Reflects the family's prioritization of needs and goals and addresses the needs as identified in the CANS screen;

(iv) Is integrated with the person's individual service plan (see WAC 246-341-0620);

(v) Identifies the functional strengths of the individual and the individual's family that can be used to help meet the identified needs;

(vi) Assigns responsibility to CFT members for each strategy/intervention or task, and establishes timelines for implementation;

(vii) Identifies immediate safety needs and a safety/crisis plan;

(viii) Assists the individual and the individual's family in using their support network; and

(ix) Is signed by all CFT members, including the individual and the individual's parent or if applicable, legal guardian.

(b) Coordination with any other involved systems and services or supports, including sharing the wraparound plan and any revisions with all members of the team;

(c) The result of the initial and subsequent CANS screenings and assessments; and

(d) The review of the wraparound plan during each CFT meeting and any revisions made to the plan to address the changing needs and progress of the identified individual and the individual's family.

NEW SECTION

WAC 246-341-0728 Outpatient services—Recovery support—Applied behavior analysis mental health services. Applied behavior analysis (ABA) mental health services assist children and their families to improve the core symptoms associated with autism spectrum disorders or other developmental disabilities for which ABA services have been determined to be medically necessary.

(1) ABA services support learning, skill development, and assistance in any one or more of the following areas or domains:

(a) Social;

(b) Behavior;

(c) Adaptive;

(d) Motor;

(e) Vocational; or

(f) Cognitive.

(2) An agency providing ABA services must meet the:

(a) General requirements in WAC 246-341-0718 for recovery support services;

(b) Specific agency staff requirements in WAC 246-341-0718(4); and

(c) Specific clinical record content and documentation requirements in WAC 246-341-0640 and 246-341-0718(5).

(3) The health care authority (HCA) administers chapter 182-531A WAC for ABA services requirements. The rules in chapter 182-531A WAC include:

(a) Definitions that apply to ABA services;

(b) Program and clinical eligibility requirements;

(c) Prior authorization and recertification requirements;

(d) Specific ABA provider requirements;

(e) Covered and noncovered services;

(f) Billing requirements; and

(g) Requirements for:

(i) Referrals to and assessments by centers of excellence (COE) for evaluations and orders; and

(ii) ABA assessments and individualized ABA therapy treatment plans.

(4) The ABA therapy treatment plan must:

(a) Be developed and maintained by a lead behavior analysis therapist (LBAT) (see subsection (5) of this section);

(b) Identify the services to be delivered by the LBAT and the therapy assistant, if the agency employs a therapy assistant (see subsections (6) and (7) of this section);

(c) Be comprehensive and document treatment being provided by other health care professionals; and

(d) Document how all treatment will be coordinated, as applicable, with other members of the health care team.

(5) An agency certified to provide ABA services must employ a lead behavior analysis therapist (LBAT).

(a) To qualify as an LBAT, an individual must meet the professional requirements in chapter 182-531 WAC.

(b) The agency must ensure the LBAT meets other applicable requirements in chapter 182-531A WAC.

(6) An agency may choose to employ a therapy assistant.

(a) To qualify as a therapy assistant, an individual must meet the professional requirements in chapter 182-531A WAC.

(b) The agency must ensure the therapy assistant meets other applicable requirements in chapter 182-531A WAC.

(7) If the agency employs a therapy assistant(s), the agency must ensure the LBAT:

(a) Supervises the therapy assistant:

(i) For a minimum of five percent of the total direct care provided by the therapy assistant per week (for example, one hour of direct supervision per twenty hours of direct care); and

(ii) In accordance with agency policies and procedures;

(b) Meets the requirements in this section;

(c) Completes a review of an individual's ABA therapy treatment plan with the therapy assistant before services are provided;

(d) Assures the therapy assistant delivers services according to the individual's ABA therapy treatment plan; and

(e) Meets at least every two weeks with the therapy assistant and documents review of the individual's progress

or response to the treatment, or both, and makes changes to the ABA therapy treatment plan as indicated by the individual's progress or response.

(8) To maintain department program-specific certification to provide ABA services, an agency must continue to ensure the requirements in this section are met.

NEW SECTION

WAC 246-341-0730 Outpatient services—Consumer-run recovery support—Clubhouses—Required clubhouse components. (1) The department certifies consumer-run clubhouses under the provision of RCW 71.24.035. International center for clubhouse development certification is not a substitute for certification by the state of Washington.

(2) Required clubhouse components include all of the following:

(a) Voluntary member participation. Clubhouse members choose the way they use the clubhouse and the staff with whom they work. There are no agreements, contracts, schedules, or rules intended to enforce participation of members. All member participation is voluntary. Clubhouse policy and procedures must describe how members will have the opportunity to participate, based on their preferences, in the clubhouse.

(b) The work-ordered day.

(c) Activities, including:

(i) Personal advocacy;

(ii) Help with securing entitlements;

(iii) Information on safe, appropriate, and affordable housing;

(iv) Information related to accessing medical, psychological, pharmacological and substance use disorder services in the community;

(v) Outreach to members during periods of absence from the clubhouse and maintaining contact during periods of inpatient treatment;

(vi) In-house educational programs that use the teaching and tutoring skills of members;

(vii) Connecting members with adult education opportunities in the community;

(viii) An active employment program that assists members to gain and maintain employment in full- or part-time competitive jobs in integrated settings developed in partnership with the member, the clubhouse, and the employer and time-limited, part-time community jobs managed by the clubhouse with absentee coverage provided; and

(ix) An array of social and recreational opportunities.

(d) Operating at least thirty hours per week on a schedule that accommodates the needs of the members.

NEW SECTION

WAC 246-341-0732 Outpatient services—Consumer-run recovery support—Clubhouses—Management and operational requirements. The requirements for managing and operating a clubhouse include all of the following:

(1) Members, staff, and ultimately the clubhouse director, are responsible for the operation of the clubhouse. The

director must ensure opportunities for members and staff to be included in all aspects of clubhouse operation, including setting the direction of the clubhouse.

(2) Location in an area, when possible, where there is access to local transportation and, when access to public transportation is limited, facilitate alternatives.

(3) A distinct identity, including its own name, mailing address, and phone number.

(4) A separate entrance and appropriate signage that make the clubhouse clearly distinct, when colocated with another community agency.

(5) An independent board of directors capable of fulfilling the responsibilities of a not-for-profit board of directors, when free-standing.

(6) An administrative structure with sufficient authority to protect the autonomy and integrity of the clubhouse, when under the auspice of another agency.

(7) Services are timely, appropriate, accessible, and sensitive to all members.

(8) Members are not discriminated against on the basis of any status or individual characteristic that is protected by federal, state, or local law.

(9) Written proof of a current fire/safety inspection:

(a) Conducted of all premises owned, leased or rented by the clubhouse; and

(b) Performed by all required external authorities (such as a state fire marshal and liability insurance carrier).

(10) All applicable state, county, and city business licenses.

(11) All required and current general liability, board and officers liability, and vehicle insurance.

(12) An identifiable clubhouse budget that includes:

(a) Tracking all income and expenditures for the clubhouse by revenue source;

(b) Quarterly reconciliation of accounts; and

(c) Compliance with all generally accepted accounting principles.

(13) Track member participation and daily attendance.

(14) Assist member in developing, documenting, and maintaining the member's recovery goals and providing monthly documentation of progress toward reaching them. Both member and staff must sign all such plans and documentation, or, if a member does not sign, staff must document the reason.

(15) A mechanism to identify and implement needed changes to the clubhouse operations, performance, and administration, and to document the involvement of members in all aspects of the operation of the clubhouse.

(16) Evaluate staff performance by:

(a) Ensuring that paid employees:

(i) Are qualified for the position they hold, including any licenses or certifications; and

(ii) Have the education, experience and skills to perform the job requirements.

(b) Maintaining documentation that paid clubhouse staff:

(i) Have a completed Washington state patrol background check on file; and

(ii) Receive regular supervision and an annual performance evaluation.

NEW SECTION

WAC 246-341-0734 Outpatient services—Consumer-run recovery support—Clubhouses—Certification process. The department grants certification based on compliance with the minimum standards in WAC 246-341-0730 through 246-341-0736.

(1) To be certified to provide clubhouse services, an organization must comply with all of the following:

(a) Meet all requirements for applicable city, county and state licenses and inspections.

(b) Complete and submit an application for certification to the department.

(c) Successfully complete an on-site certification review by the department to determine compliance with the minimum clubhouse standards, as set forth in this chapter.

(d) Initial applicants that can show that they have all organizational structures and written policies in place, but lack the performance history to demonstrate that they meet minimum standards, may be granted initial certification for up to one year. Successful completion of an on-site certification review is required prior to the expiration of initial certification.

(2) Upon certification, clubhouses will undergo periodic on-site certification reviews.

(a) The frequency of certification reviews is determined by the on-site review score as follows:

(i) A compliance score of ninety percent or above results in the next certification review occurring in three years;

(ii) A compliance score of eighty percent to eighty-nine percent results in the next certification review occurring in two years;

(iii) A compliance score of seventy percent to seventy-nine percent results in the next certification review occurring in one year; or

(iv) A compliance score below seventy percent results in a probationary certification.

(b) Any facet of an on-site review resulting in a compliance score below ninety percent requires a plan of correction approved by the department.

(3) Probationary certification may be issued by the department if:

(a) A clubhouse fails to conform to applicable law, rules, regulations, or state minimum standards; or

(b) There is imminent risk to the individual's health and safety.

(4) The department may suspend or revoke a clubhouse's certification, or refuse to grant or renew a clubhouse's certification if a clubhouse fails to correct deficiencies as mutually agreed to in the plan of correction with the department.

(5) A clubhouse may appeal a certification decision by the department.

(a) To appeal a decision, the clubhouse must follow the procedure outlined in WAC 246-341-0370 and include the name, signature, and address of the clubhouse director.

(b) The hearing decision will be made according to the provisions of chapters 34.05 RCW and 246-10 WAC.

NEW SECTION

WAC 246-341-0736 Outpatient services—Consumer-run recovery support—Clubhouses—Employment-related services. The following employment support activities must be offered to clubhouse members:

- (1) Collaboration on creating, revising, and meeting individualized job and career goals;
- (2) Information about how employment will affect income and benefits;
- (3) Information on other rehabilitation and employment services including, but not limited to:
 - (a) The division of vocational rehabilitation;
 - (b) The state employment services;
 - (c) The business community;
 - (d) Job placement services within the community; and
 - (e) Community mental health agency-sponsored supported employment services.
- (4) Assistance in locating employment opportunities that are consistent with the member's skills, goals, and interests;
- (5) Assistance in developing a resume, conducting a job search, and interviewing;
- (6) Assistance in:
 - (a) Applying for school and financial aid; and
 - (b) Tutoring and completing course work.
- (7) Information regarding protections against employment discrimination provided by federal, state, and local laws and regulations, and assistance with asserting these rights, including securing professional advocacy.

NEW SECTION

WAC 246-341-0738 Outpatient services—Level one outpatient substance use disorder services. (1) ASAM level one outpatient substance use disorder services provide a program of individual and group counseling, education, and activities, in accordance with ASAM criteria.

(2) An agency certified to provide level one outpatient substance use disorder services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650.

(3) An agency certified to provide level one outpatient substance use disorder services must ensure both of the following:

- (a) Group therapy services are provided with a staff ratio of one staff member for every sixteen individuals; and
- (b) A group counseling session with twelve to sixteen youths includes a second staff member.

NEW SECTION

WAC 246-341-0740 Outpatient services—Level two intensive outpatient substance use disorder services. ASAM level two intensive outpatient substance use disorder services provide a concentrated program of individual and group counseling, education, and activities, in accordance with ASAM criteria.

(1) An agency certified to provide level two intensive outpatient treatment services must meet the behavioral health agency licensure, certification, administration, personnel,

and clinical requirements in WAC 246-341-0300 through 246-341-0650.

(2) An agency providing level two intensive outpatient treatment services for deferred prosecution must:

(a) Ensure that individuals admitted under a deferred prosecution order receive services that meet the requirements of RCW 10.05.150, including, that the individual receives a minimum of seventy-two hours of treatment services within a maximum of twelve weeks, which consist of the following during the first four weeks of treatment:

- (i) At least three sessions each week, with each session occurring on separate days of the week;
- (ii) Group sessions that must last at least one hour; and
- (iii) Attendance at self-help groups in addition to the seventy-two hours of treatment services.

(b) There must be approval, in writing, by the court having jurisdiction in the case, when there is any exception to the requirements in this subsection; and

(c) The agency must refer for ongoing treatment or support upon completion of intensive outpatient treatment, as necessary.

(3) An agency certified to provide level two intensive outpatient substance use disorder services must ensure both of the following:

- (a) Group therapy services are provided with a staff ratio of one staff member for every sixteen individuals; and
- (b) A group counseling session with twelve to sixteen youths includes a second staff member.

NEW SECTION

WAC 246-341-0742 Outpatient services—Substance use disorder assessment only services. Substance use disorder assessment only services are provided to an individual to determine the individual's involvement with alcohol and other drugs and determine the appropriate course of care or referral.

(1) A behavioral health agency certified for assessment only services may choose to become certified to also provide driving under the influence (DUI) assessment services described in WAC 246-341-0820.

(2) An agency certified to provide assessment only services must meet the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650 except where specifically indicated.

(3) An agency providing assessment only services:

- (a) Must review, evaluate, and document information provided by the individual;
- (b) May include information from external sources such as family, support individuals, legal entities, courts, and employers; and

(c) Is not required to meet the individual service plan requirements in WAC 246-341-0620.

(4) An agency must maintain and provide a list of resources, including self-help groups, and referral options that can be used by staff members to refer an individual to appropriate services.

(5) An agency that offers off-site assessment services must meet the requirements in WAC 246-341-0342.

(6) An agency providing assessment only services must ensure all assessment only services are provided by a chemical dependency professional (CDP).

NEW SECTION

WAC 246-341-0744 Outpatient services—Information and assistance services—Substance use disorder services—General. Information and assistance services are considered nontreatment substance use disorder services provided to support an individual who has a need for interventions related to substance use.

(1) Information and assistance services require additional program-specific certification by the department and include:

- (a) Alcohol and drug information school;
- (b) Information and crisis services;
- (c) Emergency service patrol; and
- (d) Screening and brief intervention.

(2) Substance use disorder information and assistance services are available without an initial assessment or individual service plan and are not required to meet the requirements under WAC 246-341-0640.

(3) An agency providing information and assistance services must maintain and provide a list of resources, including self-help groups and referral options, that can be used by staff members to refer an individual to appropriate services.

NEW SECTION

WAC 246-341-0746 Outpatient services—Substance use disorder information and assistance services—Alcohol and drug information school. Alcohol and drug information school services provide an educational program about substance use. These services are for an individual referred by a court or other jurisdiction(s) who may have been assessed and determined not to require treatment. In addition to meeting requirements for substance use disorder information and assistance services in WAC 246-341-0744, an agency providing alcohol and drug information school services must:

(1) Ensure courses are taught by a certified information school instructor or a chemical dependency professional (CDP) who:

- (a) Advises each student there is no assumption the student has a substance use disorder and that the course is not a therapy session;
- (b) Follows a department-approved curriculum;
- (c) Ensures each course has no fewer than eight hours of classroom instruction; and
- (d) Administers each enrolled student the post-test for each course after the course is completed;

(2) Ensure a school instructor who is not a CDP has a certificate of completion of an alcohol and other drug information school instructor's training course approved by the department, and the personnel file contains documentation of the training; and

- (3) Ensure each individual student record contains:
 - (a) An intake form, including demographics;
 - (b) The hours of attendance, including dates; and
 - (c) A copy of the scored post-test.

NEW SECTION

WAC 246-341-0748 Outpatient services—Substance use disorder information and assistance—Information and crisis services. Substance use disorder information and crisis services provide an individual assistance or guidance related to substance use disorders, twenty-four hours a day by telephone or in person. In addition to meeting requirements for substance use disorder information and assistance services in WAC 246-341-0744, an agency providing information and crisis services must:

(1) Have services available to any individual twenty-four hours a day, seven days a week;

(2) Ensure each staff member completes forty hours of training that covers substance use disorders before assigning the staff member unsupervised duties;

(3) Ensure a chemical dependency professional (CDP), or a chemical dependency professional trainee (CDPT) under supervision of a CDP, is available or on staff twenty-four hours a day;

(4) Maintain a current directory of all certified substance use disorder service providers in the state; and

(5) Maintain a current list of local resources for legal, employment, education, interpreter, and social and health services.

NEW SECTION

WAC 246-341-0750 Outpatient services—Substance use disorder information and assistance—Emergency service patrol. Emergency service patrol services provide transport assistance to an intoxicated individual in a public place when a request has been received from police, merchants, or other persons. In addition to meeting requirements for substance use disorder information and assistance services in WAC 246-341-0744, an agency providing emergency service patrol services must:

(1) Ensure the staff member providing the service:

(a) Has proof of a valid Washington state driver's license;

(b) Possesses annually updated verification of first-aid and cardiopulmonary resuscitation training; and

(c) Has completed forty hours of training in substance use disorder crisis intervention techniques and alcoholism and drug abuse, to improve skills in handling crisis situations.

(2) Respond to calls from police, merchants, and other persons for assistance with an intoxicated individual in a public place;

(3) Patrol assigned areas and give assistance to an individual intoxicated in a public place;

(4) Conduct a preliminary screening of an individual's condition related to the state of their impairment and presence of a physical condition needing medical attention;

(5) Transport the individual to their home or shelter, to a certified treatment provider, or a health care facility if the individual is intoxicated, but subdued and willing to be transported;

(6) Make reasonable efforts to take the individual into protective custody and transport the individual to an appropriate treatment or health care facility, when the individual is

incapacitated, unconscious, or has threatened or inflicted harm on another person;

(7) Call law enforcement for assistance if the individual is unwilling to be taken into protective custody; and

(8) Maintain a log, including:

(a) The date, time and origin of each call received for assistance;

(b) The time of arrival at the scene;

(c) The location of the individual at the time of the assist;

(d) The name and sex of the individual transported;

(e) The results of the preliminary screening;

(f) The destination and address of the transport and time of arrival; and

(g) In case of nonpickup of a person, documentation of why the pickup did not occur.

NEW SECTION

WAC 246-341-0752 Outpatient services—Substance use disorder information and assistance—Screening and brief intervention. Screening and brief intervention services are a combination of information and assistance services designed to screen an individual for risk factors that appear to be related to substance use disorders, provide interventions, and make appropriate referral as needed. These services may be provided in a wide variety of settings. In addition to meeting requirements for substance use disorder information and assistance services in WAC 246-341-0744, an agency providing screening and brief intervention services must:

(1) Ensure services are provided by a chemical dependency professional (CDP), a chemical dependency professional trainee (CDPT) under the supervision of a CDP, or another appropriately credentialed staff member;

(2) Ensure each staff member completes forty hours of training that covers the following areas before assigning the staff member unsupervised duties:

(a) Substance use disorder screening and brief intervention techniques;

(b) Motivational interviewing; and

(c) Referral.

(3) Maintain a current list of local resources for legal, employment, education, interpreter, and social and health services; and

(4) Ensure each individual's record contains:

(a) A copy of a referral;

(b) Demographic information;

(c) Documentation the individual was informed and received a copy of the requirements under 42 C.F.R. Part 2;

(d) Documentation the individual received a copy of the counselor disclosure information;

(e) Documentation the individual received a copy of the individual rights;

(f) Authorization for the release of information; and

(g) A copy of screening documents, including outcome and referrals.

NEW SECTION

WAC 246-341-0754 Outpatient services—Problem and pathological gambling treatment services. Problem and pathological gambling treatment services provide treat-

ment to an individual that includes diagnostic screening and assessment, and individual, group, couples, and family counseling and case management. In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650 an agency that provides problem and pathological gambling treatment services must:

(1) Have an outline of each education session included in the service that is sufficient in detail for another trained staff person to deliver the session in the absence of the regular instructor;

(2) Maintain a list or source of resources, including self-help groups, and referral options that can be used by staff to refer an individual to appropriate services;

(3) Limit the size of group counseling sessions to no more than sixteen individuals; and

(4) Maintain a written procedure for the response to medical and psychiatric emergencies.

SECTION EIGHT—INVOLUNTARY AND COURT-ORDERED OUTPATIENT TREATMENT

NEW SECTION

WAC 246-341-0800 Involuntary and court-ordered—Noncompliance reporting for court-ordered substance use disorder treatment. An agency providing substance use disorder services must report noncompliance, in all levels of care, for an individual ordered into substance use disorder treatment by a court of law or other appropriate jurisdictions. An agency that fails to report noncompliance for an individual under chapter 46.61 RCW is subject to penalties as stated in RCW 46.61.5056(4). An agency providing treatment to a court-mandated individual, including deferred prosecution, must develop procedures addressing individual noncompliance and reporting requirements, including:

(1) Completing an authorization to release confidential information form that meets the requirements of 42 C.F.R. Part 2 and 45 C.F.R. Parts 160 and 164 or through a court order authorizing the disclosure pursuant to 42 C.F.R. Part 2, Sections 2.63 through 2.67;

(2) Notifying the designated crisis responder within three working days from obtaining information of any violation of the terms of the court order for purposes of revocation of the individual's conditional release, or department of corrections (DOC) if the individual is under DOC supervision;

(3) Reporting and recommending action for emergency noncompliance to the court or other appropriate jurisdiction(s) within three working days from obtaining information on:

(a) An individual's failure to maintain abstinence from alcohol and other nonprescribed drugs as verified by individual's self-report, identified third-party report confirmed by the agency, or blood alcohol content or other laboratory test;

(b) An individual's report of subsequent alcohol or drug related arrests; or

(c) An individual leaving the program against program advice or an individual discharged for rule violation;

(4) Reporting and recommending action for nonemergency, noncompliance to the court or other appropriate juris-

diction(s) within ten working days from the end of each reporting period, upon obtaining information on:

- (a) An individual's unexcused absences or failure to report, including failure to attend mandatory self-help groups; or
- (b) An individual's failure to make acceptable progress in any part of the treatment plan.
- (5) Transmitting noncompliance or other significant changes as soon as possible, but no longer than ten working days from the date of the noncompliance, when the court does not wish to receive monthly reports;
- (6) Reporting compliance status of persons convicted under chapter 46.61 RCW to the department of licensing.

NEW SECTION

WAC 246-341-0805 Involuntary and court-ordered —Less restrictive alternative (LRA) or conditional release support behavioral health services. Less restrictive alternative (LRA) support and conditional release behavioral health services are provided to individuals on a less restrictive alternative court order or conditional release. An agency agrees to provide or monitor the provision of court-ordered services, including psychiatric, substance use disorder treatment, and medical components of community support services. In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650, an agency providing court-ordered LRA support and conditional release services must do all of the following:

- (1) Have a written policy and procedure that allows for the referral of an individual to an involuntary treatment facility twenty-four hours a day, seven days a week.
- (2) Have a written policy and procedure for an individual who requires involuntary detention that includes procedures for:
 - (a) Contacting the designated crisis responder (DCR) regarding revocations or extension of an LRA or conditional release; and
 - (b) The transportation of an individual, in a safe and timely manner, for the purpose of:
 - (i) Evaluation; or
 - (ii) Evaluation and detention.
- (3) Ensure a committed individual is advised of their rights under chapter 71.05 or 71.34 RCW, as applicable, and that the individual has the right:
 - (a) To receive adequate care and individualized treatment;
 - (b) To make an informed decision regarding the use of antipsychotic medication and to refuse medication beginning twenty-four hours before any court proceeding that the individual has the right to attend;
 - (c) To maintain the right to be presumed competent and not lose any civil rights as a consequence of receiving evaluation and treatment for a mental health disorder or substance use disorder;
 - (d) Of access to attorneys, courts, and other legal redress;
 - (e) To be told statements the individual makes may be used in the involuntary proceedings; and

(f) To have all information and records compiled, obtained, or maintained in the course of treatment kept confidential as described in chapters 70.02, 71.05, and 71.34 RCW.

(4) Include in the clinical record a copy of the less restrictive alternative court order or conditional release and a copy of any subsequent modification.

(5) Ensure the development and implementation of an individual service plan which addresses the conditions of the less restrictive alternative court order or conditional release and a plan for transition to voluntary treatment.

(6) Ensure that the individual receives psychiatric medication services or medication assisted treatment for the assessment and prescription of psychotropic medications or substance use disorder treatment medications, appropriate to the needs of the individual as follows:

(a) At least one time in the initial fourteen days following release from inpatient treatment for an individual on a ninety-day or one hundred eighty-day less restrictive alternative court order or conditional release, unless the individual's attending physician, physician assistant, or psychiatric advanced registered nurse practitioner (ARNP) determines another schedule is more appropriate and documents the new schedule and the reason(s) in the individual's clinical record; and

(b) At least one time every thirty days for the duration of the less restrictive alternative court order or conditional release, unless the individual's attending physician or psychiatric ARNP determines another schedule is more appropriate and documents the new schedule and the reason(s) in the individual's clinical record.

(7) Keep a record of the periodic evaluation by a mental health professional for a mental health disorder or a chemical dependency professional for substance use disorder treatment, of each committed individual for release from, or continuation of, an involuntary treatment order. Evaluations must occur at least every thirty days for the duration of the commitments and include documentation of assessment and rationale:

(a) For requesting a petition for an additional period of less restrictive or conditional release treatment under an involuntary treatment order; or

(b) Allowing the less restrictive court order or conditional release expire without an extension request.

NEW SECTION

WAC 246-341-0810 Involuntary and court-ordered —Emergency individual detention mental health and substance use disorder services. Emergency involuntary detention services are services provided by a designated crisis responder (DCR) to evaluate an individual in crisis and determine if involuntary services are required. In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650, an agency certified to provide emergency involuntary detention services must do all of the following:

- (1) Ensure that services are provided by a DCR.

(2) Ensure staff members are available twenty-four hours a day, seven days a week.

(3) Ensure staff members utilize the protocols for DCRs required by RCW 71.05.214.

(4) Have a written agreement with a certified inpatient evaluation and treatment or secure withdrawal management and stabilization facility to allow admission of an individual twenty-four hours a day, seven days a week.

(5) Have a plan for training, staff back-up, information sharing, and communication for a staff member who responds to a crisis in a private home or a nonpublic setting.

(6) Ensure that a DCR is able to be accompanied by a second trained individual when responding to a crisis in a private home or a nonpublic setting.

(7) Ensure that a DCR who engages in a home visit to a private home or a nonpublic setting is provided by their employer with a wireless telephone, or comparable device, for the purpose of emergency communication as described in RCW 71.05.710.

(8) Provide staff members, who are sent to a private home or other private location to evaluate an individual in crisis, prompt access to information about any history of dangerousness or potential dangerousness on the individual they are being sent to evaluate that is documented in a crisis plan(s) or commitment record(s). This information must be made available without unduly delaying the crisis response.

(9) Have a written protocol for the transportation of an individual, in a safe and timely manner, for the purpose of medical evaluation or detention.

(10) Document services provided to the individual, and other applicable information. At a minimum this must include:

(a) That the individual was advised of their rights in accordance with RCW 71.05.360;

(b) That if the evaluation was conducted in a hospital emergency department or inpatient unit, it occurred in accordance with the timelines required by RCW 71.05.050, 71.05.-153, and 71.34.710;

(c) That the DCR conducting the evaluation considered both of the following when evaluating the individual:

(i) The imminent likelihood of serious harm or imminent danger because of being gravely disabled (see RCW 71.05.-153); and

(ii) The likelihood of serious harm or grave disability that does not meet the imminent standard for the emergency detention (see RCW 71.05.150).

(d) That the DCR documented consultation with any examining emergency room physician as required by RCW 71.05.154;

(e) If the individual was not detained:

(i) A description of the disposition and follow-up plan; and

(ii) Documentation that the minor's parent was informed of their right to request a court review of the DCR's decision not to detain the minor under RCW 71.34.710, if the individual is a minor thirteen years of age or older.

(f) If the individual was detained, a petition for initial detention must include the following:

(i) The circumstances under which the person's condition was made known;

(ii) Evidence, as a result of the DCR's personal observation or investigation, that the actions of the person for which application is made constitute a likelihood of serious harm, or that the individual is gravely disabled;

(iii) Evidence that the individual will not voluntarily seek appropriate treatment;

(iv) Consideration of all reasonably available information from credible witnesses, to include family members, landlords, neighbors, or others with significant contact and history of involvement with the individual, and records, as required by RCW 71.05.212; and

(v) Consideration of the individual's history of judicially required, or administratively ordered, anti-psychotic medications while in confinement when conducting an evaluation of an offender under RCW 72.09.370.

(g) Documentation that the individual, or the individual's guardian or conservator, received a copy of the following:

(i) Notice of detention;

(ii) Notice of rights; and

(iii) Initial petition.

NEW SECTION

WAC 246-341-0815 Involuntary and court-ordered —Substance use disorder counseling for RCW 46.61.5056. In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650, an agency providing certified substance use disorder counseling services to an individual convicted of driving under the influence or physical control under RCW 46.61.5056 must ensure treatment is completed as follows:

(1) Treatment during the first sixty days must include:

(a) Weekly group or individual substance use disorder counseling sessions according to the individual service plan;

(b) One individual substance use disorder counseling session of not less than thirty minutes duration, excluding the time taken for a substance use disorder assessment, for each individual, according to the individual service plan;

(c) Alcohol and drug basic education for each individual;

(d) Participation in self-help groups for an individual with a diagnosis of substance use disorder. Participation must be documented in the individual's clinical record; and

(e) The balance of the sixty-day time period for individuals who complete intensive inpatient substance use disorder treatment services must include, at a minimum, weekly outpatient counseling sessions according to the individual service plan.

(2) The next one hundred twenty days of treatment includes:

(a) Group or individual substance use disorder counseling sessions every two weeks according to the individual service plan;

(b) One individual substance use disorder counseling session of not less than thirty minutes duration, every sixty days according to the individual service plan; and

(c) Referral of each individual for ongoing treatment or support, as necessary, using ASAM criteria, upon completion of one hundred eighty days of treatment.

(3) For an individual who is assessed with insufficient evidence of a substance use disorder, a substance use disorder professional (CDP) must refer the individual to alcohol/drug information school.

NEW SECTION

WAC 246-341-0820 Involuntary and court-ordered—Driving under the influence (DUI) substance use disorder assessment services. Driving under the influence (DUI) assessment services, as defined in chapter 46.61 RCW, are provided to an individual to determine the individual's involvement with alcohol and other drugs and determine the appropriate course of care or referral.

(1) In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650, an agency certified to provide DUI assessment services:

(a) Must review, evaluate, and document information provided by the individual;

(b) May include information from external sources such as family, support individuals, legal entities, courts, and employers;

(c) Is not required to meet the individual service plan requirements in WAC 246-341-0620; and

(d) Must maintain and provide a list of resources, including self-help groups, and referral options that can be used by staff members to refer an individual to appropriate services.

(2) An agency certified to provide DUI assessment services must also ensure:

(a) The assessment is conducted in person; and

(b) The individual has a summary included in the assessment that evaluates the individual's:

(i) Blood or breath alcohol level and other drug levels, or documentation of the individual's refusal at the time of the arrest, if available; and

(ii) Self-reported driving record and the abstract of the individual's legal driving record.

(3) When the assessment findings do not result in a substance use disorder diagnosis, the assessment must also include:

(a) A copy of the police report;

(b) A copy of the court originated criminal case history;

(c) The results of a urinalysis or drug testing obtained at the time of the assessment; and

(d) A referral to alcohol and drug information school.

(4) If the information in subsection (3)(a) through (d) of this section is required and not readily available, the record must contain documentation of attempts to obtain the information.

(5) Upon completion of the DUI assessment, the individual must be:

(a) Informed of the results of the assessment; and

(b) Referred to the appropriate level of care according to ASAM criteria.

SECTION NINE—CRISIS OUTPATIENT MENTAL HEALTH SERVICES

NEW SECTION

WAC 246-341-0900 Crisis mental health services—

General. Crisis mental health services are intended to stabilize an individual in crisis to prevent further deterioration, provide immediate treatment and intervention in a location best suited to meet the needs of the individual, and provide treatment services in the least restrictive environment available. An agency certified to provide crisis mental health services must meet the general requirements in WAC 246-341-0300 through 246-341-0650 except the initial assessment, individual service plan, and clinical record requirements in WAC 246-341-0610, 246-341-0620, and 246-341-0640.

(1) Crisis services include:

(a) Crisis telephone support;

(b) Crisis outreach services;

(c) Crisis stabilization services;

(d) Crisis peer support services; and

(e) Emergency involuntary detention services.

(2) An agency providing any crisis mental health service must ensure:

(a) All crisis services are provided by, or under the supervision of, a mental health professional;

(b) Each staff member working directly with an individual receiving any crisis mental health service receives:

(i) Clinical supervision from a mental health professional; and

(ii) Annual violence prevention training on the safety and violence prevention topics described in RCW 49.19.030. The staff member's personnel record must document the training.

(c) Staff access to consultation with one of the following professionals who has at least one year's experience in the direct treatment of individuals who have a mental or emotional disorder:

(i) A psychiatrist;

(ii) A physician;

(iii) A physician assistant; or

(iv) An advanced registered nurse practitioner (ARNP) who has prescriptive authority.

(3) Subsection (2)(c) of this section does not apply to agencies that only provide crisis telephone services.

(4) Documentation of a crisis service must include the following, as applicable to the crisis service provided:

(a) A brief summary of each crisis service encounter, including the date, time, and duration of the encounter;

(b) The names of the participants; and

(c) A follow-up plan, including any referrals for services, including emergency medical services.

(5) An agency must ensure crisis services:

(a) Are, with the exception of stabilization services, available twenty-four hours a day, seven days a week;

(b) Include family members, significant others, and other relevant treatment providers, as necessary, to provide support to the individual in crisis;

(c) Are provided in a setting that provides for the safety of the individual and agency staff members; and

(d) Require that trained staff remain with the individual in crisis in order to provide stabilization and support until the crisis is resolved or referral to another service is accomplished.

NEW SECTION

WAC 246-341-0905 Crisis mental health services—Telephone support services. Mental health telephone support services are services provided as a means of first contact to an individual in crisis. These services may include deescalation and referral.

(1) In addition to meeting the general requirements for crisis services in WAC 246-341-0900, an agency certified to provide telephone support services must:

(a) Respond to crisis calls twenty-four-hours-a-day, seven-days-a week;

(b) Have a written protocol for the referral of an individual to a voluntary or involuntary treatment facility for admission on a seven-day-a-week, twenty-four-hour-a-day basis, including arrangements for contacting the designated crisis responder;

(c) Assure communication and coordination with the individual's mental health care provider, if indicated and appropriate; and

(d) Post a copy of the statement of individual rights in a location visible to staff and agency volunteers.

(2) An agency must document each telephone crisis response contact made, including:

(a) The date, time, and duration of the telephone call;

(b) The relationship of the caller to the person in crisis, for example self, family member, or friend;

(c) Whether the individual in crisis has a crisis plan; and

(d) The outcome of the call, including:

(i) Any follow-up contacts made;

(ii) Any referrals made, including referrals to emergency or other medical services; and

(iii) The name of the staff person who took the crisis call.

NEW SECTION

WAC 246-341-0910 Crisis mental health services—Outreach services. Crisis mental health outreach services are face-to-face intervention services provided to assist individuals in a community setting. A community setting can be an individual's home, an emergency room, a nursing facility, or other private or public location. In addition to meeting the general requirements for crisis services in WAC 246-341-0900, an agency certified to provide crisis outreach services must do all of the following:

(1) Provide crisis telephone screening.

(2) Ensure face-to-face outreach services are provided by a mental health professional, or a mental health care provider under the supervision of a mental health professional with documented training in crisis response.

(3) Ensure services are provided in a setting that provides for the safety of the individual and agency staff members.

(4) Have a protocol for requesting a copy of an individual's crisis plan twenty-four hours a day, seven days a week.

(5) Require that staff member(s) remain with the individual in crisis in order to provide stabilization and support until the crisis is resolved or a referral to another service is accomplished.

(6) Resolve the crisis in the least restrictive manner possible.

(7) Have a written plan for training, staff back-up, information sharing, and communication for staff members who respond to a crisis in an individual's private home or in a non-public setting.

(8) Ensure that a staff member responding to a crisis is able to be accompanied by a second trained individual when services are provided in the individual's home or other non-public location.

(9) Ensure that any staff member who engages in home visits is provided by their employer with a wireless telephone, or comparable device for the purpose of emergency communication as described in RCW 71.05.710.

(10) Provide staff members who are sent to a private home or other private location to evaluate an individual in crisis, prompt access to information about any history of dangerousness or potential dangerousness on the individual they are being sent to evaluate that is documented in a crisis plan(s) or commitment record(s). This information must be made available without unduly delaying the crisis response.

(11) Have a written protocol that allows for the referral of an individual to a voluntary or involuntary treatment facility twenty-four hours a day, seven days a week.

(12) Have a written protocol for the transportation of an individual in a safe and timely manner, when necessary.

(13) Document all crisis response contacts, including:

(a) The date, time, and location of the initial contact;

(b) The source of referral or identity of caller;

(c) The nature of the crisis;

(d) Whether the individual has a crisis plan and any attempts to obtain a copy;

(e) The time elapsed from the initial contact to the face-to-face response;

(f) The outcome, including:

(i) The basis for a decision not to respond in person;

(ii) Any follow-up contacts made; and

(iii) Any referrals made, including referrals to emergency medical services.

(g) The name of the staff person(s) who responded to the crisis.

NEW SECTION

WAC 246-341-0915 Crisis mental health services—Stabilization services. Crisis mental health stabilization services include short-term (less than two weeks per episode) face-to-face assistance with life skills training and understanding of medication effects on an individual. Stabilization services may be provided to an individual as a follow-up to crisis services provided or to any individual determined by a mental health professional to need additional stabilization services. In addition to meeting the general requirements for crisis services in WAC 246-341-0900, an agency certified to provide crisis stabilization services must:

(1) Ensure the services are provided by a mental health professional, or under the supervision of a mental health professional;

(2) Ensure the services are provided in a setting that provides for the safety of the individual and agency staff;

(3) Have a written plan for training, staff back-up, information sharing, and communication for staff members who are providing stabilization services in an individual's private home or in a nonpublic setting;

(4) Have a protocol for requesting a copy of an individual's crisis plan;

(5) Ensure that a staff member responding to a crisis is able to be accompanied by a second trained individual when services are provided in the individual's home or other nonpublic location;

(6) Ensure that any staff member who engages in home visits is provided by their employer with a wireless telephone, or comparable device, for the purpose of emergency communication as described in RCW 71.05.710;

(7) Have a written protocol that allows for the referral of an individual to a voluntary or involuntary treatment facility;

(8) Have a written protocol for the transportation of an individual in a safe and timely manner, when necessary; and

(9) Document all crisis stabilization response contacts, including identification of the staff person(s) who responded.

NEW SECTION

WAC 246-341-0920 Crisis mental health services—Peer support services. Crisis mental health peer support services assist an individual in exercising control over their own life and recovery process through the practice of peer counselors sharing their own life experiences related to mental illness to build alliances that enhance the individual's ability to function.

(1) Peer support services are intended to augment and not supplant other necessary mental health services.

(2) In addition to meeting the general requirements for crisis services in WAC 246-341-0900, an agency certified to provide crisis peer support services must:

(a) Ensure services are provided by a person recognized by the authority as a peer counselor, as defined in WAC 246-341-0200, under the supervision of a mental health professional;

(b) Ensure services provided by a peer counselor are within the scope of the peer counselor's training and credential;

(c) Ensure that a peer counselor responding to a crisis is accompanied by a mental health professional;

(d) Ensure that any staff member who engages in home visits is provided by their employer with a wireless telephone, or comparable device, for the purpose of emergency communication; and

(e) Ensure peer counselors receive annual training that is relevant to their unique working environment.

SECTION TEN—OPIOID TREATMENT PROGRAMS (OTP)

NEW SECTION

WAC 246-341-1000 Opioid treatment programs (OTP)—General. (1) Opioid treatment program services include the dispensing of an opioid treatment medication, along with a comprehensive range of medical and rehabilitative services, when clinically necessary, to an individual to alleviate the adverse medical, psychological, or physical effects incident to opioid use disorder. These services include withdrawal management treatment and maintenance treatment.

(2) An agency must meet all the certification requirements in WAC 246-341-1005 in order to provide opioid treatment program services and:

(a) Be licensed by the department as a behavioral health agency;

(b) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650; and

(c) Have policies and procedures to support and implement the:

(i) General requirements in WAC 246-341-0420; and

(ii) Program-specific requirements in WAC 246-341-1000 through 246-341-1025.

(3) An agency providing opioid treatment program services must ensure that the agency's individual record system complies with all federal and state reporting requirements relevant to opioid drugs approved for use in treatment of opioid use disorder.

(4) An agency must:

(a) Use ASAM criteria for admission, continued services, and discharge planning and decisions;

(b) Provide education to each individual admitted, totaling no more than fifty percent of treatment services, on:

(i) Alcohol, other drugs, and substance use disorder;

(ii) Relapse prevention;

(iii) Bloodborne pathogens; and

(iv) Tuberculosis (TB);

(c) Provide education or information to each individual on:

(i) Emotional, physical, and sexual abuse;

(ii) Nicotine use disorder;

(iii) The impact of substance use during pregnancy, risks to the fetus, and the importance of informing medical practitioners of substance use during pregnancy; and

(iv) Family planning.

(d) Have written procedures for:

(i) Diversion control that contains specific measures to reduce the possibility of the diversion of controlled substances from legitimate treatment use, and assign specific responsibility to the medical and administrative staff members for carrying out the described diversion control measures and functions;

(ii) Urinalysis and drug testing, to include obtaining:

(A) Specimen samples from each individual, at least eight times within twelve consecutive months;

- (B) Random samples, without notice to the individual;
- (C) Samples in a therapeutic manner that minimizes falsification;
- (D) Observed samples, when clinically appropriate; and
- (E) Samples handled through proper chain of custody techniques.
- (iii) Laboratory testing;
- (iv) The response to medical and psychiatric emergencies; and
- (v) Verifying the identity of an individual receiving treatment services, including maintaining a file in the dispensary with a photograph of the individual and updating the photographs when the individual's physical appearance changes significantly.

(5) An agency must ensure that an individual is not admitted to opioid treatment withdrawal management services more than two times in a twelve-month period following admission to services.

(6) An agency providing services to a pregnant woman must have a written procedure to address specific issues regarding their pregnancy and prenatal care needs, and to provide referral information to applicable resources.

(7) An agency providing youth opioid treatment program services must:

(a) Have a written procedure to assess and refer the youth to the department of children, youth, and families, when applicable;

(b) Ensure that a group counseling session with twelve to sixteen youths include a second staff member;

(c) Ensure that before admission the youth has had two documented attempts at short-term withdrawal management or drug-free treatment within a twelve-month period, with a waiting period of no less than seven days between the first and second short-term withdrawal management treatment; and

(d) Ensure that when a youth is admitted for maintenance treatment, written consent by a parent or if applicable, legal guardian or responsible adult designated by the relevant state authority, is obtained.

(8) An agency providing opioid treatment program services must ensure:

(a) That notification to the federal Substance Abuse and Mental Health Services Administration (SAMHSA) and the department is made within three weeks of any replacement or other change in the status of the program, program sponsor (as defined in 42 C.F.R. Part 8), or medical director;

(b) Treatment is provided to an individual in compliance with 42 C.F.R. Part 8;

(c) The individual record system complies with all federal and state reporting requirements relevant to opioid drugs approved for use in treatment of opioid use disorder; and

(d) The death of an individual enrolled in an opioid treatment program is reported to the department within one business day.

NEW SECTION

WAC 246-341-1005 Opioid treatment programs (OTP)—Agency certification requirements. An agency

applying to provide opioid treatment program services must do all of the following:

(1) Submit to the department documentation that the agency has communicated with the county legislative authority and if applicable, the city legislative authority or tribal authority, in order to secure a location for the new opioid treatment program that meets county, tribal or city land use ordinances.

(2) Ensure that a community relations plan developed and completed in consultation with the county, city, or tribal authority or their designee, in order to minimize the impact of the opioid treatment programs upon the business and residential neighborhoods in which the program is located. The plan must include:

(a) Documentation of the strategies used to:

(i) Obtain stakeholder input regarding the proposed location;

(ii) Address any concerns identified by stakeholders; and

(iii) Develop an ongoing community relations plan to address new concerns expressed by stakeholders.

(b) For new applicants who operate opioid treatment programs in another state, copies of all survey reports written by their national accreditation body and state certification, if applicable, within the past six years.

(3) Have concurrent approval to provide an opioid treatment program by:

(a) The Washington state department of health board of pharmacy;

(b) The federal Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Administration (SAMHSA), as required by 42 C.F.R. Part 8 for certification as an opioid treatment program; and

(c) The federal Drug Enforcement Administration (DEA).

(4) An agency must ensure that the opioid treatment program is provided to an individual in compliance with the applicable requirements in 42 C.F.R. Part 8 and 21 C.F.R. Part 1301.

(5) The department may deny an application for certification when the applicant has not demonstrated in the past, the capability to provide the appropriate services to assist individuals using the program to meet goals established by the legislature.

NEW SECTION

WAC 246-341-1010 Opioid treatment programs (OTP)—Agency staff requirements. In addition to meeting the agency administrative and personnel requirements in WAC 246-341-0400 through 246-341-0530, an agency providing substance use disorder opioid treatment program services must:

(1) Appoint a program sponsor, as defined in 42 C.F.R. Part 8, who is responsible for notifying the federal Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Services Administration (SAMHSA), the federal Drug Enforcement Administration (DEA), the department, and the Washington state board of pharmacy of any theft or significant loss of a controlled substance.

- (2) Ensure there is an appointed medical director who:
 - (a) Is licensed by the department to practice medicine and practices within their scope of practice;
 - (b) Is responsible for all medical services performed; and
 - (c) Ensures all medical services provided are in compliance with applicable federal, state, and local rules and laws.
- (3) Ensure all medical services provided are provided by an appropriate DOH-credentialed medical provider practicing within their scope of practice.
- (4) Ensure at least one staff member has documented training in:
 - (a) Family planning;
 - (b) Prenatal health care; and
 - (c) Parenting skills.
- (5) Ensure that at least one staff member is on duty at all times who has documented training in:
 - (a) Cardiopulmonary resuscitation (CPR); and
 - (b) Management of opioid overdose.

NEW SECTION

WAC 246-341-1015 Opioid treatment programs (OTP)—Clinical record content and documentation requirements. In addition to the general clinical record content requirements in WAC 246-341-0640, an agency providing substance use disorder opioid treatment program services must maintain an individual's clinical record. The clinical record must contain:

- (1) Documentation that the agency made a good faith effort to review if the individual is enrolled in any other opioid treatment program and take appropriate action;
- (2) Documentation that the individual received a copy of the rules and responsibilities for treatment participants, including the potential use of interventions or sanction;
- (3) Documentation that the individual service plan was reviewed quarterly and semi-annually after two years of continuous treatment;
- (4) Documentation when an individual refuses to provide a drug testing specimen sample. The refusal is considered a positive drug screen specimen;
- (5) Documentation of the results and the discussion held with the individual regarding any positive drug screen specimens in the counseling session immediately following the notification of positive results; and
- (6) Documentation of all medical services (see WAC 246-341-1020 and 246-341-1025 regarding program physician responsibility and medication management).

NEW SECTION

WAC 246-341-1020 Opioid treatment programs (OTP)—Program physician responsibility. An agency providing substance use disorder opioid treatment program services must ensure the program physician, or the medical practitioner under supervision of the program physician, performs and meets the following:

- (1) The program physician or medical practitioner under supervision of the program physician:
 - (a) Is responsible to verify an individual is currently addicted to an opioid drug and that the person became

addicted at least twelve months before admission to treatment; or

- (b) May waive the twelve month requirement in (a) of this subsection upon receiving documentation that the individual:

- (i) Was released from a penal institution, if the release was within the previous six months;
- (ii) Is pregnant; or
- (iii) Was previously treated within the previous twenty-four months.

- (2) A physical evaluation must be completed on the individual before admission that includes the determination of opioid use disorder consistent with the current and applicable Diagnostic and Statistical Manual of Mental Disorders (DSM-5) criteria, and an assessment for appropriateness for Sunday and holiday take-home medication;

- (3) A review must be completed by the department prescription drug monitoring program data on the individual:

- (a) At admission;
- (b) Annually after the date of admission; and
- (c) Subsequent to any incidents of concern.

- (4) All relevant facts concerning the use of the opioid drug must be clearly and adequately explained to each individual;

- (5) Current written and verbal information must be provided to pregnant individuals, before the initial prescribed dosage regarding:

- (a) The concerns of possible substance use disorder, health risks, and benefits the opioid treatment medication may have on the individual and the fetus;
- (b) The risk of not initiating opioid treatment medication on the individual and the fetus; and
- (c) Referral options to address neonatal abstinence syndrome for the baby.

- (6) Each individual voluntarily choosing to receive maintenance treatment must sign an informed consent to treatment;

- (7) Within fourteen days of admission, a medical examination must be completed that includes:

- (a) Documentation of the results of serology and other tests; and
- (b) An assessment for the appropriateness of take-home medications as required by 42 C.F.R. Part 8.12(i).

- (8) When exceptional circumstances exist for an individual to be enrolled with more than one opioid treatment program agency, justification granting permission must be documented in the individual's clinical record at each agency;

- (9) Each individual admitted to withdrawal management services must have an approved withdrawal management schedule that is medically appropriate;

- (10) Each individual administratively discharged from services must have an approved withdrawal management schedule that is medically appropriate;

- (11) An assessment for other forms of treatment must be completed for each individual who has two or more unsuccessful withdrawal management episodes within twelve consecutive months; and

- (12) An annual medical examination must be completed on each individual that includes the individual's overall physical condition and response to medication.

NEW SECTION

WAC 246-341-1025 Opioid treatment programs (OTP)—Medication management. An agency providing substance use disorder opioid treatment program services must ensure the medication management requirements in this section are met.

(1) An agency must use only those opioid treatment medications that are approved by the Food and Drug Administration under section 505 of the federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for use in the treatment of opioid use disorder.

(2) An agency providing an opioid treatment program that is fully compliant with the procedures of an investigational use of a drug and other conditions set forth in the application may administer a drug that has been authorized by the Food and Drug Administration under an investigational new drug application under section 505(i) of the federal Food, Drug, and Cosmetic Act for investigational use in the treatment of opioid addiction. The following opioid treatment medications are approved by the Food and Drug Administration for use in the treatment of opioid use disorder:

- (a) Methadone; and
- (b) Buprenorphine.

(3) An agency providing opioid treatment program services must ensure that initial dosing requirements are met as follows:

(a) Methadone must be administered or dispensed only in oral form and is formulated in such a way as to reduce its potential for parenteral abuse;

(b) The initial dose of methadone must not exceed thirty milligrams and the total dose for the first day must not exceed forty milligrams, unless the program physician documents in the individual's record that forty milligrams did not suppress opioid abstinence symptoms; and

(c) The establishment of the initial dose must consider:

- (i) Signs and symptoms of withdrawal;
- (ii) Individual comfort; and
- (iii) Side effects from over medication.

(4) An agency providing an opioid treatment program services must ensure that:

(a) Each opioid treatment medication used by the program is administered and dispensed in accordance with its approved product labeling;

(b) All dosing and administration decisions are made by a:

- (i) Program physician; or
- (ii) Medical practitioner under supervision of a program physician familiar with the most up-to-date product labeling.

(c) Any significant deviations from the approved labeling, including deviations with regard to dose, frequency, or the conditions of use described in the approved labeling, are specifically documented in the individual's record.

(5) An agency providing opioid treatment program services must ensure that all take-home medications are:

(a) Consistent with 42 C.F.R. Part 8.12 (i)(1) through (5) and are authorized only to stable individuals who:

- (i) Have received opioid treatment medication for a minimum of ninety days; and
- (ii) Have not had any positive drug screens in the last sixty days.

(b) Assessed and authorized, as appropriate, for a Sunday or legal holiday as identified in RCW 1.16.050;

(c) Assessed and authorized, as appropriate, when travel to the facility presents a safety risk for an individual or staff member due to inclement weather; and

(d) Not allowed in short-term withdrawal management or interim maintenance treatment.

(6) All exceptions to take-home requirements must be submitted and approved by the state opioid treatment authority and Substance Abuse and Mental Health Services Administration (SAMHSA).

SECTION ELEVEN—WITHDRAWAL MANAGEMENT, RESIDENTIAL SUBSTANCE USE DISORDER, AND MENTAL HEALTH INPATIENT SERVICES

NEW SECTION

WAC 246-341-1100 Withdrawal management services—Adults. Substance use disorder withdrawal management services are provided to an individual to assist in the process of withdrawal from psychoactive substances in a safe and effective manner, in accordance with ASAM criteria. For secure withdrawal management and stabilization services for individuals who have been involuntarily committed, see WAC 246-341-1104.

(1) A behavioral health agency certified for adult withdrawal management services may choose to also become certified to provide youth withdrawal management services (see WAC 246-341-1102).

(2) An agency providing withdrawal management services to an individual must:

(a) Be a facility licensed by the department under one of the following chapters:

(i) Hospital licensing regulations (chapter 246-320 WAC);

(ii) Private psychiatric and alcoholism hospitals (chapter 246-322 WAC);

(iii) Private alcohol and substance use disorder hospitals (chapter 246-324 WAC); or

(iv) Residential treatment facility (chapter 246-337 WAC).

(b) Be licensed by the department as a behavioral health agency;

(c) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650; and

(d) Have policies and procedures to support and implement the specific requirements in this section.

(3) An agency must:

(a) Use ASAM criteria for admission, continued services, and discharge planning and decisions;

(b) Provide counseling to each individual that addresses the individual's:

(i) Substance use disorder and motivation; and

(ii) Continuing care needs and need for referral to other services.

(c) Maintain a list of resources and referral options that can be used by staff members to refer an individual to appropriate services;

(d) Post any rules and responsibilities for individuals receiving treatment, including information on potential use of increased motivation interventions or sanctions, in a public place in the facility;

(e) Provide tuberculosis screenings to individuals for the prevention and control of tuberculosis; and

(f) Provide HIV/AIDS information and include a brief risk intervention and referral as indicated.

(4) Ensure that each staff member providing withdrawal management services to an individual, with the exception of licensed staff members and chemical dependency professionals, completes a minimum of forty hours of documented training before being assigned individual care duties. This personnel training must include the following topics:

(a) Substance use disorders;

(b) Infectious diseases, to include hepatitis and tuberculosis (TB); and

(c) Withdrawal screening, admission, and signs of trauma.

(5) In addition to the general clinical record content requirements in WAC 246-341-0640, an agency providing substance use disorder withdrawal management services must maintain an individual's clinical record that contains:

(a) Documentation of a substance use disorder screening before admission;

(b) A voluntary consent to treatment form, or any release forms, signed and dated by the individual, or the individual's parent or legal guardian, except as authorized by law for protective custody and involuntary treatment;

(c) Documentation that the individual received HIV/AIDS information and a brief risk intervention and referral as indicated; and

(d) Documentation that a discharge summary, including a continuing care recommendation and a description of the individual's physical condition, was completed within seven working days of discharge.

NEW SECTION

WAC 246-341-1102 Withdrawal management services—Youth. Youth withdrawal management services are substance use disorder services provided to an individual seventeen years of age or younger. In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650 and the adult withdrawal management requirements in WAC 246-341-1100, an agency providing youth withdrawal management services must do all of the following:

(1) Admit youth only with the written permission of the youth's parent or, if applicable, the youth's legal guardian. If a youth meets the requirements of a child in need of services (CHINS), the youth may sign themselves into treatment.

(2) Assess the individual's need for referral to the department of children, youth, and families.

(3) Ensure the following for individuals who share a room:

(a) An individual fifteen years of age or younger must not room with an individual eighteen years of age or older; and

(b) An individual sixteen or seventeen years of age must be evaluated for clinical appropriateness before being placed in a room with an individual eighteen years of age or older.

(4) Allow communication between the youth and the youth's parent or if applicable, a legal guardian, and facilitate the communication when clinically appropriate.

(5) Notify the parent or legal guardian within two hours of any change in the status of the youth and document all notification and attempts of notification in the clinical record.

(6) Discharge the youth to the care of the parent or legal guardian. For emergency discharge and when the parent or legal guardian is not available, the agency must contact the appropriate authority.

(7) Ensure at least one adult staff member of each gender is present or available by phone at all times if coeducational treatment services are provided.

(8) Ensure a staff member who demonstrates knowledge of adolescent development and substance use disorders is available at the facility or available by phone.

NEW SECTION

WAC 246-341-1104 Secure withdrawal management and stabilization services—Adults. Secure withdrawal management and stabilization services are provided to an individual to assist in the process of withdrawal from psychoactive substances in a safe and effective manner, or medically stabilize an individual after acute intoxication, in accordance with ASAM criteria and chapters 71.05 and 71.34 RCW.

(1) In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650, an agency must:

(a) Meet the requirements for withdrawal management services in WAC 246-341-1100; and

(b) Designate a physician or chemical dependency professional as the professional person as defined in RCW 71.05.020 in charge of clinical services at that facility.

(2) An agency certified to provide secure withdrawal management and stabilization services must have the following policies and procedures:

(a) Policies to ensure that services are provided in a secure environment. "Secure" means having:

(i) All doors and windows leading to the outside locked at all times;

(ii) Visual monitoring, either by line of sight or camera as appropriate to the individual;

(iii) Adequate space to segregate violent or potentially violent persons from others;

(iv) The means to contact law enforcement immediately in the event of an elopement from the facility; and

(v) Adequate numbers of staff present at all times that are trained in facility security measures.

(b) Policies to ensure compliance with WAC 246-337-110 regarding seclusion and restraint;

(c) Procedures for admitting individuals needing secure withdrawal management and stabilization services seven days a week, twenty-four hours a day;

(d) Procedures to ensure that once an individual has been admitted, if a medical condition develops that is beyond the facility's ability to safely manage, the individual will be transported to the nearest hospital for emergency medical treatment;

(e) Procedures to assure access to necessary medical treatment, including emergency life-sustaining treatment and medication;

(f) Procedures to assure at least daily contact between each in-voluntary individual and a chemical dependency professional or a trained professional person for the purpose of:

(i) Observation;

(ii) Evaluation;

(iii) Release from involuntary commitment to accept treatment on a voluntary basis; and

(iv) Discharge from the facility to accept voluntary treatment upon referral.

(g) Procedures to assure the protection of individual and family rights as described in WAC 246-341-1122, rights related to antipsychotic medication in WAC 246-341-1124, and rights as described in chapters 71.05 and 71.34 RCW;

(h) Procedures to inventory and safeguard the personal property of the individual being detained, including a process to limit inspection of the inventory list by responsible relatives or other persons designated by the detained individual;

(i) Procedures to assure that a chemical dependency professional and licensed physician, physician assistant, or advanced registered nurse practitioner (ARNP) are available for consultation and communication with the direct patient care staff twenty-four hours a day, seven days a week;

(j) Procedures to warn an identified person and law enforcement when an adult has made a threat against an identified victim as explained in RCW 70.02.050 and in compliance with 42 C.F.R. Part 2;

(k) Procedures to ensure that individuals detained for up to fourteen, ninety, or one hundred eighty additional days of treatment are evaluated by the professional staff of the facility in order to be prepared to testify that the individual's condition is caused by a substance use disorder and either results in likelihood of serious harm or the individual being gravely disabled.

(3) An agency providing secure withdrawal management and stabilization services must document that each individual has received evaluations to determine the nature of the disorder and the treatment necessary, including:

(a) A telephone screening reviewed by a nurse, as defined in chapter 18.79 RCW, or medical practitioner prior to admission that includes current level of intoxication, available medical history, and known medical risks;

(b) An evaluation by a chemical dependency professional within seventy-two hours of admission to the facility; and

(c) An assessment for substance use disorder and additional mental health disorders or conditions, using the global appraisal of individual needs - Short screener (GAIN-SS) or its successor.

(4) For individuals admitted to the secure withdrawal management and stabilization facility, the clinical record must contain:

(a) A statement of the circumstances under which the person was brought to the unit;

(b) The admission date and time;

(c) The date and time when the involuntary detention period ends;

(d) A determination of whether to refer to a designated crisis responder to initiate civil commitment proceedings;

(e) If an individual is admitted voluntarily and appears to meet the criteria for initial detention, documentation that an evaluation was performed by a designated crisis responder within the time period required in RCW 71.05.050, the results of the evaluation, and the disposition;

(f) Review of the client's current crisis plan, if applicable and available; and

(g) Review of the admission diagnosis and what information the determination was based upon.

(5) An agency certified to provide secure withdrawal management and stabilization services must ensure the treatment plan includes all of the following:

(a) A protocol for safe and effective withdrawal management, including medications as appropriate;

(b) Discharge assistance provided by chemical dependency professionals, including facilitating transitions to appropriate voluntary or involuntary inpatient services or to less restrictive alternatives as appropriate for the individual.

(6) An agency certified to provide secure withdrawal management and stabilization services must ensure that each staff member providing withdrawal management services to an individual, with the exception of licensed staff members and CDPs, completes a minimum of forty hours of documented training before being assigned individual care duties. This personnel training must include the following topics:

(a) Substance use disorders;

(b) Infectious diseases, to include hepatitis and tuberculosis (TB); and

(c) Withdrawal screening, admission, and signs of trauma.

NEW SECTION

WAC 246-341-1106 Secure withdrawal management and stabilization services—Youth. In addition to the requirements for secure withdrawal and stabilization services in WAC 246-341-1100, and requirements for adult secure withdrawal management and stabilization services in WAC 246-341-1104, an agency certified to provide secure withdrawal management and stabilization services to youth must meet the following requirements:

(1) Requirements for withdrawal management services for youth in WAC 246-341-1102;

(2) Requirements for the posting of individual rights for minors in WAC 246-341-1120; and

(3) Requirements for inpatient services for minors found in WAC 246-341-1128, 246-341-1130, and 246-341-1132.

NEW SECTION

WAC 246-341-1108 Residential substance use disorder treatment services—General. Residential treatment services provide substance use disorder treatment for an individual in a facility with twenty-four hours a day supervision.

- (1) Residential treatment services include:
- (a) Intensive inpatient services, ASAM level 3.5;
 - (b) Recovery house treatment services, ASAM level 3.1;
 - (c) Long-term residential treatment services, ASAM level 3.1; and
 - (d) Youth residential services, ASAM levels 3.1, 3.5, and 3.7.
- (2) An agency certified to provide residential treatment services must:
- (a) Be a facility licensed by the department and meet the criteria under one of the following DOH chapters:
 - (i) Hospital licensing regulations (chapter 246-320 WAC);
 - (ii) Private psychiatric and alcoholism hospitals (chapter 246-322 WAC);
 - (iii) Private alcohol and substance use disorder hospitals (chapter 246-324 WAC); or
 - (iv) Residential treatment facility (chapter 246-337 WAC).
 - (b) Be licensed by the department as a behavioral health agency;
 - (c) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650;
 - (d) Have policies and procedures to support and implement the:
 - (i) General requirements in WAC 246-341-0420; and
 - (ii) Specific applicable requirements in WAC 246-341-1110 through 246-341-1116.
 - (e) Use ASAM criteria for admission, continued services, and discharge planning and decisions;
 - (f) Provide education to each individual admitted to the treatment facility on:
 - (i) Substance use disorders;
 - (ii) Relapse prevention;
 - (iii) Bloodborne pathogens; and
 - (iv) Tuberculosis (TB).
 - (g) Provide education or information to each individual admitted on:
 - (i) Emotional, physical, and sexual abuse;
 - (ii) Nicotine use disorder; and
 - (iii) The impact of substance use during pregnancy, risks to the fetus, and the importance of informing medical practitioners of chemical use during pregnancy.
 - (h) Maintain a list or source of resources, including self-help groups, and referral options that can be used by staff to refer an individual to appropriate services;
 - (i) Screen for the prevention and control of tuberculosis;
 - (j) Limit the size of group counseling sessions to no more than sixteen individuals;
 - (k) Have written procedures for:
 - (i) Urinalysis and drug testing, including laboratory testing; and
 - (ii) How agency staff members respond to medical and psychiatric emergencies.

(1) The individual service plan is initiated with at least one goal identified by the individual during the initial assessment or at the first service session following the assessment.

(3) An agency that provides services to a pregnant woman must:

- (a) Have a written procedure to address specific issues regarding the woman's pregnancy and prenatal care needs; and
 - (b) Provide referral information to applicable resources.
- (4) An agency that provides an assessment to an individual under RCW 46.61.5056 must also meet the requirements for driving under the influence (DUI) assessment providers in WAC 246-341-0820.

NEW SECTION

WAC 246-341-1110 Residential substance use disorder treatment services—Intensive inpatient services. (1) Intensive inpatient services are substance use disorder residential treatment services that provide a concentrated program of individual and group counseling, education, and activities for an individual who has completed withdrawal management and the individual's family to address overall functioning and to demonstrate aspects of recovery lifestyle.

(2) In addition to meeting the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650 and the residential treatment services requirements in WAC 246-341-1108, an agency certified to provide intensive inpatient services must:

- (a) Complete the individual service plan within five days of admission;
- (b) Conduct and document at least weekly, one face-to-face individual substance use disorder counseling session with the individual;
- (c) Progress notes must include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it;
- (d) Document at least weekly, an individual service plan review which determines continued stay needs and progress towards goals; and
- (e) Provide treatment services in line with ASAM 3.5 components appropriate to youth or adults.

NEW SECTION

WAC 246-341-1112 Residential substance use disorder treatment services—Recovery house. (1) Recovery house services are substance use disorder residential treatment services that provide a program of care and treatment with social, vocational, and recreational activities to aid in individual adjustment to abstinence, relapse prevention, recovery skills development, and to aid in job training, employment, or participating in other types of community services.

(2) In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650 and the residential treatment services requirements in WAC 246-341-1108, an agency certified to provide recovery house services must:

(a) Provide no less than five hours per week of treatment services in line with ASAM level 3.1;

(b) Progress notes should include the date, time, duration, participant names, and a brief summary of the session and the name of the staff member who provided it; and

(c) Conduct and document an individual service plan review at least monthly.

NEW SECTION

WAC 246-341-1114 Residential substance use disorder treatment services—Long-term treatment services.

(1) Long-term treatment services are substance use disorder residential treatment services that provide a program for an individual needing consistent structure over a longer period of time to develop and maintain abstinence, develop recovery skills, and to improve overall health.

(2) In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650 and the residential treatment services requirements in WAC 246-341-1108 an agency certified to provide long-term treatment services must:

(a) Provide an individual a minimum of two hours each week of individual or group counseling;

(b) Provide no less than five hours per week of treatment services in line with ASAM 3.1 components;

(c) Progress notes should include the date, time, duration, participant names, and a brief summary of the session and the names of the staff member who provided it;

(d) Provide an individual, during the course of services, with:

(i) Education on social and coping skills, relapse prevention, and recovery skills development;

(ii) Social and recreational activities;

(iii) Assistance in seeking employment, when appropriate; and

(iv) Assistance with reentry living skills to include seeking and obtaining safe housing.

(e) Conduct and document an individual service plan review at least monthly.

NEW SECTION

WAC 246-341-1116 Residential substance use disorder treatment services—Youth residential services. Youth residential services are substance use disorder residential treatment services provided to an individual seventeen years of age or younger in accordance with ASAM criteria. In addition to meeting the behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0300 through 246-341-0650 and the residential treatment services requirements in WAC 246-341-1108 an agency certified to provide youth residential services must do all of the following:

(1) Ensure at least one adult staff member of each gender is present or on call at all times if coeducational treatment services are provided.

(2) Ensure group counseling sessions with twelve to sixteen youths include a second adult staff member.

(3) Ensure staff members are trained in safe and therapeutic techniques for dealing with a youth's behavior and emotional crisis, including:

(a) Verbal deescalation;

(b) Crisis intervention;

(c) Anger management;

(d) Suicide assessment and intervention;

(e) Conflict management and problem solving skills;

(f) Management of assaultive behavior;

(g) Proper use of therapeutic physical intervention techniques; and

(h) Emergency procedures.

(4) Provide group meetings to promote personal growth.

(5) Provide leisure, and other therapy or related activities.

(6) Provide seven or more hours of structured recreation each week, that is led or supervised by staff members.

(7) Provide each youth one or more hours per day, five days each week, of supervised academic tutoring or instruction by a certified teacher when the youth is unable to attend school for an estimated period of four weeks or more. The agency must:

(a) Document the individual's most recent academic placement and achievement level; and

(b) Obtain school work from the individual's school, or when applicable, provide school work and assignments consistent with the individual's academic level and functioning.

(8) Conduct random and regular room checks when an individual is in their room, and more often when clinically indicated.

(9) Only admit youth with the written permission of the youth's parent or if applicable, legal guardian. In cases where the youth meets the requirements of a child in need of services (CHINS), the youth may sign themselves into treatment.

(10) Assess the individual's need for referral to the department of children, youth, and families.

(11) Ensure the following for individuals who share a room:

(a) An individual fifteen years of age or younger must not room with an individual eighteen years of age or older; and

(b) An individual sixteen or seventeen years of age must be evaluated for clinical appropriateness before being placed in a room with an individual eighteen years of age or older.

(12) Allow communication between the youth and the youth's parent or if applicable, a legal guardian, and facilitate the communication when clinically appropriate.

(13) Notify the parent or legal guardian within two hours of any change in the status of the youth and document all notifications and attempts of notifications in the clinical record.

(14) Discharge the youth to the care of the youth's parent or if applicable, legal guardian. For emergency discharge and when the parent or legal guardian is not available, the agency must contact the appropriate authority.

(15) Ensure each individual's clinical record:

(a) Contains any consent or release forms signed by the youth and their parent or legal guardian;

(b) Contains the parent's or other referring person's agreement to participate in the treatment process, as appropriate and if possible; and

(c) Documents any problems identified in specific youth assessment, including any referrals to school and community support services, on the individual service plan.

NEW SECTION

WAC 246-341-1118 Mental health inpatient services

—**General.** (1) Inpatient services include the following types of behavioral health services certified by the department:

- (a) Evaluation and treatment services;
- (b) Child long-term inpatient program (CLIP);
- (c) Crisis stabilization units;
- (d) Triage services; and
- (e) Competency evaluation and treatment services.

(2) An agency providing inpatient services to an individual must:

(a) Be a facility licensed by the department under one of the following chapters:

(i) Hospital licensing regulations (chapter 246-320 WAC);

(ii) Private psychiatric and alcoholism hospitals (chapter 246-322 WAC);

(iii) Private alcohol and substance use disorder hospitals (chapter 246-324 WAC); or

(iv) Residential treatment facility (chapter 246-337 WAC).

(b) Be licensed by the department as a behavioral health agency;

(c) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0100 through 246-341-0650;

(d) Meet the applicable inpatient services requirements in WAC 246-341-1118 through 246-341-1132;

(e) Have policies and procedures to support and implement the specific applicable program-specific requirements; and

(f) If applicable, have policies to ensure compliance with WAC 246-337-110 regarding seclusion and restraint.

(3) The behavioral health agency providing inpatient services must document the development of an individualized annual training plan, to include at least:

(a) Least restrictive alternative options available in the community and how to access them;

(b) Methods of individual care;

(c) Deescalation training and management of assaultive and self-destructive behaviors, including proper and safe use of seclusion and restraint procedures; and

(d) The requirements of chapter 71.05 and 71.34 RCW, this chapter, and protocols developed by the department.

(4) If contract staff are providing direct services, the facility must ensure compliance with the training requirements outlined in subsection (4) of this section.

(5) This chapter does not apply to state psychiatric hospitals as defined in chapter 72.23 RCW or facilities owned or operated by the department of veterans affairs or other agencies of the United States government.

NEW SECTION

WAC 246-341-1120 Mental health inpatient services

—**Posting of individual rights for minors.** A behavioral health agency providing inpatient services to minors must ensure that the rights listed in RCW 71.34.355 are prominently posted in the facility and provided in writing to the individual in a language or format that the individual can understand.

NEW SECTION

WAC 246-341-1122 Mental health inpatient services

—**Rights of individuals receiving inpatient services.** The behavioral health agency providing inpatient services must ensure that the rights listed in RCW 71.05.360 and 71.05.217 are prominently posted in the facility and provided in writing to the individual in a language or format that the individual can understand.

NEW SECTION

WAC 246-341-1124 Mental health inpatient services

—**Rights related to antipsychotic medication.** All individuals have a right to make an informed decision regarding the use of antipsychotic medication consistent with the provisions of RCW 71.05.215 and 71.05.217. The provider must develop and maintain a written protocol for the involuntary administration of antipsychotic medications, including all of the following requirements:

(1) The clinical record must document all of the following:

(a) An attempt to obtain informed consent.

(b) The individual was asked if they wish to decline treatment during the twenty-four hour period prior to any court proceeding wherein the individual has the right to attend and is related to their continued treatment. The answer must be in writing and signed when possible. In the case of a child under the age of eighteen, the psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority must be able to explain to the court the probable effects of the medication.

(c) The reasons why any antipsychotic medication is administered over the individual's objection or lack of consent.

(2) The psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority may administer antipsychotic medications over an individual's objections or lack of consent only when:

(a) An emergency exists, provided there is a review of this decision by a second psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority within twenty-four hours. An emergency exists if all of the following are true:

(i) The individual presents an imminent likelihood of serious harm to self or others;

(ii) Medically acceptable alternatives to administration of antipsychotic medications are not available or are unlikely to be successful; and

(iii) In the opinion of the psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority, the individual's condition constitutes an emergency requiring that treatment be instituted before obtaining an additional concurring opinion by a second psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority.

(b) There is an additional concurring opinion by a second psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority, for treatment up to thirty days.

(c) For continued treatment beyond thirty days through the hearing on any one hundred eighty-day petition filed under RCW 71.05.217, provided the facility medical director or director's medical designee reviews the decision to medicate an individual. Thereafter, antipsychotic medication may be administered involuntarily only upon order of the court. The review must occur at least every sixty days.

(3) The examining psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority must sign all one hundred eighty-day petitions for antipsychotic medications filed under the authority of RCW 71.05.217.

(4) Individuals committed for one hundred eighty days who refuse or lack the capacity to consent to antipsychotic medications have the right to a court hearing under RCW 71.05.217 prior to the involuntary administration of antipsychotic medications.

(5) In an emergency, antipsychotic medications may be administered prior to the court hearing provided that an examining psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority files a petition for an antipsychotic medication order the next judicial day.

(6) All involuntary medication orders must be consistent with the provisions of RCW 71.05.217, whether ordered by a psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority or the court.

NEW SECTION

WAC 246-341-1126 Mental health inpatient services—Policies and procedures—Adult. In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0100 through 246-341-0650, and the applicable inpatient service requirements in WAC 246-341-1118 through 246-341-1132, an inpatient facility must implement all of the following administrative requirements:

(1) Policies to ensure that services are provided in a secure environment. "Secure" means having:

(a) All doors and windows leading to the outside locked at all times;

(b) Visual monitoring, either by line of sight or camera as appropriate to the individual;

(c) Adequate space to segregate violent or potentially violent persons from others;

(d) The means to contact law enforcement immediately in the event of an elopement from the facility; and

(e) Adequate numbers of staff present at all times that are trained in facility security measures.

(2) Designation of a professional person as defined in RCW 71.05.020 in charge of clinical services at that facility, as appropriate to the type of inpatient services.

(3) Policies to ensure compliance with WAC 246-337-110 regarding seclusion and restraint.

(4) A policy management structure that establishes:

(a) Procedures for admitting individuals needing treatment seven days a week, twenty-four hours a day, except that child long-term inpatient treatment facilities are exempted from this requirement;

(b) Procedures to assure access to necessary medical treatment, including emergency life-sustaining treatment and medication;

(c) Procedures to assure the protection of individual and family rights as described in this chapter and chapters 71.05 and 71.34 RCW;

(d) Procedures to inventory and safeguard the personal property of the individual being detained according to RCW 71.05.220;

(e) Procedures to assure that a mental health professional, chemical dependency professional, if appropriate, and physician, physician assistant, or psychiatric advanced registered nurse practitioner (ARNP) are available for consultation and communication with the direct patient care staff twenty-four hours a day, seven days a week;

(f) Procedures to warn an identified person and law enforcement when an adult has made a threat against an identified victim as explained in RCW 70.02.050 and in compliance with 42 C.F.R. Part 2; and

(g) Procedures to ensure that individuals detained for up to fourteen, ninety, or one hundred and eighty additional days of treatment are evaluated by the professional staff of the facility in order to be prepared to testify that the individual's condition is caused by a mental disorder or substance use disorder and either results in likelihood of serious harm or the individual being gravely disabled.

(5) For individuals who have been involuntarily detained, the facility must obtain a copy of the petition for

initial detention stating the evidence under which the individual was detained.

(6) The facility must document that each individual has received evaluations to determine the nature of the disorder and the treatment necessary, including:

(a) A health assessment of the individual's physical condition to determine if the individual needs to be transferred to an appropriate hospital for treatment;

(b) Examination and medical evaluation within twenty-four hours of admission by a licensed physician, advanced registered nurse practitioner, or physician assistant;

(c) Development of an initial treatment plan while in the facility;

(d) Consideration of less restrictive alternative treatment at the time of admission; and

(e) The admission diagnosis and what information the determination was based upon.

(7) An individual who has been delivered to the facility by a peace officer for evaluation must be evaluated by a mental health professional within the following time frames:

(a) Three hours of an adult individual's arrival;

(b) Twelve hours of arrival for a child in an inpatient evaluation and treatment facility; or

(c) At any time for a child who has eloped from a child long-term inpatient treatment facility and is being returned to the facility.

(8) If the mental health professional or chemical dependency professional and physician, physician assistant, or psychiatric advanced registered nurse practitioner determine that the needs of an adult individual would be better served by placement in a another type of service facility then the individual must be referred to an more appropriate placement in accordance with RCW 71.05.210.

(9) The treatment plan must contain documentation of:

(a) Diagnostic and therapeutic services prescribed by the attending clinical staff;

(b) An individual service plan that meets the requirements of WAC 246-341-0620;

(c) Copies of advance directives, powers of attorney or letters of guardianship provided by the individual;

(d) A plan for discharge including a plan for follow-up where appropriate;

(e) Documentation of the course of treatment; and

(f) That a mental health professional or chemical dependency professional, as appropriate, has contact with each involuntary individual at least daily for the purpose of determining the need for continued involuntary treatment.

NEW SECTION

WAC 246-341-1128 Mental health inpatient services—Policies and procedures—Minors. In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0100 through 246-341-0650 and the applicable inpatient services requirements in WAC 246-341-1118 through 246-341-1132, inpatient facilities serving minor children seventeen years of age and younger must develop and implement policies and procedures to address special considerations for serving children.

These special considerations must include all of the following:

(1) Procedures to ensure that adults are separated from minors who are not yet thirteen years of age.

(2) Procedures to ensure that a minor who is at least age thirteen but not yet age eighteen is served with adults only if the minor's clinical record contains:

(a) Documentation that justifies such placement; and

(b) A professional judgment that placement in an inpatient facility that serves adults will not harm the minor.

(3) Procedures to ensure examination and evaluation of a minor by a children's mental health specialist occurs within twenty-four hours of admission.

(4) Procedures to ensure a facility that provides inpatient services for minors and is licensed by the department under chapter 71.12 RCW, meets the following notification requirements if a minor's parent(s) brings the child to the facility for the purpose of behavioral health treatment or evaluation:

(a) Provide a written and oral notice to the minor's parent(s) or legal representative(s) of:

(i) All current statutorily available treatment options available to the minor including, but not limited to, those provided in chapter 71.34 RCW; and

(ii) A description of the procedures the facility will follow to utilize the treatment options.

(b) Obtain and place in the clinical file, a signed acknowledgment from the minor's parent(s) that the notice required under (a) of this subsection was received.

(5) Procedures that address provisions for evaluating a minor brought to the facility for evaluation by a parent(s).

(6) Procedures to notify child protective services any time the facility has reasonable cause to believe that abuse, neglect, financial exploitation or abandonment of a minor has occurred.

(7) Procedures to ensure a minor thirteen years or older who is brought to an inpatient facility or hospital for immediate behavioral health services is evaluated by the professional person in charge of the facility. The professional person must evaluate the minor's condition and determine the need for behavioral health inpatient treatment, and the minor's willingness to obtain voluntary treatment. The facility may detain or arrange for the detention of the minor up to twelve hours for evaluation by a designated crisis responder to commence detention proceedings.

(8) Procedures to ensure that the admission of a minor thirteen years of age or older admitted without parental consent has the concurrence of the professional person in charge of the facility and written review and documentation no less than every one hundred eighty days.

(9) Procedures to ensure that notice is provided to the parent(s) when a minor child is voluntarily admitted to inpatient treatment without parental consent within twenty-four hours of admission in accordance with the requirements of RCW 71.34.510 and within the confidentiality requirements of 42 C.F.R. Sec. 2.14.

(10) Procedures to ensure a minor who has been admitted on the basis of a designated crisis responder petition for detention is evaluated by the facility providing seventy-two hour inpatient services to determine the minor's condition and either admit or release the minor. If the minor is not approved

for admission, the facility must make recommendations and referral for further care and treatment as necessary.

(11) Procedures for the examination and evaluation of a minor approved for inpatient admission to include:

(a) The needs to be served by placement in a secure withdrawal management or evaluation and treatment facility;

(b) Restricting the right to associate or communicate with a parent(s); and

(c) Advising the minor of rights in accordance with chapter 71.34 RCW.

(12) Procedures to petition for fourteen-day commitment that are in accordance with RCW 71.34.730.

(13) Procedures for commitment hearing requirements and release from further inpatient treatment that may be subject to reasonable conditions, if appropriate, and are in accordance with RCW 71.34.740.

(14) Procedures for discharge and conditional release of a minor in accordance with RCW 71.34.770, provided that the professional person in charge gives the court written notice of the release within three days of the release. If the minor is on a one hundred eighty-day commitment, the children's long-term inpatient program (CLIP) administrator must also be notified.

(15) Procedures to ensure rights of a minor undergoing treatment and posting of such rights are in accordance with RCW 71.34.355, 71.34.620, and 71.34.370.

(16) Procedures for the release of a minor who is not accepted for admission or who is released by an inpatient facility that are in accordance with RCW 71.34.365.

(17) Procedures to ensure treatment of a minor and all information obtained through treatment under this chapter are disclosed only in accordance with applicable state and federal law.

(18) Procedures to make court records and files available that are in accordance with RCW 71.34.335.

(19) Procedures to release behavioral health services information only in accordance with applicable state and federal statutes.

NEW SECTION

WAC 246-341-1130 Mental health inpatient services—Treatment of a minor without consent of parent. An inpatient evaluation and treatment facility, approved inpatient substance use disorder facility, or secure withdrawal management and stabilization facility may admit a minor child who is at least thirteen years of age and not older than seventeen years of age without the consent of the minor's parent(s) if the requirements of RCW 71.34.500 through 71.34.530 are met.

NEW SECTION

WAC 246-341-1132 Mental health inpatient services—Treatment of a minor without consent of minor. An inpatient evaluation and treatment facility, approved inpatient substance use disorder facility, or secure withdrawal management and stabilization facility may admit, evaluate, and treat a minor child seventeen years of age or younger without the consent of the minor if the minor's parent(s)

brings the minor to the facility, if the requirements of RCW 71.34.600 through 71.34.660 are met.

NEW SECTION

WAC 246-341-1134 Mental health inpatient services—Evaluation and treatment services. In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0100 through 246-341-0650, and the applicable inpatient services requirements in WAC 246-341-1118 through 246-341-1132 an agency providing evaluation and treatment services must ensure:

(1) Designation of a physician or other mental health professional as the professional person as defined in RCW 71.05.020 in charge of clinical services at that facility; and

(2) A policy management structure that establishes:

(a) Procedures to assure appropriate and safe transportation for persons who are not approved for admission to his or her residence or other appropriate place;

(b) Procedures to detain arrested persons who are not approved for admission for up to eight hours so that reasonable attempts can be made to notify law enforcement to return to the facility and take the person back into custody;

(c) Procedures to assure the rights of individuals to make mental health advance directives, and facility protocols for responding to individual and agent requests consistent with RCW 71.32.150;

(d) Procedures to ensure that if the facility releases the individual to the community, the facility informs the peace officer of the release within a reasonable period of time after the release if the peace officer has specifically requested notification and has provided contact information to the facility;

(e) Procedures to document that each individual has received evaluations to determine the nature of the disorder and the treatment necessary, including a psychosocial evaluation by a mental health professional; and

(f) For individuals who are being evaluated as dangerous mentally ill offenders under RCW 72.09.370(7), the professional person in charge of the evaluation and treatment facility must consider filing a petition for a ninety day less restrictive alternative in lieu of a petition for a fourteen-day commitment.

NEW SECTION

WAC 246-341-1136 Mental health inpatient services—Exception—Long-term certification. (1) For adults: At the discretion of the department, a facility may be granted an exception in order to allow the facility to be certified to provide treatment to adults on a ninety or one hundred eighty-day inpatient involuntary commitment orders.

(2) For children: At the discretion of the department, a facility that is certified as a 'mental health inpatient evaluation and treatment facility' may be granted an exception to provide treatment to a child on a one hundred and eighty-day inpatient involuntary treatment order only until the child is discharged from his/her order to the community, or until a bed is available for that child in a child long-term inpatient treatment facility (CLIP). The child cannot be assigned by the

CLIP placement team in accordance with RCW 71.34.100 to any facility other than a CLIP facility.

(3) The exception certification may be requested by the facility, the director of the department or their designee, or the behavioral health organization for the facility's geographic area.

(4) The facility receiving the long-term exception certification for ninety or one hundred eighty-day patients must meet all requirements found in WAC 246-341-1134.

(5) The exception certification must be signed by the secretary or secretary's designee. The exception certification may impose additional requirements, such as types of consumers allowed and not allowed at the facility, reporting requirements, requirements that the facility immediately report suspected or alleged incidents of abuse, or any other requirements that the director of the department determines are necessary for the best interests of residents.

(6) The department may make unannounced site visits at any time to verify that the terms of the exception certification are being met. Failure to comply with any term of the exception certification may result in corrective action. If the department determines that the violation places residents in imminent jeopardy, immediate revocation of the certification can occur.

(7) Neither individuals nor facilities have fair hearing rights as defined under chapter 388-02 WAC regarding the decision to grant or not to grant exception certification.

NEW SECTION

WAC 246-341-1138 Mental health inpatient services—Child long-term inpatient program (CLIP). In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0100 through 246-341-0650, the applicable inpatient services requirements in WAC 246-341-1118 through 246-341-1322, and the evaluation and treatment service requirements of WAC 246-341-1134, child long-term inpatient treatment facilities must develop a written plan for assuring that services provided are appropriate to the developmental needs of children, including all of the following:

(1) If there is not a child psychiatrist on the staff, there must be a child psychiatrist available for consultation.

(2) There must be a psychologist with documented evidence of skill and experience in working with children available either on the clinical staff or by consultation, responsible for planning and reviewing psychological services and for developing a written set of guidelines for psychological services.

(3) There must be a registered nurse, with training and experience in working with psychiatrically impaired children, on staff as a full-time or part-time employee who must be responsible for all nursing functions.

(4) There must be a social worker with experience in working with children on staff as a full-time or part-time employee who must be responsible for social work functions and the integration of these functions into the individual treatment plan.

(5) There must be an educational/vocational assessment of each resident with appropriate educational/vocational pro-

grams developed and implemented or assured on the basis of that assessment.

(6) There must be an occupational therapist available who has experience in working with psychiatrically impaired children responsible for occupational therapy functions and the integration of these functions into treatment.

(7) There must be a recreational therapist available who has had experience in working with psychiatrically impaired children responsible for the recreational therapy functions and the integration of these functions into treatment.

(8) Disciplinary policies and practices must be stated in writing and all of the following must be true:

(a) Discipline must be fair, reasonable, consistent and related to the behavior of the resident. Discipline, when needed, must be consistent with the individual treatment plan.

(b) Abusive, cruel, hazardous, frightening or humiliating disciplinary practices must not be used. Seclusion and restraints must not be used as punitive measures. Corporal punishment must not be used.

(c) Disciplinary measures must be documented in the medical record.

(9) Residents must be protected from assault, abuse and neglect. Suspected or alleged incidents of nonaccidental injury, sexual abuse, assault, cruelty or neglect to a child must be reported to a law enforcement agency or to the department of children, youth, and families and comply with chapter 26.44 RCW.

(10) Orientation material must be made available to any facility personnel, clinical staff or consultants informing practitioners of their reporting responsibilities and requirements. Appropriate local police and department phone numbers must be available to personnel and staff.

(11) When suspected or alleged abuse is reported, the medical record must reflect the fact that an oral or written report has been made to the child protective services of DSHS or to a law enforcement agency. This note must include the date and time that the report was made, the agency to which it was made and the signature of the person making the report. Contents of the report need not be included in the medical record.

NEW SECTION

WAC 246-341-1140 Mental health inpatient services—Crisis stabilization unit—Agency facility and administrative standards. In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0100 through 246-341-0650 and the applicable inpatient services requirements in WAC 246-341-1118 through 246-341-1132, an agency certified to provide crisis stabilization unit services must meet all of the following criteria:

(1) Be licensed by the department.

(2) If a crisis stabilization unit is part of a jail, the unit must be located in an area of the building that is physically separate from the general population. "Physically separate" means:

(a) Out of sight and sound of the general population at all times;

(b) Located in an area with no foot traffic between other areas of the building, except in the case of emergency evacuation; and

(c) Has a secured entrance and exit between the unit and the rest of the facility.

(3) The professional person in charge of administration of the unit must be a mental health professional.

(4) Have a policy management structure that establishes:

(a) Procedures to ensure that for persons who have been brought to the unit involuntarily by police, the stay is limited to twelve hours unless the individual has signed voluntarily into treatment;

(b) Procedures to ensure that within twelve hours of the time of arrival to the crisis stabilization unit, individuals who have been detained by a designated crisis responder under chapter 71.05 or 70.96B RCW are transferred to a certified evaluation and treatment facility;

(c) Procedures to assure appropriate and safe transportation of persons who are not approved for admission or detained for transfer to an evaluation and treatment facility, and if not in police custody, to their respective residence or other appropriate place;

(d) Procedures to detain arrested persons who are not approved for admission for up to eight hours so that reasonable attempts can be made to notify law enforcement to return to the facility and take the person back into custody;

(e) Procedures to ensure that a mental health professional is on-site twenty-four hours a day, seven days a week;

(f) Procedures to ensure that a licensed physician, physician assistant, or psychiatric advanced registered nurse practitioner (ARNP) is available for consultation to direct care staff twenty-four hours a day, seven days a week;

(g) Procedures to ensure that the following requirements are met when an individual is brought to the facility by a peace officer under RCW 71.05.153:

(i) Within twelve hours of arrival, a designated crisis responder (DCR) must determine if the individual meets detention criteria under chapter 71.05 RCW; and

(ii) If the facility releases the individual to the community, the facility must inform the peace officer of the release within a reasonable period of time after the release if the peace officer has specifically requested notification and has provided contact information to the facility.

(h) Procedures to ensure the rights of persons to make mental health advance directives;

(i) Procedures to establish unit protocols for responding to the provisions of the advanced directives consistent with RCW 71.32.150; and

(j) Procedures to assure that restraint and seclusion are utilized only to the extent necessary to ensure the safety of patients and others, and in accordance with WAC 246-337-110, 246-322-180, and 246-320-745(6).

(5) Prominently post within the crisis stabilization unit the rights stated in WAC 246-341-1122, Mental health inpatient services—Rights of individuals receiving inpatient services, and provide them in writing to the individual in a language or format that the individual can understand.

NEW SECTION

WAC 246-341-1142 Mental health inpatient services—Crisis stabilization unit—Admission, assessment, and records. (1) For persons who have been brought to the unit involuntarily by police:

(a) The clinical record must contain:

(i) A statement of the circumstances under which the person was brought to the unit;

(ii) The admission date and time; and

(iii) The date and time when the twelve hour involuntary detention period ends.

(b) The evaluation required in subsection (2)(b) of this section must be performed within three hours of arrival at the facility.

(2) For all persons, the clinical record must contain:

(a) An assessment for substance use disorder and co-occurring mental health and substance abuse disorder, utilizing the global appraisal of individual needs - Short screener (GAIN-SS) or its successor;

(b) An evaluation by a mental health professional to include at a minimum:

(i) Mental status examination;

(ii) Assessment of risk of harm to self, others, or property; and

(iii) Determination of whether to refer to a designated crisis responder (DCR) to initiate civil commitment proceedings.

(c) Documentation that an evaluation by a DCR was performed within the required time period, the results of the evaluation, and the disposition of the person;

(d) Review of the person's current crisis plan, if applicable and available;

(e) The admission diagnosis and what information the determination was based upon;

(f) Assessment and stabilization services provided by the appropriate staff;

(g) Coordination with the person's current treatment provider, if applicable; and

(h) A plan for discharge, including a plan for follow up that includes:

(i) The name, address, and telephone number of the provider of follow-up services; and

(ii) The follow up appointment date and time, if known.

(3) For persons admitted to the crisis stabilization unit on a voluntary basis, the clinical record must contain a crisis stabilization plan developed collaboratively with the person within twenty-four hours of admission that includes:

(a) Strategies and interventions to resolve the crisis in the least restrictive manner possible;

(b) Language that is understandable to the person and members of the person's support system; and

(c) Measurable goals for progress toward resolving the crisis and returning to an optimal level of functioning.

(4) If antipsychotic medications are administered, the clinical record must document:

(a) The physician's attempt to obtain informed consent for antipsychotic medication; and

(b) The reasons why any antipsychotic medication is administered over the person's objection or lack of consent.

NEW SECTION

WAC 246-341-1144 Mental health inpatient services—Triage—Agency facility and administrative requirements. Under chapter 71.05 RCW, the department certifies facilities to provide triage services that assess and stabilize an individual, or determine the need for involuntary commitment. The department does not require a facility licensed by the department that was providing assessment and stabilization services under chapter 71.05 RCW as of April, 22, 2011, to relicense or recertify under these rules. A request for an exemption must be made to the department.

(1) In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0100 through 246-341-0650 and the applicable inpatient services requirements in WAC 246-341-1118 through 246-341-1132, an agency certified to provide triage services must:

(a) Be licensed by the department as a residential treatment facility;

(b) Meet the requirements for voluntary admissions under this chapter;

(c) Meet the requirements for involuntary admissions under this chapter if it elects to operate and be certified as a triage involuntary placement facility;

(d) Ensure that the facility and its services are accessible to individuals with disabilities, as required by applicable federal, state, and local laws; and

(e) Admit only individuals who are eighteen years of age and older.

(2) If a triage facility is collocated in another facility, there must be a physical separation. Physically separate means the triage facility is located in an area with no resident foot traffic between the triage facility and other areas of the building, except in case of emergencies.

(3) A triage facility must have, at a minimum, all of the following:

(a) A designated person in charge of administration of the triage unit.

(b) A mental health professional (MHP) on-site twenty-four hours a day, seven days a week.

(c) A written program description that includes:

(i) Program goals;

(ii) Identification of service categories to be provided;

(iii) Length of stay criteria;

(iv) Identification of the ages or range of ages of individual populations to be served;

(v) A statement that only an individual eighteen years of age or older may be admitted to the triage facility; and

(vi) Any limitation or inability to serve or provide program services to an individual who:

(A) Requires acute medical services;

(B) Has limited mobility;

(C) Has limited physical capacity for self-care; or

(D) Exhibits physical violence.

(d) Written procedures to ensure a secure and safe environment. Examples of these procedures are:

(i) Visual monitoring of the population environment by line of sight, mirrors or electronic means;

(ii) Having sufficient staff available twenty-four hours a day, seven days a week to meet the behavioral management needs of the current facility population; and

(iii) Having staff trained in facility security and behavioral management techniques.

(e) Written procedures to ensure that an individual is examined by an MHP within three hours of the individual's arrival at the facility.

(f) Written procedures to ensure that a designated crisis responder (DCR) evaluates a voluntarily admitted individual for involuntary commitment when the individual's behavior warrants an evaluation.

(g) A written declaration of intent and written procedures that are in accordance with WAC 246-337-110 if the triage facility declares intent to provide either seclusion or restraint or both.

(i) The seclusion or restraint may only be used to the extent necessary for the safety of the individual or others and only used when all less restrictive measures have failed; and

(ii) The facility must clearly document in the clinical record:

(A) The threat of imminent danger;

(B) All less restrictive measures that were tried and found to be ineffective; and

(C) A summary of each seclusion and restraint event, including a debriefing with staff members and the individual regarding how to prevent the occurrence of similar incidents in the future.

(h) Written procedures to facilitate appropriate and safe transportation, if necessary, for an individual who is:

(i) Not being held for either police custody, or police pick up, or both;

(ii) Denied admission to the triage facility; or

(iii) Detained for transfer to a certified evaluation and treatment facility.

(4) The triage facility must document that each staff member has the following:

(a) Adequate training regarding the least restrictive alternative options available in the community and how to access them;

(b) Training that meets the requirements of RCW 71.05-720 on safety and violence;

(c) Training that meets the requirements of RCW 71.05-705 if the triage facility is performing outreach services;

(d) Adequate training regarding methods of health care as defined in WAC 246-337-005(19); and

(e) Adequate training regarding the proper and safe use of seclusion and restraint procedures if the triage facility employs these techniques.

(5) The triage facility must ensure:

(a) Each clinical supervisor and each clinical staff member meets the qualifications of a mental health professional;

(b) A clinical staff member who does not meet the qualifications for an MHP is supervised by an MHP if the staff member provides direct services to individuals; and

(c) A contracted staff member who provides direct services to individuals meets the requirements of this section.

NEW SECTION

WAC 246-341-1146 Mental health inpatient services—Triage—Admission, assessment, and records. An agency certified to provide triage services must ensure the requirements in this section are met for each voluntary and involuntary admission. See WAC 246-341-1152(2) for additional requirements for an individual brought to a triage involuntary placement facility by a peace officer. See WAC 246-341-1152(3) for additional requirements for an individual involuntarily admitted to a triage involuntary placement facility based on a peace officer-initiated twelve-hour hold.

(1) Each individual must be assessed for substance use disorder and co-occurring mental health and substance abuse disorder as measured by the global appraisal on individual need-short screen (GAIN-SS) as it existed on the effective date of this section, or such subsequent date consistent with the purposes of this section. The clinical record must contain the results of the assessment.

(2) Each individual must be assessed by a mental health professional (MHP) within three hours of the individual's arrival at the facility.

(a) The assessment must include, at a minimum:

(i) A brief history of mental health or substance abuse treatment; and

(ii) An assessment of risk of harm to self, others, or grave disability.

(b) The MHP must request:

(i) The names of treatment providers and the treatment provided; and

(ii) Emergency contact information.

(c) The MHP must document all of the following in the individual's clinical record:

(i) All the information obtained in (a) and (b) of this subsection.

(ii) Sufficient information to demonstrate medical necessity. Medical necessity is defined in the state plan as "A term for describing a requested service which is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent the worsening of conditions in the recipient that endanger life, or cause suffering or pain, or result in illness or infirmity, or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the person requesting service. For the purpose of this chapter "course of treatment" may include mere observation, or where appropriate, no treatment at all."

(iii) Sufficient clinical information to justify a provisional diagnosis using criteria in the current and applicable Diagnostic and Statistical Manual of Mental Disorders (DSM-5).

(3) Each individual must receive a health care screening to determine the individual's health care needs.

(a) The health care screening instrument must be provided by a licensed health care provider defined in WAC 246-337-005. A licensed health care provider must be available to staff for staff consultation twenty-four hours a day, seven days a week.

(b) The individual's clinical record must contain the results of the health care screening.

(4) A qualified staff member according to WAC 246-341-1144(4) must coordinate with the individual's current treatment provider, if applicable, to assure continuity of care during admission and upon discharge.

(5) Each individual's clinical record must:

(a) Contain a statement regarding the individual circumstances and events that led to the individual's admission to the facility;

(b) Document the admission date and time;

(c) Contain the results of the health care screening required in subsection (3) of this section;

(d) Document the date and time of a referral to a designated crisis responder (DCR), if a referral was made;

(e) Document the date and time of release, or date and time the twelve-hour hold ended; and

(f) Document any use of seclusion or restraint and include:

(i) Documentation that the use of either seclusion, or restraint, or both, occurred only due to the individual being an imminent danger to self or others; and

(ii) A description of the less restrictive measures that were tried and found to be ineffective.

(6) A triage facility that declares any intent to provide seclusion, or restraint, or both, to an individual may do so only to the extent necessary for the safety of others and in accordance with WAC 246-322-180, 246-337-110, and 246-320-271. See also WAC 246-341-1144 (3)(g).

(7) A triage facility must document the efforts and services provided to meet the individual's triage stabilization plan.

(8) A triage facility must document the date, time, and reason an individual's admission status changed from involuntary to voluntary.

NEW SECTION

WAC 246-341-1148 Mental health inpatient services—Triage—Stabilization plan. A triage stabilization plan must be developed for each individual voluntarily or involuntarily admitted to a triage facility for longer than twenty-four hours. For an individual admitted twenty-four hours or less, the facility must document the results of the assessment performed by a mental health professional (MHP) required under WAC 246-341-1146.

(1) The triage stabilization plan must:

(a) Be developed collaboratively with the individual within twenty-four hours of admission;

(b) Either improve or resolve the individual's crisis, or both in the least restrictive manner possible;

(c) Be written in a language that is understandable to the individual or the individual's support system, or both, if applicable;

(d) Be mindful of the individual's culture, life style, economic situation, and current mental and physical limitation;

(e) Have goals that are relevant to the presenting crisis and demonstrate how they impact the crisis by improving the individual's ability to function;

(f) Include any recommendation for treatment from the mental health professional (MHP) assessment provided within three hours of the individual's arrival at the facility; and

(g) Include:

(i) The date and time the designated crisis responder (DCR) evaluated the individual in accordance with the detention criteria under chapter 71.05 RCW; and

(ii) The DCR's determination of whether the individual should be detained.

(2) The individual's clinical record must:

(a) Contain a copy of the triage stabilization plan;

(b) Contain charting that demonstrates how requirements of the individual's triage stabilization were met; and

(c) Document the services provided to the individual.

NEW SECTION

WAC 246-341-1150 Mental health inpatient services—Triage—Discharge. A triage facility must:

(1) Provide discharge services for each individual:

(a) Voluntarily admitted to the facility; or

(b) Involuntarily admitted to the facility if the individual is not transferred to another facility.

(2) Coordinate with the individual's current treatment provider, if applicable, to transition the individual back to the provider; and

(3) Develop a discharge plan and follow-up services from the triage facility that includes:

(a) The name, address, and telephone number of the provider;

(b) The designated contact person; and

(c) The appointment date and time for the follow-up services, if appropriate.

NEW SECTION

WAC 246-341-1152 Mental health inpatient services—Triage—Involuntary. An agency that elects to provide triage involuntary services must meet all of the following requirements:

(1) The agency must have a memo of understanding developed in consultation with local law enforcement agencies, which details the population that the facility has capacity to serve. The memo of understanding must include, at a minimum, a description of the facility's:

(a) Capacity to serve individuals with any medication, medical, or accommodation needs;

(b) Capacity to serve individuals with behavioral management needs;

(c) Ability to provide either seclusion, or restraint, or both, to individuals;

(d) Notification procedures for discharge of individuals; and

(e) Procedures for notifying the appropriate law enforcement agency of an individual's release, transfer, or hold for up to twelve hours to allow the peace officer to reclaim the individual.

(2) Agencies must have written procedures to ensure all of the following for individuals brought to a triage involuntary placement facility by a peace officer:

(a) An individual detained by the designated crisis responder (DCR) under chapter 71.05 RCW with a confirmed admission date to an evaluation and treatment facility, may

remain at the triage facility until admitted to the evaluation and treatment facility.

(i) The individual may not be detained to the triage facility; and

(ii) An individual who agrees to a voluntary stay must provide a signature that documents the agreement.

(b) The individual is examined by a mental health professional (MHP) within three hours of the individual's arrival at the facility, and the examination includes an assessment to determine if a DCR evaluation is also required.

(c) If it is determined a DCR evaluation is required, the DCR must evaluate the individual within twelve hours of arrival. The DCR determines whether the individual:

(i) Meets detention criteria under chapter 71.05 RCW; or

(ii) Agrees to accept voluntary admission by providing their signature agreeing to voluntary treatment.

(3) Agencies must ensure the clinical record includes all of the following for individuals involuntarily admitted to a triage involuntary placement facility based on a peace officer-initiated twelve-hour hold:

(a) The date and time the individual arrived at the facility and the date and time the examination by the mental health professional (MHP) occurred. The examination must occur within three hours of the individual's arrival to the facility.

(b) The peace officer's:

(i) Determination for cause to have the individual transported to the facility;

(ii) Request to be notified if the individual leaves the facility and how the peace officer is to be contacted, or documentation of other person(s) permitted to be contacted, such as the shift supervisor of the law enforcement agency or dispatcher; and

(iii) Request that the individual be held for the duration of the twelve hours to allow the peace officer sufficient time to return and make a determination as to whether or not to take the individual into custody.

(c) A copy of the evaluation if the individual is determined by a DCR to meet detention criteria under chapter 71.05 RCW.

NEW SECTION

WAC 246-341-1154 Mental health inpatient services—Competency evaluation and restoration. A behavioral health agency may provide competency evaluation and restoration treatment services to individuals under chapter 10.77 RCW when the department certifies the services.

(1) In addition to meeting the agency licensure, certification, administration, personnel, and clinical requirements in WAC 246-341-0100 through 246-341-0650 and the inpatient services requirements in WAC 246-341-1118 through 246-341-1132, an agency providing competency evaluation and restoration services must be licensed by the department as:

(a) A residential treatment facility consistent with chapter 246-337 WAC;

(b) A hospital consistent with chapter 246-320 WAC;

(c) A private psychiatric hospital consistent with chapter 246-322 WAC; or

(d) An inpatient evaluation and treatment facility as provided in WAC 246-341-1134 and consistent with chapter 246-337 WAC.

(2) The administrative policies and procedures must include:

(a) Designation of a psychiatrist as the professional person in charge of clinical services at the agency;

(b) Procedures to assure the protection of individual participant rights in WAC 246-341-1156; and

(c) Procedures to assure that seclusion and restraint are used only to the extent necessary to ensure the safety of the individual see WAC 246-341-1158.

(3) The clinical record must include all of the following:

(a) A copy of the court order and charging documents. If the order is for competency restoration treatment and the competency evaluation was provided by a qualified expert or professional person who was not designated by the secretary, a copy of all previous court orders related to competency or criminal insanity provided by the state and a copy of any evaluation reports must be included.

(b) A copy of the discovery materials, including, at a minimum, a statement of the individual's criminal history.

(c) A copy of the individual's medical clearance information.

(d) All diagnostic and therapeutic services prescribed by the attending clinical staff members.

(e) Specific targets and strategies for restoring competency to include periodic assessments of gains on these targets.

(f) Participation of a multidisciplinary team that includes at a minimum:

(i) A physician, advanced registered nurse practitioner (ARNP), or physician assistant certified (PA-C);

(ii) A nurse, if the person in (f)(i) of this subsection is not an ARNP; and

(iii) A mental health professional.

(g) Participation of other multidisciplinary team members, which may include a psychologist and chemical dependency professional.

(h) All assessments and justification for the use of seclusion or restraint.

(4) The initial assessment must include:

(a) The individual's:

(i) Identifying information;

(ii) Specific barriers to competence;

(iii) Medical provider's name or medical providers' names;

(iv) Medical concerns;

(v) Medications currently taken;

(vi) Brief mental health history; and

(vii) Brief substance use history, including tobacco use.

(b) The identification of any risk of harm to self and others, including suicide and homicide; and

(c) Treatment recommendations or recommendations for additional program-specific assessment.

(5) To determine the nature of the disorder and the treatment necessary, the agency must ensure that the individual receives the following assessments and document in the client's record the date provided:

(a) A health assessment of the individual's physical condition to determine if the individual needs to be transferred to an appropriate hospital for treatment;

(b) An examination and medical evaluation within twenty-four hours by a physician, advanced registered nurse practitioner, or physician assistant;

(c) A psychosocial evaluation by a mental health professional; and

(d) A competency to stand trial evaluation conducted by a licensed psychologist, or a copy of a competency to stand trial evaluation using the most recent competency evaluation, if an evaluation has already been conducted.

(6) If a state hospital transfers an individual to an agency for competency restoration treatment, the agency must review the individual's completed admission assessment from the state hospital to assure it meets the requirements of subsection (3) of this section for initial assessments. The agency must update the assessment as needed. If the state hospital has not completed or has only partially completed an assessment for the individual, the agency must complete the assessment according to the requirements in subsections (2) and (3) of this section.

(7) The agency must ensure the individual service plan is completed within seven days of admission and is updated every ninety days.

NEW SECTION

WAC 246-341-1156 Mental health inpatient services—Competency evaluation and restoration—Rights. (1)

An agency providing competency evaluation and restoration treatment services must develop a statement of individual participant rights to ensure an individual's rights are protected. The statement must incorporate at a minimum all of the following. You have the right to:

(a) Receive services without regard to race, creed, national origin, religion, gender, sexual orientation, age or disability;

(b) Practice the religion of choice as long as the practice does not infringe on the rights and treatment of others or the treatment services and, as an individual participant, the right to refuse participation in any religious practice;

(c) Reasonable accommodation in case of sensory or physical disability, limited ability to communicate, limited English proficiency, or cultural differences;

(d) Respect, dignity and privacy, except that agency staff members may conduct reasonable searches to detect and prevent possession or use of contraband on the premises;

(e) Be free of sexual harassment;

(f) Be free of exploitation, including physical and financial exploitation;

(g) Have all clinical and personal information treated in accord with state and federal confidentiality rules and laws;

(h) Review your clinical record in the presence of the administrator or the administrator's designee and the opportunity to request amendments or corrections;

(i) Upon request, receive a copy of the agency's internal procedures for addressing reported concerns that may amount to a complaint or grievance; and

(j) Submit a report to the department when you believe the agency has violated a Washington Administrative Code (WAC) requirement that regulates facilities.

(2) Each agency must ensure the applicable individual participant rights described in subsection (1) of this section are:

(a) Provided in writing to each individual on or before admission;

(b) Posted in public areas;

(c) Available in alternative formats for an individual who is visually impaired;

(d) Translated to a primary or preferred language identified by an individual who does not speak English as the primary language, and who has a limited ability to read, speak, write, or understand English; and

(e) Available to any individual upon request.

(3) Each agency must ensure all research concerning an individual whose cost of care is publicly funded is done in accordance with chapter 388-04 WAC, the protection of human research subjects, and other applicable state and federal rules and laws.

(4) In addition to the requirements in this section, each agency enrolled as either a medicare or medicaid provider, or both, must ensure an individual seeking or participating in competency evaluation or restoration treatment services, or the person legally responsible for the individual is informed of the medicaid rights at time of admission in a manner that is understandable to the individual or legally responsible person.

NEW SECTION

WAC 246-341-1158 Mental health inpatient services—Competency evaluation and restoration—Seclusion and restraint. (1) An individual receiving either competency evaluation or restoration treatment services, or both has the right to be free from seclusion and restraint, including chemical restraint except as otherwise provided in this section or otherwise provided by law. The agency must do all of the following:

(a) Develop, implement, and maintain policies and procedures to ensure that seclusion and restraint procedures are used only to the extent necessary to ensure the safety of an individual and in accordance with WAC 246-322-180 or 246-337-110, whichever is applicable.

(b) Ensure that the use of seclusion or restraint occurs only when there is imminent danger to self or others and less restrictive measures have been determined to be ineffective to protect the individual or other from harm and the reasons for the determination are clearly documented in the individual's clinical record.

(c) Ensure staff members notify and receive authorization by a physician, physician assistant (PA) or advanced registered nurse practitioner (ARNP) within one hour of initiating an individual's seclusion or restraint.

(d) Ensure the individual is informed of the reasons for use of seclusion or restraint and the specific behaviors which must be exhibited in order to gain release from a seclusion or restraint procedure.

(e) Ensure that an appropriate clinical staff member observes the individual at least every fifteen minutes and the observation is recorded in the individual's clinical record.

(f) If the use of seclusion or restraint exceeds twenty-four hours, ensure that a physician has assessed the individual

and has written a new order if the intervention will be continued. This procedure must be repeated for each twenty-four hour period that seclusion or restraint is used.

(2) The agency must ensure all assessments and justification for the use of either seclusion or restraint, or both, are documented in the individual's clinical record.

WSR 18-14-021

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 18-135—Filed June 25, 2018, 5:29 p.m., effective June 27, 2018]

Effective Date of Rule: June 27, 2018.

Purpose: Amend commercial shrimp rules in Puget Sound.

Citation of Rules Affected by this Order: Repealing WAC 220-340-52000P; and amending WAC 220-340-520.

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 2018 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) opens the pot fishery season for spot shrimp; (2) implements a spot shrimp biweekly limit for all areas; (3) implements a minimum mesh size restriction for spot shrimp gear; (4) opens the 1B-21A trawl fishery season; and (5) maintains the previous regulations and restrictions for the nonspot trawl and pot fisheries. 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 the Request of a Non-governmental 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: June 25, 2018.

Joe Stohr
Director

NEW SECTION

WAC 220-340-52000Q Puget Sound shrimp pot and trawl fishery—Season. Notwithstanding the provisions of WAC 220-340-520, effective immediately, until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1A, 1C, 2E, 2W, and 3 are open to the harvest of all shrimp species, effective immediately, until further notice, except as provided for in this section:

(i) All waters of the Discovery Bay Shrimp District are closed.

(ii) All waters of Shrimp Management Areas 1A and 1C are closed to the harvest of all species other than spot shrimp.

(iii) All waters of Shrimp Management Area 2E are closed to the harvest of spot shrimp

(iv) All waters of Shrimp Management Area 2W are closed to the harvest of spot shrimp

(v) All waters of Shrimp Management Area 3, 23A East are closed to the harvest of spot shrimp

(b) Effective immediately, until further notice, it is unlawful for the combined total harvest of non-spot shrimp by a fisher or the fisher's alternate operator to exceed 600 pounds per *weekly management period* from Shrimp Management Area 2W and 2E combined.

(c) Effective immediately, until further notice, the shrimp *weekly management period* is Wednesday through Tuesday.

(d) Effective immediately, until 11:59 p.m. July 3, 2018, it is unlawful for the combined total harvest of spot shrimp by a fisher or the fisher's alternate operator to exceed 400 pounds.

(e) Effective 12:01 a.m. July 4, 2018, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher or the fisher's alternate operator to exceed 1,200 pounds per *biweekly management period*, with the following exceptions:

a. It is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per *biweekly management period* in Shrimp Management Area 1A.

(f) Effective 12:01 a.m. July 4, 2018, until further notice, the spot shrimp *biweekly management periods* are (1) July 4 to July 17; (2) July 18 to July 31; and (3) August 1 to August 14.

(g) Only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1 3/4-inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically. There is no size restriction for spot shrimp.

(f) It is unlawful to pull shellfish pots in more than one catch area per day.

(2) Shrimp trawl gear:

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open, effective immediately, until further notice. Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) That portion of Catch Area 22A within SMA 1B is open.

(c) That portion of Catch Area 20B within SMA 1B is open.

(d) That portion of Catch Area 21A within SMA 1B is open effective 6:00 a.m. July 1, 2018, until further notice.

(3) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

REPEALER

The following section of the Washington Administrative Code is repealed effective June 27, 2018:

WAC 220-340-52000P Puget Sound shrimp pot and beam trawl fishery—Season. (18-124)

WSR 18-14-026**EMERGENCY RULES****WASHINGTON STATE UNIVERSITY**

[Filed June 26, 2018, 8:45 a.m., effective June 26, 2018, 8:45 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To add new chapter 504-49 WAC, regarding the administration of the state renewable energy system incentive program for citizens, businesses, and utilities. The incentive program is to be administered by the Washington State University (WSU) energy program, in accordance with the renewable energy system incentive program law, ESSB 5939, signed into law on July 7, 2017. Note: Emergency rule-making orders for this chapter were originally filed on October 30, 2017, and February 26, 2018. A preproposal for similar permanent rules was filed as WSR 18-02-092, with a proposal filed on March 7, 2018, and a public hearing was held on April 12, 2018.

Due to comments received during the public commenting period, the WSU energy program has made changes to six sections of the emergency rules, as included in this emergency rule-making order. (The sections changed from the previous emergency rule-making orders are WAC 504-04-165 [504-49-165], 504-04-195 [504-49-195], 504-04-210 [504-49-210], 504-04-225 [504-49-225], 504-04-305 [504-49-305], and 504-04-520 [504-49-520].) A supplementary proposal is intended to be filed on July 18, 2018, and intended for adoption on September 21, 2018.

Citation of Rules Affected by this Order: New WAC 504-49-010, 504-49-100, 504-49-103, 504-49-105, 504-49-108, 504-49-110, 504-49-115, 504-49-120, 504-49-125, 504-49-130, 504-49-135, 504-49-140, 504-49-145, 504-49-150, 504-49-155, 504-49-160, 504-49-165, 504-49-170, 504-49-175, 504-49-180, 504-49-185, 504-49-190, 504-49-195, 504-49-200, 504-49-205, 504-49-210, 504-49-215, 504-49-220,

504-49-225, 504-49-230, 504-49-235, 504-49-240, 504-49-245, 504-49-250, 504-49-300, 504-49-305, 504-49-310, 504-49-400, 504-49-405, 504-49-500, 504-49-505, 504-49-510, 504-49-515, 504-49-520, 504-49-525, 504-49-600, 504-49-605, 504-49-610, 504-49-615, 504-49-700, 504-49-705, 504-49-710, and 504-49-715.

Statutory Authority for Adoption: RCW 28B.30.150.

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 emergency rules are necessary to preserve the general welfare in that WSU energy program is replacing the Washington state department of revenue to administer an existing program that provides incentives for renewable energy. Failure to having rules in place for an existing program that is now managed by a different agency for a considerable amount of time would cause considerable disruption to the program. These emergency rules will allow for the continuation of the program while the WSU energy program goes through the process of establishing permanent rules.

Further, the emergency rules are necessary for the fair and equitable implementation of ESSB 5939 to provide consistent application of procedures, program definitions, eligibility, incentive payment rates, and decision appeal procedures - all in accordance with the language and intent of ESSB 5939. Further, emergency rules are necessary to provide immediate guidance to interested applicants because the WSU energy program became the administrator of this incentive program on October 1, 2017.

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 53, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 53, Amended 0, Repealed 0.

Date Adopted: June 26, 2018.

Deborah L. Bartlett, Director
Procedures, Records, and Forms
and University Rules Coordinator

Chapter 504-49 WAC

RENEWABLE ENERGY SYSTEM INCENTIVE PROGRAM

NEW SECTION

WAC 504-49-010 Introduction. (1) The rules in this chapter explain the renewable energy system incentive program, which is administered by the Washington State University energy program (hereinafter referred to as "energy program"). It is the legislature's intent to provide the incentives as described in RCW 82.16.130 in order to ensure the sustainable job growth and vitality of the state's renewable energy sector. The purpose of the incentive is to reduce the costs associated with installing and operating renewable energy systems by persons or entities receiving the incentive. This incentive program authorizes an incentive payment based on electricity generated by renewable energy systems located in Washington state. Qualified renewable energy systems include:

- (a) Solar energy systems;
 - (b) Wind generators; and
 - (c) Certain types of anaerobic digesters that process manure from livestock into biogas and dried manure using microorganisms in a closed oxygen-free container, in which the biogas (such as methane) fuels a generator that generates electricity.
- (2) The rules in this chapter are divided into seven parts based on subject matter, as follows:
- (a) Part I: Definitions;
 - (b) Part II: Participation and application requirements, and incentive levels by project type;
 - (c) Part III: Calculation of incentives;
 - (d) Part IV: General topics;
 - (e) Part V: Manufactured in Washington state;
 - (f) Part VI: Application process for currently certified renewable energy systems in the cost recovery incentive program; and
 - (g) Part VII: Appeals rights.

PART I

DEFINITIONS

NEW SECTION

WAC 504-49-100 Overview. The definitions in Part I of this chapter (this section and WAC 504-49-103 through 504-49-195) apply throughout this chapter unless the context clearly requires otherwise.

NEW SECTION

WAC 504-49-103 Administrator. The term "administrator" has the following two meanings in this chapter:

- (1) For purposes of a shared commercial solar project, the administrator is a utility or a business under contract with a utility which administers a shared commercial solar project that meets the eligibility requirements specified in this chapter. The administrator applies for certification on behalf of

each of the project participants. In addition, the administrator performs administrative tasks on behalf of the owners as may be necessary, such as:

- (a) Receiving the renewable energy incentive payments;
- (b) Allocating and paying appropriate amounts of such payments to owners; and
- (c) Communicating with the energy program about any changes in participants.

(2) For purposes of a community solar project as defined in WAC 504-49-120, the administrator is the utility, non-profit, or local housing authority (as defined in RCW 35.82.-020) that organizes and administers the community solar project. The administrator is responsible for applying for the renewable energy system incentive on behalf of the system's owners. In addition, the administrator performs administrative tasks on behalf of the owners as may be necessary, such as:

- (a) Receiving the renewable energy incentive payments;
- (b) Allocating and paying appropriate amounts of such payments to owners; and
- (c) Communicating with the energy program about any changes in participants.

NEW SECTION

WAC 504-49-105 Caps and limits. "Caps and limits" are defined as follows:

(1) "Annual incentive limits" means the annual limits on total incentives paid per person, business, or household for a given fiscal year of electricity generation from the four project types described in chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939). Each incentive recipient may qualify for payments up to the incentive cap within each project type. However, incentive recipients who have multiple projects within one project type are subject to the cap for the applicable project type. These caps are as follows:

- (a) Residential-scale systems: Five thousand dollars;
- (b) Commercial-scale systems: Twenty-five thousand dollars;
- (c) Shared commercial solar projects: Up to thirty-five thousand dollars per year per project participant, as determined by the terms specified in chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939); and
- (d) Community solar projects: Five thousand dollars per project participant.

(2) "Utility credit cap" means that the maximum annual incentives paid by an electrical utility may not exceed one and one-half percent of the businesses' taxable power sales generated in calendar year 2014 and due under RCW 82.16.-020 (1)(b) or two hundred fifty thousand dollars, whichever is greater, up to the utility's public utility tax liability.

(3) "Project type cap" has the following two meanings in this chapter:

- (a) For commercial-scale systems, the project type cap is twenty-five percent of the remaining funds for credit available to a utility as of July 1, 2017; and
- (b) For community solar and shared commercial solar projects combined, the project type cap is fifty percent of the remaining funds for credit available to a utility as of July 1, 2017.

(4) "Incentive rate limit" for shared commercial solar project participants means that the incentive rate must not exceed the difference between the levelized cost of energy output and the participant's retail rate.

(5) "Total program limit" means that the total incentive payments made under this program (in this chapter) may not exceed one hundred ten million dollars.

NEW SECTION

WAC 504-49-108 Certification. "Certification" means the authorization issued by the energy program establishing a system's eligibility and the eligibility of a person, business, or household to receive annual incentive payments from the serving utility for the incentive program term.

NEW SECTION

WAC 504-49-110 Commercial-scale system. "Commercial-scale system" means a renewable energy system or system other than a community solar project or a shared commercial solar project with a direct current combined nameplate capacity greater than twelve kilowatts that meets the applicable system eligibility requirements established in section 6, chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939).

NEW SECTION

WAC 504-49-115 Community solar project. "Community solar project" means a solar energy system that:

- (1) Has a nameplate generating capacity that is no larger than one thousand kilowatts direct current;
- (2) Must have at least ten participants or one participant for every ten kilowatts direct current nameplate capacity, whichever is greater; and
- (3) Meets the applicable eligibility requirements established in sections 6 and 7, chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939).

NEW SECTION

WAC 504-49-120 Consumer-owned utility. "Consumer-owned utility" has the same meaning as in RCW 19.280.020.

NEW SECTION

WAC 504-49-125 Customer-owner. "Customer-owner" means the owner of a residential-scale or commercial-scale renewable energy system, where such owner:

- (1) Is not a utility;
- (2) Is the primary account holder of the utility account; and
- (3) Either owns or occupies the premises where the renewable energy system is installed.

NEW SECTION

WAC 504-49-130 Direct current. "Direct current" means the unidirectional flow of electric charge.

NEW SECTION

WAC 504-49-135 Electric utility or utility. "Electric utility" or "utility" means a consumer-owned utility or investor-owned utility as those terms are defined in RCW 19.280.-020.

NEW SECTION

WAC 504-49-140 Fiscal year. "Fiscal year" means July 1st through June 30th of the following year for the purposes of this rule. For example, fiscal year 2018 goes from July 1, 2017, through June 30, 2018.

NEW SECTION

WAC 504-49-145 Nonprofit organization. "Nonprofit organization" means an organization exempt from taxation under 26 U.S.C. Sec. 501 (c)(3) of the federal Internal Revenue Code of 1986, as amended, as of January 1, 2009.

NEW SECTION

WAC 504-49-150 Person, business, and household. "Person, business, and household" means any individual, firm, partnership, corporation, company, association, agency, or any other legal entity that resides on a property or has a business located on a property within the service area of the utility where the renewable energy system is located.

(1) No person, business, or household is eligible to receive incentive payments provided under section 1, chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939) of more than:

(a) Five thousand dollars per year for residential-scale systems or community solar projects;

(b) Twenty-five thousand dollars per year for commercial-scale systems; or

(c) Thirty-five thousand dollars per year for shared commercial solar projects.

(2) Example: Two or more individuals living together in one household, with one customer account with the participating utility, constitutes a household. Although they may each individually participate in this incentive program, these same individuals living together in one household receive incentives in accordance with this chapter.

NEW SECTION

WAC 504-49-155 Program term. "Program term" means eight years, or until cumulative incentive payments for electricity produced by the project reach fifty percent of the total system price, including applicable sales tax, whichever occurs first. Eight years is equivalent to ninety-six months of electricity generation from the time of certification.

NEW SECTION

WAC 504-49-160 Project participant. "Project participant" has the two following meanings:

(1) For purposes of community solar projects, a utility customer who participates in a community solar project in order to obtain a beneficial interest. Eligible participants of a community solar project that are business entities, such as a

limited liability company or a corporation, are analyzed for participant eligibility and applicable incentive caps and limits by looking through the business entity to the members or stockholders that own the business entity.

(2) For purposes of shared commercial solar projects, a customer of a utility and located in the state of Washington.

NEW SECTION

WAC 504-49-165 Renewable energy system. "Renewable energy system" means a grid-connected:

(1) Solar energy system;

(2) Anaerobic digester as defined in RCW 82.08.900; or

(3) Wind generator.

NEW SECTION

WAC 504-49-170 Residential-scale system. "Residential-scale system" means a renewable energy system or systems located at a single situs with combined nameplate capacity of twelve kilowatts direct current or less that meets the applicable system eligibility requirements established in section 6, chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939).

NEW SECTION

WAC 504-49-175 Shared commercial solar project. "Shared commercial solar project" means a solar energy system, owned or administered by an electric utility, which:

(1) Has a combined nameplate capacity of greater than one megawatt direct current and not more than five megawatts direct current;

(2) Has at least five participants; and

(3) Meets the applicable eligibility requirements established in sections 6 and 8, chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939).

NEW SECTION

WAC 504-49-180 Solar energy system. "Solar energy system" means any device or combination of devices or elements that rely on direct sunlight as an energy source for use in the generation of electricity.

NEW SECTION

WAC 504-49-185 Solar inverter. "Solar inverter" means the device used to convert direct current to alternating current in a solar energy system.

NEW SECTION

WAC 504-49-190 Solar module. "Solar module" means the smallest nondivisible, self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

NEW SECTION

WAC 504-49-195 Total system price. (1) "Total system price" includes only the renewable energy system components and fees that are integral and necessary for the generation of electricity. Components and fees include:

(a) Renewable energy system equipment (depends on system type):

- (i) Solar energy system: Solar modules, inverter(s);
- (ii) Wind generator: Turbine(s), tower(s), inverter(s);
- (iii) Anaerobic digester: Digester/reactor, electrical generator.

(b) Balance of system (such as racking, wiring, switch gear, meter base);

(c) Nonhardware costs incurred up to the date of the final electrical inspection (such as fees associated with engineering, permitting, interconnection, application);

(d) Labor;

(e) Sales tax (as applicable).

(2) Total system price does not include structures and fixtures that are not integral and necessary to the generation of electricity, such as carports, roofing, and energy storage.

PART II**PARTICIPATION AND APPLICATION REQUIREMENTS, AND INCENTIVE LEVELS BY PROJECT TYPE**NEW SECTION

WAC 504-49-200 Participation by a utility in the renewable energy system incentive program is voluntary.

(1) A utility electing to participate in the incentive program must notify the energy program of such election in writing.

(2) The utility may terminate its voluntary participation in the incentive program by providing notice in writing to the energy program to cease issuing new certifications for renewable energy systems that would be served by that utility.

(3) Such notice of termination of participation is effective after fifteen days, at which point the energy program may not accept new applications for certification of renewable energy systems that would be served by that utility.

(4) Upon receiving a utility's notice of termination of participation in the incentive program, the energy program must report on its web site that customers of that utility are no longer eligible to receive new certifications under the incentive program.

(5) A utility's termination of participation does not affect the utility's obligation to continue to make annual incentive payments for electricity generated by systems that were certified prior to the effective date of the notice. The energy program must continue to process and issue certifications for renewable energy systems that were received by the energy program before the effective date of the notice of termination.

(6) A utility that has terminated participation in the program may resume participation upon filing notice with the energy program.

NEW SECTION

WAC 504-49-205 Certification restrictions. No new certification may be issued under this chapter for a system which an applicant received notice of eligibility from the department of revenue under the cost recovery program (RCW 82.16.120), or for a renewable energy system served by a utility that has elected not to participate in the incentive program, as provided in WAC 504-49-200.

NEW SECTION

WAC 504-49-210 Renewable energy project requirements. Any person, business, or household, as defined in WAC 504-49-150, that participates in any of the four types of renewable energy projects defined in sections 5 through 8, chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939), must meet the specified participation requirements and is subject to the system capacity limits, application requirements, and incentive limits, as follows:

(1) Residential-scale:

(a) Participation: The participant must be an owner of a residential-scale renewable energy system that is not a utility and:

(i) Is a customer of the utility that serves that location and has established an interconnection agreement with the utility for the renewable energy system; and

(ii) Either owns or occupies the premises where the renewable energy system is installed.

(b) Capacity: Twelve kilowatts direct current or less, combined:

(i) Example 1: A property with a six kilowatts direct current solar system on one structure and a five kilowatts direct current system on the same or separate structure qualifies for the residential-scale incentive rate because the total capacity is less than twelve kilowatts direct current, combined.

(ii) Example 2: A property with a six kilowatts direct current solar system on one structure and a seven kilowatts direct current system on the same or separate structure does not qualify for the residential-scale incentive rate because the total capacity is greater than twelve kilowatts direct current, combined. This combined system instead qualifies for the commercial-scale incentive rate.

(iii) Example 3: A property with a twelve kilowatt direct current solar system, production metered and applying for the incentive, and any additional direct current system, production metered or not, and not applying for the incentive, on the same or separate structure, does not qualify for the residential-scale incentive rate because the combined capacity is greater than twelve kilowatts direct current. This combined system instead qualifies for the commercial-scale incentive rate.

(iv) In the case of multiple renewable energy systems on a structure such as a condominium or commercial building, each having a separate customer-owner and separate utility and production meters, each system, if under twelve kilowatts direct current, would qualify for the residential-scale rate.

(c) Application: The owner submits a completed application to the energy program for certification per requirements specified in WAC 504-49-220.

(d) Annual incentive limit: Five thousand dollars per person, business, or household.

(2) Commercial-scale:

(a) Participation: The participant must be an owner of a commercial-scale renewable energy system that is not a utility and:

(i) Is a customer of the utility that serves that location and has established an interconnection agreement with the utility for the renewable energy system; and

(ii) Either owns or occupies the premises where the renewable energy system is installed.

(b) Capacity: Greater than twelve kilowatts direct current, combined.

(i) Example 1: A property with a six kilowatts direct current solar system on one structure and a seven kilowatts direct current system on the same or separate structure qualifies for the commercial-scale incentive rate because the total capacity is greater than twelve kilowatts direct current, combined.

(ii) Example 2: A property with a six kilowatts direct current solar system on one structure and a five kilowatts direct current system on the same or separate structure qualifies for the residential-scale incentive rate because the total capacity is less than twelve kilowatts direct current, combined.

(c) Application: The owner submits a completed application to the energy program for certification per requirements specified in WAC 504-49-220.

(d) Annual incentive limit: Twenty-five thousand dollars per person, business, or household.

(3) Shared commercial solar:

(a) Administration: Administrators of this project type must be a utility or a business under contract with a utility;

(b) Participation: Projects must have at least five project participants, each of which is a customer of the utility and located in the state of Washington;

(c) Capacity: Combined nameplate capacity greater than one megawatt direct current and not more than five megawatts direct current;

(d) Application:

(i) Precertification. Prior to applying for certification, a shared commercial solar administrator must apply for precertification against the remaining funds available for incentive payments as of July 1, 2017. Precertification application requirements include, but are not limited to:

(A) The name of the utility serving the project location;

(B) Contact information for the project administrator and technical management personnel; and

(C) System information, including system component details and operation data such as global positioning system coordinates, tilt, estimated shading, and azimuth, as applicable;

(D) Additional information regarding deployment of projects in low- and moderate-income communities, as those terms are defined in RCW 43.63A.510, as requested.

(ii) Certification. The application for certification may not exceed the precertified system capacity. An application for certification must be completed by the shared commercial solar project administrator and approved by the energy program within one year of precertification issuance. Extensions past the three hundred sixty-five-day period are not granted.

Projects that do not meet this deadline lose precertification status.

(e) Incentive rate: The incentive rate is set at the date of precertification approval;

(f) Annual incentive limit: Thirty-five thousand dollars per participant (person, business, household), consistent with their share of participation.

(4) Community solar project:

(a) Administration: A utility, nonprofit, or local housing authority that organizes or administers a solar project;

(b) Participation: The project must have at least ten participants, or one participant for every ten kilowatts direct current nameplate capacity, whichever is greater; and all participants must be customers of the participating utility;

(c) Capacity: Nameplate capacity that is no more than one thousand kilowatts direct current;

(d) There are no limitations on location unless stated in this section: Community solar project systems must be located in the state of Washington;

(e) Application:

(i) Precertification. Prior to applying for certification, a community solar project administrator must apply for precertification against the remaining funds available for incentive payments as of July 1, 2017. Precertification application requirements include, but are not limited to:

(A) The name of the utility serving the project location;

(B) Contact information for the project administrator and technical management personnel; and

(C) System information, including system component details and operation data such as global positioning system coordinates, tilt, estimated shading, and azimuth, as applicable.

(ii) Certification. The application for certification may not exceed the precertified system capacity. An application for certification must be completed by the community solar project administrator and approved by the energy program within one year of precertification issuance. Extensions past the three hundred sixty-five-day period are not granted. Projects that do not meet this deadline lose precertification status.

(f) Incentive rate: The incentive rate is set at the date of precertification approval;

(g) Annual incentive limit: Five thousand dollars per participant (person, business, household), consistent with their share of participation.

NEW SECTION

WAC 504-49-215 Department of revenue-certified renewable energy systems. To continue to be eligible to receive incentive payments under the renewable energy system cost recovery program (as described in WAC 458-20-273), the applicants (as defined in WAC 458-20-273) with the department of revenue certification must reapply with the energy program. This reapplication process is described in Part VI of this chapter and must be completed by April 30, 2018.

(1) Participation: Only applicants with renewable energy systems previously certified by the department of revenue may reapply for continued incentives.

(2) Application: Submit a completed reapplication to the energy program for certification in accordance with the requirements specified in Part VI of this chapter. For community solar projects, also submit a list of participants in the project.

(3) Annual incentive limit: Five thousand dollars per individual, household, business, or local governmental entity.

(4) Deadline: Reapplications must be submitted by April 30, 2018.

NEW SECTION

WAC 504-49-220 Requirements to apply for certification—Residential-scale and commercial-scale projects. The application must contain, but is not limited to, the following information; additional requirements are specified in WAC 504-49-210.

(1) The name and address of the customer-owner and location of the renewable energy system.

(2) System information, including system component details and operation data such as global positioning system coordinates, tilt, estimated shading, and azimuth, as applicable.

(3) An executed interconnection agreement with the serving utility.

(4) The date and supporting documentation verifying that the local jurisdiction issued its final electrical inspection of the renewable energy system.

(5) Documentation, including final sales invoice, and details of the total system price as defined in WAC 504-49-195.

(6) A signed statement that the applicant understands that this information is true, complete, and correct to the best of applicant's knowledge and belief under penalty of perjury.

(7) A signed statement that the applicant has not previously received a notice of eligibility from the department of revenue under RCW 82.16.120 entitling the applicant to receive annual incentive payments for electricity generated by the renewable energy system.

(8) A signed statement authorizing the energy program and the serving utility to share information related to issuing annual incentive payments, including application details and energy generation.

(9) Payment of the one hundred twenty-five dollar application fee.

(10) Provisional certification. The energy program may grant provisional certification prior to proof of final electrical inspection. Provisional certification expires one hundred eighty days after issuance, unless the applicant submits proof of the final electrical inspection from the applicable local jurisdiction, or the energy program extends the certification for a term or terms of thirty days due to extenuating circumstances.

NEW SECTION

WAC 504-49-225 Requirements to apply for certification—Shared commercial and community solar projects. The application must contain, but is not limited to, the information detailed below. Additional requirements are specified in WAC 504-49-210.

(1) The name and address of the project administrator and location of the renewable energy system.

(2) System information, including system component details and operation data such as global positioning system coordinates, tilt, estimated shading, and azimuth, as applicable.

(3) An executed interconnection agreement with the serving utility.

(4) The date and supporting documentation verifying that the local jurisdiction issued its final electrical inspection of the renewable energy system.

(5) Documentation, including final sales invoice, and details of total system price as defined in WAC 504-49-195.

(6) A signed statement that the administrator understands that this information is true, complete, and correct to the best of administrator's knowledge and belief under penalty of perjury.

(7) A signed statement that the administrator has not previously received a notice of eligibility from the department of revenue under RCW 82.16.120 entitling the community solar project participants to receive annual incentive payments for electricity generated by the solar energy system.

(8) A signed statement authorizing the energy program and the serving utility to share information related to issuing annual incentive payments, including application details and energy generation.

(9) Payment of the one hundred twenty-five dollar application fee.

(10) Additional information required for certification of shared commercial solar and community solar projects includes, but is not limited to:

(a) Shared commercial solar projects:

(i) Project design details;

(ii) Levelized cost of energy output of the system over its production life, and the calculations used to determine such cost;

(iii) A list of participants, including:

(A) Name;

(B) Address;

(C) Retail rate; and

(D) Utility account number;

(iv) Interconnection information; and

(v) Details regarding the majority of the installation work. If the majority of the installation of a shared commercial solar project is awarded to out-of-state contractors, the administrator must submit to the energy program:

(A) The reasons for using out-of-state contractors;

(B) The percentage of installation work performed by out-of-state contractors; and

(C) A cost comparison of the installation services performed by out-of-state contractors compared to the same services performed by Washington-based contractors.

(b) Community solar projects:

(i) System ownership information and business address;

(ii) Project design details;

(iii) Proof of registration with the utilities and transportation commission, as defined in commission rules;

(iv) A list of participants, including:

(A) Name;

(B) Address; and

- (C) Utility account number.
- (v) Subscription information, including:
 - (A) Rates;
 - (B) Fees;
 - (C) Terms and conditions.
- (vi) Executed interconnection agreement if the project size is greater than five hundred kilowatts direct current; and
- (vii) Updated information regarding deployment of projects in low- and moderate-income communities, as those terms are defined in RCW 43.63A.510, as requested.

NEW SECTION

WAC 504-49-230 Response from the energy program. Within thirty days of receipt of the application for pre-certification or certification, the energy program must notify the customer-owner or administrator, electronically or by mail, whether the renewable energy system qualifies for incentive payments. This notice must state the rate to be paid per kilowatt-hour of electricity generated by the renewable energy system, as provided in section 6(12), chapter 36, Laws of 2017, 3rd sp. sess. (ESSB 5939), subject to any applicable caps and limits on total annual payment as defined in this chapter.

NEW SECTION

WAC 504-49-235 Public disclosure. System certifications and the information contained therein are subject to public disclosure. In addition, all energy generation and incentive payment information associated with the certified system (as collected by the energy program) is subject to public disclosure.

NEW SECTION

WAC 504-49-240 Denial or revocation of system certification. The energy program may deny or revoke the approval of a system's certification and an appeal of this final determination may be initiated. The appeal provisions under Part VII of this chapter apply here.

NEW SECTION

WAC 504-49-245 Utility liability. A utility is not liable for incentive payments to a customer-owner if the utility has disconnected the customer due to a violation of a customer service agreement, such as nonpayment of the customer's bill or a violation of an interconnection agreement.

NEW SECTION

WAC 504-49-250 Modification to system. Modification details must be provided to the energy program. Examples are provided in WAC 504-49-305.

PART III

CALCULATION OF INCENTIVES

NEW SECTION

WAC 504-49-300 Incentive payment rate. The incentive payment rate is the sum of the base rate and the made-in-Washington bonus, if applicable. To determine the incentive payment, the incentive payment rate is then multiplied by the system's gross kilowatt-hours generated during the fiscal year to determine the incentive payment.

(1) Determining the base rate. The first step in computing the incentive payment is to determine the correct base rate to apply. This rate depends on the fiscal year in which the system was certified and the type of renewable energy project under consideration, as defined in the table in subsection (2) of this section.

(2) Made-in-Washington bonus. The bonus rate is determined by whether all applicable system components (solar modules, wind turbines or towers) are manufactured in Washington state. See additional manufacturing details in Part V of this chapter. Bonus rates vary depending on the fiscal year in which the system is certified, as provided in the table below.

Fiscal year of system certification	Base rate: Residential-scale	Base rate: Commercial-scale	Base rate: Community solar	Base rate: Shared commercial solar	Made-in-Washington bonus
2018	\$0.16	\$0.06	\$0.16	\$0.06	\$0.05
2019	\$0.14	\$0.04	\$0.14	\$0.04	\$0.04
2020	\$0.12	\$0.02	\$0.12	\$0.02	\$0.03
2021	\$0.10	\$0.02	\$0.10	\$0.02	\$0.02

(3) Examples: A renewable energy system certified in fiscal year 2019 and generate:

(a) Residential-scale system: Two thousand five hundred kilowatt-hours; commercial-scale system: Fourteen thousand kilowatt-hours.

(i) If a residential-scale or commercial-scale renewable energy system has only solar modules manufactured out-of-state, the computation is as follows:

- (A) Residential-scale: $0.14 \times 2,500 = \$350.00$;
- (B) Commercial-scale: $0.04 \times 14,000 = \$560.00$.

(ii) If a residential-scale or commercial-scale renewable energy system has all solar modules manufactured in Washington state, the computation is as follows:

- (A) Residential-scale: $(0.14 + 0.04) \times 2,500 = \450.00 ;
- (B) Commercial-scale: $(0.04 + 0.04) \times 14,000 = \$1,120.00$.

(iii) If a residential-scale or commercial-scale renewable energy system has a solar module manufactured in Washington state combined with additional solar modules manufactured out-of-state, the computation would be as follows:

(A) Residential-scale: $0.14 \times 2,500 = \$350.00$;

(B) Commercial-scale: $0.04 \times 14,000 = \$560.00$.

(iv) If residential-scale or commercial-scale wind generator equipment has an out-of-state turbine combined with a tower manufactured in Washington state, the computation is as follows:

(A) Residential-scale: $(0.14 + 0.04) \times 2,500 = \450.00 ;

(B) Commercial-scale: $(0.04 + 0.04) \times 14,000 = \$1,120.00$.

(v) If residential-scale wind generator equipment has both an out-of-state turbine and tower, the computation is as follows:

(A) Residential-scale: $0.14 \times 2,500 = \$350.00$;

(B) Commercial-scale: $0.04 \times 14,000 = \$560.00$.

(b) Shared commercial solar project system: Four million kilowatt-hours.

(i) If a shared commercial system has out-of-state solar modules, the computation is as follows: $0.04 \times 4,000,000 = \$160,000.00$. The solar project administrator distributes the incentive payments consistent with share of participation. If a participant is involved at five percent of the project, their incentive payment is $\$160,000.00 \times 0.05 = \$8,000.00$ (contingent on the rates, fees, terms or conditions of the project).

(ii) If a shared commercial system has all solar modules manufactured in Washington state, the computation is as follows: $(0.04 + 0.04) \times 4,000,000 = \$320,000.00$. The solar project administrator distributes the incentive payments consistent with share of participation. If a participant is involved at five percent of the project, their incentive payment is $\$320,000.00 \times 0.05 = \$16,000.00$ (contingent on the rates, fees, terms or conditions of the project).

(c) Community solar project system: Fifty thousand kilowatt-hours.

(i) If a community solar energy system has all solar modules manufactured in Washington state combined with an out-of-state inverter, the computation is as follows: $(0.14 + 0.04) \times 50,000 = \$9,000.00$. The solar project administrator distributes the incentive payments consistent with share of participation. If a participant is involved at five percent of the project, their incentive payment is $\$9,000.00 \times 0.05 = \450.00 (contingent on the rates, fees, terms or conditions of the project).

(ii) If a community solar energy system has some solar modules manufactured in Washington state combined with additional solar modules manufactured out-of-state, the computation is as follows: $0.14 \times 50,000 = \$7,000.00$. The solar project administrator distributes the incentive payments consistent with share of participation. If a participant is involved at five percent of the project, their incentive payment is $\$7,000.00 \times 0.05 = \350.00 (contingent on the rates, fees, terms or conditions of the project).

NEW SECTION

WAC 504-49-305 Additions or changes to existing certified systems. (1) All additions or changes to existing certified systems may be subject to existing utility standards and policies.

(2) If a residential-scale or commercial-scale customer-owner makes investments that result in an expansion of

capacity, the applicant must provide this information to the energy program. The energy program may:

(a) Issue a new certification for an additional system installed with a previously certified system, as long as the new system meets the program requirements and its production can be measured separately from the previously certified system. These systems may be subject to additional annual reporting requirements including, but not limited to, production meter readings from each system.

(b) Issue a recertification if the additional capacity is not measured separately. Such recertification expires on the same day as the original certification for the residential-scale or commercial-scale system, and applies the incentive rates and program rules that are in effect as of the date of the recertification.

(3) The following examples illustrate how increases in system capacity may affect incentive payments:

(a) A five kilowatts direct current residential-scale system is certified in February 2019 and is eligible for the fourteen cents incentive rate. Two kilowatts direct current of capacity is added in February 2021 without a separate production meter and the system is recertified in the same fiscal year. The incentive rate of ten cents per kilowatt-hour applies to all future incentive payments of the entire seven kilowatts direct current system. Incentive payments end in 2027 or when cumulative incentive payments reach fifty percent of the total system price plus the expansion price, including applicable sales tax, whichever comes first;

(b) A five kilowatts direct current residential-scale system is certified in February 2019 and is eligible for the fourteen cents incentive rate. If two kilowatts direct current of capacity is added in February 2021 with its own production meter, the addition may be certified separately and the ten cent rate applies only to the production from this separate system and ends in 2029. The originally certified five kilowatts direct current system continues to be certified at the fourteen cents rate, with those payments ending in 2027. Cumulative incentive payments of fifty percent of the total system price, including applicable sales tax, apply separately to the five kilowatts direct current and two kilowatts direct current installations;

(c) An increase in nameplate capacity, production metered or not, results in the total capacity being greater than twelve kilowatts direct current. Recertification is required and the applicable commercial-scale incentive rate will apply.

NEW SECTION

WAC 504-49-310 Cumulative limit on incentive payments. Incentive payments continue for eight years or until cumulative incentive payments for electricity produced by the project reach fifty percent of the total system price, including applicable sales tax, whichever occurs first.

PART IV

MANUFACTURED IN WASHINGTON STATE

NEW SECTION

WAC 504-49-400 What constitutes manufactured in Washington? The energy program must, in consultation with the department of commerce, establish a list of equipment that is eligible for the bonus rates described in this chapter.

(1) In order for a solar module, or a wind turbine or tower, to qualify as manufactured in Washington state, the manufactured component must meet the following definitions:

(a) "Solar module" means the smallest nondivisible, self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output. The lamination of the modules must occur in Washington state;

(b) "Wind turbine" refers to a device that converts the wind's kinetic energy into electrical energy and "tower" refers to the supporting structure.

(2) Is combining products considered to be manufacturing? When determining whether a solar module, or a wind turbine or tower, are manufactured in Washington, the energy program considers various factors to determine if a manufacturer combining various items into a single package is engaged in a manufacturing activity. Any one of the following factors is not considered conclusive evidence of a manufacturing activity:

(a) The ingredients are purchased from various suppliers;

(b) The manufacturer combining the ingredients attaches his or her own label to the resulting product;

(c) The ingredients are purchased in bulk and broken down to smaller sizes;

(d) The combined product is marketed at a substantially different value from the selling price of the individual components; and

(e) The manufacturer combining the items does not sell the individual items except within the package.

NEW SECTION

WAC 504-49-405 What is the process for a manufacturer to get its product qualified as made in Washington? The manufacturer must request certification from the energy program that its product, such as a module, or wind turbine or tower, qualifies as made in Washington.

(1) Manufacturer's statement. The manufacturer must supply the energy program with a statement specifying what processes were carried out in Washington state to qualify the product.

(2) Penalty of perjury. The manufacturer's statement must be made under penalty of perjury.

(3) Field visit to view manufacturing process. The energy program performs a field visit to view the manufacturing process for the product, which may also include, but is not limited to:

(a) An inspection of the process by an engineer or other technical expert;

(b) Testing and evaluation of a product pulled off the production line;

(c) Review of purchase invoices to verify the vendor sources for the parts used in the manufacturing of the product;

(d) Inspection of the production line; and

(e) Requests for clarification concerning questions, if any, discovered during the inspection.

(4) Approval or disapproval of manufacturer's certification. Within thirty days of the field visit, the energy program issues a written decision to the manufacturer on its product's qualification as made in Washington state. The energy program makes the decision available to the public.

(5) Change in manufacturing process. The manufacturer must notify the energy program of any change in the manufacturing process for previously certified products within ten days of such a change.

(6) Inspection of previously certified product's manufacturing process. The energy program reserves the right to perform an inspection of the manufacturing processes for each product, such as a solar module, or a wind tower or turbine, that has been previously certified as manufactured in Washington state. The inspection is conducted to verify that the product continues to qualify as manufactured in Washington state.

(7) Denial or revocation of approval of certification. The energy program may revoke the approval of certification that a product, such as a module, or a wind turbine or tower, is made in Washington state when it finds that the product does not qualify for certification as manufactured in Washington state.

(8) The appeal provisions under Part VII of this chapter apply here.

(9) Document retention. The manufacturer must retain the documentation of the made in Washington certification process for five years after the application period for the related incentive program closes.

PART V

GENERAL TOPICS

NEW SECTION

WAC 504-49-500 Is there a time limit on when incentive payment may be made for a system's generated electricity? Yes. Incentive payments may only be made for kilowatt-hours generated on or after July 1, 2017, and for the following eight years, or until cumulative incentive payments for electricity generated by the project reach fifty percent of the total system price, including applicable sales tax, whichever occurs first.

(1) Authorization of incentive payments. No incentive payments may be authorized or accrued until the final electrical inspection and executed interconnection agreement are submitted to the energy program.

(2) Certification is valid for the incentive program term. This certification entitles the person, business, or household

to receive incentive payments for electricity generated from the date the renewable energy system commences operation, or the date the system is certified, whichever date is later.

(3) Changes to incentive rates. Incentive rates determined by certification date may not be retroactively changed except to correct errors that were made during the original application or certification process and that are discovered later.

(4) Incentive schedule. Incentives are issued based on the gross kilowatt-hours generated during the fiscal year beginning on July 1st and ending on June 30th. For the last year of incentive payments, the payment is the balance of the last year of generation less the first year of generation. A negative balance for the last year results in nonpayment.

(5) Certification date. Certification date is determined by the date when the energy program completes its review of a submitted application. However, due to the timing of this program, the following administrative processes apply:

(a) For applications submitted from July 1, 2017, to December 31, 2017:

(i) For purposes of systems that commenced operation on or after July 1, 2017: The certification date is assigned based on the date that the local jurisdiction issued its final approval of the electrical inspection of the renewable energy system.

(ii) For purposes of systems that commenced operation before July 1, 2017: The certification date is assigned as July 1, 2017.

(b) For applications submitted on or after January 1, 2018: The certification date is assigned on the date when the energy program completes its review of a submitted application. The energy program encourages customer-owners to submit all applications on the date the local jurisdiction issues its final approval of the electrical inspection of the renewable energy system. In instances where the certification date might follow the final electrical inspection by more than thirty days, the customer-owner or the serving utility must provide additional information to ascertain the correct initial electrical generation amount to use in calculating the first year of incentive payments.

NEW SECTION

WAC 504-49-505 Must the customer-owner or administrator keep records regarding incentive payments? (1) Customer-owners or administrators receiving incentive payments must keep and preserve, for a period of five years after the receipt of the last incentive payment from the utility, suitable records as may be necessary to determine the amount of incentive received.

(2) Examination of records. Such records must be open for examination at any time upon notice by the energy program.

NEW SECTION

WAC 504-49-510 How to determine if community solar or shared commercial solar projects located on the same property are one combined system or separate systems for determining the applicable limit? In determining if a community solar or shared commercial solar project is

within the applicable limit when more than one community solar or shared commercial solar project is located on one property, the energy program treats each project's system as separate from the other projects if there are separate production meters and separate certification applications have been submitted to the energy program.

NEW SECTION

WAC 504-49-515 Are the renewable energy system's environmental attributes transferred when ownership of the renewable energy system changes? The nonpower attributes of the renewable energy system belong to the utility customer who owns or hosts the system or, in the case of a community solar project or a shared commercial solar project, the participant. The attributes may be kept, sold, or transferred at the utility customer's discretion unless, in the case of a utility-owned community solar or shared commercial solar project, a contract between the customer and the utility clearly specifies that the utility retains the attributes.

NEW SECTION

WAC 504-49-520 What do I have to do if I purchase property that has an existing renewable energy system? If a person, business, or household purchases a property that has a renewable energy system certified in the renewable energy system incentive program, the new customer-owner must (at a minimum) notify the energy program of the transfer of ownership and provide an executed interconnection agreement with the utility serving the premises.

NEW SECTION

WAC 504-49-525 What if I sell my share in a community solar or shared commercial solar project? The administrator of a community solar project or shared commercial solar project must provide notice to the energy program of any changes or transfers in project participation.

PART VI

APPLICATION PROCESS FOR CURRENTLY CERTIFIED RENEWABLE ENERGY SYSTEMS IN THE COST RECOVERY INCENTIVE PROGRAM

NEW SECTION

WAC 504-49-600 Requirements to reapply for certification. The reapplication for continued incentive payments through June 30, 2020, must be submitted to the energy program by April 30, 2018. This reapplication must contain, but is not limited to, the following information as specified in the applicant and eligibility requirements in WAC 458-20-273:

- (1) The name and address of the applicant and location of the renewable energy system;
- (2) The applicant's tax registration number;
- (3) The utility name and utility account number;
- (4) System information, including system component details and operation data such as global positioning system

coordinates, tilt, estimated shading, and azimuth, as applicable;

(5) A signed statement that the applicant understands that this information is true, complete, and correct to the best of their knowledge and belief under penalty of perjury; and

(6) A signed statement authorizing the energy program and the serving utility to share information related to issuing annual incentive payments, including application details and energy generation.

NEW SECTION

WAC 504-49-605 May a renewable energy system that has already been certified by the department of revenue be certified in the new program for incentive payments beyond June 30, 2020? No. If the applicant's renewable energy system has already been certified by the department of revenue for cost recovery incentives, that system is ineligible for the new incentive program.

NEW SECTION

WAC 504-49-610 May I increase the capacity of a department of revenue-certified system? The person, business, or household may not increase the capacity of a department of revenue-certified system to receive additional cost recovery program incentive payments.

NEW SECTION

WAC 504-49-615 Is there a fee to reapply? No. There is no fee for reapplication for a department of revenue-certified renewable energy system.

PART VII

APPEALS RIGHTS

NEW SECTION

WAC 504-49-700 What are the appeal rights under the renewable energy system incentive payment program? (1) The energy program may take four different types of actions that may result in a right to an appeal:

- (a) Denying a system's precertification or certification;
- (b) Revoking a system's precertification or certification;
- (c) Denying a manufacturer's statement of a product as qualifying as made in Washington state; and
- (d) Revoking a previously approved certification of a product qualifying as made in Washington.

(2) The same appeal procedures apply to all four types of action. All appeals involving the renewable energy system incentive program in this chapter are conducted as formal adjudicative proceedings under RCW 34.05.413 through 34.05.476 and chapter 10-08 WAC.

(3) The notice issued by the energy program provides an explanation of the reasons for the denial or revocation, and advises the recipient about how to appeal the decision if the recipient disagrees.

(4) The energy program's action is final unless the recipient files an appeal petition with the energy program within

thirty days of service (receipt) of the notice of the energy program's action. RCW 34.05.010(19) defines "service" and includes service by postal mail, electronic mail, and personal service.

NEW SECTION

WAC 504-49-705 Presiding officer—Final order—Review. For both a denial of an application for certification and a notice of intent to revoke a previously approved certification, the presiding officer of a formal adjudicative proceeding is the Washington state office of administrative hearings. The presiding officer makes the final decision and enters a final order as provided in RCW 34.05.461 (1)(b).

NEW SECTION

WAC 504-49-710 Petitions for reconsideration. RCW 34.05.470 governs petitions for reconsideration. Petitions for reconsideration must be addressed to or delivered to the presiding officer at the address provided in the final order. The petition for reconsideration must be filed and served as required by WAC 10-08-110.

NEW SECTION

WAC 504-49-715 Judicial review. Judicial review of the final order of the presiding officer is governed by RCW 34.05.510 through 34.05.598.

WSR 18-14-027

EMERGENCY RULES

HEALTH CARE AUTHORITY

[Filed June 26, 2018, 11:07 a.m., effective July 1, 2018]

Effective Date of Rule: July 1, 2018.

Purpose: This rule making implements 2ESHB 1388 which changed the designation of the state behavioral health authority from the department of social and health services to the health care authority, effective July 1, 2018. The health care authority is the single state medicaid agency responsible for state health care purchasing. These emergency rules are substantially the same as the rules in chapter 388-865 WAC and a few sections regarding the grievance processes in chapter 388-877 WAC that are being repealed by the department of social and health services.

Citation of Rules Affected by this Order: New 182-100-0100, 182-538D-0200, 182-538D-0232, 182-538D-0234, 182-538D-0236, 182-538D-0242, 182-538D-0246, 182-538D-0248, 182-538D-0252, 182-538D-0254, 182-538D-0256, 182-538D-0258, 182-538D-0262, 182-538D-0264, 182-538D-0266, 182-538D-0268, 182-538D-0272, 182-538D-0370, 182-538D-0375, 182-538D-0380, 182-538D-0385, 182-538D-0526, 182-538D-0600, 182-538D-0620, 182-538D-0630, 182-538D-0640, 182-538D-0654, 182-538D-0655, 182-538D-0660, 182-538D-0665, 182-538D-0670, 182-538D-0675, and 182-538D-0680.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 2ESHB 1388.

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: 2ESHB 1388 directs the transfer of the behavioral health authority to the health care authority, effective July 1, 2018.

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 33, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 33, Amended 0, Repealed 0.

Date Adopted: June 26, 2018.

Wendy Barcus
Rules Coordinator

Chapter 182-100 WAC PROBLEM GAMBLING

NEW SECTION

WAC 182-100-0100 Problem and pathological gambling treatment services. (1) Under RCW 43.20A.890, the Washington state health care authority (HCA) administers a program for:

(a) The prevention and treatment of problem and pathological gambling; and

(b) The training of professionals in the identification and treatment of problem and pathological gambling, to be administered by a qualified person who has training and experience in problem gambling or the organization and administration of treatment services for persons suffering from problem gambling.

(2) HCA tracks program participation and participant outcomes.

(3) To receive treatment under this program, a person must:

(a) Need treatment for problem or pathological gambling, or because of the problem or pathological gambling of a family member, but is unable to afford treatment; and

(b) Be identified by HCA as being most amenable to treatment.

(4) Treatment under this section is available only to the extent of the funds appropriated or otherwise made available to HCA for this purpose.

(5) Problem and pathological gambling treatment services include diagnostic screening and assessment, and individual, group, couples, and family counseling and case management.

(6) A person must have an assessment before receiving problem and pathological gambling services. The purpose of the assessment is to determine if a gambling disorder exists and if there are services available to address the person's needs. The assessment must follow the requirements in WAC 246-341-0610.

(7) An agency providing problem and pathological gambling services must meet the behavioral health agency licensure, certification, administration, personnel, clinical, and outpatient requirements in WAC 246-341-0754 and 246-341-0300 through 246-341-0650.

(8) Definitions for the purposes of this section only.

(a) **"Pathological gambling"** means a mental disorder characterized by loss of control over gambling, progression in preoccupation with gambling and in obtaining money to gamble, and continuation of gambling despite adverse consequences;

(b) **"Problem gambling"** means an earlier stage of pathological gambling which compromises, disrupts, or damages family or personal relationships, or vocational pursuits.

Chapter 182-538D WAC

BEHAVIORAL HEALTH SERVICES

NEW SECTION

WAC 182-538D-0200 Behavioral health services—Definitions. The following definitions and those found in chapter 182-500 WAC apply to this chapter. If conflict exists, this chapter takes precedence.

"Adult" means a person age eighteen or older. For purposes of the medicaid program, adult means a person age twenty-one or older.

"Assessment" means the process of obtaining all pertinent bio-psychosocial information, as identified by the person, and family and collateral sources, for determining a diagnosis and to plan individualized services and supports.

"Behavioral health" means the prevention, treatment of, and recovery from substance use disorders, mental health disorders or problem and pathological gambling disorders.

"Behavioral health organization" or **"BHO"** means any county authority or group of county authorities or other entity recognized by the director in contract in a defined region.

"Behavioral health organization (BHO) managed care organization (MCO)" is the entity that operates the prepaid inpatient health plan (PIHP) for medicaid behavioral health services.

"Chemical dependency professional" or **"CDP"** means a person credentialed by the department of health as a chemical dependency professional (CDP) with primary responsibility for implementing an individualized service plan for substance use disorder services.

"Child" means a person under the age of eighteen. For the purposes of the medicaid program, child means a person who is under the age of twenty-one.

"Clinical record" means a paper or electronic file that is maintained by the behavioral health organization and contains pertinent psychological, medical, and clinical information for each person served.

"Community support services" means services authorized, planned, and coordinated through resource management services including, at a minimum, assessment, diagnosis, emergency crisis intervention available twenty-four hours, seven days a week; prescreening determinations for people who are mentally ill being considered for placement in nursing homes as required by federal law; screening for patients being considered for admission to residential services; diagnosis and treatment for children who are mentally or severely emotionally disturbed discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment (EPSDT) program; investigation, legal, and other nonresidential services under chapter 71.05 RCW; case management services; psychiatric treatment including medication supervision; counseling; psychotherapy; assuring transfer of relevant patient information between service providers; recovery services; and other services determined by behavioral health organizations.

"Complaint" means the expression of a dissatisfaction with a service or program which may be investigated by the health care authority.

"Consent" means agreement given by a person after the person is provided with a description of the nature, character, anticipated results of proposed treatments and the recognized serious possible risks, complications, and anticipated benefits, including alternatives and nontreatment. Informed consent must be provided in a terminology that the person can reasonably be expected to understand.

"Consultation" means the clinical review and development of recommendations regarding activities, or decisions of, clinical staff, contracted employees, volunteers, or students by people with appropriate knowledge and experience to make recommendations.

"County authority" means the board of county commissioners, county council, or county executive having authority to establish a community mental health program, or two or more of the county authorities specified in this subsection which have entered into an agreement to provide a community mental health program.

"Crisis" means an actual or perceived urgent or emergent situation that occurs when a person's stability or functioning is disrupted and there is an immediate need to resolve the situation to prevent a serious deterioration in the individual's mental or physical health, or to prevent the need for referral to a significantly higher level of care.

"Cultural competence" or **"culturally competent"** means the ability to recognize and respond to health-related beliefs and cultural values, disease incidence and prevalence, and treatment efficacy. Examples of culturally competent care include striving to overcome cultural, language, and communications barriers, providing an environment in which people from diverse cultural backgrounds feel comfortable discussing their cultural health beliefs and practices in the

context of negotiating treatment options, encouraging people to express their spiritual beliefs and cultural practices, and being familiar with and respectful of various traditional healing systems and beliefs and, where appropriate, integrating these approaches into treatment plans.

"Designated crisis responder (DCR)" means a mental health professional appointed by a behavioral health organization (BHO) to perform the duties described in RCW 70.96A.140.

"Disability" means a physical or mental impairment that substantially limits one or more major life activities of a person and the person:

- (a) Has a record of such an impairment; or
- (b) Is regarded as having such impairment.

"Ethnic minority" or **"racial/ethnic groups"** means, for the purposes of this chapter, any of the following general population groups:

- (a) African American;
- (b) An American Indian or Alaskan native, which includes:
 - (i) A person who is a member or considered to be a member in a federally recognized tribe;
 - (ii) A person determined eligible to be found Indian by the secretary of interior;
 - (iii) An Eskimo, Aleut, or other Alaskan native; and
 - (iv) An unenrolled Indian meaning a person considered Indian by a federally or nonfederally recognized Indian tribe or off-reservation Indian/Alaskan native community organization.
- (c) Asian/Pacific Islander; or
- (d) Hispanic.

"Governing body" means the entity with legal authority and responsibility for the operation of the behavioral health agency, to include its officers, board of directors or the trustees of a corporation or limited liability company.

"Housing services" means the active search and promotion of individual access to, and choice in, safe and affordable housing that is appropriate to the person's age, culture, and needs.

"Less restrictive alternative (LRA)" means court ordered outpatient treatment in a setting less restrictive than total confinement.

"Licensed" means the status given to behavioral health agencies by the department of health under its authority to license and certify mental health programs chapters 71.05, 71.34, and 71.24 RCW and its authority to certify substance use disorder treatment programs chapter 70.96A RCW.

"Mental health professional" means a person who meets the following:

- (a) A psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner (ARNP), psychiatric nurse, or social worker as defined in chapters 71.05 and 71.34 RCW;
- (b) A person who is licensed by the department of health as a mental health counselor, mental health counselor associate, marriage and family therapist, or marriage and family therapist associate;
- (c) A person with a master's degree or further advanced degree in counseling or one of the social sciences from an

accredited college or university who has at least two years of experience in direct treatment of people with mental illness or emotional disturbance, experience that was gained under the supervision of a mental health professional recognized by the department of health or attested to by the licensed behavioral health agency;

(d) A person who meets the waiver criteria of RCW 71.24.260, and the waiver was granted prior to 1986; or

(e) A person who had an approved waiver to perform the duties of a mental health professional (MHP) that was requested by a behavioral health organization (BHO) and granted by the department of social and health services mental health division prior to July 1, 2001.

"Mental health specialist" means:

(a) A **"child mental health specialist"** is defined as a mental health professional with the following education and experience:

(i) A minimum of one hundred actual hours (not quarter or semester hours) of special training in child development and the treatment of children and youth with serious emotional disturbance and their families; and

(ii) The equivalent of one year of full-time experience in the treatment of seriously emotionally disturbed children and youth and their families under the supervision of a child mental health specialist.

(b) A **"geriatric mental health specialist"** is defined as a mental health professional who has the following education and experience:

(i) A minimum of one hundred actual hours (not quarter or semester hours) of specialized training devoted to the mental health problems and treatment of people age sixty and older; and

(ii) The equivalent of one year of full-time experience in the treatment of people age sixty and older, under the supervision of a geriatric mental health specialist.

(c) An **"ethnic minority mental health specialist"** is defined as a mental health professional who has demonstrated cultural competence attained through major commitment, ongoing training, experience and/or specialization in serving ethnic minorities, including evidence of one year of service specializing in serving the ethnic minority group under the supervision of an ethnic minority mental health specialist; and

(i) Evidence of support from the ethnic minority community attesting to the person's commitment to that community; or

(ii) A minimum of one hundred actual hours (not quarter or semester hours) of specialized training devoted to ethnic minority issues and treatment of ethnic minority individuals.

(d) A **"disability mental health specialist"** is defined as a mental health professional with special expertise in working with an identified disability group. For purposes of this chapter only, "disabled" means a person with a disability other than a mental illness, including a developmental disability, serious physical handicap, or sensory impairment.

(i) If the consumer is deaf, the specialist must be a mental health professional with:

(A) Knowledge about the deaf culture and psychosocial problems faced by people who are deaf; and

(B) Ability to communicate fluently in the preferred language system of the consumer.

(ii) The specialist for people with developmental disabilities must be a mental health professional who:

(A) Has at least one year experience working with people with developmental disabilities; or

(B) Is a developmental disabilities professional as defined in RCW 71.05.020.

"Peer counselor" means a person recognized by DBHR as a person who:

(a) Is a self-identified consumer of mental health services;

(b) Is a counselor credentialed under chapter 18.19 RCW;

(c) Has completed specialized training provided by or contracted through DBHR. If the person was trained by trainers approved by the department of social and health services before October 1, 2004, and has met the requirements in (a), (b) and (d) of this subsection by January 31, 2005, the person is exempt from completing this specialized training;

(d) Has successfully passed an examination administered by DBHR or an authorized contractor; and

(e) Has received a written notification letter from DBHR stating that DBHR recognizes the person as a "peer counselor."

"Quality assurance and quality improvement" means a focus on compliance to minimum requirements in rules and contracts, and activities to perform above minimum standards and achieve reasonably expected levels of performance, quality, and practice.

"Quality strategy" means an overarching system and/or process whereby quality assurance and quality improvement activities are incorporated and infused into all aspects of a behavioral health organization's (BHO's) operations.

"Recovery" means a process of change through which people improve their health and wellness, lives a self-directed life, and strives to reach their full potential.

"Residential services" means a complete range of residences and supports authorized by resource management services and which may involve a facility, a distinct part thereof, or services which support community living, for people who are acutely mentally ill, adults who are chronically mentally ill, children who are severely emotionally disturbed, or adults who are seriously disturbed and determined by the behavioral health organization to be at risk of becoming acutely or chronically mentally ill.

"Resource management services" means the planning, coordination, and authorization of residential services and community support services for people who are:

(a) Adults and children who are acutely mentally ill;

(b) Adults who are chronically mentally ill;

(c) Children who are severely emotionally disturbed; or

(d) Adults who are seriously disturbed and determined solely by a behavioral health organization to be at risk of becoming acutely or chronically mentally ill.

"Service area" means the geographic area covered by each behavioral health organization (BHO) for which it is responsible.

"State minimum standards" means minimum requirements established by rules adopted by the secretary and necessary to implement this chapter for delivery of behavioral health services.

"Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that a person continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances.

"Supervision" means the regular monitoring of the administrative, clinical, or clerical work performance of a staff member, trainee, student, volunteer, or employee on contract by a person with the authority to give direction and require change.

"Youth" means a person who is age seventeen or younger.

BEHAVIORAL HEALTH ORGANIZATIONS

NEW SECTION

WAC 182-538D-0232 Behavioral health organizations—General. (1) A behavioral health organization (BHO) contracts with the division of behavioral health and recovery (DBHR) to administer behavioral health services within its service area.

(2) A BHO operates only in areas of the state that have not implemented the Washington apple health fully integrated managed care (FIMC) program. See chapter 182-538A WAC for rules that govern the FIMC program.

(3) BHOs, behavioral health agencies, and the BHO managed care organization (MCO) must:

(a) Comply with chapters 70.96A, 71.05, 71.24, 71.34, and 71.36 RCW, which contain laws regarding substance use disorders, mental illness, and community mental health services.

(b) Meet the requirements in this chapter and chapter 246-341 WAC regarding the licensure of behavioral health agencies and the certification of behavioral health services. An exemption of any section or subsection may be requested, subject to the criteria in WAC 182-538D-0236. DBHR does not exempt any requirement that is part of statute.

(4) A BHO is responsible to ensure behavioral health services are responsive in an age and culturally competent manner to the substance use disorder treatment and mental health needs of its community.

(5) DBHR administers behavioral health services regionally if the criteria in WAC 182-538D-0234 apply.

(6) The BHO MCO is the entity that operates the prepaid inpatient health plan (PIHP) medicaid behavioral health services.

(7) WAC 182-538D-0200 contains definitions for terms and phrases used in the BHO and the BHO MCO rules.

NEW SECTION

WAC 182-538D-0234 Behavioral health organizations—When the division of behavioral health and recovery administers regional behavioral health services. (1) If a currently operating behavioral health organization (BHO)

chooses to stop functioning as a BHO, fails to meet state minimum standards specified in rule, or does not meet the requirements under RCW 71.24.045, the following is implemented:

(a) Under RCW 71.24.035(16), the director of the health care authority:

(i) Is designated as the BHO until a new BHO is designated; and

(ii) Assumes the duties assigned to the region without a participating BHO.

(b) The division of behavioral health and recovery (DBHR):

(i) Administers behavioral health services within the region without a participating BHO; and

(ii) Continues to apply the BHO requirements in WAC 182-538D-0232 through 182-538D-0272 and the BHO managed care organization requirements in WAC 182-538D-0370 through 182-538D-0385.

(2) A person who resides within the service area of a region without a participating BHO:

(a) May receive services, within available resources as defined in RCW 71.24.025(2), from any provider of behavioral health services that is contracted with DBHR and licensed by the department of health; and

(b) Who is a Title XIX medicaid client entitled to receive medically necessary behavioral health services without charge to the client.

(3) This section does not apply to a region in which the health care authority operates the Washington apple health fully integrated managed care (FIMC) program which provides fully integrated physical and behavioral health services to medicaid clients through a health care authority-contracted managed care organization. See chapter 182-538A WAC for information on Washington apple health FIMC.

NEW SECTION

WAC 182-538D-0236 Behavioral health organizations—How to request an exemption of a minimum standard. (1) A behavioral health organization (BHO), a licensed behavioral health agency, and the behavioral health organization (BHO) managed care organization (MCO) subject to the BHO and BHO MCO rules may request an exemption of a minimum standard in WAC 182-538D-0232 through 182-538D-0272 and 182-538D-0370 through 182-538D-0385 by submitting a request in writing to the director of the division of behavioral health and recovery (DBHR).

(2) The exemption request must include:

(a) The name and address of the entity that is making the request;

(b) The specific section or subsection of the rule for which an exemption is being requested;

(c) The reason why the exemption is necessary, or the method the entity will use to meet the desired outcome of the section or subsection in a more effective and efficient manner;

(d) A description of the plan and timetable to achieve compliance with the minimum standard or to implement, test, and report results of an improved way to meet the intent of the section or subsection;

(e) Documentation that the quality review team or behavioral health ombuds office was consulted and any resulting recommendations are included in the request; and

(f) A description of how people affected by the exemption will be notified.

(3) DBHR's review of the request considers whether approving the exemption will impact accountability, accessibility, efficiency, individual satisfaction, and quality of care, or will violate state or federal law. The requestor receives a determination notice from DBHR within thirty days from the date the exemption request was received.

(a) If DBHR grants the exemption request, the notice includes:

(i) The section or subsection of rule exempted;

(ii) The conditions of acceptance;

(iii) The time frame for which the exemption is approved; and

(iv) Notification that the exemption may be renewed upon request of the party that initially asked for the exemption. In this case, the requestor must submit a renewal request to the director of DBHR before the time frame of the initial exemption expires, and meet the applicable requirements of subsection (1) of this section.

(b) If DBHR denies the exemption request, the notice includes the reason for the denial.

(4) DBHR cannot exempt any minimum standard that is required by:

(a) Statute; or

(b) Another state agency.

NEW SECTION

WAC 182-538D-0242 Behavioral health organizations—Payment for behavioral health services. Within available resources as defined in RCW 71.24.025(4), a behavioral health organization (BHO) must ensure a person's eligibility for and payment for behavioral health services meet the following:

(1) A person who is eligible for medicaid is entitled to receive covered medically necessary behavioral health services without charge to the person, consistent with the state's medicaid state plan or federal waiver authorities. A medicaid recipient is also entitled to receive behavioral health services from a behavioral health organization (BHO) managed care organization (MCO) without charge.

(2) A person who is not eligible for medicaid is entitled to receive behavioral health services consistent with priorities established by the health care authority. The person, the parent(s) of the person under age eighteen, the person's legal guardian, or the estate of the person:

(a) Is responsible for payment for services provided; and

(b) May apply to the following entities for payment assistance:

(i) The health care authority for medical assistance;

(ii) The behavioral health service provider for payment responsibility based on a sliding fee scale; or

(iii) The BHO MCO for authorization of payment for involuntary evaluation and treatment services.

NEW SECTION

WAC 182-538D-0246 Behavioral health organizations—Public awareness of behavioral health services. A behavioral health organization (BHO) or its designee must provide public information on the availability of mental health and substance use disorder services. The BHO must:

(1) Maintain information on available services, including crisis services and the recovery help line in telephone directories, public web sites, and other public places in easily accessible formats;

(2) Publish and disseminate brochures and other materials or methods for describing services and hours of operation that are appropriate for all people, including those who may be visually impaired, limited-English proficient, or unable to read; and

(3) Post and make information available to people regarding the behavioral health ombuds office consistent with WAC 182-538D-0262, and local advocacy organizations that may assist people in understanding their rights.

NEW SECTION

WAC 182-538D-0248 Behavioral health organizations—Governing body responsible for oversight. The behavioral health organization (BHO) must establish a governing body responsible for oversight of the BHO. The governing body must:

(1) Be free from conflict of interest and all appearance of conflict of interest between personal, professional and fiduciary interests of a governing body member and the best interests of the BHO and the people it serves.

(2) Have rules about:

(a) When a conflict of interest becomes evident;

(b) Not voting or joining a discussion when a conflict of interest is present; and

(c) When the governing body can assign the matter to others, such as staff members or advisory bodies.

NEW SECTION

WAC 182-538D-0252 Behavioral health organizations—Advisory board membership. (1) A behavioral health organization (BHO) must appoint advisory board members and maintain an advisory board in order to:

(a) Promote active engagement with people with behavioral health disorders, their families, and behavioral health agencies; and

(b) Solicit and use the advisory board members input to improve service delivery and outcome.

(2) The BHO must appoint advisory board members and maintain an advisory board that:

(a) Broadly represents the demographic character of the service area;

(b) Is composed of at least fifty-one percent representation of one or more of the following:

(i) People with lived experience;

(ii) Parents or legal guardians of people with lived experience; or

(iii) Self-identified as people in recovery from a behavioral health disorder.

- (c) Includes law enforcement representation; and
- (d) Includes tribal representation, upon request of a tribe.
- (3) When the BHO is not a function of county government, the advisory board must include no more than four county elected officials.
- (4) The advisory board:
 - (a) May have members who are employees of subcontracted agencies, as long as there are written rules that address potential conflicts of interest.
 - (b) Has the discretion to set rules in order to meet the requirements of this section.
 - (c) Membership is limited to three years per term for time served, per each advisory board member. Multiple terms may be served by a member if the advisory board rules allow it.
 - (5) The advisory board independently reviews and provides comments to either the BHO, the BHO governing board, or both, on plans, budgets, and policies developed by the BHO to implement the requirements of this section, chapters 71.05, 71.24, 71.34 RCW, and applicable federal laws.

NEW SECTION

WAC 182-538D-0254 Behavioral health organizations—Voluntary inpatient services and involuntary evaluation and treatment services. A behavioral health organization (BHO) must develop and implement age and culturally competent behavioral health services that are consistent with chapters 70.96A, 71.24, 71.05, and 71.34 RCW.

(1) For voluntary inpatient services, the BHO must develop and implement formal agreements with inpatient services funded by the BHO regarding:

- (a) Referrals;
- (b) Admissions; and
- (c) Discharges.

(2) For involuntary evaluation and treatment services, the BHO:

(a) Must ensure that people in their regional service area have access to involuntary inpatient care; and

(b) Is responsible for coordinating discharge planning with the treating inpatient facility.

(3) The BHO must:

(a) Ensure periodic reviews of the evaluation and treatment service facilities consistent with BHO procedures and notify the appropriate authorities if it believes that a facility is not in compliance with applicable rules and laws.

(b) Authorize admissions into inpatient evaluation and treatment services for people from:

- (i) State psychiatric hospitals:
 - (A) Western state hospital;
 - (B) Eastern state hospital; and
 - (C) The child study and treatment center.
- (ii) Community hospitals.
- (iii) Certified inpatient evaluation and treatment facilities licensed by the department of health as adult residential treatment facilities.

(iv) The children's long-term inpatient program (CLIP).

(c) Receive prior approval from the division of behavioral health and recovery (DBHR) in the form of a single bed certification for services to be provided to people on a ninety-

or one hundred eighty-day community inpatient involuntary commitment order consistent with the exception criteria in WAC 246-341-1136.

NEW SECTION

WAC 182-538D-0256 Behavioral health organizations—Community support, residential, housing, and employment services. (1) **Community support services.** (1) **Community support services** as defined in WAC 182-538D-0200. A behavioral health organization (BHO) must:

(a) Develop and coordinate age and culturally appropriate community support services that are consistent with chapters 71.05, 71.24, and 71.34 RCW to ensure that the mental health and substance use disorder services listed in chapter 246-341 WAC can be accessed by all eligible people in the BHO's service area and are provided to eligible people directly, or by contract.

(b) Ensure prescreening determinations are conducted for providing community support services for people with mental illness who are being considered for placement in nursing facilities as required by RCW 71.24.025(8).

(2) **Residential services** as defined in WAC 182-538D-0200. A BHO must:

(a) Ensure active search and promotion of access to, and choice in, safe and affordable independent housing that is appropriate to the person's age, culture, and residential needs. This includes:

(i) Providing services to families of people who are homeless or at imminent risk of becoming homeless as defined in Public Law 100-77, through outreach, engagement and coordination of linkage of services with shelter and housing; and

(ii) Assuring the availability of community support services, with an emphasis on supporting people in their own home or where they live in the community, with residences and residential supports prescribed in the individual service plan, including a full range of residential services as defined in RCW 71.24.025(23).

(b) Ensure that people in licensed residential facilities receive behavioral health services consistent with their individual service plan and are advised of their rights, including long-term care rights under chapter 70.129 RCW.

(3) **Housing services** as defined in WAC 182-538D-0200. A BHO must ensure active search and promotion of access to, and choice in, safe and affordable housing that is appropriate to the person's age, culture, and needs. This includes:

(a) Providing services to families of people who are homeless or at imminent risk of becoming homeless as defined in Public Law 100-77, through outreach, engagement and coordination of linkage of services with shelter and housing;

(b) Assuring the availability of community support services, with an emphasis on supporting people in their own home or where they live in the community, with residences and residential supports prescribed in the individual service plan; and

(c) Coordinating with public housing entities, homeless continuums of care, and affordable housing developers.

(4) **Employment services.** A BHO must coordinate with the health care authority or other local entities that support employment services to assure that people wanting to work are provided with recovery support-employment services under WAC 246-341-0720.

NEW SECTION

WAC 182-538D-0258 Behavioral health organizations—Administration of the Mental Health Involuntary Treatment Act and Substance Use Disorders Involuntary Treatment Act. A behavioral health organization (BHO) must establish policies and procedures for administration of the Mental Health Involuntary Treatment Act and Substance Use Disorders Involuntary Treatment Act, including investigation, detention, transportation, court-related, and other services required by chapters 70.96A, 71.05 and 71.34 RCW. This includes:

(1) Ensuring that designated crisis responders (DCRs) perform the duties of involuntary investigation and detention in accordance with the requirements of chapters 70.96A, 71.05 and 71.34 RCW.

(2) Documenting the person's compliance with the conditions of mental health less restrictive alternative court orders by:

(a) Ensuring periodic evaluation of each committed person for release from or continuation of an involuntary treatment order. Evaluations must be recorded in the clinical record, and must occur at least monthly for ninety-day commitments and one hundred eighty-day commitments.

(b) Notifying the DCR if noncompliance with the less restrictive alternative order impairs the person sufficiently to warrant detention or evaluation for detention and petitioning for revocation of the less restrictive alternative court order.

(3) Ensuring that the requirements of RCW 71.05.700 through 71.05.715 are met.

NEW SECTION

WAC 182-538D-0262 Behavioral health organizations—Behavioral health ombuds office. A behavioral health organization (BHO) must provide unencumbered access to and maintain the independence of the behavioral health ombuds service as set forth in the contract between the BHO and the division of behavioral health and recovery (DBHR). The BHO and DBHR must ensure the inclusion of representatives of client advocate organizations when revising the terms of the contract regarding the requirements of this section. Behavioral health ombuds members must be current consumers of the mental health or substance use disorder system, or past consumers or family members of past consumers. The BHO must maintain a behavioral health ombuds office that:

(1) Is responsive to the age and demographic character of the region and assists and advocates for people with resolving issues, grievances, and appeals at the lowest possible level;

(2) Is independent of BHO service providers;

(3) Supports people, family members, and other interested parties regarding issues, grievances, and appeals;

(4) Is accessible to people, including having a toll-free, independent phone line for access;

(5) Is able to access service sites and records relating to people with appropriate releases so that it can reach out to people and help to resolve issues, grievances, and appeals;

(6) Receives training and adheres to confidentiality consistent with this chapter and chapters 70.96A, 71.05, 71.24, and 70.02 RCW;

(7) Continues to be available to advocate and support people through the grievance, appeal and administrative hearing processes;

(8) Involves other people, at the person's request;

(9) Supports people in the pursuit of a formal resolution;

(10) If necessary, continues to assist the person through the administrative hearing process;

(11) Coordinates and collaborates with allied services to improve the effectiveness of advocacy and to reduce duplication when serving the same person;

(12) Provides information on grievances to DBHR and BHO quality strategy; and

(13) Provides reports and formalized recommendations at least biennially to DBHR and BHO advisory and governing boards, local consumer and family advocacy groups, the BHO quality review team, and the BHO provider network.

NEW SECTION

WAC 182-538D-0264 Behavioral health organizations—Quality strategy. A behavioral health organization (BHO) must implement a quality strategy for continuous quality improvement in the delivery of culturally competent mental health services. The BHO must submit a quality assurance and improvement plan to the division of behavioral health and recovery (DBHR). All changes to the quality assurance and improvement plan must be submitted to DBHR for approval prior to implementation. The plan must include all of the following:

(1) Roles, structures, functions and interrelationships of all the elements of the quality strategy including, but not limited to, the BHO governing board, clinical and management staff, advisory board, behavioral health ombuds service, and quality review teams.

(2) Procedures to ensure that quality assurance and improvement activities are effectively and efficiently carried out with clear management and clinical accountability, including methods to:

(a) Collect, analyze and display information regarding:

(i) The capacity to manage resources and services, including financial and cost information and compliance with statutes, regulations and contracts;

(ii) System performance indicators;

(iii) Quality and intensity of services;

(iv) Incorporation of feedback from people, allied service systems, community providers, the behavioral health ombuds office and quality review team;

(v) Clinical care and service usage including participant outcome measures; and

(vi) Recommendations and strategies for system and clinical care improvements, including information from exit interviews of people and providers;

(b) Monitor management information system data integrity;

(c) Monitor complaints, grievances and adverse incidents for people;

(d) Monitor contractors and to notify DBHR of observations and information indicating that providers may not be in compliance with licensing or certification requirements;

(e) Immediately investigate and report allegations of fraud and abuse of the contractor or subcontractor to DBHR;

(f) Monitor delegated administrative activities;

(g) Identify necessary improvements;

(h) Interpret and communicate practice guidelines to providers;

(i) Implement change;

(j) Evaluate and report results;

(k) Demonstrate incorporation of all corrective actions to improve the system;

(l) Consider system improvements based on recommendations from all on-site monitoring, evaluation, accreditation, and certification reviews; and

(m) Review, update, and make the plan available to community stakeholders.

(3) Targeted improvement activities, including:

(a) Performance measures that are objective, measurable, and based on either current knowledge or best practice, or both, including at least those defined by DBHR in the contract with the BHO;

(b) An analysis of consumer care covering a representative sample of at least ten percent of consumers or five hundred consumers, whichever is smaller;

(c) Efficient use of human resources; and

(d) Efficient business practices.

NEW SECTION

WAC 182-538D-0266 Behavioral health organizations—Quality review teams. A behavioral health organization (BHO) must establish and maintain unencumbered access to and maintain the independence of a quality review team as described in this section and in the contract between the BHO and the division of behavioral health and recovery (DBHR). The quality review team must include people who currently receive or have in the past received behavioral health services, and may also include the family members of such people. The BHO must assure that quality review teams:

(1) Fairly and independently review the performance of the BHO and service providers in order to evaluate systemic issues as measured by objective indicators of participant outcomes in rehabilitation and recovery, including all of the following:

(a) Quality of care;

(b) The degree to which services are focused on the person and are age and culturally appropriate;

(c) The availability of alternatives to hospitalization, cross-system coordination and range of treatment options; and

(d) The effectiveness of the BHO's coordination with allied systems including, but not limited to, schools, state and local hospitals, jails and shelters.

(2) Have the authority to enter and monitor any behavioral health agency contracted with a BHO.

(3) Meet with interested people and family members, allied service providers, including state or community psychiatric hospitals, BHO contracted service providers, and people that represent the age and ethnic diversity of the BHO's service area to:

(a) Determine if services are accessible and address the needs of people based on sampled people's perception of services using a standard interview protocol. The protocol will query the sampled people regarding ease of accessing services, the degree to which services address medically necessary needs, and the benefit of the service received; and

(b) Work with interested people and other people, if requested by the person, service providers, the BHO, and DBHR to resolve identified problems.

(4) Provide reports and formalized recommendations at least biennially to DBHR, the behavioral health advisory committee and the BHO advisory and governing boards and ensure that input from the quality review team is integrated into the overall BHO quality strategy, behavioral health ombuds office services, local consumer and family advocacy groups, and provider network.

(5) Receive training in and adhere to applicable confidentiality standards.

NEW SECTION

WAC 182-538D-0268 Behavioral health organizations—Standards for contractors and subcontractors. A behavioral health organization (BHO) must not contract or subcontract for clinical services to be provided using public funds unless the contractor or subcontractor is licensed by the department of health for those services, or is individually licensed by the department of health as defined in chapter 18.57, 18.71, 18.83, or 18.79 RCW. The BHO must:

(1) Require and maintain documentation that contractors and subcontractors are licensed, certified, or registered in accordance with state and federal laws;

(2) Follow applicable requirements of the BHO contract with the division of behavioral health and recovery (DBHR);

(3) Demonstrate that it monitors contractors and subcontractors and notifies DBHR of observations and information indicating that providers may not be in compliance with licensing or certification requirements; and

(4) Terminate its contract or subcontract with a provider if DBHR notifies the BHO of a provider's failure to attain or maintain licensure.

NEW SECTION

WAC 182-538D-0272 Behavioral health organizations—Operating as a behavioral health agency. A behavioral health organization (BHO) may operate as a behavioral health agency when the BHO:

(1) Meets the criteria in RCW 71.24.045(2) and chapters 70.96A and 71.24 RCW; and

(2) Maintains a current license as a behavioral health agency from the department of health.

MENTAL HEALTH PREPAID HEALTH PLANSNEW SECTION**WAC 182-538D-0370 Behavioral health organization managed care organization—Minimum standards.**

To be eligible to contract with the division of behavioral health and recovery (DBHR), the behavioral health organization (BHO) managed care organization (MCO) must comply with all applicable local, state, and federal rules and laws. The BHO MCO must:

(1) Provide documentation of a population base of sixty thousand medicaid eligible people covered within the service area or receive approval from DBHR based on submittal of an actuarially sound risk management profile;

(2) If the BHO is not a county-based organization, the BHO must maintain licensure by the Washington state office of the insurance commissioner as a health care service contractor under chapter 48.44 RCW;

(3) Provide medically necessary behavioral health services that are age and culturally appropriate for all medicaid clients in the service area within a capitated rate;

(4) Demonstrate working partnerships with tribal authorities for the delivery of services that blend with tribal values, beliefs and culture;

(5) Develop and maintain written subcontracts that clearly recognize that legal responsibility for administration of the service delivery system remains with the BHO MCO, as identified in the contract with DBHR;

(6) Retain responsibility to ensure that applicable standards of this chapter, other state rules, and federal laws are met even when it delegates duties to subcontractors; and

(7) Ensure the protection of individual and family rights as described in chapters 70.96A, 71.05 and 71.34 RCW.

NEW SECTION**WAC 182-538D-0375 Behavioral health organization managed care plan—Utilization management.**

Utilization management is the way the behavioral health organization (BHO) managed care organization (MCO) authorizes or denies substance use disorder treatment or mental health services, monitors services, and follows the level of care guidelines. To demonstrate the impact on access to care of adequate quality, a BHO must provide utilization management of the behavioral health rehabilitation services under 42 C.F.R. Sec. 440.130(d) that is independent of service providers. This process must:

(1) Provide effective and efficient management of resources;

(2) Assure capacity sufficient to deliver appropriate quality and intensity of services to people without a wait list consistent with the contract with the division of behavioral health and recovery (DBHR);

(3) Plan, coordinate, and authorize community support services;

(4) Ensure that services are provided according to the individual service plan;

(5) Ensure assessment and monitoring processes are in place by which service delivery capacity responds to changing needs of the community and the person;

(6) Develop, implement, and enforce written level of care guidelines for admissions, placements, transfers and discharges into and out of services including:

(a) A clear process for the BHO MCO's role in the decision-making process about admission and continuing stay at various levels is available in language that is clearly understood by all parties involved in a person's care, including laypersons;

(b) Criteria for admission into various levels of care, including community support, inpatient and residential services that are clear and concrete;

(c) Methods to ensure that services are individualized to meet the needs of all people served, including methods that address different ages, cultures, languages, civil commitment status, physical abilities, and unique service needs; and

(d) Assurance that the BHO MCO retains a sufficiently strong and regular oversight role to assure decisions are being made appropriately, to the extent authorization of care at any level of care or at continuing stay determinations is delegated.

(7) Collect data that measures the effectiveness of the criteria in ensuring that all eligible people get services that are appropriate to their needs; and

(8) Report to DBHR any knowledge it gains that the BHO MCO or behavioral health service provider is not in compliance with a state or federal rule or law.

NEW SECTION**WAC 182-538D-0380 Behavioral health organization managed care organization—Choice of primary provider.**

(1) The behavioral health organization (BHO) managed care organization (MCO) must:

(a) Ensure that each person receiving nonemergency behavioral health rehabilitation services has a primary provider who is responsible to carry out the individual service plan; and

(b) Allow people, parents of people age twelve and younger, and guardians of people of all ages to select a primary provider from the available primary provider staff within the BHO MCO.

(2) For a person with an assigned case manager, the case manager is the primary provider.

(3) If the person does not select a primary provider, the BHO MCO or its designee must assign a primary provider not later than fifteen working days after the person requests services.

(4) The BHO MCO or its designee must allow a person to change primary providers at any time for any reason. The person must notify the BHO MCO or its designee of the request for a change, and inform the MCO of the name of the new primary provider.

NEW SECTION

WAC 182-538D-0385 Behavioral health organization managed care organization—Behavioral health screening for children. The behavioral health organization

(BHO) managed care organization (MCO) is responsible for conducting behavioral health screening and treatment for children eligible under the federal Title XIX early and periodic screening, diagnosis, and treatment (EPSDT) program. This includes:

- (1) Providing resource management services for children eligible under the EPSDT program as specified in contract with the division of behavioral health and recovery; and
- (2) Developing and maintaining an oversight committee for the coordination of the EPSDT program that must include representation from parents of medicaid-eligible children.

INPATIENT AND EVALUATION TREATMENT FACILITIES

NEW SECTION

WAC 182-538D-0526 Single bed certification. At the discretion of the health care authority, an exception may be granted to allow timely and appropriate treatment in a facility that is not certified under chapter 246-341 WAC to a person on a seventy-two hour detention, a five-day detention pending a revocation proceeding, or a fourteen-day commitment. An exception may also be granted for a maximum of thirty days to allow a community facility to provide treatment to a person on a ninety- or one hundred eighty-day inpatient involuntary commitment order or to a person who has been revoked from a less restrictive alternative order or conditional release. For involuntarily detained or committed children, the exception may be granted to allow timely and appropriate treatment in a facility not certified under chapter 246-341 WAC until the child's discharge from that setting to the community, or until they transfer to a bed in a children's long-term inpatient program (CLIP).

(1) The behavioral health organization (BHO) or (BHO) managed care organization (MCO) or a designee must submit a written request for a single bed certification to the health care authority. In the case of a child, the facility must submit the written request to the health care authority. The request must be submitted and approved by the health care authority for a facility to accept a person for timely and appropriate treatment under this section. If the health care authority has assumed the duties assigned to a nonparticipating BHO, an entity designated by the health care authority will perform the functions described in this section.

(2) A single bed certification may be issued to the facility for timely and appropriate mental health treatment when the following requirements are met in each instance where such certification is sought for a person:

(a) The facility that is the site of the proposed single bed certification confirms that it is willing and able to provide directly, or by direct arrangement with other public or private agencies, timely and appropriate mental health treatment to the person for whom the single bed certification is sought; and

(b) The request for single bed certification describes why the person meets at least one of the following criteria:

(i) The person is expected to be ready for discharge from inpatient services within the next thirty days and being at a

community facility would facilitate continuity of care, consistent with the person's individual treatment needs;

(ii) The person can receive appropriate mental health treatment in a residential treatment facility, as defined in WAC 246-337-005, and the single bed certification will be only to that facility; or

(iii) The person can receive appropriate mental health treatment in a hospital with a psychiatric unit, or a hospital that is willing and able to provide timely and appropriate mental health treatment, or a psychiatric hospital, and the single bed certification will apply only to that facility.

(3) In order to provide timely and appropriate mental health treatment, the facility receiving the single bed certification, or the public or private agency the facility has a direct arrangement with to provide mental health treatment, must:

(a) Implement standards for administration that include written procedures to assure that a mental health professional, as defined in RCW 71.05.020 or WAC 182-538D-0200, and licensed physicians are available for consultation and communication with both the person and the direct patient care staff;

(b) Use a plan of care/treatment. The medical or clinical record must contain documentation that:

(i) An individualized mental health treatment plan was developed, when possible, collaboratively with the person. If the person is unwilling or unable to participate in development of the plan, documentation must be made in the record. Development of this plan may include participation of a multidisciplinary team, a mental health professional, as defined in RCW 71.05.020 or WAC 182-538D-0200, or collaboration with members of the person's support system as identified by the person.

(ii) A mental health professional, as defined in RCW 71.05.020 or WAC 182-538D-0200, has had contact with each involuntarily detained person at least daily for the purposes of:

(A) Observation and evaluation; and

(B) Assessing whether the person is appropriate for release from involuntary commitment to accept treatment on a voluntary basis.

(c) Have standards for administration and monitoring of medication, including psychiatric medications. A person has a right to make an informed decision regarding the use of antipsychotic medication consistent with RCW 71.05.215.

(4) If a person requires medical services that are not generally available at a facility certified under this chapter, or at a state psychiatric hospital, or a facility that meets the requirements of subsections (2) and (3) of this section, a single bed certification may be issued to that facility for the person as follows:

(a) The single bed certification request must adequately describe why the person requires medical services that are not available at a facility certified under this chapter, a state psychiatric hospital, or a facility that meets the requirements of subsections (2) and (3) of this section;

(b) The facility that is the site of the requested single bed certification must confirm that it is willing and able to provide the medical services; and

(c) The facility has documented that one of the following has been met:

(i) With the authorization of the hospital, and consistent with any applicable hospital policies and procedures, the BHO or BHO MCO assigns a mental health professional to provide the person appropriate mental health treatment at the facility, including observation and evaluation, during the period of time the person is provided medical services; or

(ii) The hospital provides medical services and a plan that addresses the person's mental health treatment needs until the person is medically stable and the BHO, BHO MCO, or a designee identifies an appropriate facility for the person that is one of the following:

(A) The hospital providing services;

(B) A facility that is certified as an evaluation and treatment (E&T) facility; or

(C) A facility that can meet the person's needs under the single bed certification criteria in this section.

(d) If a qualified medical professional determines that mental health treatment for the person is not clinically indicated, the requirements in (c) of this subsection do not apply. When the person is determined to be medically stable, the facility must ensure the requirements in (c) of this subsection are met.

(5) The health care authority makes the decision and gives written notification to the requesting entity in the form of a single bed certification. The single bed certification must not contradict a specific provision of federal or state law.

(6) A person who receives services under a single bed certification under this section must be transferred:

(a) To an evaluation and treatment facility if on a seventy-two hour detention, a five-day detention pending a revocation proceeding, or a fourteen-day commitment; or

(b) To a state hospital if on a ninety- or one hundred eighty-day inpatient commitment, or if the person's less restrictive alternative order or conditional release was revoked, as soon as the attending physician considers the person medically stable and a bed becomes available, unless the treating facility consents to continue treatment and continued treatment in the current setting is consistent with the best clinical interests of the person.

(7) The health care authority may make site visits at any time to verify that the terms of the single bed certification are being met. Failure to comply with any term of this exception may result in corrective action. If the health care authority determines that the violation places people in imminent jeopardy, immediate revocation of this exception can occur.

(8) The BHO or BHO MCO retains the responsibility for ensuring due process required by RCW 71.24.300 (6)(b).

(9) Neither a person nor a facility has fair hearing rights as defined under chapter 182-526 WAC regarding single bed certification decisions by the health care authority staff.

DEPARTMENT OF CORRECTIONS ACCESS TO CONFIDENTIAL MENTAL HEALTH INFORMATION

NEW SECTION

WAC 182-538D-0600 Purpose. In order to enhance and facilitate the department of corrections' ability to carry out its responsibility of planning and ensuring community protection, mental health records and information, as defined in this section, that are otherwise confidential shall be released by any mental health service provider to the department of corrections personnel for whom the information is necessary to carry out the responsibilities of their office as authorized in RCW 71.05.445. Department of corrections personnel must use records only for the stated purpose and must assure that records remain confidential and subject to the limitations on disclosure outlined in chapter 71.05 RCW, except as provided in RCW 72.09.585.

NEW SECTION

WAC 182-538D-0620 Scope. Many records and reports are updated on a regular or as needed basis. The scope of the records and reports to be released to the department of corrections are dependent upon the reason for the request.

(1) For the purpose of a presentence investigation release only the most recently completed or received records of those completed or received within the twenty-four-month period before the date of the request; or

(2) For all other purposes including risk assessments release all versions of records and reports that were completed or received within the ten year period prior to the date of the request that are still available.

NEW SECTION

WAC 182-538D-0630 Time frame. The mental health service provider will provide the requested relevant records, reports and information to the authorized department of corrections person in a timely manner, according to the purpose of the request:

(1) Presentence investigation - Within seven days of the receipt of the request. If some or all of the requested relevant records, reports and information are not available within that time period the mental health service provider shall notify the authorized department of corrections person prior to the end of the seven-day-period and provide the requested relevant records, reports or information within a mutually agreed to time period; or

(2) All other purposes - Within thirty days of the receipt of the request. If some or all of the requested relevant records, reports and information are not available within that time period the mental health service provider shall notify the authorized department of corrections person prior to the end of the thirty-day period and provide the requested relevant records, reports or information within a mutually agreed to time period; or

(3) Emergent situation requests - When an offender subject has failed to report for department of corrections supervi-

sion or in an emergent situation that poses a significant risk to the public, the mental health provider shall upon request, release information related to mental health services delivered to the offender and, if known, information regarding the whereabouts of the offender. Requests if oral must be subsequently confirmed in writing the next working day, which includes email or facsimile so long as the requesting person at the department of corrections is clearly defined. The request must specify the information being requested. Disclosure of the information requested does not require the consent of consumer.

Information that can be released is limited to:

- (a) A statement as to whether the offender is or is not being treated by the mental health services provider; and
- (b) Address or information about the location or whereabouts of the offender.

NEW SECTION

WAC 182-538D-0640 Written requests. The written request for relevant records, reports and information must include:

- (1) Verification that the person for whom records, reports and information are being requested is under the authority of the department of corrections, per chapter 9.94A RCW, and the expiration date of that authority;
- (2) Sufficient information to identify the person for whom records, reports and information are being requested including name and other identifying data;
- (3) Specification as to which records and reports are being requested and the purpose for the request;
- (4) Specification as to what relevant information is requested and the purpose for the request;
- (5) Identification of the department of corrections person to whom the records, reports and information shall be sent, including the person's name, title and address;
- (6) Name, title and signature of the requestor and date of the request.

BEHAVIORAL HEALTH SERVICES-ADMINISTRATIVE REQUIREMENTS

NEW SECTION

WAC 182-538D-0654 How people may express concern about their rights, services, or treatment. (1) People who apply for, are eligible for, or receive behavioral health services authorized by a behavioral health organization (BHO), may access the BHO's grievance and appeal system to express concern about their rights, services, or treatment.

- (2) The BHO's grievance and appeal system includes:
 - (a) A grievance process as described in WAC 182-538D-0660;
 - (b) An appeal process as described in WAC 182-538D-0670; and
 - (c) Access to administrative hearings as described in WAC 182-538D-0675.
- (3) People must exhaust the appeal process before they have access to an administrative hearing.
- (4) People may also use the free and confidential ombuds services under WAC 182-538D-0262 through the BHO that

contracts with the behavioral health agency in which they receive behavioral health services. Ombuds services are provided independent of BHOs and behavioral health agencies and are offered to people at any time to help them with resolving issues or problems at the lowest possible level during the grievance, appeal, or administrative hearing process.

(5) In handling grievances and appeals, each BHO and behavioral health agency must give people any reasonable assistance in completing forms and taking other procedural steps related to grievance or appeal. This includes, but is not limited to, auxiliary aids and services, upon request, such as providing interpreter services and toll-free numbers that have adequate TTY/TTD and interpreter capability.

NEW SECTION

WAC 182-538D-0655 Grievance and appeal system and administrative hearings—Definitions. The terms and definitions in this section apply to the behavioral health organization (BHO) grievance and appeal system and administrative hearing rules. Other definitions that apply to behavioral health services may be found at WAC 182-538D-0200.

(1) "Administrative hearing" means a proceeding before an administrative law judge to review an adverse benefit determination or a BHO decision to deny or limit authorization of a requested nonmedicaid service communicated on a notice of determination.

(2) "Adverse benefit determination" means, in the case of medicaid services administered by the BHO, any one or more of the following:

- (a) The denial or limited authorization of a requested service, including determinations based on the type or level of service, requirements for medical necessity, appropriateness, setting, or effectiveness of a covered benefit;
- (b) The reduction, suspension, or termination of a previously authorized service;
- (c) The denial, in whole or in part, of payment for a service;

(d) The failure to provide services in a timely manner, as defined by the state;

(e) The failure of a BHO to act within the grievance and appeal system time frames as provided in WAC 182-538D-0660 through 182-538D-0670 regarding the standard resolution of grievances and appeals;

(f) For a resident of a rural area with only one BHO, the denial of a person's request to exercise the right to obtain services outside the network; or

(g) The denial of a person's request to dispute a financial liability, including cost sharing, copayments, premiums, deductibles, coinsurance, and other enrollee financial liabilities.

(3) "Appeal" means a review by a behavioral health organization (BHO) of an adverse benefit determination, as defined in this section.

(4) "Grievance" means an expression of dissatisfaction about any matter other than an adverse benefit determination. Grievances may include, but are not limited to, a person's right to dispute an extension of time proposed by the BHO to make an authorization decision, the quality of care or services provided, aspects of interpersonal relationships such as rude-

ness of a behavioral health provider or employee, and failure to respect the person's rights regardless of whether a specific action is requested by the person.

(5) "Grievance and appeal system" means the processes a BHO implements to handle appeals of adverse benefit determinations and grievances as well as the processes to collect and track information about them. The BHO must establish the grievance and appeal system and meet the requirements of 42 C.F.R. Sec. 438, Subpart F (2017).

(6) "Person" means a person who applies for, is eligible for, or receives BHO-authorized behavioral health services from an agency licensed by the department of health as a behavioral health agency. For the purposes of accessing the grievance and appeal system and the administrative hearing process, when another person is acting on a person's behalf, the definition of a person also includes any of the following:

- (a) In the case of a minor, the person's parent or, if applicable, the person's custodial parent;
- (b) The person's legal guardian;
- (c) The person's representative if the person gives written consent;
- (d) The person's behavioral health provider if the person gives written consent, except that the behavioral health provider cannot request continuation of benefits on the person's behalf.

(7) "Notice of adverse benefit determination" is a written notice a BHO provides to a person to communicate an adverse benefit determination.

(8) "Notice of determination" means a written notice that must be provided to a person to communicate denial or limited authorization of a nonmedicaid service offered by the BHO. A notice of determination must contain the following:

- (a) The reason for denial or offering of alternative services;
- (b) A description of alternative services, if available; and
- (c) The right to request an administrative hearing, how to request a hearing, and the time frames for requesting a hearing as identified in WAC 182-538D-0675.

NEW SECTION

WAC 182-538D-0660 Filing a grievance. (1) A person or person's representative may file a grievance to express dissatisfaction in person, orally, or in writing about any matter other than an adverse benefit determination, as defined in WAC 182-538D-0655, to:

- (a) The behavioral health agency providing the behavioral health services; or
- (b) The behavioral health organization (BHO), if the agency is contracted with the BHO.

(2) If a person receives behavioral health services through a behavioral health agency that is not contracted with a BHO, the agency, through its internal process, is responsible to handle the person's grievances.

(3) There is no time limit to file a grievance.

(4) The ombuds may assist the person in resolving the grievance at the lowest possible level.

(5) **Filing a grievance with a behavioral health agency.** If a person first files a grievance with the behavioral health agency and the person is not satisfied with the agency's written decision on the grievance, or if the person does not

receive a copy of that decision from the agency within the time required under subsection (7) of this section, the person may then choose to file the grievance with the BHO. The BHO's written decision on the grievance is the final decision. The grievance cannot progress to an administrative hearing except under circumstances described in subsection (9) of this section.

(6) **Filing a grievance with a BHO.** If the person first files a grievance with the BHO and not the agency, and the person is not satisfied with the BHO's written decision on the grievance, the person cannot file the same grievance with the behavioral health agency, even if that agency or its staff member(s) is the subject of the grievance. The BHO's written decision on the grievance is the final decision. The grievance cannot progress to an administrative hearing except under circumstances described in subsection (9) of this section.

(7) When a person files a grievance, the behavioral health agency or BHO that receives the grievance must:

- (a) Acknowledge the receipt of the grievance in writing within five business days;
- (b) Investigate the grievance;
- (c) At the person's request, give the person reasonable assistance in taking any procedural steps;
- (d) Inform the person about ombuds services and how to access these services;
- (e) Apply the rules in subsection (8) of this section; and
- (f) Send the person who filed the grievance a written notice describing the decision no longer than ninety days from the date the behavioral health agency or BHO receives the grievance.

(8) The behavioral health agency or BHO that receives the grievance must ensure all of the following:

- (a) Other people are allowed to participate in the grievance process, if the person chooses;
- (b) That a grievance is resolved even if the person is no longer receiving behavioral health services;
- (c) That the people who make decisions on a grievance:
 - (i) Were neither involved in any previous level of review or decision making nor are subordinates of any person who reviewed or decided on a previous level of the grievance;
 - (ii) Are mental health or chemical dependency professionals who have appropriate clinical expertise in the type of behavioral health service if deciding a grievance concerning denial of an expedited resolution of an appeal or a grievance that involves any clinical issues; and
 - (iii) Consider all comments, documents, records, and other information submitted by the person or the person's representative.

(d) That the person and, if applicable, the person's representative, receives a written notice containing the decision no later than ninety days from the date the agency or BHO receives a grievance. This time frame can be extended up to an additional fourteen days:

- (i) If requested by the person or the person's representative; or
- (ii) By the agency or BHO when additional information is needed and the agency or BHO is able to demonstrate to the health care authority upon the health care authority's request that it needs additional information and the added time is in the person's interest. The BHO must:

(A) Make reasonable efforts to give the person prompt oral notice of the delay; and

(B) Within two days, give the person written notice of the reason for the decision to extend the time frame and inform the person of the right to file a grievance if the person disagrees with that decision.

(c) That the written notice includes the resolution of the grievance, the reason for the decision, and the date the decision was made and is in an easily understood format following 42 C.F.R. Sec. 438.10 (2017), which requires that each notice:

(i) Is written in the person's non-English language, if applicable;

(ii) Contains the BHO's toll-free and TTY/TDY telephone number; and

(iii) Explains the availability of free written translation, oral interpretation to include any non-English language, auxiliary aids such as American sign language and TTY/TDY telephone services, and alternative formats to include large print and Braille.

(f) That full records of all grievances and materials received or compiled in the course of processing and attempting to resolve the grievance are:

(i) Kept for a period of no less than ten years after the completion of the grievance process;

(ii) Made available to the health care authority upon request as part of the state quality strategy and made available upon request to the Centers for Medicare and Medicaid Services (CMS);

(iii) Kept in confidential files separate from the person's clinical record;

(iv) Not disclosed without the person's written permission, except to the health care authority or as necessary to resolve the grievance; and

(g) Are accurately maintained and contain, at a minimum, all of the following information:

(i) A general description of the reason for the grievance;

(ii) The date received;

(iii) The date of each review or, if applicable, review meeting;

(iv) Resolution at each level of the grievance, if applicable;

(v) Date of resolution at each level, if applicable; and

(vi) Name of the covered person for whom the grievance was filed.

(9) When the BHO does not act within the grievance process time frames described in this section, the person is considered to have exhausted the appeal process and has a right to request an administrative hearing.

NEW SECTION

WAC 182-538D-0665 Notice of adverse benefit determination. (1) A behavioral health organization's (BHO's) notice of adverse benefit determination provided to a person must be in writing and in an easily understood format following 42 C.F.R. Sec. 438.10 (2017), which requires that each notice:

(a) Be written in the person's non-English language, if applicable;

(b) Contains the BHO's toll-free and TTY/TDY telephone number; and

(c) Explains the availability of free written translation, oral interpretation to include any non-English language, auxiliary aids such as American sign language, TTY/TDY telephone services, and alternative formats to include large print and Braille.

(2) The notice of adverse benefit determination must, at a minimum, explain the following:

(a) The adverse benefit determination the BHO has made or intends to make;

(b) The reasons for the adverse benefit determination, including citation of the rule(s) and criteria used for the basis of the decision;

(c) The right of the person to be provided reasonable access to and copies of all documents, records, and other information relevant to the person's adverse benefit determination upon request and free of charge;

(d) The person's right to file an appeal of the adverse benefit determination with the BHO, including information on exhausting the BHO's one level of appeal and the person's right to request an administrative hearing;

(e) The circumstances under which an expedited appeal process is available and how to request it; and

(f) The person's right to receive behavioral health services while an appeal is pending, how to make the request, and that the person may be held liable for the cost of services received while the appeal is pending if the appeal decision upholds the decision in the notice of adverse benefit determination.

(3) When the BHO or its contracted behavioral health agency does not reach service authorization decisions within the required time frame, or fails to provide services in a timely manner, it is considered an adverse benefit determination. In these cases, the BHO sends a formal notice of adverse benefit determination, which includes the person's right to request an administrative hearing. When the BHO does not act within the grievance and appeal system time frames as identified within this chapter, it is considered exhaustion of the appeals process and the person has a right to request an administrative hearing.

NEW SECTION

WAC 182-538D-0670 Filing an appeal. (1) A person may file an appeal to ask the behavioral health organization (BHO) to review an adverse benefit determination that the BHO has communicated on a written notice of adverse benefit determination as defined in WAC 182-538D-0655. A person's representative may appeal an adverse benefit determination with the person's written consent. If a written notice of adverse benefit determination was not received, an appeal may still be filed.

(2) The person requesting review of an adverse benefit determination must file an appeal and receive a notice of the resolution from the BHO before requesting an administrative hearing.

(3) Appeals may be:

(a) Standard as described in subsections (6) and (7) of this section; or

(b) Expedited if the criteria in subsection (8) of this section are met.

(4) The appeal process must:

(a) Provide a person a reasonable opportunity to present evidence and make legal and factual arguments in person as well as in writing. The BHO must inform the person of the limited time available.

(b) Provide the person opportunity, free of charge and sufficiently in advance to examine the person's clinical record, including examining new or additional evidence, medical records, and any other documents and records considered during the appeal process.

(c) Include the following, as applicable, as parties to the appeal:

(i) The person, the person's representative, or both; or

(ii) The legal representative of a deceased person's estate.

(5) The BHO must ensure that the people who make decisions on an appeal:

(a) Were not involved in any previous level of review or decision making nor are subordinates of any person who reviewed or decided on a previous level of appeal;

(b) Are mental health or chemical dependency professionals who have appropriate clinical expertise in the type of behavioral health service if deciding an appeal of an adverse benefit determination concerning medical necessity or an appeal that involves any clinical issues; and

(c) Consider all comments, documents, records, and other information submitted by the person regardless of whether the information was considered in the initial review.

(6) Standard appeals for adverse benefit determination - Continued services not requested. A person who disagrees with a decision communicated on a notice of adverse benefit determination may file an appeal orally or in writing. An oral filing of an appeal must be followed with a written and signed appeal. The BHO must use the date of an oral appeal as the official filing date to establish the earliest possible filing date. All of the following apply:

(a) The person must file the appeal within sixty days from the date on the notice of adverse benefit determination.

(b) The BHO must confirm receipt of the appeal in writing within five business days.

(c) The BHO must send the person a written notice of the resolution as expeditiously as the person's health condition requires, and no longer than thirty days from the day the BHO received the appeal. This time frame may be extended up to fourteen additional days if the person requests an extension or the BHO is able to demonstrate to the health care authority upon the health care authority's request that it needs additional information and that the added time is in the person's interest. The BHO must:

(i) Make reasonable efforts to give the person prompt oral notice of the delay; and

(ii) Within two days, give the person written notice of the reason for the decision to extend the time frame and inform the person of the right to file a grievance if the person disagrees with that decision.

(d) The written notice of the resolution must include all the information listed in subsection (9) of this section.

(7) Standard appeals for termination, suspension, or reduction of previously authorized services - Continued services requested. A person who receives a notice of adverse benefit determination from the BHO that terminates, suspends, or reduces previously authorized services may file an appeal orally or in writing and request continuation of those services pending the BHO's decision on the appeal. An oral filing of an appeal and request for continuation of services must be followed with a written and signed appeal and include a written request for continuation of services pending the BHO's decision on the appeal. The BHO must use the date of an oral appeal as the official filing date to establish the earliest possible filing date. All of the following apply:

(a) The person must:

(i) File the appeal with the BHO on or before the later of the following:

(A) Within ten days of the date on the notice of adverse benefit determination; or

(B) The intended effective date of the BHO's proposed adverse benefit determination; and

(ii) Request continuation of services.

(b) The BHO must:

(i) Confirm receipt of the appeal and the request for continued services with the person orally or in writing within five business days;

(ii) Send a notice in writing that follows up on any oral confirmation made; and

(iii) Include in the notice that if the appeal decision is not in favor of the person, the BHO may recover the cost of the behavioral health services provided pending the BHO decision.

(c) The BHO's written notice of the resolution must contain all of the information listed in subsection (9) of this section.

(8) Expedited appeal process. If a person or the person's behavioral health provider feels that the time taken for a standard resolution of an appeal could seriously jeopardize the person's life, physical or mental health, or ability to attain, maintain, or regain maximum function, an expedited appeal and resolution of the appeal may be requested. If the BHO denies the request for the expedited appeal and resolution of an appeal, it must transfer the appeal to the time frame for standard resolutions under subsection (6) or (7) of this section, and make reasonable efforts to give the person prompt oral notice of the denial and follow up within two days with a written notice.

(a) Both of the following apply to expedited appeal requests:

(i) The adverse benefit determination must be for denial of a requested service, termination, suspension, or reduction of previously authorized behavioral health services;

(ii) The expedited appeal must be filed with the BHO, either orally or in writing and within:

(A) Ten days of the BHO's mailing the written notice of adverse benefit determination or the intended effective date of the BHO's proposed adverse benefit determination, if the person is requesting continued benefits; or

(B) Sixty days from the date on the BHO's written notice of adverse benefit determination if the person is not requesting continued benefits.

(b) The BHO must:

(i) Confirm receipt of the request for an expedited appeal in person or by telephone.

(ii) Send the person a written notice of the resolution no longer than seventy-two hours after receiving the request for an expedited appeal.

(c) The BHO may extend the time frames up to fourteen additional days if the person requests an extension or the BHO is able to demonstrate to the health care authority upon the health care authority's request that it needs additional information and that the added time is in the person's interest. In this case the BHO must:

(i) Make reasonable efforts to give the person prompt oral notice of the delay;

(ii) Within two days give the person written notice of the reason for the decision to extend the time frame and inform the person of the right to file a grievance if the person disagrees with that decision; and

(iii) Resolve the appeal as expeditiously as the person's health condition requires and no later than the date the extension expires.

(d) The BHO must ensure that punitive action is not taken against a behavioral health provider who requests an expedited resolution or who supports a person's appeal.

(9) The BHO's written notice of the resolution containing the decision on a standard appeal or expedited appeal must:

(a) Clearly state the BHO's decision on the appeal, the reason for the decision, and the date the decision was made;

(b) Inform the person of the right to an administrative hearing if the person disagrees with the decision, how to request a hearing, and the following time frames for requesting a hearing:

(i) Within ten days from the date on the notice of the resolution if the person is asking that services be continued pending the outcome of the hearing or if the person is asking for an expedited hearing;

(ii) Within one hundred twenty days from the date on the notice of the resolution if the person is not asking for continued services.

(c) Be in an easily understood format following 42 C.F.R. Sec. 438.10 (2017), which requires that each notice:

(i) Be written in the person's non-English language, if applicable;

(ii) Contains the BHO's toll-free and TTY/TDY telephone number; and

(iii) Explains the availability of free written translation, oral interpretation to include any non-English language, auxiliary aids such as American sign language and TTY/TDY telephone services, and alternative formats to include large print and Braille.

(10) When the BHO does not act within the appeal process time frames explained in this section, the person is considered to have exhausted the appeal process and has a right to request an administrative hearing.

(11) Duration of continued services during the appeal process. When a person has requested continued behavioral health services pending the outcome of the appeal process and the criteria in this section have been met, the BHO must

ensure the services are continued until one of the following occurs:

(a) The person withdraws the appeal; or

(b) The BHO provides a written notice of the resolution that contains a decision that is not in favor of the person and the person does not request an administrative hearing within ten days from the date the BHO mails the notice; see WAC 182-538D-0675, administrative hearings, for rules on duration of continued services during the administrative hearing process.

(12) Reversal of an adverse benefit determination. If the final written notice of the resolution of the appeal or administrative hearing reverses the adverse benefit determination, the BHO must authorize or provide the behavioral health service(s) no later than seventy-two hours from the date it receives notice of the adverse benefit determination being overturned.

(13) Recovery of the cost of behavioral health services in adverse decisions of appeals. If the final written notice of the resolution of the appeal is not in favor of the person, the BHO may recover the cost of the behavioral health services furnished to the person while the appeal was pending to the extent that they were provided solely because of the requirements of this section. Recovery of the cost of medicaid services is limited to the first sixty days of services after the health care authority or the office of administrative hearings (OAH) receives an administrative hearing request. See RCW 74.09.741 (5)(g).

(14) Recordkeeping and maintenance of appeals. The BHO must ensure that full records of all appeals and materials received and compiled in the course of processing and attempting to resolve appeals are:

(a) Kept for a period of no less than ten years after the completion of the appeal process;

(b) Made available to the health care authority upon request as part of the state quality strategy and made available upon request to the Centers for Medicare and Medicaid Services (CMS);

(c) Kept in confidential files separate from the person's clinical record;

(d) Not disclosed without the person's written permission, except to the health care authority or as necessary to resolve the appeal; and

(e) Accurately maintained and contain, at a minimum, all of the following information:

(i) A general description of the reason for the appeal;

(ii) The date received;

(iii) The date of each review or, if applicable, review meeting;

(iv) Resolution at each level of the appeal, if applicable;

(v) Date of resolution at each level, if applicable; and

(vi) Name of the covered person for whom the appeal was filed.

NEW SECTION

WAC 182-538D-0675 Administrative hearings. (1) An administrative hearing is a proceeding before an administrative law judge (ALJ) that gives a person, as defined in WAC 182-538D-0655, an opportunity to be heard in disputes

about adverse benefit determinations or a decision of a behavioral health organization (BHO) to deny or limit authorization of a requested nonmedicaid service communicated on a notice of determination.

(2) A person may request an administrative hearing for the following reasons:

(a) After a person receives notice that the BHO upheld an adverse benefit determination;

(b) After a person receives a BHO decision to deny or limit authorization of a requested nonmedicaid service communicated on a notice of determination; or

(c) If the BHO does not act within the grievance or appeal process time frames described in WAC 182-538D-0660 and 182-538D-0670. In this case, the person is considered to have exhausted the appeal process and has a right to request an administrative hearing.

(3) A person who requests an administrative hearing must do so within one of the following time frames:

(a) If continued services are not requested, a hearing must be requested within one hundred twenty days from the date on the written notice of the resolution received from the BHO at the end of the appeal process or one hundred twenty days from the date on the notice of determination.

(b) If continued medicaid services are requested pending the outcome of the administrative hearing, all of the following apply:

(i) The person appealed a decision on the notice of adverse benefit determination for termination, suspension, or reduction of the person's behavioral health services;

(ii) The person appealed the adverse benefit determination and the BHO upheld the adverse benefit determination; and

(iii) The person requests an administrative hearing and continued behavioral health services within ten days of the date on the written notification of the resolution.

(c) The BHO is not obligated to continue nonmedicaid services pending the result of an administrative hearing when available resources are exhausted, since services cannot be authorized without funding regardless of medical necessity.

(4) If a person or the person's behavioral health provider believes that the time taken for a standard administrative hearing could seriously jeopardize the person's life, physical or mental health, or ability to attain, maintain, or regain maximum function, an expedited hearing may be requested. Subsection (3)(b) and (c) of this section apply if continued behavioral health services are requested.

(5) The BHO's failure to issue an appeal decision in writing within the time frames in WAC 182-538D-0670 constitutes exhaustion of the appeal process and the person may request an administrative hearing.

(6) When the criteria in this section are met for continued services, the BHO must continue the person's behavioral health treatment services during the administrative hearing process until one of the following occurs:

(a) The person withdraws the hearing request;

(b) The administrative law judge issues a hearing decision adverse to the person.

(7) If the administrative hearing decision is not in favor of the person, the BHO may recover the cost of the behavioral health services furnished to the person while the hearing was

pending to the extent that they were provided solely because of the requirements of this section. Recovery of the cost of medicaid services is limited to the first sixty days of services after the health care authority or the office of administrative hearings (OAH) receives an administrative hearing request.

(8) Administrative hearings include adjudicative proceedings and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Title 182 WAC, chapter 10-08 WAC, or other law. Chapters 34.05 RCW and 182-526 WAC govern cases where a person has an issue involving a service that is funded by medicaid or is not funded by medicaid.

NEW SECTION

WAC 182-538D-0680 A person's rights specific to medicaid recipients. (1) Medicaid recipients have general rights and medicaid-specific rights when applying for, eligible for, or receiving behavioral health services authorized by a behavioral health organization (BHO).

(a) General rights that apply to all people, regardless of whether a person is or is not a medicaid recipient, include:

(i) All applicable statutory and constitutional rights;

(ii) The participant rights provided under WAC 182-538D-0600; and

(iii) Applicable necessary supplemental accommodation services.

(b) Medicaid-specific rights that apply specifically to medicaid recipients include the following. You have the right to:

(i) Receive medically necessary behavioral health services, consistent with access to care standards adopted by the health care authority in its managed care waiver with the federal government. Access to care standards provide minimum standards and eligibility criteria for behavioral health services and are available on the behavioral health administration's (BHA's) division of behavioral health and recovery (DBHR) web site.

(ii) Receive the name, address, telephone number, and any languages offered other than English, of behavioral health providers in your BHO.

(iii) Receive information about the structure and operation of the BHO.

(iv) Receive emergency or urgent care or crisis services.

(v) Receive poststabilization services after you receive emergency or urgent care or crisis services that result in admission to a hospital.

(vi) Receive age and culturally appropriate services.

(vii) Be provided a certified interpreter and translated material at no cost to you.

(viii) Receive information you request and help in the language or format of your choice.

(ix) Have available treatment options and alternatives explained to you.

(x) Refuse any proposed treatment.

(xi) Receive care that does not discriminate against you.

(xii) Be free of any sexual exploitation or harassment.

(xiii) Receive an explanation of all medications prescribed and possible side effects.

(xiv) Make a mental health advance directive that states your choices and preferences for mental health care.

(xv) Receive information about medical advance directives.

(xvi) Choose a behavioral health care provider for yourself and your child, if your child is under thirteen years of age.

(xvii) Change behavioral health care providers at any time for any reason.

(xviii) Request and receive a copy of your medical or behavioral health services records, and be told the cost for copying.

(xix) Be free from retaliation.

(xx) Request and receive policies and procedures of the BHO and behavioral health agency as they relate to your rights.

(xxi) Receive the amount and duration of services you need.

(xxii) Receive services in a barrier-free (accessible) location.

(xxiii) Receive medically necessary services in accordance with the early and periodic screening, diagnosis and treatment (EPSDT) under WAC 182-534-0100, if you are twenty years of age or younger.

(xxiv) Receive enrollment notices, informational materials, materials related to grievances, appeals, and administrative hearings, and instructional materials relating to services provided by the BHO, in an easily understood format and non-English language that you prefer.

(xxv) Be treated with dignity, privacy, and respect, and to receive treatment options and alternatives in a manner that is appropriate to your condition.

(xxvi) Participate in treatment decisions, including the right to refuse treatment.

(xxvii) Be free from seclusion or restraint used as a means of coercion, discipline, convenience, or retaliation.

(xxviii) Receive a second opinion from a qualified professional within your BHO area at no cost, or to have one arranged outside the network at no cost to you, as provided in 42 C.F.R. Sec. 438.206(b)(3) (2015).

(xxix) Receive medically necessary behavioral health services outside of the BHO if those services cannot be provided adequately and timely within the BHO.

(xxx) File a grievance with the behavioral health agency or BHO if you are not satisfied with a service.

(xxxii) Receive a notice of adverse benefit determination so that you may appeal any decision by the BHO that denies or limits authorization of a requested service, that reduces, suspends, or terminates a previously authorized service, or that denies payment for a service, in whole or in part.

(xxxii) File an appeal if the BHO fails to provide services in a timely manner as defined by the state.

(xxxiii) Request an administrative (fair) hearing if your appeal is not resolved in your favor or if the BHO does not act within the grievance or appeal process time frames described in WAC 182-538D-0660 and 182-538D-0670.

(xxxiv) Request services by the behavioral health ombuds office to help you file a grievance or appeal or request an administrative hearing.

(2) A behavioral health agency licensed by the division of behavioral health and recovery (DBHR) that provides DBHR-certified mental health services, DBHR-certified sub-

stance use disorder services, or both, must ensure the medic-aid rights described in subsection (1)(b) of this section are:

(a) Provided in writing to each medicaid recipient, and if appropriate, the recipient's legal representative, on or before admission;

(b) Upon request, given to the medicaid recipient in an alternative format or language appropriate to the recipient and, if appropriate, the recipient's legal representative;

(c) Translated to the most commonly used languages in the agency's service area; and

(d) Posted in public areas.

WSR 18-14-029

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 18-134—Filed June 26, 2018, 2:52 p.m., effective July 1, 2018]

Effective Date of Rule: July 1, 2018.

Purpose: Amends coastal commercial crab rules.

Citation of Rules Affected by this Order: Amending WAC 220-340-420.

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

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

Reasons for this Finding: This emergency rule is needed because the weekly landing limit and period is necessary to mitigate handling mortality from sorting soft shelled crab and provide for an orderly fishery. 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 the Request of a Non-governmental 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 26, 2018.

Joe Stohr
Director

NEW SECTION

WAC 220-340-42000H Coastal crab fishery— Weekly trip limits Notwithstanding the provisions of WAC 220-340-420:

(1) Effective immediately until further notice, it is unlawful for any person licensed to fish under a Dungeness crab-coastal fishery license to possess or land crab in excess of 2,500 pounds taken during each of the following coastal crab accounting periods:

- July 1 - July 7, 2018
- July 8 - July 14, 2018
- July 15 - July 21, 2018
- July 22 - July 28, 2018
- July 29 - August 4, 2018
- August 5 - August 11, 2018
- August 12 - August 18, 2018
- August 19 - August 25, 2018
- August 26 - September 1, 2018
- September 2 - September 8, 2018
- September 9 - September 15, 2018

(2) Any crab taken prior to July 1, 2018, and not landed before 11:59 p.m. June 30, 2018, become part of the July 1 through July 7, 2018 accounting period catch.

(3) It is unlawful for any person taking crab under subsection (1) of this section to fish for crab during any accounting period while having on board any crab taken in a different accounting period.

WSR 18-14-030
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-132—Filed June 26, 2018, 2:53 p.m., effective June 30, 2018]

Effective Date of Rule: June 30, 2018.

Purpose: Amends recreational fishing rules for the Yakima River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-05000M.

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: Spring Chinook daily counts at Prosser and Roza have declined substantially, signaling the end of the 2018 return to the Yakima River. This emergency rule is needed to close the upper river salmon fishing. 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 the Request of a Non-governmental 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: June 26, 2018.

Joe Stohr
Director

REPEALER

The following section of the Washington Administrative Code is repealed effective June 30, 2018:

WAC 220-312-05000M Freshwater exceptions to statewide rules—Eastside. (18-127)

WSR 18-14-035
EMERGENCY RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed June 27, 2018, 8:48 a.m., effective July 1, 2018]

Effective Date of Rule: July 1, 2018.

Purpose: Establish chapter 110-05 WAC, one hundred twenty day provisional hires, for the department of children, youth, and families (DCYF). This chapter includes the requirements for one hundred twenty day provisional hires which allows an employee in a group care facility to have unsupervised access to children in the care and custody of DCYF on a provisional basis pending the results of their Federal Bureau of Investigation [background check].

Citation of Rules Affected by this Order: New chapter 110-05 WAC.

Statutory Authority for Adoption: Chapter 43.216 RCW, RCW 74.15.030.

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 rules are being filed as emergency to ensure a process is in place on July 1, 2018, when DCYF officially begins its work. These rules are needed [to] ensure the safety of children in licensed group care facilities. These rules are in alignment with chapter 43.216 RCW which transfers all powers, duties, and functions of the department of social and health services pertaining to child welfare services under chapters 26.44 and 74.13 RCW, to the department of children, youth, and families. In addition, chapter 43.216 RCW also states that "all rules and

pending business before the department of early learning and social and health services pertaining to the powers, duties, and functions transferred shall be continued and acted upon by the department of children, youth, and families."

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 7, 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 22, 2018.

Brenda Villarreal
Rules Coordinator

Title 110 WAC

CHILDREN, YOUTH, AND FAMILIES, DEPARTMENT OF

Chapter 110-05 WAC

ONE HUNDRED TWENTY-DAY PROVISIONAL HIRES

NEW SECTION

WAC 110-05-0010 What is the purpose of this chapter? WAC 388-06-0500 through 388-06-0540 defines when the one hundred twenty-day provisional hire is allowed by the department of children, youth, and families (DCYF).

NEW SECTION

WAC 110-05-0020 What is the purpose of the one hundred twenty-day provisional hire? The one hundred twenty-day provisional hire allows an employee to have unsupervised access to children, juveniles, and vulnerable adults on a provisional basis pending the results of their Federal Bureau of Investigation (FBI) background check.

NEW SECTION

WAC 110-05-0030 What definitions apply to one hundred twenty-day provisional hires? "Agency" means any private agency providing services to children, juveniles, and vulnerable adults.

"Employee" means an employee of an agency defined in RCW 74.15.020 that receives children for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children for foster care or placement of children for adoption; or

an employee of a department contractor when that contractor provides for the care, supervision, case management, or treatment, of children who are receiving child protective services or child welfare services as defined in RCW 74.15.020.

"Entity" means, but is not limited to, a licensed facility, corporation, partnership, sole proprietorship, or a contracted or certified service provider.

"Group care" is a general term for a licensed facility that is maintained and operated for a group of children on a twenty-four-hour basis to provide a safe and healthy living environment that meets the developmental needs of the children in care per RCW 74.15.020 (1)(f).

"Hire" means engagement by an entity to perform specific agreed duties as a paid employee or a contract employee.

"Individual" means an employee or a contract employee.

"Qualified" means an individual can be hired into a position that includes unsupervised access to children, juveniles, and vulnerable adults because the results of their background check are not disqualifying.

"Unsupervised access" means that:

(a) An individual will or may have the opportunity to be alone with a child, juvenile, or a vulnerable adult; and

(b) Neither a qualified employee or contract employee of the agency nor a relative or guardian of the child, juvenile, or vulnerable adult is present.

NEW SECTION

WAC 110-05-0040 Who is responsible for approving the one hundred twenty-day provisional hire? The entity is responsible for approving individuals for the one hundred twenty-day provisional hire.

NEW SECTION

WAC 110-05-0050 When are individuals eligible for the one hundred twenty-day provisional hire? Individuals who have lived three consecutive years in Washington state before submitting their application, cleared the state background check process, and submitted fingerprints are eligible for the one hundred twenty-day provisional hire. The fingerprint process must be completed as required by the applicable DCYF program.

NEW SECTION

WAC 110-05-0060 When does the one hundred twenty-day provisional hire begin? The one hundred twenty-day provisional hire may begin when notified by DCYF when the conditions in WAC 388-06-0525 have been met.

NEW SECTION

WAC 110-05-0070 Are there instances when the one hundred twenty-day provisional hire is not available? The one hundred twenty-day provisional hire is not available to an entity requesting:

- (1) An initial license;
- (2) An initial contract;

(3) Approval as a family child day care home provider, child placing agency employee, foster parent, or adoptive parent (see 42 U.S.C. Sec. 671 (a)(20)).

WSR 18-14-038
EMERGENCY RULES
HARDWOODS COMMISSION

[Filed June 27, 2018, 1:19 p.m., effective July 1, 2018]

Effective Date of Rule: July 1, 2018.

Purpose: To be commensurate with the effective date of the new WAC 244-12-050 Assessments and collections.

Citation of Rules Affected by this Order: Amending WAC 244-12-050.

Statutory Authority for Adoption: Chapter 15.74 RCW.

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

Reasons for this Finding: Maintain operation of the commission to affect greater hardwood harvest which supports the infrastructure and rural economy.

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

Number of Sections Adopted at the Request of a Non-governmental 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 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 0, Repealed 0.

Date Adopted: June 27, 2018.

David A. Sweitzer
 Executive Director

AMENDATORY SECTION (Amending WSR 91-14-055, filed 6/27/91, effective 7/1/91)

WAC 244-12-050 Assessments and collections. (1) ((The assessment shall be based upon the following schedule:

QUARTERLY PRODUCTION

CATEGORY	(THOUSAND TONS)			QUARTERLY ASSESSMENT
4	25	to	35	\$900
5	35	to	45	\$1,200
6	45	to	62.5	\$1,500
7	62.5	to	82.5	\$2,250
8	82.5	to	125	\$3,000
9	125	to	175	\$4,500
10	175	to	250	\$6,000
11	250	to	350	\$9,000
12	350	to	450	\$12,000
13	450	to	625	\$15,000
14	625	to	875	\$22,500
15	875	to	1125	\$30,000
16	over		1125	\$35,000

To provide for permanent funding of the Washington hardwoods commission, agricultural commodity assessments shall be levied by the commission on processors of hardwoods.

An assessment is hereby levied on hardwood processors operating within the state of Washington. The assessment shall be based on the hardwood processor's production per calendar quarter. The assessment shall be four cents per ton produced effective July 1, 2018.

Beginning July 1, 2019, and every July 1st thereafter, the assessment must be adjusted to reflect the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the bureau of economic analysis of the federal Department of Commerce by September 25th of the year before the assessments are payable.

(2) For purposes of determining the ((appropriate production category)) assessment, the following ((equivalents will)) definitions apply:

(a) One ton of logs, scaled by weight, input for a processor equals one ton of production; or

(b) One thousand board feet, Scribner scale, input for a processor equals 7.25 tons of production.

(3) Processors who produce less than ((five)) one thousand tons of hardwood products or ship less than one thousand tons of logs out of the state of Washington in a calendar quarter will not be assessed. However, they still must submit a quarterly report.

(4) Assessments shall be paid to the commission according to the levy schedule in subsection (1) of this section.

QUARTERLY PRODUCTION

CATEGORY	(THOUSAND TONS)			QUARTERLY ASSESSMENT
1	5	to	7.5	\$150
2	7.5	to	15	\$300
3	15	to	25	\$600

WSR 18-14-040
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-137—Filed June 27, 2018, 2:21 p.m., effective June 27, 2018, 2:21 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for the halibut fishery.

Citation of Rules Affected by this Order: Repealing WAC 220-314-03000N; and amending WAC 220-314-030.

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: Recreational catch estimates from the recent halibut opener on June 21 and June 23 indicate that there is sufficient quota remaining to open recreational halibut fishing for one final day on Saturday, June 30, 2018. 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 the Request of a Non-governmental 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: June 27, 2018.

Joe Stohr
Director

NEW SECTION

WAC 220-314-03000P Halibut—Seasons—Daily and possession limits. Notwithstanding the provisions of WAC 220-314-030, 220-314-040, and 220-314-010, effective immediately until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

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

(a) Open June 30, 2018.

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

Beginning at 48°18'N., 125°18'W.; thence to 48°18'N., 124°59'W.; thence to 48°11'N., 124°59'W.; thence to

48°11'N., 125°11'W., thence to 48°04'N., 125°11'W.; thence to 48°04'N., 124°59'W.; thence to 48°N., 124°59'W.; thence to 48°N., 125°18'W.; thence to point of origin.

(c) In Marine Areas 3 and 4 (west of the Bonille-Tatoosh Line); it is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour except, on days open to the Pacific halibut fishery in these areas, it is permissible to retain lingcod, sablefish and Pacific cod seaward of the 20 fathom depth contour as defined by the following coordinates:

48°23.9'N. lat., 124°44.2'W. long.

48°23.6'N. lat., 124°44.9'W. long. 48°18.6'N. lat., 124°43.6'W. long. 48°18.6'N. lat., 124°48.2'W. long. 48°10.0'N. lat., 124°48.8'W. long. 48°02.4'N. lat., 124°49.3'W. long. 47°37.6'N. lat., 124°34.3'W. long. 47°31.7'N. lat., 124°32.4'W. long.

(d) In Marine Area 4 (east of the Bonilla-Tatoosh Line) it is unlawful to fish for or possess bottomfish seaward of a line approximating 120-feet (20 fathoms), except, on days open to the Pacific halibut fishery in this area, it is permissible to retain lingcod, and Pacific cod seaward of the 120 feet (20 fathoms) as defined by WAC 220-314-010.

(2) **Catch Record Card Area 5 through 10:**

(a) Open June 30, 2018.

(b) It is permissible for halibut anglers to retain Pacific cod caught while fishing for halibut in waters deeper than 120 feet on days when halibut fishing is open in Areas 5 and 6.

(3) **Catch Record Card Areas 11, 12 and 13:** Closed.

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

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

(6) Annual halibut limit is four.

(7) All other permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-314-03000N Halibut—Seasons—Daily and possession limits. (18-117)

WSR 18-14-046
EMERGENCY RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed June 28, 2018, 11:11 a.m., effective July 1, 2018]

Effective Date of Rule: July 1, 2018.

Purpose: ESHB 1434 was passed during the 2018 legislative session with an effective date of July 1, 2018. This bill expands the use of shared leave to employees that are sick or

temporarily disabled because of a pregnancy disability and for the purposes of parental leave. This bill also allows an employee to maintain up to forty hours of vacation leave and forty hours of sick leave while using shared leave for these reasons.

Citation of Rules Affected by this Order: Amending WAC 357-31-380, 357-31-390, 357-31-395, 357-31-405, 357-31-415, and 357-31-435.

Statutory Authority for Adoption: RCW 41.04.665.

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: To align chapter 357-31 WAC with the changes made to RCW 41.04.665 resulting from ESHB 1434.

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 6, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 6, Repealed 0.

Date Adopted: June 28, 2018.

Roselyn Marcus
Assistant Director of
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

WAC 357-31-380 What is the purpose of the state leave sharing program? The purpose of the state leave sharing program is to permit state employees, at no significantly increased cost to the state for providing leave, to come to the aid of another state employee who is likely to take leave without pay or terminate ~~((his or her))~~ employment ~~((because:~~

~~(1) The employee has been called to service in the uniformed services;~~

~~(2) The employee is volunteering with a governmental agency or a nonprofit organization when a state of emergency has been declared within the United States;~~

~~(3) The employee or a relative or household member is suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition; or~~

~~(4) The employee is a victim of domestic violence, sexual assault, or stalking as defined in RCW 41.04.655)).~~

AMENDATORY SECTION (Amending WSR 17-18-030, filed 8/28/17, effective 10/2/17)

WAC 357-31-390 What criteria does an employee have to meet to be eligible to receive shared leave? An employee may be eligible to receive shared leave if the agency head or higher education institution president has determined the employee meets the following criteria:

(1) The employee:

(a) Suffers from, or has a relative or household member suffering from, an illness, injury, impairment~~((;))~~ or physical or mental condition which is of an extraordinary or severe nature;

~~(b) ((The employee))~~ Has been called to service in the uniformed services;

(c) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has the needed skills to assist in responding to the emergency or its aftermath and volunteers their services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services;

~~(d) ((The employee))~~ Is a victim of domestic violence, sexual assault~~((;))~~ or stalking as defined in RCW 41.04.655;

~~(e) ((The employee))~~ Is a current member of the uniformed services or is a veteran as defined under RCW 41.04.005, and is attending medical appointments or treatments for a service connected injury or disability; ~~((or))~~

~~(f) ((The employee))~~ Is a spouse of a current member of the uniformed services or a veteran as defined under RCW 41.04.005, who is attending medical appointments or treatments for a service connected injury or disability and requires assistance while attending appointments or treatments;

(g) Needs the time for parental leave as defined in WAC 357-31-395(3); or

(h) Is sick or temporarily disabled because of a pregnancy disability as defined in WAC 357-31-395(4).

~~(2) The ~~((illness, injury, impairment, condition, call to service, emergency volunteer service, consequence of domestic violence, sexual assault, or stalking, or))~~ condition(s) listed in subsection (1) of this section is likely to cause, the employee to~~((:~~~~

~~((a)))~~ go on leave without pay status~~((;))~~ or ~~((b)))~~ terminate state employment.

(3) The employee's absence and the use of shared leave are justified.

(4) The employee has depleted or will shortly deplete ~~((their:~~

~~(a) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, and accrued sick leave if the employee qualifies under subsection (1)(a) of this section; or~~

~~(b) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, and paid military leave allowed under RCW 38.40.060 if the employee qualifies under subsection (1)(b) of this section; or~~

~~(c) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, and accrued vacation leave if the employee qualifies under (1)(c) of this section))~~ leave in accordance with WAC 357-31-435. If the employee

qualifies under subsection (1)(g) or (h) of this section the employee is not required to deplete all of their vacation leave or sick leave in accordance with WAC 357-31-435.

(5) The employee has abided by employer rules regarding:

(a) Sick leave use if the employee qualifies under subsection (1)(a), (d), (g), or (h) of this section; or

(b) Military leave if the employee qualifies under subsection (1)(b) of this section.

(6) If the illness or injury is work-related and the employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if the employee qualifies under subsection (1)(a) of this section.

AMENDATORY SECTION (Amending WSR 09-17-056 and 09-18-113, filed 8/13/09 and 9/2/09, effective 12/3/09)

WAC 357-31-395 What definitions apply to shared leave? (1) As defined in RCW 41.04.655, "employee" means any employee of the state, including employees of school districts and educational service districts, who ((is)) are entitled to accrue sick leave or vacation leave and for whom accurate leave records are maintained.

(2) "Employee's relative" normally must be limited to the employee's spouse, registered domestic partner, child, grandchild, grandparent((;)) or parent.

(3) "Parental leave" means leave to bond and care for a newborn child after birth or to bond and care for a child after placement for adoption or foster care, for a period of up to sixteen weeks after the birth or placement.

(4) "Pregnancy disability" means a pregnancy-related medical condition or miscarriage.

(5) "Severe" or "extraordinary" condition is defined as serious ((or)), extreme ((and/or)) or life threatening.

((4)) (6) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty including state-ordered active duty((;)) and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

((5)) (7) "Uniformed services" means the armed forces, the army national guard, and the air national guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time national guard duty, or state active duty, the commissioned corps of the public health service, the coast guard((;)) and any other category of persons designated by the President of the United States in time of war or national emergency.

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

WAC 357-31-405 What documentation may an employee seeking shared leave be required to submit? An employee may be required to submit the following documentation before the employer approves or disapproves the employee's request for shared leave:

(1) For employees seeking shared leave under WAC 357-31-390 (1)(a), the employer may require the employee to submit a medical certificate from a licensed physician or health care practitioner verifying the severe or extraordinary nature and expected duration of the condition ((before the employer approves or disapproves the request)).

(2) For employees seeking shared leave under WAC 357-31-390 (1)(b), the employer may require the employee to submit a copy of the military orders verifying the employee's required ((absence before the employer approves or disapproves the request)).

(3) For employees seeking shared leave under WAC 357-31-390 (1)(c), proof of acceptance of an employee's offer to volunteer for either a governmental agency or a non-profit organization during a declared state of emergency.

(4) For employees seeking shared leave under WAC 357-31-390 (1)(d), the employer may require that the request be supported by documentation. An employee may satisfy the verification requirement by providing the employer with one or more of the following:

(a) A police report indicating that the employee was a victim of domestic violence, sexual assault((;)) or stalking;

(b) A court order protecting or separating the employee from the perpetrator of the act of domestic violence, sexual assault((;)) or stalking;

(c) Evidence from the court or prosecuting attorney that the employee appeared or is scheduled to appear in court in connection with an incident of domestic violence, sexual assault((;)) or stalking;

(d) An employee's written statement that the employee is a victim of domestic violence, sexual assault((;)) or stalking; or

(e) Documentation that the employee is a victim of domestic violence, sexual assault((;)) or stalking, from any of the following persons from whom the employee or employee's family member sought assistance in addressing the domestic violence, sexual assault((;)) or stalking: An advocate for victims of domestic violence, sexual assault((;)) or stalking; an attorney; a member of the clergy; or a medical or other professional.

(5) Employees seeking shared leave under WAC 357-31-390 (1)(e) or (f), the employee must provide documentation in accordance with WAC 357-31-805.

(6) Employees seeking shared leave under WAC 357-31-390 (1)(g), the employer may require verification of the birth or adoption of the child or proof of a current foster parent license for foster care or placement.

(7) Employees seeking shared leave under WAC 357-31-390 (1)(h), the employer may require a medical certification from a licensed physician or health care practitioner verifying that the pregnancy disability is a requirement.

AMENDATORY SECTION (Amending WSR 05-08-139, filed 4/6/05, effective 7/1/05)

WAC 357-31-415 Can donated leave be used for any purpose? Vacation leave, sick leave, or all or part of a personal holiday transferred from a donating employee under these rules must be used solely for the purpose stated in WAC ((357-31-380)) 357-31-390.

AMENDATORY SECTION (Amending WSR 15-11-102, filed 5/20/15, effective 6/22/15)

WAC 357-31-435 Must employees use their own leave before using shared leave? (1) Employees who qualify for shared leave under WAC 357-31-390 (1)(a) must first use all compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, sick leave(☹) and vacation leave that they have accrued before using shared leave.

(2) Employees who qualify for shared leave under WAC 357-31-390 (1)(b) must first use all of their compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave(☹) and paid military leave allowed under RCW 38.40.060 before using shared leave.

(3) Employees who qualify for shared leave under WAC 357-31-390 (1)(c) and (d) must first use all compensatory time, recognition leave as described in WAC 357-31-565, personal holiday(☹) and vacation leave that they have accrued before using shared leave.

(4) Employees who qualify for shared leave under WAC 357-31-390 (1)(e) or (f) must first use all leave as described in WAC 357-31-895.

(5) Employees who qualify for shared leave under WAC 357-31-390 (1)(g) and/or (h) must first use all accrued compensatory time, recognition leave as described in WAC 357-31-565 and personal holiday before using shared leave. The employee is not required to deplete all of their accrued vacation leave and sick leave and can maintain up to forty hours of vacation leave and forty hours of sick leave.

WSR 18-14-051

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 18-138—Filed June 28, 2018, 2:06 p.m., effective July 1, 2018]

Effective Date of Rule: July 1, 2018.

Purpose: Amends freshwater recreational rules for the southwest region.

Citation of Rules Affected by this Order: Amending WAC 220-220-160 and 220-312-030.

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

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

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans, and are interim until permanent rules take effect.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 28, 2018.

Joe Stohr
Director

NEW SECTION

WAC 220-220-16000A Two pole endorsement Notwithstanding the provisions of WAC 220-220-160, effective July 1, 2018, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

Anglers who possess a valid two-pole endorsement may fish with two lines in the following river sections:

(1) Cowlitz River, from the mouth to the Lexington Drive Bridge.

(2) Lewis River, from the mouth to the railroad bridge near Khunis Road.

NEW SECTION

WAC 220-312-03000W Freshwater exceptions to statewide rules—Southwest Notwithstanding the provisions of WAC 220-312-030, effective July 1, 2018, until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Rescind from the following waters the rule - when the anti-snagging rule is in effect, only fish hooked inside the mouth may be retained:

(a) **Blue Creek** (Lewis Co.) from mouth to posted markers above the rearing pond outlet;

(b) **Cowlitz River** (Lewis Co.) from Mill Creek to 400' or posted markers below the barrier dam;

(c) **Cowlitz River** (Lewis Co.) from posted PUD sign on Peters Road to Forest Road 1270 (old Jody's Bridge);

(d) **Drano Lake** (Skamania Co.);

(e) **Elochoman River** (Wahkiakum Co.) from mouth to West Fork;

(f) **Grays River** (Wahkiakum Co.) from mouth to South Fork;

(g) **Green River** (Cowlitz Co.) from mouth to Toutle Hatchery intake;

(h) **Kalama River** (Cowlitz Co.) from railroad bridge below the I-5 to intake at lower salmon hatchery;

(i) **Klickitat River** (Klickitat Co.) from mouth to Fisher Hill Bridge;

(j) **Lewis River** (Clark/Cowlitz counties) from mouth of East Fork to overhead powerlines below Merwin Dam;

(k) **Mill Creek** (Lewis Co.) from mouth to hatchery road crossing culvert;

(l) **North Fork Toutle River** (Cowlitz Co.) from confluence with South Fork to mouth of Green River;

(m) **West Fork Grays River** (Wahkiakum Co.) from mouth to hatchery intake/footbridge;

(n) **Tilton River** (Lewis Co.) from mouth to West Fork;

(o) **Washougal River** (Clark/Skamania counties) from mouth to Salmon Falls;

(p) **White Salmon River** (Klickitat/Skamania counties) from mouth to county road bridge below former location of the powerhouse;

(q) **Wind River** (Skamania Co.) from the Hwy. 14 Bridge to 800 yards downstream of Carson National Fish Hatchery

(2) **White Salmon River** (Klickitat/Skamania counties):

(a) From the mouth (Burlington Northern Railroad Bridge) to the county road bridge below the former location of the powerhouse:

(i) It is unlawful to fish for salmon and steelhead using anything other than barbless hooks.

(ii) Open year-round.

(iii) Game fish: Statewide minimum length/daily limit, except: Release wild rainbow and wild cutthroat.

(iv) August 1, 2018 until further notice: Anti-snagging rule.

(v) Salmon and steelhead:

(A) April 1 through July 31:

(I) Limit 2; no more than 2 salmon, or 2 hatchery steelhead, or one of each, may be retained.

(II) Release wild Chinook.

(B) August 1, 2018 until further notice:

(I) Limit 6; no more than 2 adult salmon, or 2 hatchery steelhead, or one of each, may be retained.

(II) Salmon: Only hatchery Chinook and hatchery coho may be retained.

(b) From the county road bridge below the former location of the powerhouse upstream to Big Brother Falls

(i) From Big Brother Falls downstream 400 feet: Closed waters.

(ii) Game fish: Statewide minimum length/daily limit, except: Release wild rainbow and wild cutthroat trout.

(iii) Selective gear rules.

(iv) Salmon and steelhead:

(A) Open through July 31:

(I) Daily limit 2 fish, no more than 2 salmon, or 2 Steelhead, or 1 of each may be retained.

(II) Only hatchery salmon and hatchery steelhead may be retained.

(B) August, 2018 until further notice:

(I) Daily limit 6; no more than 2 adult salmon, or 2 steelhead, or one of each may be retained.

(II) Only hatchery salmon and hatchery steelhead may be retained.

(3) **Drano Lake** - Open to night fishing until further notice

WSR 18-14-052
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed June 28, 2018, 2:07 p.m., effective July 1, 2018]

Effective Date of Rule: July 1, 2018.

Purpose: Amends recreational Puget Sound salmon rules.

Citation of Rules Affected by this Order: Repealing WAC 220-313-06000M and 220-313-06000N; and amending WAC 220-313-060.

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

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

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans, and are interim until permanent rules take effect.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: April 28, 2018.

Joe Stohr
Director

NEW SECTION

WAC 220-313-06000Q Puget Sound salmon—Salt-water seasons and daily limits. Notwithstanding the provisions of WAC 220-313-060, the following rules apply:

(1) Marine Area 5

(a) Open July 1 through August 15: Daily limit of 2 salmon. Release chum, wild Chinook and wild coho. 2 Additional sockeye salmon may be retained as part of the daily limit.

(b) Open August 16 through September 30. Daily limit of 2 salmon. Release chum, Chinook and wild coho. 2 Additional sockeye salmon may be retained as part of the daily limit.

(2) Marine Area 6

(a) Open July 3 through August 15: Daily limit of 2 salmon. Release chum, wild Chinook and wild coho. 2 Additional sockeye salmon may be retained as part of the daily limit. Release all Chinook east of a true north-south line through the Number 2 Buoy immediately east of Ediz Hook.

(b) Waters of Port Angeles Harbor west of a line from the tip of Ediz Hook to the ITT Rayonier Dock are closed July 1 through August 15.

(c) Open August 16 through September 30: Daily limit of 2 salmon. Release chum, Chinook and wild coho. 2 Additional sockeye salmon may be retained as part of the daily limit.

(3) Marine Area 7

(a) Open July 1 through July 31: Daily limit of 2 salmon. Release chum and wild Chinook. 2 Additional sockeye salmon may be retained as part of the daily limit. Closed to salmon fishing in the Southern Rosario Strait and Eastern Strait of Juan de Fuca closure area described in WAC 220-313-020(7).

(b) Open August 1 through September 3: Daily limit of 2 salmon; no more than one may be a Chinook salmon. Release chum. 2 Additional sockeye salmon may be retained as part of the daily limit. Closed to salmon fishing in the Southern Rosario Strait and Eastern Strait of Juan de Fuca closure area described in WAC 220-313-020(7).

(c) Open September 4 through September 30:

(i) Daily limit of 2 salmon.

(ii) Release chum and Chinook.

(d) Closed to salmon fishing in Samish Bay area described in WAC 220-313-020(7).

(e) Waters of Bellingham Bay described in WAC 220-313-020(1): Open July 1 through August 15. August 16 through September 30: Daily limit of 4 salmon; no more than 2 may be Chinook salmon.

(4) Marine Area 8-1

(a) Open August 1 through September 30: Daily limit 2 salmon. Release Chinook.

(5) Marine Area 8-2

(a) Open August 1 through September 23: Daily limit of 2 salmon. Release Chinook.

(6) Marine Area 9

(a) Open July 16 through August 15, except waters in this subsection: Daily limit of 2 salmon; no more than one may be a Chinook salmon. Release chum, wild coho and wild Chinook. Closed south of a line from Foulweather Bluff to Olele Point July 16 through August 15 except it is permissible to fish from shore in waters south of a line from Foulweather Bluff to Olele Point: Daily limit of 2 salmon. Release Chinook, chum and wild coho.

(b) Open August 16 through September 30: Daily limit of 2 salmon. Release Chinook, chum and wild coho.

(c) Edmonds Fishing Pier: Open year-round. Daily limit of 2 salmon; no more than one may be a Chinook salmon. Release chum from August 1 through September 30.

(7) Marine Area 10

(a) Open through July 15. Daily limit of 2 salmon. Release Chinook and chum.

(b) Open July 16 through August 31: Daily limit of 2 salmon, no more than one may be a Chinook salmon. Release chum and wild Chinook.

(c) Open September 1, 2018, until further notice: Daily limit of 2 salmon. Release Chinook. Release chum September 1 through September 15.

(d) Waters of Shilshole Bay southeast of a line from Meadow Point to West Point: Closed July 1 through August 15.

(e) Waters of Elliott Bay east of a line from West Point to Alki Point: Closed July 1 through August 31, except: In years ending in odd numbers: Those waters north of a line from Jack Block Park through the north tip of Harbor Island to shore northeast of the North Waterway (47°35.47'N, 122°20.58'W), open August 15 through August 31 from Friday through Sunday of each week only. Daily limit of 2. Release Chinook, chum and wild coho.

(f) Waters of Sinclair Inlet and Port Orchard south of the Manette Bridge in Bremerton, south of a line true west from Battle Point, and west of a line drawn true south from Point White: Open July 1 through September 30. Daily limit of 3 salmon. Release wild Chinook and wild coho. Release chum from August 1 through September 15.

(8) Marine Area 11

(a) Open June 1 through Sept 30, Daily limit 2 salmon of which 1 may be a hatchery chinook. Release Wild Chinook.

(b) Waters of Commencement Bay east of a line from the Cliff House Restaurant to the Sperry Ocean Dock are closed June 1 through July 31.

(c) Dash Point Dock, Les Davis Pier, Des Moines Pier, Redondo Pier, and Point Defiance Boathouse Dock, open year-round: Daily limit of 2 salmon; no more than one may be a Chinook salmon.

(9) Marine Area 12

(a) Open July 1 through September 30, in waters south of Ayock Point except waters listed in this subsection: Daily limit of 4 salmon. Release chum and wild Chinook.

(b) Waters within a 2,000-foot arc seaward of yellow buoys at the mouth of Finch Creek at Hoodport Salmon Hatchery: Daily limit of 4 salmon. Release chum and wild Chinook. It is unlawful to fish for or possess salmon taken from these waters from one hour after sunset to one hour before sunrise. It is unlawful to fish from any Hoodport Salmon Hatchery structure except persons with disabilities who permanently use a wheelchair and who have a designated harvester card under WAC 220-220-240 may fish from the ADA-access site at the Hoodport Salmon Hatchery, as long as persons follow all applicable department rules.

REPEALER

The following sections of the Washington Administrative Code are repealed effective July 1, 2018:

WAC 220-313-06000M Puget Sound salmon—Saltwater seasons and daily limits. (18-57)

WAC 220-313-06000N Puget Sound salmon—Saltwater seasons and daily limits. (18-117)

WSR 18-14-056
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-133—Filed June 28, 2018, 3:48 p.m., effective July 1, 2018]

Effective Date of Rule: July 1, 2018.

Purpose: Amend recreational fishing rules for the Stillaguamish River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000N; and amending WAC 220-312-040.

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

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

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans, and are interim until permanent rules take effect.

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

Number of Sections Adopted at the Request of a Non-governmental 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: June 28, 2018.

Joe Stohr
 Director

NEW SECTION

WAC 220-312-04000N Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Boulder River** (Snohomish Co.), from mouth to Boulder Falls; trout and other gamefish open July 1 through July 31, 2018, selective gear rules, trout catch and release fishing only.

(2) **Canyon Creek** (Snohomish Co.), from mouth to forks; trout and other gamefish open July 1, 2018, selective gear rules, statewide minimum size and daily limit except release cutthroat trout and wild rainbow trout.

(3) **Pilchuck Creek** (Skagit/Snohomish Co.), from mouth to Pilchuck Falls; trout and other gamefish open July 1, 2018, statewide min size/daily limit except cutthroat trout and wild rainbow trout min size 14", selective gear rules.

(4) **Squire Creek** (Snohomish Co.) trout and other gamefish open July 1 through July 31, 2018, selective gear rules, statewide minimum size and daily limit except release cutthroat trout and wild rainbow trout.

(5) **Stillaguamish River** (Snohomish Co.) from Marine Drive to Forks; Trout and other gamefish, closed July 1 through July 31, 2018, open August 1, catch and release, night closure, selective gear rules are in effect.

(6) **Stillaguamish River, North Fork** (Snohomish Co.) from mouth to Swede Heaven Bridge; closed to all fishing July 1, 2018.

(7) **Stillaguamish River, North Fork** (Snohomish Co.) from Swede Heaven Bridge to North Fork Falls; trout and other gamefish open July 1 through July 31, 2018, selective gear rules, statewide minimum size and daily limit except release cutthroat trout and wild rainbow trout. Closed to all fishing August 1.

(8) **Stillaguamish River, South Fork** (Snohomish Co.) from mouth to 400 feet below Granite Falls Fishway outlet; trout and other gamefish open July 1, 2018, statewide minimum size and daily limit except cutthroat trout and wild rainbow trout min size 14", August 1, 2018, night closure and anti-snagging rules are in effect.

(9) **Stillaguamish River, South Fork** (Snohomish Co.) from Mountain Loop Hwy Bridge upstream; trout and other gamefish open July 1, 2018, statewide minimum size and daily limit, August 1, 2018, night closure and anti-snagging rules are in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 1, 2018:

WAC 220-312-04000N Freshwater exceptions to statewide rules—Puget Sound.

WSR 18-14-060
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Aging and Long-Term Support Administration)
 [Filed June 29, 2018, 7:03 a.m., effective July 1, 2018]

Effective Date of Rule: July 1, 2018.

Purpose: The department is amending WAC 388-105-0005 in order to update the tables of rates in WAC 388-105-0005 to reflect rates consistent with legislative appropriation and direction.

Citation of Rules Affected by this Order: Amending WAC 388-105-0005.

Statutory Authority for Adoption: RCW 74.39A.030 (3)(a).

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 rule needs to reflect the appropriate rate amounts to avoid confusion and possible interruption of service. Regular rule making has already commenced.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 27, 2018.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-03-097, filed 1/17/18, effective 2/17/18)

WAC 388-105-0005 The daily medicaid payment rates for clients who have been assessed using the CARE tool and reside at an AFH or assisted living facility contracted to provide assisted living, adult residential care, or enhanced adult residential care services. For contracted adult family homes (AFH) and assisted living facilities contracted to provide assisted living (AL), adult residential care (ARC), or enhanced adult residential care (EARC) services, the department pays the following daily rates for medicaid residents who have been assessed using the comprehensive assessment reporting evaluation (CARE) tool:

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
KING COUNTY					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC/EARC Without Capital Add-On	ARC/EARC With Capital Add-On	AFH
A Low	\$(70.59) <u>73.34</u>	\$(76.01) <u>81.18</u>	\$(50.06) <u>52.02</u>	\$(50.06) <u>54.44</u>	\$71.96
A Med	\$(76.38) <u>79.35</u>	\$(81.80) <u>87.19</u>	\$(56.74) <u>58.95</u>	\$(56.74) <u>61.37</u>	\$74.74
A High	\$(85.66) <u>88.99</u>	\$(91.08) <u>96.83</u>	\$(62.27) <u>64.70</u>	\$(62.27) <u>67.12</u>	\$81.23
B Low	\$(70.59) <u>73.34</u>	\$(76.01) <u>81.18</u>	\$(50.06) <u>52.02</u>	\$(50.06) <u>54.44</u>	\$73.40
B Med	\$(78.72) <u>81.78</u>	\$(84.14) <u>89.62</u>	\$(63.42) <u>65.89</u>	\$(63.42) <u>68.31</u>	\$79.78
B Med-High	\$(89.08) <u>92.54</u>	\$(94.50) <u>100.38</u>	\$(67.41) <u>70.04</u>	\$(67.41) <u>72.46</u>	\$86.56
B High	\$(93.75) <u>97.39</u>	\$(99.17) <u>105.23</u>	\$(76.98) <u>79.97</u>	\$(76.98) <u>82.39</u>	\$89.05
C Low	\$(76.38) <u>79.35</u>	\$(81.80) <u>87.19</u>	\$(56.74) <u>58.95</u>	\$(56.74) <u>61.37</u>	\$81.03
C Med	\$(85.66) <u>88.99</u>	\$(91.08) <u>96.83</u>	\$(71.09) <u>73.83</u>	\$(71.09) <u>76.28</u>	\$93.33
C Med-High	\$(106.51) <u>110.64</u>	\$(111.93) <u>118.48</u>	\$(94.60) <u>98.27</u>	\$(94.60) <u>100.69</u>	\$98.41
C High	\$(107.57) <u>111.74</u>	\$(112.99) <u>119.58</u>	\$(95.51) <u>99.22</u>	\$(95.51) <u>101.64</u>	\$99.76

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
KING COUNTY					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC/EARC Without Capital Add-On	ARC/EARC With Capital Add-On	AFH
D Low	\$((78.72)) <u>81.78</u>	\$((84.14)) <u>89.62</u>	\$((76.52)) <u>79.50</u>	\$((76.52)) <u>81.92</u>	\$86.46
D Med	\$((87.40)) <u>90.79</u>	\$((92.82)) <u>98.63</u>	\$((88.58)) <u>92.02</u>	\$((88.58)) <u>94.44</u>	\$95.25
D Med-High	\$((112.88)) <u>117.26</u>	\$((118.30)) <u>125.10</u>	\$((112.50)) <u>116.86</u>	\$((112.50)) <u>119.28</u>	\$((112.59)) <u>114.84</u>
D High	\$((121.59)) <u>126.30</u>	\$((127.01)) <u>134.14</u>	\$((121.59)) <u>126.30</u>	\$((121.59)) <u>128.72</u>	\$((128.01)) <u>130.57</u>
E Med	\$((146.85)) <u>152.53</u>	\$((152.27)) <u>160.37</u>	\$((146.85)) <u>152.53</u>	\$((146.85)) <u>154.95</u>	\$((154.39)) <u>157.48</u>
E High	\$((172.10)) <u>178.76</u>	\$((177.52)) <u>186.60</u>	\$((172.10)) <u>178.76</u>	\$((172.10)) <u>181.18</u>	\$((180.80)) <u>184.42</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
METROPOLITAN COUNTIES*					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC/EARC Without Capital Add-On	ARC/EARC With Capital Add-On	AFH
A Low	\$((64.78)) <u>67.30</u>	\$((69.70)) <u>74.64</u>	\$((50.06)) <u>52.02</u>	\$((50.06)) <u>54.44</u>	\$70.78
A Med	\$((68.28)) <u>70.94</u>	\$((73.20)) <u>78.28</u>	\$((54.51)) <u>56.64</u>	\$((54.51)) <u>59.06</u>	\$73.49
A High	\$((83.35)) <u>86.59</u>	\$((88.27)) <u>93.93</u>	\$((59.39)) <u>61.71</u>	\$((59.39)) <u>64.13</u>	\$79.80
B Low	\$((64.78)) <u>67.30</u>	\$((69.70)) <u>74.64</u>	\$((50.06)) <u>52.02</u>	\$((50.06)) <u>54.44</u>	\$72.18
B Med	\$((74.05)) <u>76.93</u>	\$((78.97)) <u>84.27</u>	\$((60.09)) <u>62.43</u>	\$((60.09)) <u>64.85</u>	\$78.39
B Med-High	\$((83.83)) <u>87.09</u>	\$((88.78)) <u>94.43</u>	\$((63.86)) <u>66.35</u>	\$((63.86)) <u>68.77</u>	\$84.98
B High	\$((91.43)) <u>94.98</u>	\$((96.35)) <u>102.32</u>	\$((74.82)) <u>77.73</u>	\$((74.82)) <u>80.15</u>	\$87.41
C Low	\$((68.28)) <u>70.94</u>	\$((73.20)) <u>78.28</u>	\$((54.73)) <u>56.87</u>	\$((54.73)) <u>59.29</u>	\$79.61
C Med	\$((83.35)) <u>86.59</u>	\$((88.27)) <u>93.93</u>	\$((70.19)) <u>72.92</u>	\$((70.19)) <u>75.31</u>	\$91.57
C Med-High	\$((103.01)) <u>107.01</u>	\$((107.93)) <u>114.35</u>	\$((87.92)) <u>91.33</u>	\$((87.92)) <u>93.75</u>	\$93.63
C High	\$((105.05)) <u>108.09</u>	\$((108.97)) <u>115.43</u>	\$((93.50)) <u>97.13</u>	\$((93.50)) <u>99.55</u>	\$97.03

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE METROPOLITAN COUNTIES*					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC/EARC	ARC/EARC	AFH
	Add-on	Add-on	Without Capital Add-On	With Capital Add-On	
D Low	\$(74.05) <u>76.93</u>	\$(78.97) <u>84.27</u>	\$(75.47) <u>78.41</u>	\$(75.47) <u>80.83</u>	\$84.89
D Med	\$(85.04) <u>88.34</u>	\$(89.96) <u>95.68</u>	\$(86.81) <u>90.18</u>	\$(86.81) <u>92.60</u>	\$93.44
D Med-High	\$(109.19) <u>113.42</u>	\$(114.11) <u>120.76</u>	\$(109.74) <u>113.99</u>	\$(109.74) <u>116.41</u>	\$(109.19) <u>111.37</u>
D High	\$(118.27) <u>122.85</u>	\$(123.19) <u>130.19</u>	\$(118.27) <u>122.85</u>	\$(118.27) <u>125.27</u>	\$(123.88) <u>126.36</u>
E Med	\$(142.31) <u>147.82</u>	\$(147.23) <u>155.16</u>	\$(142.31) <u>147.82</u>	\$(142.31) <u>150.24</u>	\$(149.01) <u>151.99</u>
E High	\$(166.34) <u>172.77</u>	\$(171.23) <u>180.11</u>	\$(166.34) <u>172.77</u>	\$(166.34) <u>175.19</u>	\$(174.13) <u>177.61</u>

*Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, and Yakima counties.

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE NONMETROPOLITAN COUNTIES**					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC/EARC	ARC/EARC	AFH
	Add-on	Add-on	Without Capital Add-On	With Capital Add-On	
A Low	\$(63.65) <u>66.13</u>	\$(68.89) <u>73.79</u>	\$(50.06) <u>52.02</u>	\$(50.06) <u>54.44</u>	\$69.07
A Med	\$(68.28) <u>70.94</u>	\$(73.52) <u>78.60</u>	\$(53.41) <u>55.50</u>	\$(53.41) <u>57.92</u>	\$71.67
A High	\$(83.38) <u>86.59</u>	\$(88.59) <u>94.25</u>	\$(58.45) <u>60.73</u>	\$(58.45) <u>63.15</u>	\$77.73
B Low	\$(63.65) <u>66.13</u>	\$(68.89) <u>73.79</u>	\$(50.06) <u>52.02</u>	\$(50.06) <u>54.44</u>	\$70.42
B Med	\$(74.05) <u>76.93</u>	\$(79.29) <u>84.59</u>	\$(58.97) <u>61.27</u>	\$(58.97) <u>63.69</u>	\$76.38
B Med-High	\$(83.83) <u>87.09</u>	\$(89.07) <u>94.25</u>	\$(62.67) <u>65.11</u>	\$(62.67) <u>67.53</u>	\$82.71
B High	\$(91.43) <u>94.98</u>	\$(96.67) <u>102.64</u>	\$(70.79) <u>73.55</u>	\$(70.79) <u>75.97</u>	\$85.04
C Low	\$(68.28) <u>70.94</u>	\$(73.52) <u>78.60</u>	\$(53.41) <u>55.50</u>	\$(53.41) <u>57.92</u>	\$77.55
C Med	\$(83.35) <u>86.59</u>	\$(88.59) <u>94.25</u>	\$(66.67) <u>68.96</u>	\$(66.37) <u>71.38</u>	\$89.04
C Med-High	\$(103.01) <u>107.01</u>	\$(108.25) <u>114.67</u>	\$(84.58) <u>87.87</u>	\$(84.58) <u>90.29</u>	\$91.01
C High	\$(104.05) <u>108.09</u>	\$(109.29) <u>115.75</u>	\$(88.40) <u>91.83</u>	\$(88.40) <u>94.25</u>	\$93.08

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE NONMETROPOLITAN COUNTIES**					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	<u>ARC/EARC</u> <u>Without Capi- tal Add-On</u>	<u>ARC/EARC</u> <u>With Capital</u> <u>Add-On</u>	AFH
D Low	\$((74.05)) <u>76.93</u>	\$((79.29)) <u>84.59</u>	\$((71.36)) <u>74.14</u>	\$((71.36)) <u>76.56</u>	\$82.62
D Med	\$((85.04)) <u>88.34</u>	\$((90.28)) <u>96.00</u>	\$((82.09)) <u>85.28</u>	\$((82.09)) <u>87.70</u>	\$90.83
D Med-High	\$((109.19)) <u>113.42</u>	\$((114.43)) <u>121.08</u>	\$((103.74)) <u>107.76</u>	\$((103.74)) <u>110.18</u>	\$((104.36)) <u>103.46</u>
D High	\$((111.81)) <u>116.14</u>	\$((117.05)) <u>123.80</u>	\$((111.81)) <u>116.14</u>	\$((111.81)) <u>118.56</u>	\$((117.20)) <u>119.54</u>
E Med	\$((134.53)) <u>139.74</u>	\$((139.77)) <u>147.40</u>	\$((134.53)) <u>139.74</u>	\$((134.53)) <u>142.16</u>	\$((140.94)) <u>143.76</u>
E High	\$((157.25)) <u>163.33</u>	\$((162.49)) <u>170.99</u>	\$((157.25)) <u>163.33</u>	\$((157.25)) <u>165.75</u>	\$((164.70)) <u>167.99</u>

** Nonmetropolitan counties: Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Orielle, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla and Whitman.

WSR 18-14-061
EMERGENCY RULES
HEALTH CARE AUTHORITY

[Filed June 29, 2018, 8:13 a.m., effective July 1, 2018]

Effective Date of Rule: July 1, 2018.

Purpose: The agency is amending WAC 182-550-7500 to comply with ESSB 6032, section 213 (1)(fff) that provides funding for a fifty percent rate increase of outpatient services for sole community hospitals for SFY 2019, effective July 1, 2018.

Citation of Rules Affected by this Order: Amending WAC 182-550-7500.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, ESSB 6032, section 213 (1)(fff), supplemental operating budget, 65th legislature, 2018 regular session.

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

Reasons for this Finding: This emergency is necessary to comply with ESSB 6032, section 213 (1)(fff), effective on July 1, 2018, while the agency completes the permanent rule-making process. ESSB 6032 requires the agency to increase the rate of outpatient services for sole community hospitals by fifty percent. The agency filed the permanent rules under

WSR 18-13-114 on June 20, 2018. A public hearing is scheduled for July 25, 2018.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: June 29, 2018.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-22-003, filed 10/22/14, effective 11/22/14)

WAC 182-550-7500 OPPS rate. (1) The medicaid agency calculates hospital-specific outpatient prospective payment system (OPPS) rates using all of the following:

- (a) A base conversion factor established by the agency;
- (b) An adjustment for direct graduate medical education (DGME); and

(c) The latest wage index information established and published by the centers for medicare and medicaid services (CMS) when the OPSS rates are set for the upcoming year. Wage index information reflects labor costs in the cost-based statistical area (CBSA) where a hospital is located.

(2) Base conversion factors. The agency calculates the base enhanced ambulatory patient group (EAPG) conversion factor during a hospital payment system rebasing. The base is calculated as the maximum amount that can be used, along with all other payment factors and adjustments described in this chapter, to maintain aggregate payments across the system. The agency will publish base conversion factors on its web site.

(3) Wage index adjustments reflect labor costs in the CBSA where a hospital is located.

(a) The agency determines the labor portion of the base rate by multiplying the base rate by the labor factor established by medicare; then

(b) Multiplying the amount in (a) of this subsection is multiplied by the most recent wage index information published by CMS when the rates are set; then

(c) The agency adds the nonlabor portion of the base rate to the amount in (b) of this subsection to produce a hospital-specific wage adjusted factor.

(4) DGME. The agency obtains the DGME information from the hospital's most recently filed medicare cost report as available in the CMS health care cost report information system (HCRIS) dataset.

(a) The hospital's medicare cost report must cover a period of twelve consecutive months in its medicare cost report year.

(b) If a hospital's medicare cost report is not available on HCRIS, the agency may use the CMS Form 2552-10 to calculate DGME.

(c) In the case where a hospital has not submitted a CMS medicare cost report in more than eighteen months from the end of the hospital's cost reporting period, the agency may remove the hospital's DGME adjustment.

(d) The agency calculates the hospital-specific DGME by dividing the DGME cost reported on worksheet B, part 1 of the CMS cost report by the adjusted total costs from the CMS cost report.

(5) The formula for calculating the hospital's final specific conversion factor is:

$$\text{EAPG base rate} \times (.6(\text{wage index}) + .4)/(1-\text{DGME})$$

~~(6) ((Effective January 1, 2015, the agency multiplies the hospital's specific conversion factor by 1.25 if the hospital meets the agency's sole community hospital criteria listed in (a) of this subsection.~~

~~(a))~~ The agency considers an in-state hospital a sole community hospital if all the following conditions apply. The hospital must:

~~((i))~~ (a) Be certified by CMS as a sole community hospital as of January 1, 2013.

~~((ii))~~ (b) Have a level III adult trauma service designation from the department of health as of January 1, 2014.

~~((iii))~~ (c) Have less than one hundred fifty acute care licensed beds in fiscal year 2011.

~~((iv))~~ (d) Be owned and operated by the state or a political subdivision.

~~((b))~~ (7) If the hospital meets the agency's sole community hospital (SCH) criteria listed in subsection (6) of this section, effective:

~~(a) January 1, 2015, through June 30, 2018, the agency multiplies the hospital's specific conversion factor by 1.25;~~

~~(b) July 1, 2018, through June 30, 2019, the agency multiplies an in-state hospital's specific EAPG conversion factor by 1.50;~~

~~(c) July 1, 2019, the agency multiplies an in-state hospital's specific EAPG conversion factor by 1.25.~~

(8) The formula for calculating a sole community hospital's final conversion factor is:

$$[\text{EAPG base rate} \times (.6(\text{wage index}) + .4)/(1-\text{DGME})] \times \text{SCH Factor}$$

Reviser's note: The brackets and enclosed material in the text of 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 18-14-062
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-142—Filed June 29, 2018, 8:32 a.m., effective June 30, 2018]

Effective Date of Rule: June 30, 2018.

Purpose: To prevent new and multiple wildfires during this period of extreme fire danger; and to prevent the severe deterioration of air quality, which exacerbates the risk to life, health, and property.

Citation of Rules Affected by this Order: Amending WAC 220-500-030, 220-500-040, and 220-500-110.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, 77.12.047, and 77.32.470.

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: Addresses an emergency need to prevent new and multiple wildfires during this period of extreme fire danger, and reduces the risk to life, health, and property.

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 the Request of a Non-governmental 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 3, Repealed 0.

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

Date Adopted: June 29, 2018.

Joe Stohr
Director

NEW SECTION

WAC 220-500-03000A Operating chainsaws, welding, or operating an acetylene or other torch with open flame. (1) Notwithstanding the provisions of WAC 220-500-030, effective June 30, 2018, until further notice, in wildlife areas and access sites in eastern Washington owned or controlled by the department, it is unlawful to:

(a) Operate a chainsaw without a permit or approval from the director; or

(b) Weld or operate an acetylene torch or other open flame without a permit or approval from the director.

(2) A violation of this section is an infraction punishable under RCW 77.15.160 (5)(b).

[NEW SECTION]

WAC 220-500-04000A Operating a motor vehicle off developed roadways. (1) Notwithstanding the provisions of WAC 220-500-040, effective June 30, 2018, until further notice, it is unlawful to operate a motor vehicle off developed roadways in wildlife areas and access sites owned or controlled by the department in eastern Washington. However, it is permissible to park in an area devoid of vegetation within 10 feet of the roadway, and to park overnight in developed campgrounds and at trailheads.

(2) A violation of this section is an infraction punishable under RCW 77.15.160 (5)(b).

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[NEW SECTION]

WAC 220-500-11000A Fires, campfires and smoking. (1) Notwithstanding the provisions of WAC 220-500-110, effective June 30, 2018, until further notice, it is unlawful to build, start, or maintain fires or campfires in wildlife areas and access sites owned or controlled by the department in eastern Washington without a permit or approval from the director. However, it is permissible to use personal camp stoves or lanterns fueled by liquid petroleum, liquid petroleum gas, or propane.

(2) Effective immediately until further notice, it is unlawful to smoke in wildlife areas and access sites owned or controlled by the department in eastern Washington, except in an enclosed vehicle.

(3) A violation of this section is an infraction punishable under RCW 77.15.160 (5)(b).

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

WSR 18-14-066
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-141—Filed June 29, 2018, 9:51 a.m., effective June 30, 2018]

Effective Date of Rule: June 30, 2018.

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

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000F, 220-312-06000H and 220-312-06000I; and amending WAC 220-312-060.

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

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

Reasons for this Finding: This action provides recreational angling opportunity based on a runsize upgrade of sockeye passage at Bonneville Dam. Summer Chinook is tracking below the preseason forecast, and as a result much of the allocation sharing will likely shift upstream to above Priest Rapids Dam, thus retention below Bonneville Dam is closed. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. This action conforms Washington state rules with Oregon state rules and is consistent with the compact action of June 28, 2018. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 3; **Federal Rules or Standards:** New 1, Amended 0, Repealed 3; **or Recently Enacted State Statutes:** New 1, Amended 0, Repealed 3.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, 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: June 29, 2018.

Joe Stohr
Director

NEW SECTION

WAC 220-312-06000L Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-312-060, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

- (1) Salmon and Steelhead:
- (a) From the Megler-Astoria Bridge upstream to Bonneville Dam
- (i) Effective July 1 through July 31, 2018
- (ii) Daily limit 6, no more than 2 adults.
- (iii) Release all salmon other than hatchery jack Chinook and sockeye.
- (iv) Salmon minimum length is 12 inches.
- (b) From Bonneville Dam to the HWY 395 Bridge at Pasco
- (i) Effective July 1 through July 31, 2018
- (ii) Daily limit 6, no more than 2 adults.
- (iii) Release all salmon other than hatchery Chinook and sockeye.
- (iv) Salmon minimum length is 12 inches.
- (c) From HWY 395 Bridge at Pasco to Priest Rapids Dam
- (i) Effective July 1 until further notice
- (ii) Daily limit 6, no more than 2 adults, no more than 1 adult hatchery Chinook.
- (iii) Release all salmon other than hatchery Chinook and sockeye.
- (iv) Salmon minimum length is 12 inches.
- (d) Priest Rapids Dam to Wells Dam
- (i) Effective July 1 until further notice
- (ii) Daily limit 6, no more than 4 adults, no more than 2 adult hatchery Chinook and 2 sockeye.
- (iii) Release all salmon other than hatchery Chinook and sockeye.
- (iv) Salmon minimum length is 12 inches.
- (e) Wells Dam to HWY 173 at Brewster.
- (i) Effective July 16 until further notice
- (ii) Daily limit 6, no more than 4 adults, no more than 2 adult hatchery Chinook and 2 sockeye.
- (iii) Release all salmon other than hatchery Chinook and sockeye.
- (iv) Salmon minimum length is 12 inches.
- (f) HWY 173 Bridge at Brewster to Chief Joseph Dam
- (i) Effective July 1 until further notice
- (ii) Daily limit 6, no more than 4 adults, no more than 2 adult hatchery Chinook and 2 sockeye.
- (iii) Release all salmon other than hatchery Chinook and sockeye.
- (iv) Salmon minimum length is 12 inches.

REPEALER

The following sections of the Washington Administrative Code are repealed effective July 1, 2018:

- WAC 220-312-06000F Freshwater exceptions to statewide rules—Columbia River. (18-66)
- WAC 220-312-06000H Freshwater exceptions to statewide rules—Columbia River. (18-106)

WAC 220-312-06000I Freshwater exceptions to statewide rules—Columbia River. (18-110)

WSR 18-14-067**EMERGENCY RULES****OFFICE OF****FINANCIAL MANAGEMENT**

[Filed June 29, 2018, 10:11 a.m., effective July 1, 2018]

Effective Date of Rule: July 1, 2018.

Purpose: 2ESSHB [2E2SHB] 1661 creates the department of children, youth and families (DCYF) effective July 1, 2018. Section 807 of 2ESSHB [2E2SHB] 1661 amends RCW 41.06.475 which removes the requirement for the office of financial management (OFM) to adopt background check rules for the department of early learning and requires OFM to adopt background check rules for DCYF.

Citation of Rules Affected by this Order: Amending WAC 357-19-183, 357-19-184, 357-19-186, 357-19-187, 357-19-188, 357-19-189, and 357-19-191.

Statutory Authority for Adoption: Chapter 6, Laws of 2017.

Other Authority: RCW 41.06.475.

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: To align Title 357 WAC with the changes made to RCW 41.06.475 effective July 1, 2018.

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 7, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental 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 7, Repealed 0.

Date Adopted: June 29, 2018.

Roselyn Marcus
Assistant Director of
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 08-07-062, filed 3/17/08, effective 4/18/08)

WAC 357-19-183 Must (~~DEL~~) DCYF conduct background checks on all employees in covered positions and individuals being considered for a covered position?

(1) The (~~director~~) secretary of the department of (~~early learning (DEL)~~) children, youth and families (DCYF) or

designee must conduct background checks on all employees in covered positions and individuals being considered for a covered position.

(2) The requirement for background checks must include the following:

(a) Current employees in covered positions.

(b) Any employee considered for a covered position because of a layoff, reallocation, transfer, promotion, demotion, or other actions that result in the employee being in a covered position.

(c) Any individual being considered for positions which are covered positions.

(3) Considered for positions includes decisions about:

(a) Initial hiring, layoffs, reallocations, transfers, promotions, demotions, or

(b) Other decisions that result in an individual being in a position that will or may have unsupervised access to children as an employee, an intern, or a volunteer.

AMENDATORY SECTION (Amending WSR 07-17-125, filed 8/20/07, effective 9/20/07)

WAC 357-19-184 Besides the ~~(director)~~ DCYF, may other employers conduct background checks on applicants or employees and what is the requirement to notify applicants or employees? (1) Employers may conduct background checks on applicants and/or employees if required by state or federal law, or if the employer identifies the need for a background check to verify that the applicant or employee satisfies the position requirements.

(2) Employers who conduct background checks must develop procedures regarding how and when background checks will be conducted. The procedures must include notification to applicants and/or employees if a background check is required.

AMENDATORY SECTION (Amending WSR 07-17-125, filed 8/20/07, effective 9/20/07)

WAC 357-19-186 For purposes of WAC 357-19-183, what information is considered in a background check conducted by ~~(director)~~ DCYF and what are the results of the background check used for? (1) The background check information considered by the ~~(director)~~ secretary of the ~~(director)~~ DCYF will include but not be limited to conviction records, pending charges, and disciplinary board final decisions.

(2) The results of the background check must be used solely for the purpose of determining the character, suitability and competence of the applicant and/or employee.

AMENDATORY SECTION (Amending WSR 08-07-062, filed 3/17/08, effective 4/18/08)

WAC 357-19-187 For purposes of WAC 357-19-183, must an employee and/or individual being considered for a covered position authorize the ~~(director)~~ secretary of the ~~(director)~~ DCYF or designee to conduct a background check and what happens if the employee or individual being considered for a covered position does not provide authorization? An employee and/or individual applying for

or being considered to remain in a covered position must authorize the ~~(director)~~ secretary of the ~~(director)~~ DCYF or designee to conduct a background check.

Failure to authorize the ~~(director)~~ secretary of the ~~(director)~~ DCYF or designee to conduct a background check disqualifies an employee or individual from consideration for any covered position including their current covered position.

AMENDATORY SECTION (Amending WSR 07-17-125, filed 8/20/07, effective 9/20/07)

WAC 357-19-188 What happens when a permanent ~~(director)~~ DCYF employee is disqualified because of a background check? (1) A permanent employee with a background check disqualification may be subject to any of the following actions in no specific order:

(a) Voluntary demotion;

(b) Job restructuring;

(c) Voluntary resignation;

(d) Job reassignment;

(e) Nondisciplinary separation in accordance with WAC 357-46-195; or

(f) Disciplinary action in accordance with WAC 357-40-010.

(2) An appointing authority may use the following interim measures while exploring the availability of actions (not to exceed thirty calendar days except in cases where there are investigations of pending charges):

(a) Voluntary use of accrued vacation, exchange, and/or compensatory time;

(b) Authorized leave without pay, if there is no paid leave available, or if the employee chooses not to use paid leave; and/or

(c) Reassignment to another work location.

(d) When considering the above actions, the agency will consider the least restrictive means necessary to prevent unsupervised access.

(3) Before a permanent employee may be separated due to a background check disqualification, the search for a non-covered position will occur over a period of thirty calendar days.

AMENDATORY SECTION (Amending WSR 07-17-125, filed 8/20/07, effective 9/20/07)

WAC 357-19-189 What are the responsibilities of the ~~(director)~~ secretary of the ~~(director)~~ DCYF in carrying out the requirement to conduct background checks? (1) In order to implement the requirements of WAC 357-19-183, the ~~(director)~~ secretary of the ~~(director)~~ DCYF or designee must:

(a) Notify employees and individuals being considered for covered positions that a background check is required for covered positions; and

(b) Develop policies and procedures pertaining to background checks.

(2) Information contained in background checks must be used solely for the purpose of determining the character, suitability and competence of the employee and/or individual being considered for covered positions. The information must not be disseminated further. Dissemination and use of

such information is governed by the criminal records privacy act, chapter 10.97 RCW. Unlawful dissemination of information protected by the criminal records privacy act is a criminal offense and may result in prosecution and/or disciplinary action as provided in chapter 357-40 WAC. However, results of a background check may be discoverable pursuant to the rules of civil discovery, or subject to disclosure pursuant to a public records request.

AMENDATORY SECTION (Amending WSR 07-17-125, filed 8/20/07, effective 9/20/07)

WAC 357-19-191 Does a permanent employee of (~~DEL~~) DCYF who is disqualified from a covered position as a result of a background check have the right to request a review of the disqualification? A permanent employee of (~~DEL~~) DCYF who is disqualified from a covered position as a result of a background check has the right to present to the (~~director~~) secretary of the (~~DEL~~) DCYF or designee evidence that mitigates convictions, pending charges, and disciplinary board final decisions including, but not limited to:

- (1) The employee's background check authorization and disclosure form;
- (2) The employee's age at the time of conviction, charge, or disciplinary board final decision;
- (3) The nature and severity of the conviction, charge, or disciplinary board final decision;
- (4) The length of time since the conviction, charge, or disciplinary board final decision;
- (5) The nature and number of previous offenses;
- (6) Vulnerability of the child to which the employee will or may have unsupervised access; and
- (7) The relationship between the potentially disqualifying event and the duties of the employee.

WSR 18-14-068
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-140—Filed June 29, 2018, 10:37 a.m., effective June 29, 2018, 10:37 a.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Rules Affected by this Order: Repealing WAC 220-358-03000Q; and amending WAC 220-358-030.

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

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008)

(Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: Adjusts the 2018 summer select area commercial seasons. Impacts to nonlocal stocks are expected to be minimal and local Chinook stocks reared for the select area sites are available for harvest. The fishery is consistent with the *U.S. v. Oregon* Management Agreement and the associated biological opinion. Conforms Washington state rules with Oregon state rules. Regulation is consistent with compact action of January 30 and June 28, 2018. There is insufficient time to promulgate permanent rules.

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

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

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

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

Number of Sections Adopted at the Request of a Non-governmental 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: June 29, 2018.

Joe Stohr
Director

NEW SECTION

WAC 220-358-03000R Columbia River seasons below Bonneville. Notwithstanding the provisions of WAC 220-358-030, WAC 220-358-040, and WAC 220-358-050, it is unlawful for a person to take or possess salmon, sturgeon, and shad for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, 1E and Select Areas, except during the times and conditions listed below:

(1) Tongue Point/South Channel

(a) **Dates:** 7 PM to 7 AM Monday and Thursday nights immediately through July 27, 2018.

(b) **Area:** The Tongue Point Area is defined as those waters of the Columbia River bounded by a line from a regulatory marker (located at 46.20863 degrees N, -123.75944 degrees W) on the eastern shore of Tongue Point to the flashing green USCG light "3" on the rock jetty at the northwest tip of Mott Island, a line from a regulatory marker at the southeast end of Mott Island northeasterly to a regulatory marker on the northwest shore of Lois Island, and a line from a regulatory marker (46.18270 degrees N, -123.74313 degrees W) located on the Oregon shore 500 feet north of the railroad bridge crossing the John Day River projecting easterly to a regulatory marker on Lois Island.

The South Channel Area is defined as those waters of South Channel bounded by a line from a regulatory marker on the Oregon shore at John Day Point projecting northeasterly to a regulatory marker on Lois Island, and a line from a regulatory marker on Settler Point projecting northwesterly to the flashing red USCG light "10" then projecting westerly to the eastern tip of Burnside Island.

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

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

(2) Blind Slough/Knappa Slough Select Area

(a) **Dates:** Open 7 PM to 7 AM Monday and Thursday nights immediately through July 27, 2018.

(b) **Area:** Blind Slough and Knappa Slough are both open. The lower boundary of the Knappa Slough fishing area is defined by markers on the west end of Minaker Island to

markers on Karlson Island and the Oregon shore (fall boundary).

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

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

(3) **Allowable Possession:** Salmon, white sturgeon and shad. A maximum of two white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday), through Saturday, June 30, 2018. Effective Monday, July 2, 2018, a maximum of three white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). The white sturgeon possession and sales limit includes all Select Area fisheries.

(4) **24-hour** quick reporting is in effect for Washington buyers WAC 220-352-180. Permanent transportation rules in effect.

(5) **Multi-Net Rule:** Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored (WAC 220-358-010(2)).

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-358-03000Q Columbia River seasons below Bonneville. (18-71)

WSR 18-14-069

EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 18-139—Filed June 29, 2018, 10:39 a.m., effective June 29, 2018, 10:39 a.m.]

Effective Date of Rule: Immediately upon filing.

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

Citation of Rules Affected by this Order: Repealing WAC 220-359-02000R; and amending WAC 220-359-020.

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

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

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

Reasons for this Finding: Continues the treaty fishery for commercial sales to Washington wholesale buyers and the public. Harvestable fish are available under the current harvest guidelines. The season is consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River Compact on June 5 and June 28, 2018. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

Number of Sections Adopted at the Request of a Non-governmental 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: June 29, 2018.

Joe Stohr
Director

NEW SECTION

WAC 220-359-02000S Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-359-010, WAC 220-359-020, WAC 220-359-030, and WAC 220-359-090, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

- (1) Open Areas: SMCRA 1F, 1G, and 1H (Zone 6)
 - (a) Season: Immediately through 6:00 p.m. June 29 and 6:00 a.m. July 2 through 6:00 p.m. July 6.
 - (b) Gear: Set and drift gill nets with a 7" minimum mesh size restriction.
 - (c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon may not be sold but sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools and may be kept for subsistence purposes. Fish landed during the open periods are allowed to be sold after the period concludes.
 - (d) Standard river mouth and dam sanctuary closures remain in place for this gear except Spring Creek Hatchery.
- (2) Open Areas: SMCRA 1F, 1G, and 1H (Zone 6)
 - (a) Season: Immediately through 11:59 p.m. July 31.
 - (b) Gear: Hoop nets/bag nets, dip nets, and rod and reel with hook and line.
 - (c) Allowable sale: Salmon (any species), steelhead caught after 6:00 a.m. on June 16 may be sold or kept for subsistence. Shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon may not be sold but sturgeon from 38 to 54 inches fork length in the Bonneville Pool and sturgeon from 43 to 54 inches fork length in The Dalles and John Day Pools and may be kept for subsistence purposes. Fish landed during the open periods are allowed to be sold after the period concludes.
 - (d) Standard river mouth and dam sanctuary closures remain in place for this gear except Spring Creek Hatchery.
- (3) Open Areas: Areas defined in tribal/state MOU's/ MOA's.

(a) Season: Immediately through 11:59 p.m. July 31 and only during days and times opened under tribal rules.

(b) Gear: Hook and line and/or platform gear identified in tribal rules.

(c) Allowable sale: Salmon (any species), steelhead, shad, yellow perch, bass, walleye, catfish, and carp may be sold or retained for subsistence. Sturgeon may not be retained in fisheries downstream of Bonneville Dam. Sales of fish are not authorized on COE property downstream of Bonneville Dam. Fish must be transported elsewhere for sale. Fish landed during the open periods are allowed to be sold after the period concludes.

(4) Columbia River Tributaries upstream of Bonneville Dam:

(a) Season: Immediately until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

(b) Area: Wind River, Drano Lake, and Klickitat River.

(c) Gear: Hoop nets, bag nets, dip nets, and rod and reel with hook and line. Gill nets may only be used in Drano Lake.

(d) Allowable Sale: Salmon, steelhead, shad, yellow perch, bass, walleye, catfish, or carp. Sturgeon between 38 to 54 inches fork length harvested in tributaries within Bonneville pool may not be sold but may be kept for subsistence purposes only. Sales of fish are allowed after the open period concludes, as long as fish were landed during the open period.

(5) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-352-080, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

(6) Fish caught during the open period may be sold after the period concludes.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-359-02000R Columbia River salmon seasons above Bonneville Dm. (18-116)

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

WSR 18-14-071 EMERGENCY RULES DEPARTMENT OF EARLY LEARNING

[Filed June 29, 2018, 1:06 p.m., effective June 30, 2018]

Effective Date of Rule: June 30, 2018.

Purpose: Rules explain the procedures for requesting public records from the department of children, youth, and families (DCYF), when fees will be charged, and how requests will be processed. Codifying process and procedures aids in the agency's consistent processing of public records requests.

Citation of Rules Affected by this Order: New WAC 170-01-0205 and 170-01-0206; repealing WAC 170-01-0210 and 170-01-0220; and amending WAC 170-01-0010, 170-01-0020, 170-01-0030, 170-01-0040, 170-01-0050, 170-01-0100, 170-01-0110, 170-01-0120, 170-01-0200, 170-01-0230, 170-01-0240, 170-01-0250, 170-01-0260, 170-01-0270, and 170-01-0290.

Statutory Authority for Adoption: RCW 43.215.070; chapter 42.56 RCW.

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

Reasons for this Finding: Rules must be in place on July 1 to establish DCYF's policies for public disclosure requests, to clarify for the public how to request records from DCYF, and to clarify procedures, fees, and processing times. Identical permanent rules have been adopted, but will not take effect until later in July.

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 14, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 14, Repealed 2.

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 29, 2018.

Heather Moss
Director

AMENDATORY SECTION (Amending WSR 12-09-035, filed 4/11/12, effective 5/12/12)

WAC 170-01-0010 Purpose. The purpose of this chapter is to provide rules for the department (~~of early learning~~) to implement the Public Records Act, chapter 42.56 RCW.

AMENDATORY SECTION (Amending WSR 16-09-060, filed 4/15/16, effective 5/16/16)

WAC 170-01-0020 Definitions. The definitions set forth in chapter 42.56 RCW shall apply to this chapter. ~~((Additional definitions not listed in the Public Records Act are listed in this section, except as provided in this section))~~ The following definitions also apply to this chapter.

"Authorization" means a detailed document that gives the department permission to use or disclose confidential information records for specified purposes.

"Client" means a person who receives services or benefits from the department.

~~((~~"DEL"~~ or))~~ "Department" means the department of ~~((early learning))~~ children, youth, and families. Where appropriate, ~~((DEL))~~ "department" also may refer to the officials and employees of the department of ~~((early learning))~~ children, youth, and families.

"Disclosure" means inspection ~~((and/or))~~ or copying of public records, unless the record is exempt from disclosure by law.

"Public records" includes any writing, as defined in RCW 42.56.010, containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. Almost all records held by an agency relate to the conduct of government; however, some do not. A purely personal record having no relation to the conduct of government is not a "public record." While the contents of the personal record might not be a public record, a transaction of the record itself may be.

"Public records officer" or "PRO" means the designated person for the department who oversees all records requests under RCW 42.56.580. This person is identified in the Washington state register.

"Redact" means to edit from a released record information that is exempt from disclosure to the public, by covering over the information with black ink or other method without deleting the information from the original record.

AMENDATORY SECTION (Amending WSR 16-09-060, filed 4/15/16, effective 5/16/16)

WAC 170-01-0030 ~~((Description of the))~~ Department ~~((of early learning))~~ locations. (1) ~~((DEL was formed in July 2006 under chapter 265, Laws of 2006 to bring together child care and early learning programs previously under the departments of social and health services and commerce, as well as the state office of public instruction.~~

~~((2) The department was established to oversee child care licensing and early childhood learning programs and initiatives.~~

~~((3))~~ The administrative office of the department ~~((of early learning))~~ is located ~~((in Olympia, Washington. To request any information, contact: P.O. Box 40970, Olympia, WA 98504-0970, or call toll free 1-866-482-4325))~~ at 1500 Jefferson Street, S.E., Olympia, Washington.

~~((4))~~ (2) Field offices are located throughout the state and contact information can be found on ~~((DEL's))~~ the department's web site, www.dcyf.wa.gov.

AMENDATORY SECTION (Amending WSR 12-09-035, filed 4/11/12, effective 5/12/12)

WAC 170-01-0040 Public records officer. ~~((DEL's))~~ The department's director will appoint a public records officer (PRO) whose responsibility is to serve as a "point of contact" for members of the public seeking public records. ~~((DEL))~~ The department will provide the public records officer's name and contact information by publishing it in the state register. ~~((DEL))~~ The department will also provide the public records officer's contact information on ~~((the department))~~ its web site, www.dcyf.wa.gov.

A request may be fulfilled by the PRO, or ~~((other DEL))~~ department staff designated by the PRO.

AMENDATORY SECTION (Amending WSR 12-09-035, filed 4/11/12, effective 5/12/12)

WAC 170-01-0050 Records index. (1) ~~((The department keeps an index (list) of the following documents:~~

~~((a) Rules adopted by DEL under chapter 34.05 RCW.~~

~~((b) Substantive final orders issued by the department in adjudicative proceedings under chapter 34.05 RCW and chapter 170-03 WAC.~~

~~((c) Interpretive and policy statements filed by the department under chapter 34.05 RCW.~~

~~((2) The department finds that it would be unduly burdensome and would interfere with agency operations to maintain an index of other records because of the complexity and diversity of its operations and the resulting volume of manuals, correspondence, electronic data and constituent records.~~

~~((3) The department will make available for public disclosure all indices if at a future time they are developed for agency use.))~~ records retention schedule established by the division of state archives of the office of the secretary of state serves as an index for the identification and location of the department's records including those described in RCW 42.56.070(5).

(2) The records retention schedule indexes records according to the originating program or section, and then the record series title. Each title is further identified by a statement of function or purpose, and the retention period. The records retention schedule is available to the public for inspection and copying. The records retention schedule is updated by the department as needed. With the assistance of the public records officer or designee, any person can obtain access to the department's public records using the records retention schedule.

AMENDATORY SECTION (Amending WSR 12-09-035, filed 4/11/12, effective 5/12/12)

WAC 170-01-0100 Availability of public records. Public records are available for inspection and copying during ~~((DEL's))~~ the department's normal business hours, Monday through Friday, 8 a.m. to 5 p.m., excluding legal holidays. A department staff person must be present at all times when a record is being inspected. Appointments are not required, but significantly help ~~((DEL))~~ the department provide prompt and efficient service. Some ~~((DEL))~~ department records may be stored in other locations, in computer storage

systems, or the state records warehouse, and may take time ~~((for DEL))~~ to identify and gather ~~((them))~~. Other records may be exempt from disclosure. Original records cannot be removed from ~~((a DEL building))~~ the inspection location. If required by law, ~~((DEL))~~ department staff must redact information in a record before making it available for inspection. ~~((DEL))~~ Department staff will make copies of records on request.

AMENDATORY SECTION (Amending WSR 12-09-035, filed 4/11/12, effective 5/12/12)

WAC 170-01-0110 Organization of records. ~~((DEL))~~ The department will maintain its records in an organized manner and will take reasonable actions to protect records from damage and disorganization. Records available on the ~~((DEL))~~ department's web site ~~((at www.del.wa.gov))~~, www.dcyf.wa.gov, are available to the public without a records request, and the department does not copy those records. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

AMENDATORY SECTION (Amending WSR 16-09-060, filed 4/15/16, effective 5/16/16)

WAC 170-01-0120 How to make a public records request. (1) Public records requests should be made directly to the ~~((DEL))~~ department's public records officer.

(2) Public records requests may be made verbally or in writing.

(a) Written requests may be sent by email to ~~((public-records@del.wa.gov))~~ dcyf.publicrecords@dcyf.wa.gov, by fax to 360-725-4925 or mail. Requests may be delivered to ~~((Department of Early Learning, P.O. Box 40970, Olympia, WA 98504-0970))~~ 1500 Jefferson Street S.E., Olympia, Washington or P.O. Box 40975, Olympia, WA 98504-0975.

(b) ~~((DEL's))~~ The department's public records request form is on its web site. The department recommends that requestors submit requests using the department's public records request form.

(c) A written request without using the DEL public records request form should contain:

- (i) Name of requestor;
- (ii) Address of requestor;
- (iii) Other contact information, including telephone number and any email address;
- (iv) The date on which the request was made;
- (v) A sufficient description of the record requested; and
- (vi) If the ~~((information))~~ record being requested may include a list of individuals or businesses, a statement that the list will not be used for commercial purposes, which is prohibited by law.

(3) The department may ask an individual requesting a public record for proof of identification when the law restricts disclosure to a specific person.

AMENDATORY SECTION (Amending WSR 12-09-035, filed 4/11/12, effective 5/12/12)

WAC 170-01-0200 How ~~((DEL))~~ the department responds to ~~((your))~~ public records requests. Within five

business days ~~((after))~~ of receiving the request, ~~((DEL))~~ the department will either:

(1) Provide the ~~((record(s)))~~ record;

(2) Acknowledge the request and give a reasonable time estimate of how long the department will take to provide records;

(3) Contact the requestor to clarify the request if it isn't understood by the public records officer; or

(4) Deny all or part of the request in writing, with reasons for the denial. The explanation will include the law that ~~((DEL))~~ the department relied upon in its denial.

At his or her discretion, the public records officer may send the ~~((request))~~ requested records by email, fax, postal mail, or commercial delivery. The records may be delivered on paper, computer or compact discs, or other methods.

AMENDATORY SECTION (Amending WSR 12-09-035, filed 4/11/12, effective 5/12/12)

WAC 170-01-0230 Reasons for ~~((DEL))~~ denying disclosure of all or part of a record. RCW 42.56.030 states that the Public Records Act "shall be liberally construed and its exemptions narrowly construed." ~~((DEL))~~ The department will provide all records required by law. However, there are times when all or part of a record request ~~((would))~~ may be denied, such as when:

(1) The record is exempt from disclosure by law.

(2) The request is for lists of individuals for commercial purposes, including family home providers.

(3) The requestor has not asked for an identifiable record. The Public Records Act requires access to existing, identifiable public records in an agency's possession at the time of the request.

(4) The request requires ~~((DEL))~~ the department to collect or organize data to create a public record, or to give data that did not exist at the time of the public records request.

AMENDATORY SECTION (Amending WSR 12-09-035, filed 4/11/12, effective 5/12/12)

WAC 170-01-0240 Types of records that may be exempt from disclosure. ~~((With any public records request, disclosure must occur unless a specific exemption exists in statute that would allow for DEL to not disclose the record or the information within a record.~~

~~DEL is always prohibited by statute from disclosing lists of individuals, including family home providers, for commercial purposes.~~

~~The Public Records Act lists exemptions or allows for "other statute" exemptions. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by DEL, for inspection and copying: For example, RCW 5.60.060(2) restricts privileged attorney-client communications between DEL staff and the office of the attorney general.)~~ (1) Public records and information may be exempt from disclosure or production under chapter 42.56 RCW or other state or federal laws. Commonly applicable exemptions include, but are not limited to, the following:

(a) Under RCW 42.56.230(1), personal information in files maintained for welfare recipients and patients or clients of public institutions or public health agencies;

(b) Under RCW 42.56.230(2), personal information in files maintained for a child enrolled in licensed child care;

(c) Under chapter 13.50 RCW and related federal laws, information and records;

(d) Under chapter 26.33 RCW and related federal laws, information and records about adoption;

(e) Under RCW 42.56.230(3), personal information in files maintained for department employees or elected officials to the extent that disclosure would violate their privacy rights;

(f) Under RCW 42.56.250, personal information in personnel records, public employment related records, volunteer rosters, or included in any mailing list of employees or volunteers of any public agency; and

(g) Under RCW 42.56.640(2), names of family child care providers.

(2) If the requested public record contains information that is exempt from public disclosure, the department may:

(a) As appropriate, release the nonexempt portion, explaining what exemptions apply to redacted portions of the record;

(b) As appropriate, deny release of the entire record and send a written explanation citing the exemption that applies to the denial; or

(c) When a denial would reveal confidential information, neither confirm nor deny the existence of the requested records and provide the legal basis for confidentiality as if the responsive records existed.

AMENDATORY SECTION (Amending WSR 12-09-035, filed 4/11/12, effective 5/12/12)

WAC 170-01-0250 If the public record requested is exempt from disclosure. If ~~((DEL))~~ the department determines that a record is exempt from disclosure, ~~((you))~~ the requestor will be informed in writing of the specific exemption authorizing DEL to withhold the record.

AMENDATORY SECTION (Amending WSR 12-09-035, filed 4/11/12, effective 5/12/12)

WAC 170-01-0260 If only part of the record requested is exempt from disclosure. ~~((DEL))~~ The department may redact (see WAC 170-01-0020) identifying details or other information when the information is not subject to disclosure. The requestor will be informed in writing of the exemptions authorizing ~~((DEL))~~ the department to withhold information within a record.

AMENDATORY SECTION (Amending WSR 16-09-060, filed 4/15/16, effective 5/16/16)

WAC 170-01-0270 ~~((DEL))~~ Department reviews of records request denials. (1) All review requests must be in writing (letter, fax or email). All review requests must specify the part or parts of the denial or redaction that the requestor wishes to be reviewed.

(2) If ~~((DEL))~~ the department denies all or part of a request, or redacts any portion of a record, the requestor may request a review of this decision by:

(a) Asking the public records officer for an internal ~~((DEL))~~ review. ~~((After receiving a request for an internal review, the public records officer will refer the matter for review to the deputy director who may consult with other agency leaders.))~~ The denial will either be upheld or reversed within two business days after the receipt of the review request.

(b) Asking for an external review by the attorney general's office.

Requestors may initiate this by sending a request for review to Public Records Review, Office of the Attorney General, P.O. Box 40100, Olympia, WA 98504-0100 or publicrecords@atg.wa.gov.

(c) Asking for a judicial review.

To initiate a court review of a public records case, a requestor can file a "motion to show cause" which directs the agency to appear before the court and show any cause why the agency did not violate the act. The case must be filed in the superior court in the county in which the record is maintained.

AMENDATORY SECTION (Amending WSR 17-22-072, filed 10/27/17, effective 11/27/17)

WAC 170-01-0290 Charges for public records. (1)

There is no cost to inspect public records.

(2) Calculating the actual costs of charges for providing public records is unduly burdensome because ~~((it will consume scarce))~~ the department ~~((of early learning))~~ does not have resources to conduct a study of actual costs ~~((, and it is difficult to accurately calculate all costs directly incident to copying records, including equipment and paper costs, data storage costs, electronic production costs, and staff time for copying and sending))~~ for all requested records. In addition, conducting such a study would interfere with other essential agency functions.

(3) ~~((Instead of calculating the actual costs of charges for records, the director or director's designee shall establish, maintain, and make available for public inspection and copying a statement of costs that the department of early learning charges for providing photocopies or electronically produced copies of public records, and such charges for records shall not exceed the maximum default charges allowed in RCW 42.56.120 (2)(b), as amended by section 3, chapter 304, Laws of 2017. The department may also use any other method authorized by the Public Records Act for imposing charges for public records including, but not limited to, charging a flat fee, charging a customized service charge, or charging based on a contract, memorandum of understanding, or other agreement with a requestor.))~~ The department may do one or more of the following:

(a) Charge for copies of records according to the default fees in RCW 42.56.120 (2)(b), (c), and (d);

(b) Charge for customized services pursuant to RCW 42.56.120(3);

(c) Charge other copy fees authorized by statutes outside of chapter 42.56 RCW; and

(d) Enter into an alternative fee agreement with a requestor under RCW 42.56.120(4).

(4) Fee waivers. ~~((Fee waivers are an exception and are available for some small requests under the following conditions:~~

~~(a) It is within the discretion of the public records officer to waive copying fees when:~~

~~(i) All of the records responsive to an entire request are paper copies only and are twenty-five or fewer pages; or~~

~~(ii) All of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of one hundred printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requestor will be charged in accordance with this rule.~~

~~(b) Fee waivers are not applicable to records provided in installments.)~~ The department may waive copying fees in one or more of the following circumstances:

(a) Clients receiving the first copy of their file;

(b) Producing records assists in managing a program;

(c) The expense of billing exceeds the cost of producing records; and

(d) All of the records responsive to an entire request are paper copies only and are twenty-five or fewer pages.

(5) Advance deposits. The public records officer may require an advance deposit of ten percent of the estimated ~~((fees when the copying fees for an installment or an entire request, or customized service charge, exceeds twenty-five dollars.~~

~~(6) All required fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. DEL will notify the requestor when payment is due. Payment should be delivered to the DEL Financial Services Office, P.O. Box 40970, Olympia, WA 98504-0970. Payment may be made by cash, check, or money order to the department of early learning. It should clearly be marked as payment for public records.~~

~~(7) DEL will close))~~ costs of copying records. The public records officer may also require the payment of the remainder of the copying costs before providing all of the records, or, when records are provided on an installment basis, require payment of the costs of copying an installment before providing that installment. If the requestor does not claim an installment of a records request, the department is not obligated to continue producing the balance of the request.

(6) A request will be closed when a requestor fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 170-01-0210 What DEL considers a reasonable time estimate.

WAC 170-01-0220 Reasons for DEL extending the time needed to fill a public records request.

NEW SECTION

WAC 170-01-0205 Third-party requests for otherwise confidential records. (1) A third party, such as a department client's attorney or lay representative, may access otherwise confidential records about a department client with a valid authorization.

(2) The authorization should:

(a) Identify the client;

(b) Identify the individual(s) or organization(s) authorized to receive the records;

(c) State that the department may disclose the information to the requestor;

(d) Identify the record(s) that the client wants the department to release;

(e) State the date the authorization expires or an expiration event that relates to the client or the purpose of the use of disclosure;

(f) State the reason for disclosure;

(g) State the right to revoke;

(h) State the potential for redisclosure;

(i) As appropriate, include specific language authorizing the department to release any one or more of the following to the requestor: Substance use disorder records, child welfare records, adoption records, records concerning reproductive health and sexually transmitted diseases, and mental health records; and

(j) Include a dated, verified signature of the individual with legal authority to authorize the release of records.

(3) The department may ask for additional proof to verify the third-party's authority to access confidential records when required by law.

(4) In general, a parent may access confidential records about a child under age eighteen. A child must consent to disclosure of the following confidential records:

(a) At any age, birth control, and abortion records (see RCW 9.02.100);

(b) If over age thirteen, substance use disorder and mental health records (see 42 C.F.R., Part 2 and RCW 71.34.530);

(c) If over age fourteen, sexually transmitted disease records (see RCW 70.24.110); and

(d) If over age eighteen, all client records held by the department.

(5) Legal guardians under Title 13 RCW and legal custodians under chapter 26.10 RCW are not considered third parties for the purposes of accessing records pertaining to children in their care and custody.

NEW SECTION

WAC 170-01-0206 Notifying third parties of a request. (1) If records responsive to a public records request identify or pertain directly to an individual or organization other than the requestor, the department may notify the named individual or organization about the request.

(2) The department's third-party notice may include:

(a) A copy of the original request;

(b) If appropriate, a copy of the records that identify or pertain to the third party;

(c) The date the department intends to release the record; and

(d) A statement that the third party may prevent release of the record by agreement or by bringing a lawsuit and getting an injunction against the department and the requestor under RCW 42.56.540 prior to the intended release date.

(3) The department may inform the requestor that:

(a) A third party has been notified of the request;

(b) The department provided the third party with a due date for objecting to disclosure; and

(c) The third party may bring a lawsuit against the requestor and the department under RCW 42.56.540 to prohibit disclosure.

WSR 18-14-073
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-148—Filed June 29, 2018, 2:02 p.m., effective July 1, 2018]

Effective Date of Rule: July 1, 2018.

Purpose: Amends commercial coastal troll rules—Seasons and areas.

Citation of Rules Affected by this Order: Repealing WAC 220-354-30000I; and amending WAC 220-354-300.

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: A harvestable quota of salmon is available for the troll fleet. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing 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 the Request of a Non-governmental 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: June 29, 2018.

Joe Stohr
Director

NEW SECTION

WAC 220-354-30000J Coastal salmon troll seasons —Commercial. Notwithstanding the provisions of WAC 220-354-300, effective July 1 until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided below:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude open: July 1 through September 19, 2018.

(2) In Washington Catch Reporting Areas 1, 3 and 4, landing and possession limit of 50 Chinook and 10 coho per vessel per landing week, defined as Thursday through Wednesday.

(3) In Washington Catch Reporting Area 2, landing and possession limit of 10 coho per vessel per landing week, defined as Thursday through Wednesday.

(4) The Cape Flattery and Columbia River Control Zones are closed. The Mandatory Yelloweye Rockfish Conservation Area is closed. The Grays Harbor Control Zone is closed beginning August 13.

(5) All retained coho must be marked with a healed adipose fin clip.

(6) No chum retention north of Cape Alava, WA in August and September.

(7) Minimum size for Chinook salmon is 28 inches in length. Minimum size for coho salmon is 16 inches in length. No minimum size for pink, sockeye or chum salmon.

(8) Lawful troll gear is restricted to all legal troll gear with single point, single shank barbless hooks.

(9) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section. Vessels in possession of salmon north of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 249-1215 or by email at Wendy.Beehley@dfw.wa.gov with Area fished, total Chinook, coho, and halibut catch aboard, and destination. Vessels in possession of salmon south of the Queets River may not cross the Queets River line without first notifying WDFW by phone at (360) 249-1215 or by email at Wendy.Beehley@dfw.wa.gov with Area fished, total Chinook, coho, and halibut catch aboard, and destination. Vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and North of Leadbetter Point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

(10) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. Exclusive Economic Zone, and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude, and east of 125°05'00" W longitude.

(11) The Columbia Control Zone is defined as an area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09" N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07" W.

long, to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(12) The Grays Harbor Control Zone is defined as the area within and east of a line drawn from the Westport Lighthouse (46°53'18" N. lat., 124°07'01" W. long.) to Buoy #2 (46°52'42" N. lat., 124°12'42" W. long.) to Buoy #3 (46°55'00" N. lat., 124°14'48" W. long.) to the Grays Harbor north jetty (46°55'36" N. lat., 124°10'51" W. long.).

(13) The Mandatory Yelloweye Rockfish Conservation Area is defined as the area in Washington Marine Catch Area 3 from 48°00.00" N latitude; 125°14.00" W longitude to 48°02.00" N latitude; 125°14.00" W longitude to 48°02.00" N latitude; 125°16.50" W longitude to 48°00.00" N latitude; 125°16.50" W longitude and connecting back to 48°00.00" N latitude; 125°14.00" W longitude.

(14) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(15) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective July 1, 2018:

WAC 220-354-30000I Coastal salmon troll seasons—Commercial. (18-123)

**WSR 18-14-074
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 18-146—Filed June 29, 2018, 2:03 p.m., effective June 29, 2018, 2:03 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing regulations for Ross Lake.

Citation of Rules Affected by this Order: Amending WAC 220-312-040.

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

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

Reasons for this Finding: This emergency rule is necessary because this closure was omitted from the WAC during the rules simplification process. The department is in the process of adopting permanent rules. This emergency rule is interim until permanent rules take effect.

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

Number of Sections Adopted at the Request of a Non-governmental 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 29, 2018.

Joe Stohr
Director

NEW SECTION

WAC 220-312-04000Q Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040, it is unlawful to violate the following provisions, effective immediately:

Ross Lake tributaries and their tributaries (except Ruby and Big Beaver Creeks) (Whatcom Co.): from mouths upstream 1 mile: Closed waters.

**WSR 18-14-075
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 18-143—Filed June 29, 2018, 2:04 p.m., effective June 29, 2018, 2:04 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for Swift Reservoir.

Citation of Rules Affected by this Order: Amending WAC 220-312-030.

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: Hatchery and wild steelhead are currently being released into Swift Reservoir as part of the reintroduction program. These fish should not be retained by anglers. The department is in the process of adopting permanent rules. This emergency rule is necessary until permanent rules are in effect.

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

Number of Sections Adopted at the Request of a Non-governmental 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 29, 2018.

Joe Stohr
Director

NEW SECTION

WAC 220-312-03000X Freshwater exceptions to statewide rules—Southwest. Notwithstanding the provisions of WAC 220-312-030, effective July 1, 2018 until further notice:

Swift Reservoir (Skamania County): Release all steelhead.

WSR 18-14-076

EMERGENCY RULES

DEPARTMENT OF

CHILDREN, YOUTH, AND FAMILIES

[Filed June 29, 2018, 3:44 p.m., effective July 1, 2018]

Effective Date of Rule: July 1, 2018.

Purpose: Establish new rules for the adjudicative proceedings for the department of children, youth, and families (DCYF). Chapter 110-03 WAC creates rules for informal dispute resolution between DCYF and person or entities, and hearing regulations involving DCYF. This chapter supplements chapter 43.216 RCW, the Administrative Procedure Act, chapter 34.05 RCW and the model rule of procedure adopted by the office of administrative hearings, 10-08 WAC.

Citation of Rules Affected by this Order: New chapter 110-03 WAC.

Statutory Authority for Adoption: Chapters 43.216, 34.05 RCW, chapter 10-08 WAC.

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 rules are being filed as emergency to ensure an administrative hearing process is in place on July 1, 2018, when DCYF officially begins its work. The administrative process provides the general public the opportunity to appeal the department's decisions, decisions that can impact the aggrieved person's ability to be licensed or employed. On July 1, DSHS's board of appeals will no longer have the authority to review any cases for the children's administration, therefore it is crucial that these rules are effective on July 1, 2018. These rules are in alignment with chapter 43.216 RCW which transfers all powers, duties and functions of the department of social and health services pertaining to child welfare services under chapters 26.44 and 74.13 RCW, to the department of children, youth, and families. In addition, chapter 43.216 RCW also states that "all rules and pending business before the department of early learning and social and health services pertaining to the powers, duties, and functions transferred shall be continued and acted upon by the department of children, youth and families."

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 the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 59, 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 29, 2018.

Brenda Villareal
Rules Coordinator

Chapter 110-03 WAC

HEARING RULES

NEW SECTION

WAC 110-03-0010 Purpose and scope. (1) Application. This chapter contains the procedural rules that apply to adjudicative proceedings involving the department of children, youth and families (DCYF).

(2) This chapter:

(a) Where appropriate, establishes rules encouraging informal dispute resolution between DCYF and persons or entities who disagree with the department's actions; and

(b) Regulates all hearings involving DCYF.

(3) The rules of this chapter are intended to supplement chapter 43.216 RCW; the Administrative Procedure Act (APA), chapter 34.05 RCW; and the model rules of procedure adopted by the office of administrative hearings (OAH), chapter 10-08 WAC. If a provision of this chapter conflicts with a provision in any chapter containing a specific procedural or substantive rule, the provision in the chapter containing the specific procedural or substantive rule governs.

(4) This chapter and any amendments to this chapter apply to cases pending before OAH or a review judge at the time of adoption unless the amendment or rule specifically states otherwise. An amendment to this chapter does not require that issues already addressed by OAH or a review judge be readdressed in order to comply with the amendment, unless the amendment expressly says otherwise.

(5) Nothing in this chapter is intended to affect the constitutional rights of any person or to limit or change additional requirements imposed by statute or other rule. Other laws or rules determine whether a hearing right exists, including the APA and DCYF program rules and laws.

(6) Specific DCYF hearing rules contained in other chapters within this title will prevail over the rules in this chapter.

(7) Effective date. This chapter is effective July 1, 2018.

(a) This chapter, and not chapter 388-02 or 170-03 WAC, applies to all cases in which DCYF has issued written notice of an appealable decision that is mailed after July 1, 2018.

(b) Chapter 388-02 or 170-03 WAC, and not this chapter, apply:

(i) To all cases in which the department of social and health services (DSHS) or the department of early learning (DEL) has issued written notice of an appealable decision concerning a DCYF program that was mailed before July 1, 2018, but an initial administrative hearing has not taken place.

(ii) To all cases in which DSHS or DEL has issued a written notice of an appealable decision concerning a DCYF program before July 1, 2018, and an initial administrative hearing has taken place, but an administrative law judge (ALJ) has not yet issued an initial order.

(iii) To all cases in which DSHS or DEL has issued written notice of an appealable decision concerning a DCYF program that was mailed before July 1, 2018, and an administrative hearing has taken place and an ALJ has issued an initial order, but a final order has not been issued by an ALJ from either OAH or a review judge from DSHS board of appeals (BOA).

(iv) To all cases in which an ALJ issued an initial or final order on a case concerning a DCYF program before July 1, 2018, and the appellant filed a petition for judicial review by July 1, 2018.

(c) WAC 110-03-0510 through 110-03-0590, governing review of initial and final orders, apply to the review of any

orders issued in response to any written notice of an appealable decision mailed after July 1, 2018.

NEW SECTION

WAC 110-03-0020 Definitions. The following definitions apply to this chapter:

(1) "Adjudicative proceeding" means a proceeding in which an opportunity for hearing occurs before an administrative law judge (ALJ) concerning an administrative appeal of department action. An adjudicative proceeding may take place before the office of administrative hearings (OAH), and as provided under subsection (6) of this section, this term may also encompass hearings before the BOA.

(2) "Administrative law judge" or "ALJ" means an impartial decision-maker who is an attorney and presides over an administrative proceeding resulting in an initial order. The office of administrative hearings (OAH), which is an independent state agency, employs the ALJs.

(3) "Board of appeals" or "BOA" means the DCYF board of appeals.

(4) "Business days" means all days except for Saturdays, Sundays and state legal holidays.

(5) "Calendar days" means all days including Saturdays, Sundays and state legal holidays.

(6) "Case" means the entire proceeding following the filing of a request for hearing with OAH.

(7) "Continuance" means a change in the date or time of a prehearing conference, hearing, or deadline for other action.

(8) "Date of the department action" means the date when the department issued a written decision that was appealable to OAH.

(9) "DCYF" or "department" means the department of children, youth, and families.

(10) "DCYF" or "department representative" means an employee of the department, an assistant attorney general, or special assistant attorney general authorized to represent DCYF in an administrative hearing.

(11) "Deliver" means giving a document to a person or entity in person or placing the document into the person's or entity's possession as authorized by the rules of this chapter or chapter 34.05 RCW.

(12) "Documents" means papers, letters, writings, or other printed or written items.

(13) "Ex parte contact" means a written or oral communication with an ALJ or review judge about something related to the hearing when all other parties are not present. Procedural questions are not considered an ex parte contact. Examples of procedural questions include clarifying the hearing date, time, or location or asking for directions to the hearing location as provided in RCW 34.05.455.

(14) "Final order" means an order that is the final DCYF decision. An ALJ's initial order becomes a final order if the ALJ's initial order is not appealed to the BOA. If an ALJ's initial order is appealed to the BOA, the review judge's order is DCYF's final order.

(15) "Good cause" means a substantial reason or legal justification for an action or for failing to appear, act, or respond to an action required under these rules.

(a) To show good cause, the ALJ must find that the party had a good reason for what they did or did not do using the provisions of superior court civil rule 60 as a guideline.

(b) Good cause may include, but is not limited to, the following examples:

(i) You ignored a notice because you were in the hospital or were otherwise prevented from responding; or

(ii) You could not respond to the notice because it was written in a language that you did not understand.

(16) "Hearing" means a session held before OAH or a BOA review judge for the purpose of deciding issues of fact or law that gives an aggrieved party an opportunity to be heard in disputes resulting from actions taken against the party by DCYF. For purposes of this chapter, adjudicative proceedings include administrative hearings, and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Title 110 WAC, or other law.

(17) "Hearing impaired person" means a person who, because of a hearing or speech impairment, cannot readily speak, understand or communicate in spoken language.

(18) "Initial order" is a decision made by an ALJ that may be reviewed by a BOA review judge at either party's request.

(19) "Judicial review" means a superior court's review of a final order.

(20) "Limited-English-proficient person" includes limited-English-speaking persons or other persons unable to readily communicate in spoken English.

(21) "Limited-English-speaking person" means a person who, because of non-English-speaking cultural background or disability (including a hearing impairment), cannot readily speak or understand the English language.

(22) "OAH" means the office of administrative hearings. This is a separate agency and not a part of DCYF.

(23) "Party" means a person or entity to whom a DCYF adverse action is directed and who has a right under law or rule to be involved in the hearing process. DCYF also is a party.

(24) "Prehearing conference" means a proceeding scheduled and conducted by an ALJ or review judge in preparation for a hearing.

(25) "Program" means a DCYF organizational unit and the services that it provides, including services provided by DCYF staff and through contracts with providers. Organizational units include, but are not limited to, DCYF administrations and divisions.

(26) "Reconsideration" has the same meaning as described in WAC 110-03-0590(1).

(27) "Record" means the official documentation of the hearing process. The record includes tape recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

(28) "Representative" means the person selected by a party to represent that party in an administrative hearing. "Lay representative" means a person or advocate who is assisting a party in presenting that party's case in an administrative hearing. If the party selects an attorney or a lay representative as their representative, DCYF will not pay for that attorney's or lay representative's services.

(29) "Review" means the act of reviewing initial orders and issuing the DCYF final order as provided by RCW 34.05.464.

(30) "Review judge" or "BOA review judge" means an attorney employed by the DCYF BOA to act as the reviewing officer and who is authorized to review initial orders and to prepare and enter the final agency order.

(31) "Rule" means a state regulation, including a licensing standard. Rules are found in the Washington Administrative Code (WAC).

(32) "Stay" means an order temporarily halting the DCYF decision or action.

NEW SECTION

WAC 110-03-0030 Computing time for meeting deadlines in the hearing process. (1) When counting days to determine when the time allowed or prescribed for an action under these rules or to meet a hearing deadline:

(a) Do not include the day of the action, notice, or order. For example, if an initial order is mailed on Tuesday and a party has twenty-one days from the date of mailing to request a review, count Wednesday as the first day.

(b) Count the last day of the period, unless the last day is a Saturday, Sunday or state legal holiday, in which case the deadline is the next business day.

(2) For periods of seven days or less, count only business days.

(3) For periods over seven days, count every day, including Saturdays, Sundays, and state legal holidays.

(4) The deadline ends at 5:00 p.m. on the last day.

(5) If a request is not received within the required time frames, an individual loses their right to a hearing or to appeal an adverse action by DCYF.

NEW SECTION

WAC 110-03-0040 The right to a hearing. (1) A person or entity has a right to a hearing only if a law or DCYF rule expressly gives that right and a hearing is requested in a timely manner. If a party is unsure if they have a right to a hearing, they should request one.

(2) Some DCYF programs may require a party to go through an informal administrative review process before they can request a hearing. The notice of action that DCYF sends a party should include information about this requirement.

(3) A party has only a limited time to request a hearing. The deadline for the request is set by statute or DCYF rule. In most cases, DCYF will send a notice of adverse action that gives specific information about how, where and when to request a hearing.

(4) A challenge to a DCYF adverse action is heard in an administrative hearing by an administrative law judge (ALJ) employed by the office of administrative hearings (OAH). Not all DCYF actions may be challenged through the hearing process.

(5) If a party requests a hearing that is authorized under subsection (1) of this section, one will be scheduled.

(6) If DCYF or the ALJ questions a party's right to a hearing, the ALJ decides whether the party has that right. The ALJ will decide either:

- (a) There is no right to a hearing and dismiss the case; or
- (b) There is a right to a hearing and proceed with the hearing.

NEW SECTION

WAC 110-03-0050 Requesting a hearing. (1) A request for hearing must be made in writing. DCYF will provide forms that requesting parties may use to request a hearing. The request for hearing can be made by the party requesting the hearing or by the party's representative.

- (2) The hearing request must include:
 - (a) The requesting party's name, address, and telephone number;
 - (b) A brief explanation of why the requesting party disagrees with the DCYF adverse action;
 - (c) Any assistance, such as a foreign or sign language interpreter or accommodation for a disability, needed by the requesting party; and
 - (d) A copy of the notice from DCYF stating the adverse action.
- (3) For a request for a hearing of a child protective services founded finding of child abuse or neglect, the request for hearing must be filed with OAH and served on DCYF within thirty calendar days after receiving notice of the agency review determination, pursuant to RCW 26.44.125.
- (4) For a request for a hearing of a child care or foster care licensing adverse action, a request for hearing must be filed with OAH and served on DCYF within twenty-eight calendar days of DCYF's notice of the adverse action.
- (5) For all other requests for hearings, a request for a hearing must be filed with OAH and served on DCYF as stated in the rule or law governing that action.

NEW SECTION

WAC 110-03-0060 Filing the request for hearing. (1) Filing is the act of delivering documents to OAH at the location listed in WAC 110-03-0070.

- (2) The date of filing is the date documents are actually received by OAH during office hours.
- (3) A party may file documents with OAH by:
 - (a) Personal service (hand delivery);
 - (b) First class, registered, or certified mail;
 - (c) Fax transmission, if the party also mails a copy of the document the same day;
 - (d) Commercial delivery service; or
 - (e) Legal messenger service.
- (4) A party cannot file documents by email.

NEW SECTION

WAC 110-03-0070 Location of office of administrative hearings. (1) The office of administrative hearings (OAH) is open from 8:00 a.m. to 5:00 p.m. Monday through Friday, except state legal holidays.

(2) The address for the OAH is:

Office of Administrative Hearings
2420 Bristol Court S.W., 1st Floor
P.O. Box 42489
Olympia, WA 98504-2489
Phone: 360-407-2700
Fax: 360-664-8721.

NEW SECTION

WAC 110-03-0080 Service of notice and documents.

- (1) Service is the act of delivering a copy of documents to the opposing party. Service gives the opposing party notice of the request for a hearing or other action. When a document is delivered to a party, that party is considered served with official notice of the contents of the document.
- (2) Unless otherwise stated in law or rule, a party may serve another party by:
 - (a) Personal service (hand delivery);
 - (b) First class, registered, or certified mail;
 - (c) Fax, if the party also mails a copy of the document the same day;
 - (d) Commercial delivery service; or
 - (e) Legal messenger service.
- (3) A party cannot serve documents by email.
- (4) A party must serve all other parties or a party's representative, if the party is represented, whenever the party files a document or brief with OAH or BOA or when required by law.
- (5) Unless otherwise stated in law or rule, service is complete when:
 - (a) Personal service is made;
 - (b) Mail is properly stamped, addressed, and deposited in the United States mail;
 - (c) Fax produces proof of transmission;
 - (d) A parcel is delivered to a commercial delivery service with charges prepaid; or
 - (e) A parcel is delivered to a legal messenger service with charges prepaid.

NEW SECTION

WAC 110-03-0090 Proof of service. A party may prove that an opposing party was served with documents by providing any of the following:

- (1) A sworn statement by the person who served the document;
- (2) The certified mail receipt signed by the recipient;
- (3) An affidavit or certificate of mailing;
- (4) A signed receipt from the person who accepted the commercial delivery service or legal messenger service package;
- (5) Proof of fax transmission; or
- (6) Acknowledgment by the party being served.

NEW SECTION

WAC 110-03-0100 Representation during the hearing process. (1) The party requesting the hearing may repre-

sent himself or herself or may have another person, except a DCYF employee, act as the representative.

(2) The representative may be a friend, relative, community advocate, attorney, paralegal, or lay representative.

(3) The representative must provide OAH and the other parties with the representative's name, address, and telephone number. If the representative is an attorney or lay representative, the representative must file a written notice of appearance in the action. If the party's representative is not an attorney, the party must provide a written statement to DCYF authorizing the release of information about the party to the representative.

(4) DCYF may be represented by a DCYF employee, a DCYF contractor, an assistant attorney general, or a special assistant attorney general.

NEW SECTION

WAC 110-03-0110 The right to an interpreter in the hearing process. (1) If a party or witness has limited-English proficiency (LEP), OAH will provide an interpreter during the hearing at no cost.

(2) If OAH is notified that a party is a limited-English-speaking person, all notices concerning hearings must:

(a) Be written in the party's primary language; or

(b) Include a statement, in the primary language, explaining the importance of the notice and informing the party how to get help in understanding the notice and responding to it.

NEW SECTION

WAC 110-03-0120 Interpreter qualifications. (1) Pursuant to chapters 2.42 and 2.43 RCW, OAH must provide a qualified interpreter to assist any person who:

(a) Has limited-English proficiency; or

(b) Is limited-English-speaking or hearing impaired; and

(c) Is a party or witness in a hearing.

(2) OAH may hire or contract with persons to interpret at hearings.

(3) Relatives of any party and DCYF employees may not be used as interpreters.

(4) The ALJ must determine, at the beginning of the hearing, if an interpreter can accurately interpret all communication for the person requesting the service.

(5) The parties or their representatives may question the interpreter's qualifications and ability to be impartial.

(6) If, at any time before or during the hearing, the ALJ finds that the interpreter does not provide accurate and effective communication, OAH must provide another interpreter.

NEW SECTION

WAC 110-03-0130 Waiver of interpreter services. (1) An eligible party may waive interpreter services.

(2) A request for waiver must be made in writing or through a qualified interpreter on the record.

(3) The ALJ must determine that the waiver has been knowingly and voluntarily made.

(4) A waiver of interpreter services may be withdrawn at any time before or during the hearing.

(5) A waiver of interpreter services at the hearing constitutes a waiver of a right to challenge any aspect of the hearing based on a lack of understanding resulting from an inability to understand or a lack of proficiency in the English language.

NEW SECTION

WAC 110-03-0140 Requirements that apply to the use of interpreters. (1) Interpreters must:

(a) Use the interpretive mode that the parties, the limited English proficient, limited-English-speaking, or hearing impaired person, the interpreter, and the ALJ consider the most accurate and effective;

(b) Interpret statements made by the parties, witnesses, and the ALJ;

(c) Not disclose information about the hearing without the written consent of the parties unless required by law; and

(d) Not comment on the hearing or give legal advice.

(2) The ALJ must allow enough time for all interpretations to be made and understood.

(3) The ALJ may videotape a hearing and use it as the official transcript for hearings involving a hearing impaired person.

NEW SECTION

WAC 110-03-0150 Requirements that apply to decisions involving limited-English-speaking parties. (1)

When an interpreter is used at a hearing, the administrative law judge (ALJ) must explain on the record that decisions are written in English and that the office of administrative hearings (OAH) will provide an interpreter for an oral translation of the decision at no cost to the party needing interpretation services.

(2) OAH must provide the party needing interpretation services information about how to obtain those services. Information about how to access interpretation services must be attached to the decision or order. The individual who provides the interpretation services does not need to be the same individual who provided the interpretation services at the hearing.

(3) OAH or the BOA review judge must send a copy of a decision or order to an interpreter for use in oral interpretation.

NEW SECTION

WAC 110-03-0160 Notice of hearing. (1) When a hearing is requested, OAH sends the parties a written notice of the hearing or prehearing conference. A notice of a hearing must be sent to all parties and their representatives at least fourteen calendar days before the hearing date.

(2) The notice of hearing or prehearing conference will include:

(a) The names, mailing addresses, and telephone numbers of all parties and of their representatives;

(b) The name, mailing address, and telephone number of the ALJ;

(c) The date, time, place, and nature of the hearing or prehearing conference;

(d) The legal authority and jurisdiction for the hearing or prehearing conference; and

(e) The date of the hearing request.

(3) OAH will also send information with the notice of hearing or prehearing conference stating:

(a) If a party and the party's representative fail to attend or participate in a prehearing conference or a hearing, that party may lose the right to a hearing and the ALJ may enter an order of default or an order dismissing the case;

(b) If a party or witness needs a qualified interpreter because the party or witness is entitled to an interpreter under WAC 110-03-0110 and 110-03-0120, OAH will provide an interpreter at no cost to the party;

(c) Whether the hearing or prehearing conference is to be held by telephone or in person, and how to request a change in the way it is held;

(d) How to indicate any special needs for a party or witness; and

(e) How to contact OAH if a party or witness has a safety concern.

(4) If the hearing is scheduled as:

(a) An in-person hearing, an ALJ is physically present.

(b) A telephonic hearing, an ALJ is present by telephone.

(5) The ALJ and the parties may agree to shorten the amount of notice required by any rule.

(6) Any party may request that the proceeding be rescheduled and OAH must reschedule it if:

(a) A rule requires OAH to provide notice of a proceeding; and

(b) OAH does not provide the amount of notice required.

NEW SECTION

WAC 110-03-0170 Prehearing conferences. (1) A prehearing conference is a formal meeting that may be conducted by an ALJ before a full hearing. A prehearing conference may not be conducted in some cases. In others, more than one prehearing conference may be necessary.

(2) Either the ALJ orders a prehearing conference, or a party may request that the ALJ order a prehearing conference. If the ALJ decides to hold a prehearing conference, OAH sends notice of the time and date of the prehearing conference to all parties and their representatives at least seven business days before the date of the prehearing conference except:

(a) An ALJ may convert a scheduled hearing into a prehearing conference and provide less than seven days' notice of the prehearing conference;

(b) OAH may provide less than seven business days' notice if the only purpose of the prehearing conference is to consider whether there is good cause to grant a continuance under WAC 110-03-0250.

(3) The ALJ must reschedule the hearing if necessary to comply with the notice requirements in this section.

(4) An ALJ may conduct the prehearing conference in person, by telephone conference call, by electronic means, or in any other manner acceptable to the parties.

(5) Attendance by the parties or their representatives is mandatory. A party may lose the right to participate during the hearing if that party or his/her representative, if any, does

not attend the prehearing conference. A party's appeal may be dismissed by the BOA if the party or the party's representative, if any, do not attend.

(6) Additional prehearing conferences may be requested by the parties or set by the ALJ to address procedural or other issues specific to the case.

NEW SECTION

WAC 110-03-0180 Purposes of prehearing conferences. (1) The purposes of the prehearing conferences are to clarify issues, set deadlines for the parties to exchange information regarding witnesses and evidence, and set the time for the hearing.

(2) During a prehearing conference, the parties and the ALJ may:

(a) Simplify or clarify the issues to be decided during the hearing;

(b) Agree to the date, time, and place of the hearing;

(c) Identify accommodation and safety issues;

(d) Agree to postpone the hearing;

(e) Allow the parties to make changes in their own documents, including but not limited to, the DCYF notice of adverse action or the appealing party's hearing request;

(f) Agree to facts and documents to be entered during the hearing;

(g) Set a deadline for each party to file and serve the document containing the names and phone numbers of witnesses and copies of all documents or other exhibits that will be presented at the hearing;

(h) Schedule additional prehearing conferences;

(i) Resolve the dispute;

(j) Consider granting a stay if authorized by law or DCYF rule;

(k) Consider a motion for summary judgment or other motion; or

(l) Determine any other procedural issues were raised by the parties.

(3)(a) If the parties resolve the dispute during the prehearing conference and put it in writing or present the agreement to the ALJ, the agreement may be legally enforceable.

(b) If the parties want the ALJ to consider any agreements or stipulations made at the prehearing conference, the parties must present them to the ALJ either before or during the hearing.

(c) If all the issues are resolved and the settlement agreement is in writing and signed by both parties, or presented verbally by both parties to the ALJ, the ALJ enters the settlement agreement into the record and the agreement constitutes a withdrawal of the appellant's hearing request.

NEW SECTION

WAC 110-03-0190 Prehearing order. (1) After the prehearing conference ends, the ALJ will send a prehearing order describing:

(a) The decisions made or actions taken during the conference;

(b) Any changes to DCYF's or other party's initial documents; and

(c) Any agreements reached.

(2) A party may object to the prehearing order by notifying the ALJ in writing within ten days after the mailing date of the order. The ALJ must issue a ruling on the objection.

(3) If no objection is made to the prehearing order, the order determines how the hearing is conducted, including whether the hearing will be in person or held by telephone conference or other means, unless the ALJ changes the order for good cause.

(4) Prehearing orders are not final appealable orders of the department.

NEW SECTION

WAC 110-03-0200 Assignment and challenge of assignment of administrative law judge. (1) OAH assigns an ALJ at least five business days before the hearing and discloses that assignment in writing to the parties. A party may ask which ALJ is assigned to the hearing by calling or writing the OAH field office listed on the notice of hearing.

(2) A party may file a motion of prejudice against an ALJ under RCW 34.12.050 and 34.05.425 by:

(a) Sending a written motion of prejudice at least three business days before the hearing and before the ALJ rules on a discretionary issue in the case;

(b) The motion of prejudice must include an affidavit that a party does not believe the ALJ can hear the case fairly;

(c) The party must send the request to the chief administrative law judge in care of the OAH field office where the ALJ works and send a copy of the request to all other parties or, if other parties are represented, to the representatives.

(3) The first timely request for a different ALJ under RCW 34.12.050 is automatically granted. Any later request may be granted or denied by the chief ALJ or a designee.

(4) A party may also request that an ALJ or BOA review judge be disqualified under RCW 34.05.425, for bias, prejudice, conflict of interest, or any other good cause or if one of the parties or a party's representative has an ex parte contact with the ALJ or BOA review judge by:

(a) Sending a written petition for disqualification. A petition for disqualification is a written explanation to request assignment of a different ALJ or BOA review judge. A party must promptly make the petition upon discovery of facts establishing grounds for disqualification.

(b) A party must send or deliver the petition to the ALJ or BOA review judge assigned to the case and send a copy of the petition to all other parties or, if other parties are represented, to the representatives. The ALJ or BOA review judge must decide whether to grant or deny the petition and must state the facts and reasons for the decision.

NEW SECTION

WAC 110-03-0210 Rules an ALJ or review judge must apply when making a decision. (1) ALJs and BOA review judges must first apply the DCYF rules adopted in the Washington Administrative Code.

(2) If no DCYF rule applies, the ALJ or BOA review judge must decide the issues according to the best legal authority and reasoning available, including federal and Washington state constitutions, statutes, rules, and published appellate court decisions.

(3) When applying program rules regarding the substantive rights and responsibilities of the parties (such as eligibility for services, benefits, or a license), the ALJ and review judge must apply the program rules in effect on the date of the DCYF action, unless otherwise required by other rule or law. If DCYF amends its notice of action, the ALJ or BOA review judge must apply the rules in effect on the date the amendment was made, unless otherwise required by other rule or law.

(4) When applying procedural rules, the ALJ and the BOA review judge must apply the rules that are in effect on the date the procedure is followed.

(5) The ALJ and the BOA review judge must apply the rules in this chapter beginning on the date each rule is effective.

NEW SECTION

WAC 110-03-0220 Challenges to validity of DCYF rules. (1) Neither an ALJ nor a BOA review judge may decide that a DCYF rule is invalid or unenforceable. Only a court may decide this issue.

(2) If the validity of a DCYF rule is raised during the hearing, the ALJ or BOA review judge may allow argument for later court review.

NEW SECTION

WAC 110-03-0230 Amendment to DCYF notice or party's request for hearing. (1) The ALJ must allow DCYF to amend (change) the notice of a DCYF adverse action before or during the hearing to match the evidence and facts.

(2) If DCYF amends its notice, it must put the change in writing and give a copy to the ALJ and the other parties.

(3) The ALJ may allow an appealing party to amend a hearing request before or during the hearing to conform with an amended DCYF notice.

(4) If there is an amendment to either the DCYF notice or the appealing party's request for a hearing, the ALJ must offer to continue or postpone the hearing to give the parties more time to prepare or present evidence or argument if there is a significant change from the earlier DCYF notice or from the appealing party's request for hearing.

(5) If the ALJ grants a continuance, OAH must send a new hearing notice at least seven business days before the new hearing date.

NEW SECTION

WAC 110-03-0240 Changes of address. (1) Parties and representatives must tell DCYF and OAH, as soon as possible, when the party's or the representative's name, mailing address or telephone number changes.

(2) If OAH and DCYF are not notified of a change in a party's or a representative's mailing address and either DCYF or OAH continues to send documents to the address stated in the file, the ALJ and DCYF may assume the documents were received.

NEW SECTION

WAC 110-03-0250 Continuances. (1) Any party may request a continuance either verbally or in writing.

(2) Before contacting the ALJ to request a continuance, a party may contact the other parties, if possible, to find out if they will agree to a continuance.

(3) The party making the request for a continuance must let the ALJ know whether the other parties agree to the continuance.

(a) If the parties agree to a continuance, the ALJ will grant the request, unless the ALJ finds that good cause for a continuance does not exist.

(b) If the parties do not agree to a continuance, the ALJ will set a hearing to decide whether there is good cause to grant or deny the request for continuance.

(4) If a request for continuance is granted, OAH will send written notice of the changed time and date of the hearing.

NEW SECTION**WAC 110-03-0260 Orders of dismissal and default.**

(1)(a) An order of dismissal is an order sent by the ALJ to end the hearing. The order may be based on a request for dismissal made by the department, request for dismissal based on an agreement by the parties, or because the party who requested the hearing withdrew the request, failed to appear, or refused to participate.

(b) If a hearing is dismissed because the appealing party withdrew the request, did not appear, or refused to participate, the DCYF decision must be the final decision.

(c) If the hearing is dismissed due to a written agreement between the parties, the parties must comply with the agreement.

(2)(a) An order of default may be entered when the appealing party fails to attend a scheduled prehearing conference or hearing. The order of default will include an inquiry as to whether the appealing party wants to petition to reinstate the hearing.

(b) The appealing party may file a request to vacate an order of default under WAC 110-03-0270.

(c) An order of default becomes a final order dismissing the appealing party's request for a hearing if the appealing party does not file a request to vacate within twenty-one calendar days of the order being served (mailed) on the parties.

(d) The DCYF action must remain in effect and be the final action after an order of default becomes a final order.

NEW SECTION

WAC 110-03-0270 Vacating an order of default or order of dismissal. (1) A party may ask the ALJ to vacate (set aside) an order of default or dismissal.

(a) A request to vacate an order must be filed with OAH within twenty-one calendar days after the date the order of default or dismissal was mailed. If no request is received within that deadline, the order becomes a final order.

(b) The request to vacate an order of default or dismissal must specify why the party believes there is good cause for the order to be vacated.

(2) OAH will schedule a hearing on the request to vacate the order.

(3) At the hearing, the ALJ will receive evidence and argument from the parties on whether there is good cause for an order of default to be vacated.

(4) The ALJ will vacate an order of dismissal and reinstate the hearing if the defaulted party shows good cause or if the DCYF representative agrees to waive the deadline.

(5) An agreed order of dismissal may be vacated only upon proof that a party has violated a condition of the agreed order of dismissal.

(6) A party may make a late request to vacate the order of dismissal for up to one year after it was mailed but they must show good cause according to WAC 110-03-0020 for the late request to be accepted and the dismissal to be vacated.

(7) If a party requests to vacate an order more than one year after it was mailed, the ALJ may vacate the order of dismissal if the DCYF representative and any other party agrees to waive (excuse) the deadline.

NEW SECTION

WAC 110-03-0280 Stay of DCYF action. The appealing party may request that an ALJ or review judge stay (stop) a DCYF action until there is a decision entered by the ALJ or review judge. Stay of summary suspension of child care license actions are governed by WAC 110-03-0290.

NEW SECTION

WAC 110-03-0290 Stay of summary suspension of child care license. (1) The department may immediately and summarily suspend a child care license when:

(a) It finds that conditions in the licensed facility constitute an imminent danger to a child or children in care; or

(b) The public health, safety, or welfare requires emergency action.

(2) Pursuant to WAC 110-03-0040, 110-03-0050, and 110-03-0280 a licensee may request a hearing to challenge the decision to summarily suspend a license. A licensee who contests a summary suspension of a license may obtain a stay of the effective date of the suspension only as set forth in this section.

(3) It is the licensee's burden to establish that the stay is in the public interest and is made for good cause.

(4) The licensee's request for a stay of the summary suspension must be made by filing a motion for stay of summary suspension. The motion for stay of summary suspension must be filed with the initial request for hearing, or by subsequent motion. The motion for stay, and documents and pleadings described in subsection (5) of this section, must be served on the office of administrative hearings and attorney general's office by noon on the seventh day before the hearing, unless a shorter time is ordered. Reply affidavits or declarations must be served on the licensee's attorney, or representative, by noon on the day prior to the hearing. If unrepresented, the reply affidavits or declarations must be served on the licensee.

(5) The motion for stay must be accompanied by a statement of grounds justifying the stay and a description of evi-

dence setting forth the factual basis upon which the request is based. The decision to grant or deny the request for a stay must be based on:

(a) Legal authority; and

(b) Affidavits or declarations signed under penalty of perjury.

(6) The ALJ must not allow the presentation of oral testimony at a stay hearing except under the following circumstances:

(a) The party seeking the opportunity to offer oral testimony must file a motion for permission to offer oral testimony. The decision to grant or deny the motion must be based on affidavits filed in support of or opposition to the motion to offer oral testimony.

(b) Oral testimony must only be permitted if substantial evidence has been presented establishing that the failure to allow oral testimony will deny the moving party the opportunity for a fair stay hearing.

(7) Upon receipt of a motion for a stay, the ALJ must schedule a hearing on the motion, not less than seven days from the date the request is received by the office of administrative hearings.

(8) The ALJ must not grant the motion for stay unless the ALJ makes specific findings that the stay is in the public interest and is made for good cause. In finding good cause, the ALJ must determine:

(a) The licensee is likely to prevail in the hearing on the merits of the licensing action;

(b) The licensee will suffer irreparable injury if the stay is not granted;

(c) The threat to the public health, safety, or welfare inherent in the licensee's operation of a child care facility is not sufficiently serious to justify the suspension of the license; and

(d) Economic hardship itself is an insufficient reason for a finding of irreparable injury under (b) of this subsection.

(9) Unless otherwise stipulated by the parties, the ALJ, after granting or denying a motion for stay, will expedite the hearing and decision on the merits.

(10) The decision on the motion for stay is subject to review by the BOA at the request of either DCYF or the licensee. The request for review must be filed not later than seven days following the date the decision on the motion for stay is mailed by OAH to the parties.

(11) The BOA review judge must promptly determine a request for review. The BOA review judge's decision on the request for review, regarding the motion for stay, must not be subject to judicial review.

NEW SECTION

WAC 110-03-0300 Conduct of hearings. (1) Hearings may be held in person or by telephone conference or other electronic means.

(a) A telephone conference hearing is where all parties appear by telephone.

(b) An in-person hearing is where you appear face-to-face with the ALJ and the other parties appear either in person or by telephone.

(2) Parties and their witnesses may appear in person or by telephone conference. The ALJ may require parties or their witnesses to appear in person if the ALJ determines there is a compelling reason and the compelling reason is stated in a hearing notice or prehearing order.

(3) Whether a hearing is held in person or by telephone conference, the parties have the right to see all documents, hear all testimony, and question all witnesses.

(4) When a hearing is held by telephone or other electronic means, all documentary evidence must be filed and served in advance of the hearing.

(5) All hearings must be recorded.

NEW SECTION

WAC 110-03-0310 Authority of the administrative law judge. (1) The ALJ must hear and decide the issues de novo (anew) based on what is presented during the hearing. The ALJ's authority is limited to determining whether the sanction imposed or action taken by the department was warranted or justified under the evidence presented during the hearing. The ALJ does not have authority to substitute or impose an alternative sanction, remedy, or action.

(2) As needed, the ALJ may:

(a) Administer oaths and affirmations;

(b) Determine the order for presenting evidence;

(c) Issue subpoenas and protective orders as provided in the Administrative Procedure Act;

(d) Rule on objections, motions, and other procedural matters;

(e) Rule on motions for summary judgment;

(f) Rule on offers of proof and admit relevant evidence;

(g) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;

(h) Question witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

(i) Request additional exhibits or testimony following a finding that the additional evidence is necessary to complete the record provided all parties are given a full opportunity for cross-examination and/or rebuttal;

(j) Take official notice of facts pursuant to RCW 34.05.-452(5);

(k) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

(l) Permit or require oral argument or briefs and determine the time limits for submission thereof;

(m) Issue an order of default pursuant to RCW 34.05.-440;

(n) Hold prehearing conferences;

(o) Allow a party to waive rights given by chapter 34.05 RCW or these rules unless another law prevents it;

(p) Decide whether a party has a right to a hearing;

(q) Permit and regulate the taking of discovery;

(r) Consider granting a stay if authorized by law or DCYF rule; and

(s) Take any other action necessary and authorized by any applicable statute or rule.

(3) The ALJ may, upon his or her own motion or the motion of any party, order that multiple administrative proceedings be consolidated for the hearing if they involve common issues or parties.

(4) The ALJ may waive any of the department's procedural rules, other than a rule relating to jurisdiction, for any party not represented by legal counsel or a lay representative upon specific findings that the waiver:

(a) Is necessary to avoid manifest injustice to the unrepresented party; and

(b) Would not prejudice any other party.

(5) The ALJ must make findings of fact based on the preponderance of the evidence standard, unless otherwise required by law.

(6) The ALJ's authority is limited to those powers granted by statute or rule. The ALJ has no inherent or common law powers.

NEW SECTION

WAC 110-03-0320 Order of the hearing. (1) At the hearing, the ALJ:

(a) Explains the rights of the parties;

(b) Marks and admits or rejects exhibits;

(c) Sustains or overrules objections made by the parties, as provided by law;

(d) Ensures that a record is made;

(e) Explains that a decision is mailed after the hearing; and

(f) Notifies the parties of appeal rights.

(2) The parties may:

(a) Make opening statements to explain the issues;

(b) Offer evidence to prove their positions, including oral or written statements of witnesses;

(c) Question the witnesses presented by the other parties; and

(d) Give closing arguments about what the evidence shows and what laws apply.

(3) The record is closed at the end of the hearing if the ALJ does not allow more time to offer evidence.

NEW SECTION

WAC 110-03-0330 Evidence. (1) Evidence includes documents, objects, and testimony of witnesses that parties offer during the hearing to help prove their positions.

(2) Evidence may include all or parts of original documents or copies of the originals.

(3) If a witness cannot appear, a party may offer as evidence statements signed by the witness that are under oath or affirmation.

(4) The ALJ may give more weight to testimony that is subject to cross-examination by the other parties.

(5) The ALJ's decision will only be based on admissible evidence.

NEW SECTION

WAC 110-03-0340 Introduction of evidence into the record. (1) The ALJ may set a deadline before the hearing for the parties to provide proposed exhibits and names of wit-

nesses to the ALJ and to all other parties. If the parties miss the deadline, the ALJ may refuse to admit the evidence unless the parties show:

(a) They have good cause for missing the deadline; or

(b) The other parties agree to waive the deadline.

(2) The ALJ may admit and consider hearsay evidence. Hearsay is a statement made outside of the hearing used to prove the truth of what is in the statement. Hearsay evidence is admissible if in the judgment of the ALJ it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs.

(3) The ALJ may reject evidence, if it:

(a) Is not relevant;

(b) Repeats evidence already admitted;

(c) Is from a privileged communication protected by law; or

(d) Is otherwise legally improper.

(4) Where the department's notice of adverse action alleges the person lacks the character to provide for the needs of any child in care or to have unsupervised access to any child in care, evidence regarding character or reputation must be admissible. In all other proceedings, evidence regarding character or reputation must be admissible as provided by law. In cases where such evidence is admissible, the ALJ must exercise reasonable control over the number of character witnesses so as to avoid duplication of testimony and evidence and needless consumption of time.

NEW SECTION

WAC 110-03-0350 Objections to evidence. (1) Although a party may offer any documents and testimony at the hearing to support the party's position, other parties may object to the evidence and may question the witnesses. For example, a party may object to the authenticity or admissibility of any exhibit or offer argument about how much weight the ALJ should give the exhibit.

(2) The ALJ determines whether to admit the evidence and what weight (importance) to give it.

(3) If the ALJ does not admit the evidence, the party may make an offer of proof to show why the ALJ should admit it. The offer of proof preserves the issue for appeal. To make an offer of proof, a party presents evidence and argument on the record to show why the ALJ should consider the evidence.

(4) If a witness refuses to answer any question ruled proper by the ALJ, the ALJ may reject all of the related testimony of that witness.

NEW SECTION

WAC 110-03-0360 Stipulations. (1) A stipulation is an agreement among two or more parties that certain facts or evidence are correct or authentic.

(2) If an ALJ accepts a stipulation, the ALJ must enter the stipulation into the record.

(3) A stipulation may be made before or during the hearing.

NEW SECTION

WAC 110-03-0370 Proposed exhibits. (1) Proposed exhibits are documents or other objects that a party wants the ALJ to consider when reaching a decision. If the exhibit is admitted into evidence by the ALJ, the exhibit will be considered by the ALJ in reaching his or her decision.

(2) The ALJ may require the parties to mark and number their proposed exhibits before the hearing and to provide copies to the other parties as far ahead of the hearing as possible.

(3) The ALJ admits proposed exhibits into the record by marking, listing, identifying, and admitting the proposed exhibits.

(4) The ALJ may also exclude proposed exhibits from the record.

NEW SECTION

WAC 110-03-0380 Judicial notice. (1) Judicial notice is evidence that includes facts or standards that are generally recognized and accepted by judges, government agencies, or national associations, such as a calendar, building code or standard of practice.

(2) An ALJ may consider and admit evidence by taking judicial notice.

(3) If a party requests judicial notice, or if the ALJ intends to take judicial notice, the ALJ may ask the party to provide a copy of the document that contains the information.

(4) The ALJ must give the parties time to object to judicial notice evidence.

NEW SECTION

WAC 110-03-0390 Witnesses. (1) A witness is any person who makes statements or gives testimony that becomes evidence in a hearing.

(2) One type of witness is an expert witness. An expert witness is qualified by knowledge, experience, and education to give opinions or evidence in a specialized area.

(3) Witnesses may include:

(a) The appealing party or a DCYF representative; and

(b) Anyone a party or the ALJ asks to be a witness.

(4) The ALJ decides who may testify as a witness.

(5) Unless DCYF agrees, a current or former DCYF employee may not be an expert witness against DCYF if that employee was actively involved in the case while working for DCYF, or if that employee was actively involved in the case while working for the department of early learning or the children's administration on or before June 30, 2018.

NEW SECTION

WAC 110-03-0400 Requiring witnesses to testify or provide documents. (1) A party may require witnesses to testify or provide documents by issuing a subpoena. A subpoena is an order to appear at a certain time and place to give testimony or to provide books, documents, or other items.

(2) ALJs, DCYF, and attorneys for the parties may prepare subpoenas.

(3) If a party is not represented by an attorney, the party may ask the ALJ to prepare a subpoena on that party's behalf:

(a) The ALJ may schedule a hearing to decide whether to issue a subpoena;

(b) There is no cost to prepare a subpoena, but a party may have to pay for:

(i) Serving a subpoena;

(ii) Complying with a subpoena; and

(iii) Witness fees according to RCW 34.05.446(7).

(4) A party may request that an ALJ quash (set aside) or change the subpoena at any time before the deadline given in the subpoena.

(5) An ALJ may set aside or change a subpoena if it is unreasonable.

NEW SECTION

WAC 110-03-0410 Serving a subpoena. (1) Any person who is at least eighteen years old and not a party to the hearing may serve a subpoena.

(2) Service of a subpoena is complete when the server:

(a) Gives the witness a copy of the subpoena; or

(b) Leaves a copy at the residence of the witness with a person over the age of eighteen.

(3) To prove that a subpoena was served on a witness, the person serving the subpoena must sign a written, dated statement that includes the following:

(a) Who was served with the subpoena;

(b) When the subpoena was served;

(c) Where the subpoena was served; and

(d) The name, age, and address of the person who served the subpoena.

NEW SECTION

WAC 110-03-0420 Testimony. (1) Direct examination. All witnesses may be asked questions by the party that calls the witness to testify. Each witness:

(a) Must affirm or take an oath to testify truthfully during the hearing;

(b) May testify in person, or by telephone if approved by the ALJ;

(c) May request interpreters from OAH at no cost to the parties;

(d) May be subpoenaed and ordered to appear according to WAC 110-03-0400.

(2) Cross-examination. The parties have the right to cross-examine (question) each witness called by any other party.

(3) If a party has a representative, only the representative, not the party, may question the witness.

(4) The ALJ may also question witnesses.

(5) Witnesses may refuse to answer questions. However, if a witness refuses to answer a question, the ALJ may reject all of the related testimony of that witness.

NEW SECTION

WAC 110-03-0430 Burden of proof and standard of proof. (1) The party who has the burden of proof is the party who has the responsibility to provide evidence to persuade the ALJ that a position is correct under the standard of proof required.

(2) Standard of proof refers to the amount of evidence needed to prove a party's position. Unless a rule or the law states otherwise, the standard of proof in a hearing is a preponderance of the evidence. This standard means that it is more likely than not that something happened or exists.

(3) The ALJ decides if a party has met the burden of proof.

NEW SECTION

WAC 110-03-0440 Equitable estoppel. (1) Equitable estoppel is a legal doctrine defined in case law that may only be used as a defense to prevent DCYF from taking some action against a party, such as collecting an overpayment. Equitable estoppel may not be used to require DCYF to continue to provide something, such as benefits, services, or a license, or to require the department to take action contrary to a statute.

(2) Equitable estoppel contains five elements, all of which must be proved by clear and convincing evidence:

(a) DCYF made a statement or took action or failed to take action, which is inconsistent with its later claim or position regarding an overpayment;

(b) The appealing party relied on DCYF's original statement, action or failure to act;

(c) The appealing party will be injured if DCYF is allowed to contradict the original statement, action or failure to act;

(d) Equitable estoppel is needed to prevent a manifest injustice; and

(e) The exercise of government functions is not impaired.

(3) If the ALJ concludes that all of the elements of equitable estoppel described in subsection (2) of this section have been proved by clear and convincing evidence, DCYF is estopped or prevented from taking action or enforcing its claim for repayment of the overpayment.

NEW SECTION

WAC 110-03-0450 Closing the record. When the record is closed, no more evidence may be taken, without a showing of good cause. The record is closed:

(1) At the end of the hearing if the ALJ does not allow more time to offer evidence or argument; or

(2) After the deadline set by the ALJ for offering evidence or argument has passed.

NEW SECTION

WAC 110-03-0460 Timing of the ALJ's decision. (1) After the record is closed, the ALJ must write an initial order and send copies to the parties.

(2) The maximum time an ALJ has to send an initial order is ninety calendar days after the record is closed.

(3) OAH must send the official record of the proceedings to the BOA. The record must be complete when it is sent and include all parts required by WAC 110-03-0480.

NEW SECTION

WAC 110-03-0470 Contents of the hearing record.

(1) The administrative law judge must produce a complete official record of the proceedings.

(2) The official record must include, if applicable:

(a) Notice of all proceedings;

(b) Any prehearing orders;

(c) Any motions, pleadings, briefs, petitions, requests, and intermediate rulings;

(d) Evidence received or considered;

(e) A statement of matters officially noticed;

(f) Offers of proof, objections, and any resulting rulings;

(g) Proposed findings, requested orders and exceptions;

(h) A complete audio recording of the entire hearing, together with any transcript of the hearing;

(i) Any final order, initial order, or order on reconsideration; and

(j) Matters placed on the record after an ex parte communication.

NEW SECTION

WAC 110-03-0480 Contents of the initial order. The ALJ's initial order must:

(1) Identify the hearing decision as a DCYF case;

(2) List the name and docket number of the case and the names of all parties and representatives;

(3) Find the specific facts determined to exist by the ALJ, based on the hearing record, and relied on by the ALJ in resolving the dispute;

(4) Explain why evidence is credible when the facts or conduct of a witness is in question;

(5) State the law that applies to the dispute;

(6) Apply the law to the facts of the case in the conclusions of law;

(7) Discuss the reasons for the decision based on the facts and the law;

(8) State the result;

(9) Explain how to request corrections to the initial order or how to request a petition for review by the BOA and provide deadlines for such requests;

(10) State the date the decision becomes final; and

(11) Include any other information required by law or DCYF program rules.

NEW SECTION

WAC 110-03-0490 Finality of initial order. If no one timely requests review of the initial order or if a review request is dismissed, the initial order becomes the DCYF final decision twenty-one calendar days after the date it is mailed to the parties by OAH.

NEW SECTION

WAC 110-03-0500 Correcting clerical errors in ALJ's decisions. (1) A clerical error is a mistake that does not change the result or intent of the decision. Some examples of clerical errors are:

(a) Missing or incorrect words or numbers;

(b) Dates inconsistent with the decision or evidence in the record such as using May 3, 2081, instead of May 3, 2018; or

(c) Math errors when adding the total of an overpayment.

(2) If a party disagrees with an ALJ's initial order because of a clerical error, the party may ask for a corrected decision from the ALJ. A party may ask for a corrected ALJ decision by making the request in writing and sending it to the OAH office that held the hearing. A copy of the request must be sent to the other parties or their representatives.

(3) A request to correct a clerical error must be made within ten days of the date the decision was mailed to the parties by OAH.

(4) When asking for a corrected decision, a party must clearly identify the clerical error.

(5) When a party requests a corrected initial or final order, the ALJ must either:

(a) Send all parties a corrected order; or

(b) Deny the request within three business days of receiving it.

(6) If the ALJ corrects an initial order and a party does not request review, the corrected initial order becomes final twenty-one calendar days after the original initial order was mailed.

(7) If the ALJ denies the request for a corrected initial order and a party does not request review, the initial order becomes final twenty-one calendar days after the original initial order was mailed.

(8) Requesting a corrected initial order for a case does not extend the deadline to request review of the initial order by the review judge.

NEW SECTION

WAC 110-03-0510 Review of the initial order. (1) If a party disagrees with or wants a change in an initial order, other than correcting a clerical error, he or she may seek review of the initial order with the BOA.

(2) A party must request review of an initial order from the BOA as provided in WAC 110-03-0520 through 110-03-0540.

(3) If more than one party requests review, each request must meet the deadlines described in WAC 110-03-0520.

(4) Before deciding if the initial order should be affirmed, reversed, or remanded for further proceedings the BOA review judge will consider the request, the initial order, and record.

(5) Any party may request that the BOA review an initial order.

(6) BOA review judges may not review final orders entered by an ALJ.

NEW SECTION

WAC 110-03-0520 Time for requesting review of initial order. (1) The BOA must receive the written petition for review on or before the twenty-first calendar day after the initial order was mailed. A party may submit the review request by facsimile transmission (fax), but only if the party also submits the request by mail.

(2) A BOA review judge may extend the deadline if a party:

(a) Asks for more time before the deadline expires; and

(b) Shows good cause for requesting more time.

(3) The BOA may accept a review request after the twenty-one calendar day deadline only if:

(a) The BOA receives the review request on or before the thirtieth calendar day after the deadline; and

(b) A party shows good cause for missing the deadline.

NEW SECTION

WAC 110-03-0530 Petition for review of initial order. (1) A party must make the review request (petition for review) in writing and clearly identify the:

(a) Parts of the initial order with which the party disagrees; and

(b) Arguments or evidence supporting the party's position.

(2) The petition for review must be filed with the BOA, and the BOA sends a copy to the other parties, their representatives and OAH.

(3) The BOA can be contacted at the following address or at the address stated on the letter containing instructions for obtaining review mailed with the initial order:

DCYF Board of Appeals
1500 Jefferson St.
P.O. Box 40975
Olympia, WA 98504-0975

NEW SECTION

WAC 110-03-0540 Response to petition for review of initial order. (1) A party does not have to respond to the review request.

(2) If a party responds, that party must send the response so that the BOA receives it on or before the seventh business day after the date a copy of the petition for review was mailed to the party by the BOA.

(3) The responding party must send a copy of the response to any other party or representative.

(4) If a party needs more time to respond, the party must contact the BOA by the deadline in subsection (2) of this section and show good cause for an extension of time.

(5) The BOA may accept and consider a party's response even if it is received after the deadline.

NEW SECTION

WAC 110-03-0550 Board of appeals decision process. (1) After the response deadline, the record on review is closed unless there is a good cause to keep it open or to reopen the record.

(2) A BOA review judge is assigned by the BOA to review the initial order after the record is closed. The BOA review judge only considers evidence given at the original hearing unless the review judge has reopened the record pursuant to subsection (1) of this section.

(3) The BOA review judge will decide the appeal without oral argument, unless the BOA review judge determines that oral argument is necessary for resolution of the appeal.

(4) The BOA review judge enters a final order that affirms, changes, dismisses, or reverses the initial order, or remands (returns) the case to the administrative law judge for further specified action.

NEW SECTION

WAC 110-03-0560 Authority of the board of appeals review judge. (1) The BOA review judge reviews initial orders and enters final orders. The BOA review judge has the same decision-making authority as the ALJ. The BOA review judge considers the entire record and decides the case de novo (anew). In reviewing the findings of fact, the BOA review judge must give due regard to the ALJ's opportunity to observe witnesses.

(2) BOA review judges may return (remand) cases to the OAH for further action.

(3) A BOA review judge's authority is limited to those powers conferred (granted) by statute or rule. The BOA review judge has no inherent or common law powers.

(4) The BOA review judge's order is the DCYF final order in the case. If the BOA review judge's final order upholds the department's adverse action, the appealing party must comply with the final order unless the appealing party obtains a stay of the effectiveness of the final order from the superior court after filing a petition for judicial review in accordance with WAC 110-03-0590.

NEW SECTION

WAC 110-03-0570 Reconsideration. (1) Reconsideration is:

(a) Asking an ALJ to reconsider a final order entered by the ALJ because the party believes the ALJ made a mistake; and

(b) Asking a BOA review judge to reconsider a final order entered by a BOA review judge because the party believes the BOA review judge made a mistake.

(2) If a party asks for reconsideration of the final order, the reconsideration process must be completed before requesting judicial review. However, a request for reconsideration of a final order is not a precursor to requesting judicial review.

(3) The request for reconsideration should identify the parts of the final order with which the party disagrees and should identify the evidence in the hearing record supporting the party's position.

(4) A party does not have to respond to a request for reconsideration.

(5) If a party responds, that party must send a response to the ALJ or BOA review judge by or before the seventh business day after the date OAH or the BOA review judge mailed the request to the party.

(6) A party must send a copy of the response to any other party or representative.

(7) If a party needs more time to respond, OAH or the review judge may extend the deadline if the party demon-

strates good cause for an extension within the deadline in subsection (5) of this section.

(8) The request for reconsideration must be filed with the BOA, and the BOA sends a copy to the other parties, their representatives and OAH.

NEW SECTION

WAC 110-03-0580 Ruling on request for reconsideration. (1) After the ALJ or BOA review judge receives a reconsideration request, the ALJ or BOA review judge has twenty calendar days to enter and serve a reconsideration decision unless the ALJ or BOA review judge sends notice that additional time is required.

(2) After the ALJ or BOA review judge receives a reconsideration request, the ALJ or BOA review judge must either:

(a) Write a reconsideration decision; or

(b) Serve all parties an order denying the request.

(3) If the ALJ or BOA review judge does not dispose of the petition or send the parties written notice setting a date by which the ALJ or BOA review judge will act on the petition within twenty days of receipt of the reconsideration request, the request is denied.

(4) The ALJ or BOA review judge decision on reconsideration is final when the decision is mailed or the date the request is denied.

NEW SECTION

WAC 110-03-0590 Judicial review. (1) Judicial review is the process of appealing a final order to a superior court.

(2) Any party, except DCYF, may appeal a final order by filing in superior court pursuant to RCW 34.05.514 a written petition for judicial review that meets the requirements of RCW 34.05.546. The petition must be properly filed and served within thirty calendar days of the date the review judge mails the final order in the case. Copies of the petition must be served on DCYF, the office of the attorney general, and all other parties.

(3) To serve DCYF, a copy of the petition must be delivered to the secretary of DCYF or to the DCYF BOA. The petition must be hand delivered or mailed with proof of receipt. The physical location of the secretary is:

DCYF Office of the Secretary
1150 Jefferson St.
Olympia, WA 98504-0975

The mailing address of the secretary is:

DCYF Office of the Secretary
P.O. Box 40975
Olympia, WA 98504-0975

The physical and mailing address for the DCYF BOA are in WAC 110-03-0530.

(4) To serve the office of the attorney general and other parties, a copy of the petition for judicial review must be sent by regular mail. The office of the attorney general may be served by hand delivery at:

Office of the Attorney General
7141 Cleanwater Drive S.W.
Tumwater, WA 98501

The mailing address of the office of the attorney general is:

Office of the Attorney General
P.O. Box 40124
Olympia, WA 98504-0124

(5) Generally, a party may file a petition for judicial review only after it has completed the administrative hearing process. See RCW 34.05.534.

(6) Filing a petition for judicial review of a final order does not stay the effectiveness of the final order.

(7) RCW 34.05.510 through 34.05.598 contain further details of the judicial review process.

WSR 18-14-077
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-147—Filed June 29, 2018, 4:02 p.m., effective June 29, 2018,
4:02 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing regulations for the Columbia River and several eastside water bodies including the Methow drainage, Okanogan River drainage, Chelan River drainage, and Lake Wenatchee.

Citation of Rules Affected by this Order: Amending WAC 220-312-050 and 220-312-060.

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 steelhead closures in these areas were omitted from WAC during the 2017 rule simplification process. These rules are necessary to comply with federal Endangered Species Act permitting requirements. The permanent rule process has been initiated, these rules are interim until permanent rules take effect. There is insufficient time to promulgate 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 the Request of a Non-governmental 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: June 29, 2018.

Amy H. Windrope
for Joe Stohr
Director

NEW SECTION

WAC 220-312-06000M Exceptions to statewide rules—Columbia River. Notwithstanding the provisions of WAC 220-312-060, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

From Priest Rapids to Chief Joseph Dam: Closed to fishing for or retaining steelhead.

NEW SECTION

WAC 220-312-05000N Exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-312-060, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

The following areas are closed to fishing for or retaining steelhead:

(1) Methow River (Okanogan Co.) and all tributaries, including: Twisp, Chewuch, and Lost Rivers.

(2) Okanogan River (Okanogan Co.) and all tributaries, including: Salmon Creek and the Similkameen River.

(3) Chelan River (Chelan Co.)

(4) Entiat River (Chelan Co.): from mouth to Entiat Falls

(5) Icicle River (Chelan Co.): from mouth to the Icicle Peshastin Irrigation Footbridge

(6) Wenatchee River (Chelan Co.): from mouth to Icicle Road Bridge

(7) Lake Wenatchee (Chelan Co.)

WSR 18-14-091
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-144—Filed July 2, 2018, 1:50 p.m., effective July 3, 2018]

Effective Date of Rule: July 3, 2018.

Purpose: Amends recreational fishing rules for the Cowlitz River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-03000N and 220-312-03000Y; and amending WAC 220-312-030.

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 2018 Cowlitz River spring Chinook return was anticipated to be relatively low and so far has been below expectations. Washington department of fish and wildlife is closing the fishery by emergency rule to ensure hatchery broodstock goals are met, and to allow for additional fish to be transported above Cowlitz Falls Dam for reintroduction purposes. 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 the Request of a Non-governmental 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: July 2, 2018.

Eric Gardner
for Joe Stohr
Acting Director

NEW SECTION

WAC 220-312-03000Y Freshwater exceptions to statewide rules—Southwest. Notwithstanding the provisions of WAC 220-312-030, effective July 3 through July 31, 2018, Chinook salmon retention is closed for the Cowlitz River, Cispus River and Lake Scanewa.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 3, 2018:

WAC 220-312-03000N Freshwater exceptions to statewide rules—Southwest. (18-38)

The following section of the Washington Administrative Code is repealed effective August 1, 2018:

WAC 220-312-03000Y Freshwater exceptions to statewide rules—Southwest.

**WSR 18-14-096
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 18-145—Filed July 3, 2018, 9:54 a.m., effective July 3, 2018, 9:54 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing regulations for Baker Lake.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000P; and amending WAC 220-312-040.

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

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

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans, and are interim until permanent rules take effect.

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

Number of Sections Adopted at the Request of a Non-governmental 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: July 3, 2018.

Ron Warren
for Joe Stohr
Director

NEW SECTION

WAC 220-312-04000P Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

Baker Lake (Whatcom Co.):

(a) Salmon:

(i) Open from July 7, 2018 through September 7:

(A) Daily limit 3.

(B) Min. size 18".

(C) Release all salmon other than sockeye.

(D) It is permissible for all anglers aboard a vessel to deploy salmon angling gear until the daily salmon limit for all anglers aboard has been achieved.

REPEALER

The following section of the Washington Administrative Code is repealed effective September 8, 2018:

WAC 220-312-04000P Freshwater exceptions to statewide rules—Puget Sound.

all permanent rules remain in effect; effective immediately through September 30, 2018:

Nisqually River (Thurston Co.):

(a) Salmon: Closed to fishing for or retaining on Sundays

WSR 18-14-100
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 18-150—Filed July 3, 2018, 11:22 a.m., effective July 3, 2018, 11:22 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amends recreation salmon fishing rules for the Nisqually River.

Citation of Rules Affected by this Order: Repealing WAC 220-312-04000R; and amending WAC 220-312-040.

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

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

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed-to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans, and are interim until permanent rules take effect.

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

Number of Sections Adopted at the Request of a Non-governmental 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: July 3, 2018.

Ron Warren
for Joe Stohr
Director

NEW SECTION

WAC 220-312-04000R Freshwater exceptions to statewide rules—Puget Sound. Notwithstanding the provisions of WAC 220-312-040, it is unlawful to violate the following provisions, provided that unless otherwise amended,

REPEALER

The following section of the Washington Administrative Code is repealed effective October 1, 2018:

WAC 220-312-04000R Freshwater exceptions to statewide rules—Puget Sound.