WSR 25-05-019
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed February 7, 2025, 3:14 p.m., effective February 7, 2025, 3:14 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The developmental disabilities administration (DDA) is enacting these changes on an emergency basis to implement home and community-based services (HCBS) waivers as approved by the Centers for Medicare and Medicaid Services (CMS).

Primary waiver amendments:

- These amendments add: Waiver eligibility for children and youth age 20 and younger who are subject to a court dependency or a similar proceeding in a tribal court or are receiving extended foster care services from the department of children, youth, and families or from a tribe in Washington state; technical information about service plan collaboration; and teleservice delivery as a service delivery method for some services.
- These amendments adjust: Waiver enrollment limits; language about cross-agency collaboration; the service definition for transportation; provider qualifications for music therapists; and level-of-care and inter-rate reliability level of care evaluation processes.
- These amendments clarify: Teleservice language in all services where teleservice delivery is now available; and waiver service definitions and service limit language across all five waivers.

To read all other CMS-approved waiver amendments effective September 1, 2024, open a waiver under "Current Approved Waivers" on DDA's home and community-based waivers website.

This is a subsequent emergency filing on these sections and is necessary to keep the rules in effect until DDA completes the permanent rule-making process. DDA is preparing the rules for external review. We have filed a CR-101 preproposal under WSR 24-18-103. This filing supersedes the emergency rule making filed as WSR 25-02-044.

Citation of Rules Affected by this Order: New WAC 388-842-0001, 388-842-0005, 388-842-0010, 388-842-0015, 388-842-0020, 388-842-0025, 388-842-0030, 388-842-0035, 388-842-0040, 388-842-0045, 388-842-0060, 388-842-0065, 388-842-0070, 388-842-0075, 388-842-0080, 388-842-0085, 388-842-0090, 388-842-0095, 388-842-0110, 388-842-0115, 388-842-0120, 388-842-0125, 388-842-0140, 388-842-0145, 388-842-0150, 388-842-0165, 388-842-0170, 388-842-0175, 388-842-0180, 388-842-0185, 388-842-0190, 388-842-0195, 388-842-0205, 388-842-0210, 388-842-0215, 388-842-0220, 388-842-0230, 388-842-0235, and 388-842-0250; repealing WAC 388-825-0571 and 388-845-2019; and amending WAC 388-825-020, 388-825-096, 388-825-120, 388-828-1020, 388-828-1340, 388-828-1540, 388-828-5120, 388-828-5140, 388-828-5160, 388-828-5180, 388-828-5920, 388-828-5940, 388-828-5980, 388-845-0001, 388-845-0030, 388-845-0045, 388-845-0055, 388-845-0060, 388-845-0100, 388-845-0110, 388-845-0111, 388-845-0760, 388-845-0955, 388-845-1515, 388-845-1607, 388-845-1620, 388-845-2000, 388-845-2010, 388-845-2200, 388-845-3015, and 388-845-3095.

Statutory Authority for Adoption: RCW 34.05.350.

Other Authority: RCW 71A.12.380(1); 42 C.F.R. 441.301.

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: Enacting these rules on an emergency basis is necessary in order to implement HCBS waivers as approved by CMS. Aligning rules with approved waiver amendments provides assurances required under 42 C.F.R. 441.301. This third filing is necessary to remove WAC 388-845-0113 and 388-845-0210 from the emergency rule making filed under WSR 25-02-044 and file them under a separate emergency filing.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 39, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 39, Amended 31, Repealed 2.

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

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

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

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

Date Adopted: February 7, 2025.

Katherine I. Vasquez
Rules Coordinator

SHS-5051.4

AMENDATORY SECTION (Amending WSR 23-07-130, filed 3/22/23, effective 4/22/23)

WAC 388-825-020 Definitions. "Adult day care" is a service administered by DDA-contracted counties that provides a structured social program for adults.

"Authorization" means DDA approval of funding for a service as identified in the person-centered service plan or evidence of payment for a service.

"Assistant secretary" means the assistant secretary of the developmental disabilities administration.

"Background check system" or **"BCS"** means an online system for processing background checks.

"Consumer-directed employer" is a private entity that contracts with the department to be the legal employer of individual providers for purposes of performing administrative functions.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020((~~(3)~~)) who also has been determined eligible to receive services by the administration under chapter 71A.16 RCW. "Client" may also refer to a child with a functional need for personal care services who does not have a developmental disability.

"Community first choice" or **"CFC"** is a medicaid state plan program defined in chapter 388-106 WAC.

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

"DDA" means the developmental disabilities administration within the department of social and health services.

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

"Family" means one or more of the following relatives: Spouse or registered domestic partner; natural, adoptive, or stepparent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"Individual provider" means an employee of a consumer-directed employer who provides personal care or respite care services.

((~~"~~)) **"Intermediate care facility for individuals with intellectual disabilities"** or **"ICF/IID"** means a facility certified under federal law to provide active treatment and rehabilitation services.

"Legal representative" means a parent of a client if the client is under age 18 and parental rights have not been terminated or relinquished, a court-appointed guardian if a decision is within the scope of the guardianship order, or any other person authorized by law to act for the client.

"Medicaid" means the federal medical aid program under title XIX of the Social Security Act that provides health care to eligible people.

"Person-centered service plan" or **"PCSP"** is a document that identifies a client's goals and assessed health and welfare needs. The PCSP also indicates the paid services and natural supports that will help a client achieve their goals and address their assessed needs.

"Residential habilitation center" or **"RHC"** means a state-operated facility under RCW 71A.20.020.

"Respite care" means short-term intermittent care for DDA clients to provide relief for people who normally provide that care.

"State-only funded services" means those services paid entirely with state funds.

"State supplementary payment" or **"SSP"** is the state paid cash assistance program for certain DDA-eligible clients.

"You" or **"your"** means the client.

AMENDATORY SECTION (Amending WSR 12-22-037, filed 11/1/12, effective 12/2/12)

WAC 388-825-096 Will I have to pay for the services ((~~DDD~~)) DDA authorizes for me? (1) If you live in your own home, you do not pay toward the cost of your services except chore services. You must pay toward the cost of chore services as described in WAC 388-106-0625.

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

(a) If you are eligible for and receiving SSI or have SSI related eligibility per chapter 182-512 WAC ((~~388-475-0100 (2)(a) or (b)~~)), you are not required to pay toward the cost of your care if you are living at home or in a community setting.

(b) If you are enrolled in a ((~~DDD~~)) DDA HCBS waiver you must pay toward the cost of your services as described in WAC ((~~388-515-1510~~)) 182-515-1510.

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

(3) If you live in a medical institution you must pay toward the cost of your care as described in WAC ((~~388-513-1380~~)) 182-513-1380. See WAC ((~~182-500-0005~~)) 182-500-0050 for the definition of a medical institution.

AMENDATORY SECTION (Amending WSR 23-07-130, filed 3/22/23, effective 4/22/23)

WAC 388-825-120 When may I appeal a decision made by the developmental disabilities administration? (1) You, your legal representative, or your authorized representative may appeal a decision made by DDA if you are an applicant, a client, or a former client.

(2) You have the right to an administrative hearing to dispute the following DDA actions:

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

(b) Approval, denial, or termination of eligibility;

(c) Approval, denial, reduction, or termination of payment of SSP authorized by DDA set forth in chapter 388-827 WAC;

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

(e) Refusal to abide by your request that we not send notices to any other person;

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

(g) Denial of payment to your provider for any reason under WAC 388-825-375;

(h) Termination of your provider's contract for any reason under WAC 388-825-385 or 388-825-390;

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

(j) A claim that you owe an overpayment debt;

(k) Action related to the community protection program under WAC 388-831-0300;

(l) An exception to rule decision if:

(i) The total number of service hours you are currently receiving includes hours approved as an exception to rule in addition to the number of hours available to you under program rule or DDA assessment; and

(ii) The total number of service hours you are currently receiving is reduced because of a reduction or termination in the number of hours approved as an exception to rule.

(3) Except as allowed under subsection (2)((~~(m)~~))(l) of this section, you do not have a right to appeal the department's denial of an exception to rule request.

(4) If you appeal a decision made by the developmental disabilities administration, your appeal is governed by this chapter and:

(a) Chapter 34.05 RCW;

(b) Chapter 71A.10 RCW; and

(c) Chapters 388-02 or 182-526 WAC, as applicable.

(5) If any provision in this chapter conflicts with chapters 388-02 or 182-526 WAC or WAC 388-440-0001(3), the provision in this chapter prevails.

(6) If you receive personal care services under chapter 388-106 WAC that are authorized by DDA, the appeal provision in WAC 388-106-1315 applies.

(7) If you are not enrolled in a waiver and your request to be enrolled in a waiver is denied, your appeal rights are limited under WAC 388-845-4005.

(8) If you are enrolled in a waiver and your request to be enrolled in a different waiver is denied, your appeal rights are limited under WAC 388-845-4005.

Chapter 388-828 WAC
THE ((~~DIVISION OF~~)) DEVELOPMENTAL DISABILITIES ((~~(DDD)~~)) ADMINISTRATION (DDA) ASSESSMENT

AMENDATORY SECTION (Amending WSR 23-12-061, filed 6/2/23, effective 7/3/23)

WAC 388-828-1020 What definitions apply to this chapter? The following definitions apply to this chapter:

"AAIDD" means the American Association on Intellectual and Developmental Disabilities.

"Acuity Scale" refers to an assessment tool that is intended to provide a framework for documenting important assessment elements and for standardizing the key questions that should be asked as part of a professional assessment. The design helps provide consistency from client to client by minimizing subjective bias and assists in promoting objective assessment of a person's support needs.

"Administration" means the developmental disabilities administration of the department of social and health services.

"Adult family home" or "AFH" means a residential home in which a person or entity is licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood, adoption, or marriage to a provider, entity representative, resident manager, or caregiver who resides in the home. An adult family home may be licensed to provide care to up to eight adults if the home receives approval under chapter 388-76 WAC.

"Agency provider" means a business that is licensed, certified, or both, and that is contracted with the department or a county to provide DDA services.

"Algorithm" means a numerical formula used by the DDA assessment for one or more of the following:

(1) Calculation of assessed information to identify a client's relative level of need; and

(2) Assignment of a service level to support a client's assessed need.

"Authorization" means DDA approval of funding for a service as identified in the person-centered service plan or evidence of payment for a service.

"CARE" refers to the comprehensive assessment reporting evaluation assessment per chapter 388-106 WAC.

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

"Collateral contact" means a person or agency that is involved in the client's life such as legal guardian, family member, care provider, or friend.

"Companion home" is a DDA contracted residential service that provides 24-hour training, support, and supervision, to one adult living with a paid provider.

"Contracted provider" means an individual provider contracted with the department, individual provider employed by the consumer directed employer, or an individual or agency who is one or more of the following: Licensed, certified, or contracted by the department to provide services to DDA clients.

"DDA" means the developmental disabilities administration of the department of social and health services.

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

"Group home" or "GH" means a licensed adult family home or assisted living facility contracted and certified to provide residential services and support to adults with developmental disabilities.

"Home visit" means viewing a client's living quarters with the client present.

"ICF/IID" means a medicaid-certified facility operating under Title XIX of the Social Security Act in 42 C.F.R. 440-150 to furnish health or rehabilitation services.

"ICF/IID level of care" is a standardized assessment of a client's need for ICF/IID level of care per 42 C.F.R. Sec. 440 and 42 C.F.R. Sec. 483. In addition, ICF/IID level of care refers to one of the standards used by DDA to determine whether a client meets minimum eligibility criteria for one of the DDA HCBS waivers or the community first choice program.

"Legal guardian" means a person/agency, appointed by a court, who is authorized to make some or all decisions for a person determined by the court to be incapacitated. In the absence of court intervention, parents remain the legal guardians for their child until the child reaches the age of 18.

"Legal representative" means a parent of a client if the client is under age 18 and rights have not been terminated or relinquished, a court-appointed guardian if a decision is within the scope of the guardianship order, or any other person authorized by law to act for the client.

"Living quarters" means the client's bedroom and main living area(s).

"LOC score" means a level of care score for answers to questions in the support needs assessment for children that are used in determining if a client meets eligibility requirements for ICF/IID level of care.

"Panel" refers to the visual user-interface in the DDA assessment computer application where assessment questions are typically organized by topic and you and your respondents' answers are recorded.

"Person-centered service plan (PCSP)" is a document that identifies your goals and assessed health and welfare needs. Your person-centered service plan also indicates the paid services and natural

supports that will assist you to achieve your goals and address your assessed needs.

"Raw score" means the numerical value when adding a person's "frequency of support," "daily support time," and "type of support" scores for each activity in the support needs and supplemental protection and advocacy scales of the supports intensity scale (SIS) assessment.

"Residential habilitation center" or "RHC" is a state-operated facility under RCW 71A.20.020.

"Respondent" means the adult client or another person familiar with the client who participates in the client's DDA assessment by answering questions and providing information. Respondents may include DDA contracted providers.

"Service provider" refers to a department contracted agency or person who provides services to DDA clients. Also refers to state operated living alternative programs (SOLA).

"Significant change assessment" means a DDA assessment completed any time a change is reported in a client's support needs, such as an increased need for medical or behavioral supports.

"SIS" means the supports intensity scale developed by the American Association of Intellectual and Developmental Disabilities (AAIDD).

"SOLA" means a state operated living alternative program for adults that is operated by DDA.

"State supplementary payment" or "SSP" is the state paid cash assistance program for certain DDA eligible Social Security income clients per chapter 388-827 WAC.

"Supported living" or "SL" refers to residential services provided by DDA certified residential agencies to clients living in homes that are owned, rented, or leased by the clients or their legal representatives.

"Waiver respite care" means short-term intermittent relief for persons normally providing care to individuals who are authorized to receive services available in the individual and family services (IFS), children's intensive in-home behavioral support (CIIBS), basic plus, and core waivers per chapter 388-845 WAC.

"You" and "your" means the client.

AMENDATORY SECTION (Amending WSR 21-19-093, filed 9/17/21, effective 10/18/21)

WAC 388-828-1340 After administering the DDA assessment, when will DDA inform me of the services I am eligible to receive? DDA will inform you of the services you are eligible to receive no more than ((~~thirty~~)) 30 days after DDA administers your assessment.

AMENDATORY SECTION (Amending WSR 21-19-093, filed 9/17/21, effective 10/18/21)

WAC 388-828-1540 Who participates in your DDA assessment? (1) You choose the people who participate in your assessment and person-centered service plan meeting.

(2) DDA requires that at a minimum: You, one of your respondents, and a DDA employee participate in your DDA assessment interview. In addition:

(a) If you are under the age of ((~~eighteen~~)) 18, your parent(s) ((~~or legal guardian(s)~~)) or legal representative must participate in your DDA assessment interview.

(b) If you are age ((~~eighteen~~)) 18 or older, DDA must consult with your court-appointed legal representative ((~~/guardian must be consulted if he/she~~)) if the representative does not attend your DDA assessment interview.

(c) If you are age ((~~eighteen~~)) 18 and older and have no legal representative ((~~/guardian~~)), DDA will assist you to identify a respondent.

(d) DDA may consult with other people who were not present at your DDA assessment interview, if needed, to obtain complete and accurate information.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-5120 What is the ((~~DDD~~)) DDA caregiver status acuity scale? The ((~~DDD~~)) DDA caregiver status acuity scale is an assessment of risks associated with your caregiver's ability to provide care.

AMENDATORY SECTION (Amending WSR 08-12-037, filed 5/30/08, effective 7/1/08)

WAC 388-828-5140 How is information in the ((~~DDD~~)) DDA caregiver status acuity scale used by ((~~DDD~~)) DDA? (1) Information obtained in the ((~~DDD~~)) DDA caregiver status acuity scale is one of the factors used by ((~~DDD~~)) DDA to determine:

(a) The amount of waiver respite, if any, that you are authorized to receive; and

(b) Your individual and family services level, if you are authorized to receive individual and family services.

(2) The ((~~DDD~~)) DDA caregiver status acuity scale does not affect service determination for the medicaid personal care or waiver personal care assessment; and

(3) The information is used for reporting purposes to the legislature and the department.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-5160 When is a collateral contact an informal caregiver? A collateral contact is an informal caregiver when the person provides you supports without payment from ((~~DDD~~)) DDA for a service.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-5180 When is a collateral contact a formal caregiver? A collateral contact is a formal caregiver when the person receives payment from ((~~DDD~~)) DDA or DCYF to provide you a service.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-5920 What is the respite assessment? The respite assessment is an algorithm in the ((~~DDD~~)) DDA assessment that determines the number of hours of respite care, if any, that your provider may receive per year if ((~~DDD~~)) DDA has authorized you to receive ((~~Basic,~~)) basic plus((~~,~~)) or ((~~Core~~)) core waiver services per chapter 388-845 WAC.

AMENDATORY SECTION (Amending WSR 08-12-037, filed 5/30/08, effective 7/1/08)

WAC 388-828-5940 Are there any exceptions when the respite assessment is not used to determine the number of hours for waiver respite services? The respite assessment is not used to determine waiver respite when you are receiving any of the following:

(1) ((~~Voluntary placement program~~)) Children's residential habilitative services per chapter 388-826 and 388-842 WAC; or

(2) ((~~Companion home~~)) Residential habilitation services from a companion home provider per chapter 388-829C WAC.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

WAC 388-828-5980 How does ((~~DDD~~)) DDA determine your respite assessment level? (1) ((~~DDD~~)) DDA determines your respite assessment level using the following table:

If your Protective Supervision Support Level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your respite assessment level is:
0	None	1	None	1
0	None	1	Low	1
0	None	1	Medium	1
0	None	1	High	2
0	None	2 or 3	None	1
0	None	2 or 3	Low	1
0	None	2 or 3	Medium	2
0	None	2 or 3	High	2
0	Low	1	None	1
0	Low	1	Low	1

If your Protective Supervision Support Level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your respite assessment level is:
0	Low	1	Medium	1
0	Low	1	High	2
0	Low	2 or 3	None	1
0	Low	2 or 3	Low	1
0	Low	2 or 3	Medium	2
0	Low	2 or 3	High	2
0	Medium	1	None	1
0	Medium	1	Low	1
0	Medium	1	Medium	1
0	Medium	1	High	2
0	Medium	2 or 3	None	1
0	Medium	2 or 3	Low	1
0	Medium	2 or 3	Medium	2
0	Medium	2 or 3	High	2
0	High	1	None	1
0	High	1	Low	1
0	High	1	Medium	2
0	High	1	High	2
0	High	2 or 3	None	2
0	High	2 or 3	Low	2
0	High	2 or 3	Medium	2
0	High	2 or 3	High	3
0	Immediate	1	None	1
0	Immediate	1	Low	1
0	Immediate	1	Medium	2
0	Immediate	1	High	2
0	Immediate	2 or 3	None	2
0	Immediate	2 or 3	Low	2
0	Immediate	2 or 3	Medium	2
0	Immediate	2 or 3	High	3
1	None	1	None	1
1	None	1	Low	1
1	None	1	Medium	1
1	None	1	High	2
1	None	2 or 3	None	1
1	None	2 or 3	Low	1
1	None	2 or 3	Medium	2
1	None	2 or 3	High	3
1	Low	1	None	1
1	Low	1	Low	1
1	Low	1	Medium	1
1	Low	1	High	2
1	Low	2 or 3	None	1
1	Low	2 or 3	Low	1

If your Protective Supervision Support Level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your respite assessment level is:
1	Low	2 or 3	Medium	2
1	Low	2 or 3	High	3
1	Medium	1	None	1
1	Medium	1	Low	1
1	Medium	1	Medium	2
1	Medium	1	High	3
1	Medium	2 or 3	None	1
1	Medium	2 or 3	Low	2
1	Medium	2 or 3	Medium	2
1	Medium	2 or 3	High	3
1	High	1	None	2
1	High	1	Low	2
1	High	1	Medium	2
1	High	1	High	3
1	High	2 or 3	None	2
1	High	2 or 3	Low	2
1	High	2 or 3	Medium	3
1	High	2 or 3	High	4
1	Immediate	1	None	2
1	Immediate	1	Low	2
1	Immediate	1	Medium	2
1	Immediate	1	High	3
1	Immediate	2 or 3	None	2
1	Immediate	2 or 3	Low	2
1	Immediate	2 or 3	Medium	3
1	Immediate	2 or 3	High	4
2 or 3	None	1	None	1
2 or 3	None	1	Low	1
2 or 3	None	1	Medium	2
2 or 3	None	1	High	3
2 or 3	None	2 or 3	None	2
2 or 3	None	2 or 3	Low	2
2 or 3	None	2 or 3	Medium	2
2 or 3	None	2 or 3	High	4
2 or 3	Low	1	None	1
2 or 3	Low	1	Low	1
2 or 3	Low	1	Medium	2
2 or 3	Low	1	High	3
2 or 3	Low	2 or 3	None	2
2 or 3	Low	2 or 3	Low	2
2 or 3	Low	2 or 3	Medium	2
2 or 3	Low	2 or 3	High	4
2 or 3	Medium	1	None	2
2 or 3	Medium	1	Low	2

If your Protective Supervision Support Level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your respite assessment level is:
2 or 3	Medium	1	Medium	2
2 or 3	Medium	1	High	3
2 or 3	Medium	2 or 3	None	2
2 or 3	Medium	2 or 3	Low	2
2 or 3	Medium	2 or 3	Medium	3
2 or 3	Medium	2 or 3	High	4
2 or 3	High	1	None	2
2 or 3	High	1	Low	2
2 or 3	High	1	Medium	2
2 or 3	High	1	High	3
2 or 3	High	2 or 3	None	2
2 or 3	High	2 or 3	Low	2
2 or 3	High	2 or 3	Medium	3
2 or 3	High	2 or 3	High	4
2 or 3	Immediate	1	None	2
2 or 3	Immediate	1	Low	2
2 or 3	Immediate	1	Medium	2
2 or 3	Immediate	1	High	3
2 or 3	Immediate	2 or 3	None	2
2 or 3	Immediate	2 or 3	Low	2
2 or 3	Immediate	2 or 3	Medium	3
2 or 3	Immediate	2 or 3	High	4
4	None	1	None	2
4	None	1	Low	2
4	None	1	Medium	2
4	None	1	High	3
4	None	2 or 3	None	2
4	None	2 or 3	Low	2
4	None	2 or 3	Medium	3
4	None	2 or 3	High	4
4	Low	1	None	2
4	Low	1	Low	2
4	Low	1	Medium	2
4	Low	1	High	3
4	Low	2 or 3	None	2
4	Low	2 or 3	Low	2
4	Low	2 or 3	Medium	3
4	Low	2 or 3	High	4
4	Medium	1	None	2
4	Medium	1	Low	2
4	Medium	1	Medium	3
4	Medium	1	High	3
4	Medium	2 or 3	None	2
4	Medium	2 or 3	Low	3

If your Protective Supervision Support Level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your respite assessment level is:
4	Medium	2 or 3	Medium	3
4	Medium	2 or 3	High	4
4	High	1	None	2
4	High	1	Low	2
4	High	1	Medium	3
4	High	1	High	3
4	High	2 or 3	None	2
4	High	2 or 3	Low	3
4	High	2 or 3	Medium	4
4	High	2 or 3	High	4
4	Immediate	1	None	2
4	Immediate	1	Low	2
4	Immediate	1	Medium	3
4	Immediate	1	High	3
4	Immediate	2 or 3	None	2
4	Immediate	2 or 3	Low	3
4	Immediate	2 or 3	Medium	4
4	Immediate	2 or 3	High	4
5	None	1	None	2
5	None	1	Low	2
5	None	1	Medium	3
5	None	1	High	4
5	None	2 or 3	None	3
5	None	2 or 3	Low	3
5	None	2 or 3	Medium	4
5	None	2 or 3	High	5
5	Low	1	None	2
5	Low	1	Low	2
5	Low	1	Medium	3
5	Low	1	High	4
5	Low	2 or 3	None	3
5	Low	2 or 3	Low	3
5	Low	2 or 3	Medium	4
5	Low	2 or 3	High	5
5	Medium	1	None	2
5	Medium	1	Low	2
5	Medium	1	Medium	3
5	Medium	1	High	4
5	Medium	2 or 3	None	3
5	Medium	2 or 3	Low	3
5	Medium	2 or 3	Medium	4
5	Medium	2 or 3	High	5
5	High	1	None	2
5	High	1	Low	2

If your Protective Supervision Support Level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your respite assessment level is:
5	High	1	Medium	3
5	High	1	High	4
5	High	2 or 3	None	3
5	High	2 or 3	Low	3
5	High	2 or 3	Medium	4
5	High	2 or 3	High	5
5	Immediate	1	None	2
5	Immediate	1	Low	2
5	Immediate	1	Medium	3
5	Immediate	1	High	4
5	Immediate	2 or 3	None	3
5	Immediate	2 or 3	Low	3
5	Immediate	2 or 3	Medium	4
5	Immediate	2 or 3	High	5
6	None	1	None	2
6	None	1	Low	3
6	None	1	Medium	3
6	None	1	High	4
6	None	2 or 3	None	3
6	None	2 or 3	Low	3
6	None	2 or 3	Medium	4
6	None	2 or 3	High	5
6	Low	1	None	2
6	Low	1	Low	3
6	Low	1	Medium	3
6	Low	1	High	4
6	Low	2 or 3	None	3
6	Low	2 or 3	Low	3
6	Low	2 or 3	Medium	4
6	Low	2 or 3	High	5
6	Medium	1	None	3
6	Medium	1	Low	3
6	Medium	1	Medium	3
6	Medium	1	High	4
6	Medium	2 or 3	None	3
6	Medium	2 or 3	Low	4
6	Medium	2 or 3	Medium	4
6	Medium	2 or 3	High	5
6	High	1	None	3
6	High	1	Low	3
6	High	1	Medium	4
6	High	1	High	4
6	High	2 or 3	None	4
6	High	2 or 3	Low	4

If your Protective Supervision Support Level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your respite assessment level is:
6	High	2 or 3	Medium	5
6	High	2 or 3	High	5
6	Immediate	1	None	3
6	Immediate	1	Low	3
6	Immediate	1	Medium	4
6	Immediate	1	High	4
6	Immediate	2 or 3	None	4
6	Immediate	2 or 3	Low	4
6	Immediate	2 or 3	Medium	5
6	Immediate	2 or 3	High	5

(2) ((~~DDD~~)) DDA adds one level to your respite assessment level when your respite assessment level is determined to be a one, two, three, or four and you have a score of four for question two "Other caregiving for persons who are disabled, seriously ill, or under five" in the ((~~DDD~~)) DDA caregiver status acuity scale. See WAC 388-828-5260.

(3) DDA will reduce your respite allocation amount by the number of hours you or your caregiver are eligible to receive through DCYF.

Chapter 388-842 WAC
RESIDENTIAL HABILITATION FOR DEPENDENT YOUTH (RHDY) PROGRAM

PURPOSE

NEW SECTION

WAC 388-842-0001 What is the residential habilitation for dependent youth program? (1) The residential habilitation for dependent youth (RHDY) program is administered by the developmental disabilities administration (DDA) through a person-centered service plan. The program provides residential habilitation services to a dependent child or youth in a qualified setting outside of the family home that is agreed to by the parent, guardian, or legal representative.

(2) The RHDY program does not include:

(a) Maintenance or supervision, which is the responsibility of DCYF;

(b) Behavioral health services;

(c) Care provided by other paid supports or the client's family; or

(d) Education and related services provided under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), which are the responsibility of state and local education agencies.

DEFINITIONS

NEW SECTION

WAC 388-842-0005 What definitions apply to this chapter? Client means a person who has a developmental disability as defined in RCW 71A.10.020 and who has been determined DDA-eligible under chapter 388-823 WAC.

Community inclusion activities means person-centered activities where clients engage with others in their local community.

Court order means a direction ordered by a court or judge. Court orders may be redacted.

CRM means DDA case resource manager, social worker, or social service specialist.

DCYF means the department of children, youth, and families.

DDA means the developmental disabilities administration within the department of social and health services.

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

Dependency action means the court process that starts with the filing of a dependency petition and can result in a court determining a child or youth to be dependent. This may include children who are in shelter care status and placed out of home or those who have been determined dependent.

Dependent means a child or youth for whom the court has entered an order of dependency determining that the child or youth is dependent as defined in RCW 13.34.030 or a similar tribal court action.

Family means one or more of the following relatives: Spouse or registered domestic partner; natural, adoptive, or stepparent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

Habilitation means support provided by a DDA-contacted or DDA-certified provider that assists people with developmental disabilities to acquire, retain, or improve upon the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings.

Individual instruction and support plan means a written document that describes how staff will provide habilitation and supports to meet the needs identified in the client's person-centered service plan, which are assigned to and agreed upon by the RHDY provider.

Individualized team meeting means a strengths-based process to review the client's individual support needs and ensure coordination with the client's team. The process is driven by the perspectives of the client.

Legal representative means a parent of a client if the client is under age 18 and parental rights have not been terminated or relinquished, a court-appointed guardian if a decision is within the scope of the guardianship order, or any other person authorized by law to act for the client. DCYF is the legal decision maker for all children and youth (dependents) placed in out-of-home care by the court.

Maintenance means the cost of rental or purchase of real estate and home furnishings, utilities, maintenance of the building and associated administrative services, including a full nutritional regimen of three meals a day.

Medication administration means the direct application of a prescribed medication by injection, inhalation, ingestion, application, or other means, to a client by a person legally authorized to do so under chapter 246-945 WAC.

Monthly maintenance allowance means costs associated with typical family responsibilities (e.g., clothing, toiletries, and extracurricular or school-sponsored activities).

Out-of-home placement means a living arrangement for a child outside of the family home that is court ordered through a juvenile court.

Out-of-home services (OHS) means a program administered by the developmental disabilities administration (DDA) through a person-centered service plan to provide residential habilitation services for a client in a qualified setting outside of the family home that is agreed to by the client's parent or legal representative.

RHDY acknowledgment means a document that outlines the rights and responsibilities of DCYF, the legal representative, and the provider while a client is receiving services through the RHDY program.

RHDY engagement plan means a written agreement between the client's legal representative and the RHDY program provider.

RHDY program is a children's residential habilitation program available to waiver-eligible DDA clients who are a DCYF or tribal court dependent.

Parent or legal guardian means a biological or adoptive parent, title 11 or title 13 guardian, or legal custodian with legal authority to make decisions on behalf of the child regarding healthcare and public benefits.

Participation has the same meaning as is under WAC 182-513-1100.

Personal needs allowance (PNA) means an amount set aside from a client's income under WAC 182-513-1105.

Person-centered service plan (PCSP) has the same meaning as is under WAC 388-845-0001.

Physical intervention means the use of a manual technique intended to interrupt or stop a behavior from occurring. Physical intervention includes using physical restraint to release or escape from a dangerous or potentially dangerous situation.

Registered nurse delegator means a licensed registered nurse who delegates specific nursing care tasks to a qualified nursing assistant or home care aide, and supports clients in a community-based care setting or in-home care setting under RCW 18.79.260.

Residential habilitation services means instruction and support services under WAC 388-845-1500.

Significant change as defined in WAC 388-832-0001, means a change in a client's medical condition, caregiver status, behavior, living situation, or employment status.

SOLA means a certified state-operated living alternative program.

Staffed residential home, as defined in WAC 110-145-1305, means a licensed group care facility that provides 24-hour care to six or fewer children who require more supervision than can be provided in a foster home.

Supervision means the oversight of a client when habilitation activities or personal care are not occurring (e.g., monitoring a client while watching tv, sleeping, sitting in a classroom setting or worksite; or other day-to-day, line-of-eyesight or earshot monitoring).

Supplemental security income (SSI) means a needs-based assistance program administered by the federal Social Security Administration for blind, disabled, and aged individuals.

Treating healthcare provider means a healthcare professional who specializes in the discipline within the professional's scope of practice.

ELIGIBILITY

NEW SECTION

WAC 388-842-0010 Who is eligible for the residential habilitation for dependent youth program? A person is eligible for the RHDY program if the person's legal representative requests residential habilitation services and the person:

(1) Is DDA-eligible under chapter 388-823 WAC;

(2) Is eligible for the core waiver under chapter 388-845 WAC;

(3) Is age 8-17 at the time they enter service;

(4) Has completed the DDA assessment process under chapter 388-828 WAC;

(5) Has received medically necessary inpatient treatment——when recommended by the client's treating professional;

(6) Does not have a treatment recommendation for a locked or secure facility;

(7) Is placed out of home:

(a) By a dependency action and is in the custody of the department of children, youth, and families under chapter 13.34 RCW and is:

(i) In shelter care under RCW 13.34.060; or

(ii) A dependent under RCW 13.34.130;

(b) In the custody of a tribal court via a similar tribal court child welfare action.

NEW SECTION

WAC 388-842-0015 How does the provider determine if they can safely meet a client's needs? (1) To determine whether they can safely meet a client's needs, the RHDY provider must review available client information, such as:

(a) The client's referral packet;
(b) Information gathered from the client, collateral contacts, or case manager;
(c) Client placement and legal history;
(d) Child health and education tracking (CHET) report;
(e) Copy of behavior rehabilitation services (BRS) packet and all attachments, if applicable;
(f) Family time plan; or
(g) DCYF case plan, or similar tribal case plan as it relates to the child or youth.
(2) Information provided as part of the client referral to the RHDY program may be redacted as necessary.

NEW SECTION

WAC 388-842-0020 May a client age 18 or older continue to access the RHDY program? (1) A client age 18 or older may continue in the RHDY program if the client is:
(a) Under the age of 21;
(b) Accessing the RHDY program the day before their 18th birthday;
(c) Enrolled in extended foster care; and
(d) Pursuing a high school or equivalency course of study (GED/HSEC) or vocational program.
(2) If a client over 18 and under 21 is no longer pursuing their GED, HSEC, or attending a vocational program, DDA will begin the process of transitioning the client to adult services.

PROVIDER QUALIFICATIONS

NEW SECTION

WAC 388-842-0025 Who can be a RHDY program provider? To be a RHDY program provider, an entity must be one of the following:
(1) A children's state-operated living alternative; or
(2) A staffed residential home contracted with the developmental disabilities administration and licensed under chapter 74.15 RCW.

NEW SECTION

WAC 388-842-0030 Must a state-operated RHDY provider be certified? A state-operated RHDY provider must be certified by DDA.

NEW SECTION

WAC 388-842-0035 Is a site visit required and what does DDA review during a site visit? (1) To be a certified provider, a state-operated provider must participate in site visits.

(2) During a site visit, DDA reviews the provider's service site for the following safety requirements:

(a) The common areas of the home are unrestricted.

(b) All entrances and exits are unblocked.

(c) The home is maintained in a safe and healthy manner.

(d) The home has a storage area for flammable and combustible materials.

(e) Every floor of the home has working smoke and carbon monoxide detectors.

(f) The home has a fire extinguisher that meets requirements for the residence type. There must be a fire extinguisher in the kitchen and at least one on every floor of the home.

(g) The home has a stocked first-aid kit.

(h) The home has a working and accessible telephone.

(i) The home has a working and accessible flashlight or alternative light source.

(j) Emergency contact information is available and accessible in the home (e.g., 911, poison control, nonemergency 911, adult protective services, child protective services).

(k) The contact information for the developmental disabilities ombuds is available and accessible in the home.

(l) The water temperature at the home is 120 degrees Fahrenheit or less.

(m) There is a safety plan for any body of water more than 24 inches deep at the home.

(n) The home has an evacuation plan and an emergency food and water supply.

(o) The home meets integrated setting requirements under WAC 388-823-1096.

(p) The home has a backup power source (e.g., generator, battery pack) if the provider supports a client who uses life sustaining medical equipment.

NEW SECTION

WAC 388-842-0040 What training must a children's state-operated living alternative provider complete? (1) To provide direct support to a client in the RHDY program, a direct support professional at a children's state-operated living alternative must complete:

(a) Training and continuing education required under chapter 388-829 WAC;

(b) Training according to the timelines in chapter 388-101D WAC; and

(c) Nurse delegation training if delegation criteria are met under WAC 246-840-930.

(2) The provider must ensure that each employee providing direct support keeps their first-aid training, CPR certification, food worker card, and bloodborne pathogens training current.

NEW SECTION

WAC 388-842-0045 What training must a staffed residential home provider complete? To support a client in the RHDY program, a direct support professional of a staffed residential home must complete:

(1) Training required under chapter 110-145 WAC;

(2) Training and continuing education required under chapter 388-829 WAC;

(3) Client-specific training based on the individual instruction and support plan; and

(4) Nurse delegation training if the client needs delegation and criteria are met under WAC 246-840-930.

HEALTH AND SAFETY

NEW SECTION

WAC 388-842-0060 What water temperature safety measures must be met? (1) The provider must regulate the facility's water temperature no higher than 120 degrees Fahrenheit.

(2) The provider must complete and document monthly water temperature checks.

NEW SECTION

WAC 388-842-0065 What infection control practices must the provider implement? (1) The provider must have written policies and procedures about the control of infections. These must include, but are not limited to, the following areas:

(a) Isolation of sick individuals;

(b) Germ control procedures;

(c) Hygiene, including hand washing, toileting, and laundering;

(d) Prevention of the transmission of communicable diseases including management and reporting;

(e) First aid;

(f) Care of minor illnesses;

(g) Actions to be taken for medical emergencies; and

(h) General health practices.

(2) The provider must promote personal hygiene to help prevent the spread of germs.

(3) The provider must provide staff with the supplies necessary for limiting the spread of infections.

(4) Staff with a reportable communicable disease or a notifiable disease condition in an infectious stage, as defined by the department of health in chapter 246-101 WAC, must not be on duty until they have a healthcare professional's approval for returning to work.

NEW SECTION

WAC 388-842-0070 What are the fire drill requirements for providers? (1) The provider must conduct a fire drill at least once each month at varying times of the day and night so that staff on all shifts practice the procedures with the clients they support.

(2) The provider must maintain a written record on the premises that indicates the date and time each fire drill is completed.

(3) If a provider supports a non-ambulatory child, the provider must consult with and follow the Washington state patrol/fire protection bureau (WSP/FPB) protocol for simulated fire drills.

NEW SECTION

WAC 388-842-0075 What must the provider do to prepare for emergency evacuations? (1) The provider must display an emergency evacuation plan in a common area on every floor of the home.

(2) The emergency evacuation plan must include:

(a) A floor plan of the home with clearly marked exits;

(b) Emergency evacuation routes; and

(c) The location for the clients to meet outside the home.

(3) The provider must be able to evacuate all clients to a safe location outside the home.

(4) If a client requires assistance during an evacuation, the provider's evacuation plan must describe the type of assistance that will be provided.

NEW SECTION

WAC 388-842-0080 What are the requirements for storing chemicals and other substances? (1) The provider must safely secure cleaning supplies, flammables, and other combustible materials, toxic or poisonous substances, and aerosols.

(2) If a container is filled with a toxic substance from a bulk supply, the provider must clearly label the container.

NEW SECTION

WAC 388-842-0085 How must the provider store medication? (1) The provider must store a client's medication:

(a) In a locked container, such as a lockbox;

(b) Separate from food and toxic chemicals;

(c) Under proper conditions for sanitation, temperature, and ventilation; and

(d) In the original medication container with the pharmacist-prepared or manufacturer's label, which must include the:

(i) Name of the client for whom the medication is prescribed;

(ii) Name of the medication; and

(iii) Dosage and frequency.

(2) The provider may store a client's medication in a medication organizer if the medication organizer was prepared by a pharmacist or registered nurse.

(3) Life-saving medications must be accessible in an emergency.

NEW SECTION

WAC 388-842-0090 When and how must the provider dispose of medication? (1) The provider must follow the Food and Drug Administration guidelines on proper disposal of medications.

(2) When disposing a client's medication, the provider must list the:

(a) Client's name;

(b) Medication name;

(c) Amount disposed; and

(d) Date of disposal.

(3) Two people must verify the disposal by signature.

NEW SECTION

WAC 388-842-0095 What must the provider do if a client declines a prescribed medication? If a client declines a prescribed medication, the provider must:

(1) Document the decline, including the time, date, and medication declined;

(2) Inform the client of the benefit of the medication;

(3) Consult a pharmacist or licensed medical provider with prescription authority to determine if declining the medication could significantly harm the client;

(4) If recommended, continue to offer the medication following consultation with subsection (3) of this section; and

(5) Inform the client's parent or legal representative of the declined medication and any reasons for declining if shared by the client.

FACILITY REQUIREMENTS

NEW SECTION

WAC 388-842-0110 What fire safety requirements must the facility meet? (1) The provider must be located in an area with public fire protection.

(2) The provider must have working smoke and carbon monoxide detectors installed. Each smoke and carbon monoxide detector must address the needs of clients who are deaf or hard of hearing.

(3) Smoke detectors must:

(a) Be in operating condition both inside and outside of all sleeping areas.

(b) Be installed on each story of the facility, in all play areas, and in the basement.

(c) Be installed and maintained according to the manufacturer's specifications.

(d) If mounted on a wall, be 12 inches from the ceiling and a corner.

(e) Be tested twice a year to ensure they are in working order. The provider must document the date and time of the test.

(4) Carbon monoxide detectors must be located in or near each client's bedroom and on every floor of the facility.

(5) The provider must have at least one approved 2A10BC-rated five pound or larger all-purpose (ABC) fire extinguisher readily available at all times. "Approved 2A10BC-rated" means a fire extinguisher with an underwriters laboratory label on the nameplate classifying the extinguisher as 2A10BC-rated or larger.

(6) The provider must maintain and service fire extinguishers according to manufacturer's specifications.

(7) An approved fire extinguisher must be located in the area of the normal path of exiting. The maximum travel distance to an extinguisher from any place on the premises must not exceed 75 feet. When the travel distance exceeds 75 feet, additional extinguisher(s) are required.

(8) The provider must install at least one fire extinguisher on each floor of a multilevel facility.

(9) Fire extinguishers must:

(a) Be mounted in a bracket or in a fire extinguisher cabinet so that the top of the extinguisher is no more than five feet above the floor; and

(b) Receive an annual maintenance certification by a licensed firm specializing in this work, based on the manufacturer's recommended schedule. Maintenance means a thorough check of the extinguisher for:

(i) Mechanical parts;

(ii) Extinguishing agent; and

(iii) Expelling means.

(10) New fire extinguishers do not need to receive an additional certification test during the first year.

(11) DDA may require that additional fire extinguishers be available on the premises, in consultation with the local fire authority or Washington state patrol's fire protection bureau.

NEW SECTION

WAC 388-842-0115 What other requirements must the facility meet? (1) The provider must maintain buildings, premises, and equipment in a clean and sanitary condition, free of hazards, and in good repair. The provider must ensure the facility has:

(a) Handrails for steps, stairways, and ramps if identified as a safety need.

(b) Appropriate furnishings, based on the age and activities of the client supported.

(c) Washable, water-resistant floors in bathrooms, kitchens, and other rooms exposed to moisture. Washable short-pile carpeting may be approved in kitchen areas if kept clean and sanitary.

(d) Tamper-proof or tamper-resistant electrical outlets or blank covers installed in areas accessible to clients who might be endangered by access to them.

(e) Easy access to the outdoors and rooms occupied by children in case an emergency arises.

(f) Non-breakable light fixture covers or shatter-resistant light bulbs or tubes in food preparation and dining areas.

(2) Adequate indoor and outdoor space, ventilation, light, and heat to ensure the health and comfort of all members of the household.

(3) The bathroom facilities must include:

(a) Toilets, urinals, and handwashing sinks appropriate to the height for the clients supported, or have a safe and easily cleaned step stool or platform that is water-resistant; and

(b) Soap and clean towels, disposable towels, or other approved hand-drying devices.

(4) The cleanliness and care of the premises must meet generally accepted health standards for the storage and preparation of food.

(5) The provider must make reasonable attempts to keep the premises free from pests, such as rodents, flies, cockroaches, fleas, and other insects using the least toxic methods.

(6) The provider must have an immediate plan to address hazardous conditions on the property or in the facility.

(7) The facility must be accessible to emergency vehicles and the address must be clearly visible on the facility or mailbox so that first responders can easily find the facility.

(8) The facility must be located on a well-drained site, free from hazardous conditions.

(9) Utility rooms with mop sinks that do not have windows opening to the outside must be ventilated with a mechanical exhaust fan to the outside of the building.

(10) The use of window blinds or other window coverings with pull cords capable of forming a loop and posing a risk of strangulation to children are prohibited under RCW 43.216.380.

SERVICE DELIVERY

NEW SECTION

WAC 388-842-0120 When must an individual instruction and support plan be developed or revised? (1) The provider must develop and implement an individual instruction and support plan for each client they support.

(2) The provider must develop and implement a client's instruction and support plan no more than 30 days after the client begins receiving RHDY services.

(3) The provider must revise a client's individual instruction and support plan:

(a) As goals are achieved or as the client's assessed needs change;

(b) At least semi-annually; and

(c) If requested by the client or the client's legal representative.

NEW SECTION

WAC 388-842-0125 What requirements must the individual instruction and support plan meet? The individual instruction and support plan must:

(1) Describe habilitation goals that the provider and client will work on together while the provider supports the client;

(2) List the instruction and support activities the provider will provide to the client and explain how those activities meet the assessed needs identified in the client's person-centered service plan;

(3) Describe other relevant support and service information; and

(4) For clients over age 16, include a plan for promoting independent living skills, including financial readiness education and internet literacy.

RECORDKEEPING

NEW SECTION

WAC 388-842-0140 What are the quarterly report requirements? A quarterly report from a staffed residential provider or a children's SOLA must:

(1) Be submitted to DDA and sent to the client's parent or legal representative no more than 10 business days after the end of each quarter; and

(2) Include:

(a) A copy of the client's current positive behavior support plan and individual instruction and support plan, including progress charts or graphs;

(b) A document that tracks community inclusion activities and a running balance of funds;

(c) A brief summary of progress toward habilitation goals listed in the individual instruction and support plan;

(d) A summary of target behaviors and any notable observations;

(e) Description of significant incidents;

(f) Total number and type of physical interventions implemented;

(g) Integrated settings modifications being requested, if any;

(h) Any significant changes in the client's condition or prescribed medications;

(i) Summary of school participation;
(j) Additional resources needed to support the client; and
(k) A summary of staff training hours per month if the client receives enhanced out-of-home services.

NEW SECTION

WAC 388-842-0145 Must the provider keep a record of a client's property? The provider must maintain current, written property records. The record must consist of:
(1) A list of personal possessions with a value of at least $25.00 that the client owns when moving into the program;
(2) A list of personal possessions with a value of $75.00 or more per item after the client moves into the program;
(3) Description and identifying numbers, if any, of the property.

NEW SECTION

WAC 388-842-0150 What records must the provider keep and how long must the records be retained? (1) The provider must keep the following in the client's record:
(a) Referral packet contents;
(b) Service notes;
(c) The client's individual instruction and support plan;
(d) The client's positive behavior support plan;
(e) Signed RHDY acknowledgment;
(f) RHDY engagement plan;
(g) Log of client expenses for community inclusion;
(h) Log of client expenses for monthly maintenance allowance;
(i) Medication records; and
(j) Incident reports.
(2) The provider must retain a client's records for at least six years after delivering services to the client.

RIGHTS AND RESPONSIBILITIES

NEW SECTION

WAC 388-842-0165 What is the RHDY acknowledgment? (1) The RHDY acknowledgment is a document that outlines the rights and responsibilities of the client, DCYF, and the provider while a client is receiving services from a RHDY provider. The RHDY acknowledgment is signed by the client's legal representative, client if over 18, and the provider designee.
(2) The RHDY acknowledgment must state:

(a) Integrated setting requirements under 42 C.F.R. 441.301 (c)(4);

(b) The responsibilities of the legal representative;

(c) DSHS and DDA are offering services through medicaid;

(d) That the client's receipt of services is voluntary and can be terminated at any time;

(e) Termination requirements for the provider under RCW 71A.26.030;

(f) The provider will assist in accessing non-DDA related services including but not limited to education and medically necessary treatments. This includes participation in IEP and individualized team meetings; and

(g) The provider will participate in the creation and implementation of a RHDY engagement plan.

NEW SECTION

WAC 388-842-0170 What is a RHDY engagement plan? (1) A RHDY engagement plan is a written agreement between DCYF and the provider.

(2) A RHDY engagement plan must include:

(a) A schedule of court-ordered family time or a copy of the family time plan.

(b) A safety plan for any documented safety issues.

(c) Identification of any legal documents that place restrictions on the child or family members.

(d) Identification of a DCYF representative who is able to make decisions on behalf of the youth to attend medical and dental appointments and provide consents as required, unless the parent is serving in that capacity.

(e) Identification of a court-ordered educational liaison who will sign documents for school and participate in meetings, including individual education plan meetings, unless the parent is serving in that capacity.

(f) A plan for after-hours emergencies.

(3) A RHDY engagement plan must:

(a) Outline the provider's role, including:

(i) Participation in scheduling and attending medical and dental appointments, school meetings, and community inclusion activities;

(ii) Supporting the client or families cultural or religious practices; and

(iii) Celebrating holidays and special occasions;

(b) Be developed before the start date of the client's RHDY services;

(c) Be reviewed during the annual assessment or more frequently upon request; and

(d) Be updated when:

(i) Changes to the family time plan occur; or

(ii) The client turns age 18 to reflect the client's individualized transition goals, and legal guardianship if applicable.

NEW SECTION

WAC 388-842-0175 What are DDA's responsibilities for a client in the RHDY program? When a client is in the RHDY program, DDA must:

(1) Facilitate the development of the RHDY engagement plan under WAC 388-842-0170 before the start of service and at each annual assessment;

(2) Visit the client in their licensed or certified setting at least every 90 days;

(3) Develop the client's person-centered service plan as required under WAC 388-845-3055;

(4) Assist with accessing a client's medically necessary physical or behavioral health benefits, which may include attending care conferences and sharing information with medicare, medicaid, or private health insurance representatives for purposes of care coordination;

(5) Monitor the client's services by:

(a) Facilitating individualized team meetings on a quarterly basis;

(b) Reviewing the individual instruction and support plan;

(c) Reviewing the quarterly report;

(d) Reviewing incident reports and follow-up measures involving the client;

(e) Authorizing payment for services;

(6) Determine eligibility for medicaid coverage under chapters 182-513 and 182-515 WAC;

(7) Complete an individual rate assessment;

(8) Monitor the provider to ensure the provider complies with contract requirements, which includes compliance with DDA policies;

(9) Refer a client for a nurse delegation assessment by a registered nurse delegator, if required under chapter 246-945 WAC.

NEW SECTION

WAC 388-842-0180 What are the provider's responsibilities for a client in the RHDY program? (1) When a client is in the RHDY program, the licensed or certified provider must:

(a) Ensure the health and safety of the client;

(b) Provide adequate staff to meet the needs of the client as identified in the rate assessment;

(c) Develop and implement the client's individual instruction and support plan;

(d) Complete quarterly reports as outlined under WAC 388-842-0140;

(e) Participate in the development of the RHDY engagement plan with the client, the client's legal representative, and DDA social service specialist;

(f) Implement the RHDY engagement plan;

(g) Support the client in regular school attendance, including following the school's reporting requirements when the client is absent or has an appointment during the school day;

(h) With the legal representative and educational liaison or parent's consent, maintain regular communication with school representatives and attend school-related meetings;

(i) Participate in the client's individualized education program and collaborate with the school, legal representative, and parent or

educational liaison to ensure timely and continuous access to a free and appropriate public education in the least restrictive environment;

(j) Maintain regular communication with the client's legal representative;

(k) Develop and practice evacuation plans in case of fire, natural disaster, or other emergencies in accordance with WAC 388-842-0075;

(l) Maintain a client rights policy in accordance with chapter 71A.26 RCW;

(m) Request an assessment for nurse delegation if the client needs medication administration;

(n) Monitor community inclusion funds in the following ways:

(i) Discuss and schedule community inclusion activity options with the client; and

(ii) Track, and make available to DDA upon request, the client's participation in community inclusion activities, including:

(A) Date of each activity;

(B) Cost of each activity; and

(C) A running balance of the client's community inclusion activities funds;

(o) Monitor monthly maintenance allowance by tracking, and making available to DDA and DCYF upon request, the following client expenditures:

(i) Date of purchase;

(ii) Cost of each item; and

(iii) A running balance of the client's monthly maintenance allowance funds;

(p) Support and assist client with requested or needed DCYF case-specific communications.

(2) If DCYF provides a copy of the family time plan, the provider must support DCYF with implementation by having the client available at scheduled times.

(a) Providers must not provide transportation, supervision, or documentation regarding family time.

(b) If a child chooses to not participate in family time, the provider will not enforce the plan.

(c) DCYF must provide DDA and the provider with updated copies of the family time plan as changes occur.

NEW SECTION

WAC 388-842-0185 What are DCYF's responsibilities for a client in the RHDY program? When a client is in the RHDY program, DCYF must:

(1) Enroll the client in the local school district where the RHDY program is located.

(2) Identify the court-ordered educational liaison who will sign documents for school and participate in meetings, including individual education plan meetings, unless the parent is serving in that capacity.

(3) Identify a DCYF representative who is able to make medical and dental decisions and provide consents on behalf of the youth as required per WAC 110-145-1845. Attend and participate in:

(a) The development and implementation of the RHDY engagement plan;

(b) Individualized team meetings; and

(c) The DDA annual assessment, including the person-centered service plan.

(4) Ensure management of the client's finances and benefits, by:

(a) Maintaining client financial eligibility;

(b) Managing, or appointing a representative payee to manage, the client's social security or supplemental security income in accordance with federal social security rules, including ensuring that the client is not over federal resource limits; and

(c) Ensuring payment of DCYF's responsibility for the DCYF portion of client's daily rate in the RHDY program.

(5) Coordinate family time visits, in person or remote, by:

(a) Identifying a provider for any supervision or monitoring needs; and

(b) Securing transportation to and from family time visits.

(6) Arrange for non-routine transportation, including transportation:

(a) To the RHDY program;

(b) To and from family time visits; and

(c) To court hearings and other DCYF case related appointments or meetings.

(7) Partner with DDA before any potential change to the client's court-ordered placement or dependency status.

(8) Notify DDA no more than one business day after a change to a client's dependency status or placement.

(9) Provide updated copies of court orders to DDA on a regular basis showing that the client continues to meet eligibility for the RHDY program.

NEW SECTION

WAC 388-842-0190 How must the provider obtain medical care for a client? (1) The provider is responsible for partnering with a client's legal representative to obtain medical care for the client.

(2) The legal representative must provide a copy of the court order or signed parent consent to the RHDY provider before care occurs if the client requires:

(a) General anesthesia or surgery and is under age 18;

(b) Gender-affirming medical care and is under age 18; or

(c) A prescribed psychotropic medication, and is:

(i) Under age 13; or

(ii) Age 13-17 and their treating healthcare professional has determined they are not capable of giving consent.

(3) The RHDY provider must notify DCYF and DDA of emergency care provided.

NEW SECTION

WAC 388-842-0195 What is a provider's responsibility to engage in dependency court proceedings? (1) The provider is not required to:

(a) Participate in dependency court proceedings;

(b) Provide court reports and other documentation; or

(c) Provide testimony.

(2) The provider must ensure that a client is available for scheduled dependency court hearings and court-related appointments.

RATES

NEW SECTION

WAC 388-842-0205 What must a client pay toward the cost of the RHDY program? DDA determines the amount of client responsibility and room and board a client must pay under WAC 182-515-1510.

NEW SECTION

WAC 388-842-0210 How does DDA determine the rate to support a client in the RHDY program and when may it be updated? (1) DDA determines the rate to support a client in a staffed residential home by assessing the client's identified needs.

(2) DDA completes a rate assessment, which consists of four cost centers:

(a) Administrative and non-staff costs, including transportation and damage reimbursement, if applicable;

(b) Funds for community inclusion activities as outlined in WAC 388-842-0180;

(c) Consultant and training costs; and

(d) Instruction and support services, which are determined by assessing a client's identified needs and supervision in the following areas:

(i) Activities of daily living as defined in WAC 388-106-0010;

(ii) Instrumental activities of daily living as defined in WAC 388-106-0010; and

(iii) Support and supervision.

(3) DDA must conduct a rate assessment before a client starts services with a RHDY provider, if a significant change occurs, or if the household composition changes.

NEW SECTION

WAC 388-842-0215 What must DCYF pay when a client is in the RHDY program? When a client is in the RHDY program, DCYF must pay for the client's:

(1) Basic expenses (including maintenance) and supervision.

(2) Monthly maintenance allowance.

NEW SECTION

WAC 388-842-0220 What does DDA pay when a client is in the RHDY program? For a client in the RHDY program, DDA pays the cost of the RHDY program services minus client responsibility under WAC 388-842-0205 and the amount determined to be DCYF responsibility under WAC 388-842-0215.

TERMINATION AND CHANGE IN PROVIDER

NEW SECTION

WAC 388-842-0230 What happens if a provider decides to stop providing services to a client? (1) If a provider decides to stop providing services to a client, the provider must:

(a) Notify DDA and DCYF at least 30 days before the effective date;

(b) Provide one of the following reasons:

(i) The provider cannot meet the needs of the client;

(ii) The client's safety or the safety of other people in the facility is endangered;

(iii) The client's health or the health of other people in the facility would otherwise be endangered;

(iv) The provider ceases to operate; or

(c) Participate in the development of a transition plan.

(2) If the client does not transition to a new provider by the end of 30 days, DCYF must resume care and custody of the client.

(3) If the client is in a temporary setting, (e.g., medical or criminal justice facility) and the provider determines they are unable to have the client safely return to their program, DCYF must resume care and custody of the client upon discharge from the temporary setting.

NEW SECTION

WAC 388-842-0235 What happens if a client's dependency is closed, or the placement is changed to in-home while the client is in the RHDY program? (1) A client is no longer eligible for the RHDY program if the client's dependency status changes and the dependency is closed, or the placement is changed to in-home.

(2) DDA will meet with the parent or legal representative (or client if over 18) to explore waiver services through other programs.

(a) If the client requests services through the out-of-home services (OHS) program, and the client meets eligibility under WAC 388-826-0010, DDA will follow the OHS referral process.

(b) If the client does not pursue services through the OHS program, the client must not remain in the RHDY home or facility more than 15 days after the date of the court-ordered change.

(3) Transportation and moving expenses from the RHDY program are the responsibility of DCYF, the parent, or legal representative.

ADMINISTRATIVE HEARING RIGHTS

NEW SECTION

WAC 388-842-0250 Who may appeal a DDA action? A client, the client's parent, or the client's legal representative may appeal DDA decisions under WAC 388-825-120.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

WAC 388-845-0001 Definitions. "Aggregate services" means a combination of services subject to the dollar limits in the basic plus waiver and CIIBS waiver.

"Allocation" means the amount of individual and family services (IFS) waiver funding available to a client for a maximum of 12 months.

"Behavior support plan" means a plan written by a professionally trained behavioral health or similar provider to address behavioral health intervention needs.

"CARE" ((~~means~~)) stands for comprehensive assessment and reporting evaluation.

"Client" means a person who has a developmental disability under RCW 71A.10.020((~~(5)~~)) and has been determined eligible to receive services from ((~~the administration~~)) DDA under chapter ((~~71A.16 RCW~~)) 388-823 WAC.

"DDA" means the developmental disabilities administration, of the department of social and health services.

"DDA assessment" refers to the standardized assessment tool under chapter 388-828 WAC, used by DDA to measure the support needs of people with developmental disabilities.

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

"DCYF out-of-home caregiver" means a caregiver approved by DCYF, who may also be licensed by DCYF, for children and youth placed out-of-home by a court and in the care and custody of DCYF.

"DCYF placement provider" means a provider contracted with DCYF to provide placement for children and youth placed out-of-home by the court and in the care and custody of DCYF.

"Dependency action" means the court process that starts with the filing of a dependency petition and can result in a court determining a child or youth to be dependent.

"Dependent" refers to a child or youth for whom the court has entered an order of dependency determining that the child or youth is dependent within the meaning of RCW 13.34.030 or a similar tribal court action.

"Evidence-based treatment" means the use of physical, mental, and behavioral health interventions for which systematic, empirical research has provided evidence of statistically significant effectiveness as treatments for specific conditions. Alternate terms with the same meaning are evidence-based practice (EBP) and empirically supported treatment (EST).

"Family" means one or more of the following relatives: Spouse or registered domestic partner; natural, adoptive, or stepparent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"Family home" means the residence where you and your family live.

"Gainful employment" means employment that reflects achievement of or progress towards a living wage.

"General utility" describes something used by people in the absence of illness, injury, or disability.

"HCBS waiver" is a home and community based services waiver program under section 1915(c) of the Social Security Act.

"Home" means present place of long-term residence.

"ICF/IID" means an intermediate care facility for individuals with intellectual disabilities.

"Integrated business settings" means a setting that enables participants to either work alongside or interact with individuals who do not have disabilities, or both.

"Integrated setting" means a home and community-based setting in ((~~the community that supports a client's full access to the greater community, including opportunities to seek employment and work in competitive settings, engage in community life, control personal resources, and receive services in the community, to the same degree of access as people not receiving home and community-based services~~)) compliance with 42 C.F.R. 441.301 (c)(4) and (5).

"Legal representative" means a parent of a ((~~person who~~)) client if the client is under age 18 ((~~years of age~~)) and parental rights have not been terminated or relinquished, a ((~~person's legal~~)) court-appointed guardian((~~, a person's limited guardian when the subject matter is within the scope of limited guardianship, a person's attorney-at-law, a person's attorney-in-fact,~~)) if a decision is within the scope of the guardianship order, or any other person who is authorized by law to act for ((~~another person~~)) the client.

"Living wage" means the amount of earned wages needed to enable an individual to meet or exceed his or her living expenses.

"Maintenance" means the cost of rental or purchase of real estate and home furnishings, utilities, maintenance of the building and associated administrative services, including a full nutritional regimen of three meals a day. Home furnishings are excluded if they are intended to remain in the home for the benefit of future clients.

"Necessary supplemental accommodation representative" means an individual who receives copies of DDA planned action notices (PANs) and other department correspondence in order to help a client understand the documents and exercise the client's rights. A necessary supplemental accommodation representative is identified by a client of DDA when the client does not have a legal guardian and the client is requesting or receiving DDA services.

"Participant" means a client who is enrolled in a home and community-based services waiver program.

"Person-centered service plan" is a document that identifies your goals and assessed health and welfare needs. Your person-centered service plan also indicates the paid services and natural supports that will assist you to achieve your goals and address your assessed needs.

"Primary caregiver" means the person who provides the majority of your care and supervision.

"Provider" means an individual or agency who meets the provider qualifications and is contracted with DSHS to provide services to you.

"Respite assessment" means an algorithm within the DDA assessment that determines the number of hours of respite care you may receive per year if you are enrolled in the basic plus, children's intensive in-home behavioral support, or core waiver.

"SSI" means supplemental security income, an assistance program administered by the federal Social Security Administration for blind, disabled, and aged individuals.

"SSP" means state supplementary payment program, a state-paid cash assistance program for certain clients of the developmental disabilities administration.

"State-funded services" means services that are funded entirely with state dollars.

"Supervision" means the oversight of a client when habilitation activities or personal care are not occurring, such as monitoring a client while watching tv, sleeping, sitting in a classroom setting or worksite, or other day-to-day line-of-eyesight or earshot monitoring.

"You" means the client or participant.

"Waiver year" means the 12-month period starting from the initial or annual plan effective date in the client's person-centered service plan.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

WAC 388-845-0030 Do I meet criteria for HCBS waiver-funded services? (1) You meet criteria for DDA HCBS waiver-funded services if you meet all of the following:

(a) You have been determined eligible for DDA services per RCW 71A.10.020.

(b) You have been determined to meet ICF/IID level of care per WAC 388-845-0070, 388-828-3060, and 388-828-3080.

(c) You meet disability criteria established in the Social Security Act.

(d) You meet financial eligibility requirements as defined in WAC 182-515-1510.

(e) You choose to receive services in the community rather than in an ICF/IID facility.

(f) You have a need for monthly waiver services or monthly monitoring as identified in your person-centered service plan.

(g) You are not residing in hospital, jail, prison, nursing facility, ICF/IID, or other institution.

(h) Additionally, for the children's intensive in-home behavioral support (CIIBS) waiver-funded services:

(i) You are age eight or older and under the age of 18 for initial enrollment and under age 21 for continued enrollment;

(ii) You have been determined to meet CIIBS program eligibility per chapter 388-828 WAC prior to initial enrollment only;

(iii) You live at home with a family member; and

(iv) DDA receives a signed participation agreement from your:

(A) Parent, guardian, or primary caregiver; and

(B) Legal representative if that person is not your parent or guardian.

(2) For the individual and family services waiver, you must meet the criteria in subsection (1) of this section and also live ((~~in your~~)) at home with a family ((~~home~~)) member.

((~~(3) For the children's intensive in-home behavioral supports (CIIBS) waiver, in addition to meeting criteria in subsection (1) of this section:~~

~~(a) You must:~~

~~(i) Be age eight or older and under the age of 18 for initial enrollment and under age 21 for continued enrollment;~~

~~(ii) Be determined to meet CIIBS program eligibility per chapter 388-828 WAC prior to initial enrollment only; and~~

~~(iii) Live with your family.~~

~~(b) Your parent or guardian, and primary caregiver if other than your parent or guardian, must sign the participation agreement.~~))

AMENDATORY SECTION (Amending WSR 24-01-116, filed 12/19/23, effective 1/19/24)

WAC 388-845-0045 When there is capacity to add people to a waiver, how does DDA determine who will be enrolled? When there is capacity on a waiver, DDA may enroll people from the statewide database in a waiver based on the following priority considerations:

(1) First priority will be given to current waiver participants assessed to require a different waiver because their identified health and welfare needs have increased and these needs cannot be met within the scope of their current waiver.

(2) DDA may also consider any of the following populations in any order:

(a) Priority populations as identified and funded by the legislature.

(b) Persons DDA has determined to be in immediate risk of ICF/IID admission due to unmet health and welfare needs.

(c) Persons identified as a risk to the safety of the community.

(d) Persons currently receiving services through state-only funds.

(e) Persons on an HCBS waiver that provides services in excess of what is needed to meet their identified health and welfare needs.

(f) Persons who were previously on an HCBS waiver since April 2004 and lost waiver eligibility per WAC 388-845-0060 (1)(k).

(g) Persons exiting the Washington department of children, youth, and families foster care or aging out of dependency.

(h) Persons age 20 and younger who are subject to a state court dependency proceeding pursuant to chapter 13.34 RCW or a similar proceeding in tribal court, are receiving extended foster care services, or exited a dependency or discontinued extended foster care services

from the department of children, youth, and families or from a tribe in Washington state and desire waiver services.

(3) DDA may consider persons who need the waiver services available in the basic plus or IFS waivers to maintain them in their family's home or in their own home.

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0055 How do I remain eligible for the waiver? (1) Once you are enrolled in a DDA HCBS waiver, you can remain eligible if you continue to meet eligibility criteria in WAC 388-845-0030, and:

(a) You complete a reassessment with DDA at least once every ((~~twelve~~)) 12 months to determine if you continue to meet all of these eligibility requirements;

(b) You must either receive a waiver service at least once in every ((~~thirty~~)) 30 consecutive days, as specified in WAC 182-513-1320(3), or your health and welfare needs require monthly monitoring, which will be documented in your client record;

(c) You complete an in-person DDA assessment/reassessment interview per WAC 388-828-1520.

(2) For the children's intensive in-home behavioral supports waiver, you must meet the criteria in subsection (1) of this section and you must:

(a) Be under age ((~~twenty-one~~)) 21;

(b) Live ((~~with your~~)) at home with a family member;

(c) Have an annual participation agreement signed by your:

(i) Parent((~~/~~)) or guardian(s) and primary caregiver((~~(s),~~)); or

(ii) Primary caregiver(s) and legal representative, if other than parent((~~/~~)) or guardian(s); and

(d) Continue to participate in the program as outlined in the annual participation agreement.

(3) For the individual and family services waiver, you must meet the criteria in subsection (1) of this section and live ((~~in your~~)) at home with a family ((~~home~~)) member.

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-0060 Can your waiver enrollment be terminated? DDA may terminate your waiver enrollment if DDA determines that:

(1) Your health and welfare needs cannot be met in your current waiver or for one of the following reasons:

(a) You no longer meet one or more of the requirements listed in WAC 388-845-0030;

(b) You do not have an identified need for a waiver service at the time of your annual person-centered service plan;

(c) You do not use a waiver service at least once in every ((~~thirty~~)) 30 consecutive days and your health and welfare do not require monthly monitoring to avoid institutionalization;

(d) You are on the community protection waiver and:

(i) You choose not to be served by a certified residential community protection provider-intensive supported living services (CP-ISLS);

(ii) You engage in any behaviors identified in WAC 388-831-0240 (1) through (4); and

(iii) DDA determines that your health and safety needs or the health and safety needs of the community cannot be met in the community protection program;

(e) You choose to unenroll from the waiver;

(f) You reside out-of-state;

(g) You cannot be located or do not make yourself available for the annual waiver reassessment of eligibility;

(h) Your needs exceed the maximum funding level or scope of services under the basic plus waiver as specified in WAC 388-845-3080;

(i) Your needs exceed what can be provided under WAC 388-845-3085;

(j) You refuse to participate with DDA in:

(i) Service planning;

(ii) Required quality assurance and program monitoring activities; or

(iii) Accepting services agreed to in your person-centered service plan as necessary to meet your health and welfare needs; or

(k) You are in a hospital, jail, prison, nursing facility, ICF/IID, or other institution for at least one full calendar month, ((~~and~~)) are under the care of that institution or entity, and:

(i) At the end of that full calendar month and there is no immediate plan for you to return to the community;

(ii) At the end of the ((~~twelfth~~)) 12th month following the effective date of your current person-centered service plan, as described in WAC 388-845-3060; or

(iii) At the end of the waiver fiscal year, whichever date occurs first.

(2) Services offered on a different waiver can meet your health and welfare needs and DDA enrolls you on a different waiver.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

WAC 388-845-0100 What determines which waiver I am assigned to? DDA will assign you to the waiver with the minimum service package necessary to meet your health and welfare needs, based on its evaluation of your DDA assessment as described in chapter 388-828 WAC and the following criteria:

(1) For the individual and family services waiver, you:

(a) Live ((~~in your~~)) at home with a family ((~~home~~)) member; and

(b) Are assessed to need a waiver service to remain ((~~in the~~)) at home with a family ((~~home~~)) member.

(2) For the basic plus waiver your health and welfare needs require a waiver service to remain in the community.

(3) For the core waiver:

(a) You are at immediate risk of out-of-home placement due to your disability and not related to chapter 13.34 RCW; or

(b) You have an identified health and welfare need for residential services that cannot be met by the basic plus waiver.

(4) For the community protection waiver, refer to WAC 388-845-0105 and chapter 388-831 WAC.

(5) For the children's intensive in-home-behavioral support waiver, you:

(a) Are age eight or older but under age 18;

(b) Live at home with ((~~your~~)) a family member;

(c) Are assessed at high or severe risk of out-of-home placement due to challenging behavior per chapter 388-828 WAC; and

(d) Have a signed family participation agreement from your:

(i) Parent, ((~~or~~)) guardian, or ((~~and~~)) primary caregiver((~~,~~)); and

(ii) Legal representative, if ((~~other than~~)) that person is not your parent or guardian.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

WAC 388-845-0110 What are the limits to the waiver services you may receive? The following limits apply to the waiver services you may receive:

(1) A service must be available in your waiver and address an unmet need identified in your DDA assessment and person-centered service plan.

(2) Stabilization services may be added to your person-centered service plan after the services have been provided.

(3) Waiver services are limited to services required to prevent placement in an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

(4) The daily cost of your waiver services must not exceed the average daily cost of care in an ICF/IID.

(5) Waiver services must not replace or duplicate other available paid or unpaid supports or services. Before DDA will cover a service through waiver services, you must first request and be denied all applicable covered benefits through private insurance, medicare, the medicaid state plan, and other resources.

(6) Waiver services must supplement, and not supplant, the child welfare services and supports a child or youth is entitled to from the department of children, youth, and families (DCYF), from Title IV-E of the Social Security Act, or from other sources.

((~~(6)~~)) (7) Waiver funding must not be authorized for treatments determined by DSHS to be experimental or investigational under WAC 182-531-0050.

((~~(7)~~)) (8) For the individual and family services (IFS) waiver, basic plus waiver, and children's intensive in-home behavioral support waiver, services must not exceed the yearly limits specified in these programs for specific services or combinations of services.

((~~(8)~~)) (9) Your choice of qualified providers and services is limited to the most cost-effective option that meets your unmet need identified in your DDA assessment and person-centered service plan.

((~~(9)~~)) (10) Services, with the exception of respite care, must be provided in integrated settings.

((~~(10)~~)) (11) Services provided out-of-state, other than in recognized bordering cities, are limited to respite care during vacations of not more than 30 consecutive days.

((~~(11)~~)) (12) You may receive services in a recognized out-of-state bordering city under WAC 182-501-0175.

((~~(12)~~)) (13) Other out-of-state waiver services require an approved exception to rule before DDA will authorize payment.

((~~(13)~~)) (14) Waiver services do not cover:

(a) Copays;

(b) Deductibles;

(c) Dues;

(d) Membership fees; or

(e) Subscriptions.

((~~(14)~~)) (15) Waiver services do not cover a product unless the product is:

(a) The most basic model of the product available that can meet your health and safety need related to your intellectual or developmental disability;

(b) The least restrictive means for meeting that need; and

(c) Requested by you.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

WAC 388-845-0111 Are there ((~~limitations regarding~~)) limits to who can provide waiver services? The following ((~~limitations~~)) limits apply to providers ((~~for~~)) of waiver services:

(1) Your spouse must not be your paid provider for any waiver service.

(2) If you are under age 18, your natural, step, ((~~or~~)) adoptive parent, legal representative, or DCYF out-of-home caregiver must not be your paid provider for any waiver service.

(3) If you are age 18 or older, your natural, step, or adoptive parent must not be your paid provider for any waiver service with the exception of:

(a) Personal care;

(b) Transportation ((~~to and from a waiver service~~)) per WAC 388-845-2200 through 388-845-2210;

((~~(b)~~)) (c) Residential habilitation services per WAC 388-845-1510 if your parent is certified as a residential agency per chapter 388-101 WAC; or

((~~(c)~~)) (d) Respite care if you and the parent who provides the respite care live in separate homes.

(4) If you receive CIIBS waiver services, your legal representative or family member per WAC 388-845-0001 must not be your paid provider for any waiver service with the exception of:

(a) Transportation ((~~to and from a waiver service~~)) per WAC 388-845-2200 through 388-845-2210; and

(b) Respite per WAC 388-845-1605 through 388-845-1620.

(5) A person must not be your provider of a DDA waiver service if the person is also:

(a) Providing a DCYF-paid service to you; or

(b) Is your DCYF out-of-home caregiver.

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0760 Are there limits to community transition services I can receive? (1) Community transition services does not include:

((~~(a)[(1)]~~)) (a) Diversional or recreational items such as televisions, cable TV access, VCRs, MP3, CD, or DVD players;

((~~(2)~~)) (b) Computers, if primarily used as a diversion or for recreation; or

((~~(3)~~)) (c) Rent assistance.

(2) Expenditures above $1,500 for community transition require prior approval by the regional administrator or designee.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

WAC 388-845-0955 Are there limits to the remote support I may receive? The following limits apply to your receipt of remote support:

(1) Remote support must never be used to restrict ((~~people~~)) a person from their home, community, or body autonomy.

(2) Before DDA authorizes remote support, a ((~~safety~~)) backup plan must be established and documented in the waiver participant's person-centered service plan.

(3) The need for remote support must be identified in the waiver participant's person-centered service plan.

(4) Remote support cannot pay for internet, data plans, or wi-fi access.

(5) Remote support requires prior approval by the regional administrator or designee.

(6) For basic plus, remote support is limited to:

(a) The aggregate budget((~~.~~)); and

(b) Emergency assistance funding, if eligible per WAC 388-845-0810.

(7) For IFS, remote support is limited to the annual allocation.

(8) Remote support must not replace, duplicate, or be the delivery method for other available paid or unpaid supports or services.

((~~(9) Remote support must not be authorized to waiver participants receiving residential habilitation.~~))

AMENDATORY SECTION (Amending WSR 18-23-004, filed 11/7/18, effective 12/8/18)

WAC 388-845-1515 Are there limits to the residential habilitation services I may receive? (1) You may only receive one type of residential habilitation service at a time.

(2) None of the following may be paid for under the core or community protection waiver:

(a) Room and board;

(b) The cost of building maintenance, upkeep, improvement, modifications, or adaptations required to assure the health and safety of

residents, or to meet the requirements of the applicable life safety code;

(c) Activities or supervision already being paid for by another source;

(d) If you are a child or youth (up to age 21), and you are subject to a dependency action, and placed in out-of-home care by the court, DCYF is responsible for your maintenance and supervision costs;

((~~(d)~~)) (e) Services provided in your parent's home unless you are receiving alternative living services for a maximum of six months to transition you from your parent's home into your own home.

(3) Alternative living services in the core waiver cannot:

(a) Exceed ((~~forty~~)) 40 hours per month;

(b) Provide personal care or protective supervision.

(4) The following persons cannot be paid providers for your service:

(a) Your spouse;

(b) Your natural, step, or adoptive parents if you are a child age ((~~seventeen~~)) 17 or younger;

(c) Your natural, step, or adoptive parent unless your parent is certified as a residential agency per chapter 388-101 WAC or is employed by a certified or licensed agency qualified to provide residential habilitation services.

(5) The initial authorization of residential habilitation services requires prior approval by the DDA regional administrator or designee.

(6) If you are under age ((~~eighteen~~)) 18, the residential habilitation services you receive are subject to requirements under chapter 388-826 WAC.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

WAC 388-845-1607 Can someone who lives with you be your respite provider? A person who lives with you may be your respite care provider if the person is not:

(1) Your primary care provider;

(2) Providing any other DSHS or DCYF paid service to you in the month that person provides respite care to you; or

(3) Excluded from providing services based on the limits under WAC 388-845-0111.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

WAC 388-845-1620 Are there limits to the respite care you may receive? The following limits apply to the respite care you may receive:

(1) For basic plus, core, and the children's intensive in-home behavioral support (CIIBS) waivers, the developmental disabilities administration (DDA) assessment will determine how much respite you may receive under chapter 388-828 WAC.

(2) If you are a dependent child or youth through the DCYF, your respite hours determined by the DDA assessment may be reduced based on your access to case aide hours through DCYF.

((~~(2)~~)) (3) For the individual and family services (IFS) waiver, the dollar amount for your annual allocation in your IFS waiver limits the amount of respite care you may receive.

((~~(3)~~)) (4) Respite must not replace:

(a) Day care while your parent or guardian is at work; or

(b) Personal care hours available to you.

((~~(4)~~)) (5) If you receive respite in a private home, the home must be licensed to provide respite care unless the home is:

(a) Your private home; or

(b) The home of a relative under WAC 388-825-345.

((~~(5)~~)) (6) If you receive respite from a provider who requires licensure, the respite services are limited to activities and age-specific criteria contained in the provider's license.

((~~(6)~~)) (7) Your individual respite provider must not provide:

(a) Other DDA services for you during your respite care hours; or

(b) DDA paid services to other persons during your respite care hours.

((~~(7)~~)) (8) Your primary caregivers must not provide other DDA services for you during your respite care hours.

((~~(8)~~)) (9) If your personal care provider is your parent and you live in your parent's adult family home you must not receive respite.

(10) If you are a dependent child or youth, your DCYF out-of-home caregiver or provider must not provide respite to you.

((~~(9)~~)) (11) DDA must not pay for fees - such as a membership or insurance fee - associated with your respite care.

((~~(10)~~)) (12) If you require respite care from a licensed practical nurse (LPN) or a registered nurse (RN), respite services may be authorized using an LPN or RN. Respite services are limited to the assessed respite care hours identified in your person-centered service plan. Respite provided by an LPN or RN requires a prior approval by the regional administrator or designee.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

WAC 388-845-2000 What is staff and family consultation? (1) Staff and family consultation is assistance, not covered by the medicaid state plan, to families or direct service providers to help them meet the individualized and specific needs of a participant as outlined in the participant's person-centered service plan and necessary to improve the participant's independence and inclusion in their community.

(2) Staff and family consultation is available in all DDA HCBS waivers.

(3) Staff and family consultation is ((~~consultation and~~)) guidance ((~~to~~)) for a ((~~staff member~~)) DDA direct support provider, DCYF out-of-home caregiver, DCYF placement provider, informal caregiver, or family member ((~~about~~)) working with the participant. Staff and family consultation includes one or more of the following:

(a) Health and medication monitoring to track and report to healthcare provider;

(b) Positioning and transfer;

(c) Basic and advanced instructional techniques;
(d) Consultation with potential referral resources;
(e) Augmentative communication systems;
(f) Diet and nutritional guidance;
(g) Disability information and education;
(h) Strategies for effectively and therapeutically interacting with the participant;
(i) Environmental consultation;
(j) Assistive technology safety;
(k) Parenting skills; and
(l) For the basic plus, IFS, and CIIBS waivers only, individual and family counseling.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

WAC 388-845-2010 Are there limits to the staff and family consultation you may receive? (1) Staff and family consultation are limited to supports identified in your DDA assessment and documented in the person-centered service plan.

(2) Expenses to the family or provider for room and board or attendance, including registration, at conferences are excluded as a service under staff and family consultation.

(3) The dollar amounts for aggregate service in your basic plus or CIIBS waiver or the dollar amount of the annual allocation in your individual and family services (IFS) waiver limit the amount of staff and family consultation you may receive.

(4) Individual and family counseling is limited to family members who:

(a) Live with the participant; and

(b) Have been assaulted by the participant and the assaultive behavior was:

(i) Documented in the participant's ((~~DDA assessment and~~)) person-centered service plan; and

(ii) Addressed in the participant's ((~~positive~~)) DDA assessment and behavior support plan or therapeutic plan.

(5) For a child or youth currently subject to a dependency action, parenting skills for parents, foster care parents, or other staff must only be authorized after confirmation that parenting support has been accessed through the supports available through DCYF.

((~~(5)~~)) (6) Staff and family consultation does not provide training or consultation necessary to meet a contracted provider's or staff's contractual licensing or certification requirements or to complete the necessary functions of their job.

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

WAC 388-845-2200 What are transportation services? Transportation services provide reimbursement to a provider when the transportation is required and specified in the person-centered service plan. This service is available in all DDA HCBS waivers if the cost and re-

sponsibility for transportation is not already included in your provider's contract and payment.

(1) Transportation provides you access to waiver services ((~~, specified by~~)) and other community services, activities, and resources, as specified in your person-centered service plan.

(2) Whenever possible, you must use family, neighbors, friends, or community agencies that can provide this service without charge.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-3015 How is the waiver respite assessment administered? The waiver respite assessment is administered by department staff during an in-person interview with you if you choose to be present, and at least one other person with knowledge of you, such as your primary caregiver or legal representative.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-3095 Will I have to pay toward the cost of waiver services? (1) You are required to pay toward ((~~board and~~)) room and board costs if you live in a licensed facility or in a companion home as room and board is not considered to be a waiver service.

(2) If you are a dependent child or youth subject to a court order, DCYF is responsible to pay your maintenance and supervision.

((~~(2)~~)) (3) You will not be required to pay towards the cost of your waiver services if you receive SSI.

((~~(3)~~)) (4) You may be required to pay towards the cost of your waiver services if you do not receive SSI. DDA determines what amount, if any, you pay in accordance with WAC 182-515-1510.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-825-0571	What services am I eligible to receive from DDA if I am under the age of eighteen, have been determined to meet DDA eligibility requirements, and I am in a dependency guardianship or foster care with children's administration?
WAC 388-845-2019	What modifications to waiver services apply during the COVID-19 outbreak?

WSR 25-07-005
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 25-35—Filed March 5, 2025, 4:02 p.m., effective March 13, 2025, 8:00 a.m.]

Effective Date of Rule: March 13, 2025, 8:00 a.m.

Purpose: Amends coastal commercial crab rules.

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000C and 220-340-45000V; and amending WAC 220-340-420 and 220-340-450.

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: Provisions of the State/Makah Harvest Management Agreement allow for the opening of Makah special management area to state license holders and specify a temporary pot limit. 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: March 5, 2025.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-42000D Commercial crab fishery—Unlawful acts. Notwithstanding the provisions of WAC 220-340-420, effective immediately until further notice:

(1) It is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean from any vessel, unless:

(a) A valid Washington crab vessel inspection certificate has been issued to the delivering vessel. Vessel hold inspection certificates dated from January 14, 2025, through February 9, 2025, are only valid for the area south of 46°28.00 N. Lat. until 8:00 A.M. March 18, 2025; and

(b) The vessel inspection certificate numbers are recorded on all shellfish tickets completed for coastal Dungeness crab landings until March 18, 2025.

(2) It is unlawful for a vessel to use more than 200 pots in the Makah SMA beginning 8:00 A.M. March 13, 2025, until 8:00 A.M. April 12, 2025. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the following methods:

• E-mail to Jamie Fuller at Jamie.Fuller@dfw.wa.gov; or

• Telephone call to Jamie Fuller at 360-580-0875.

(3) Unless otherwise amended all other provisions of the permanent rule remain in effect.

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

NEW SECTION

WAC 220-340-45000W Commercial crab fishery—Seasons and areas—Coastal. Notwithstanding the provisions of WAC 220-340-450 effective immediately until further notice: it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided in this section.

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

(a) For the purposes of this section, the waters of Willapa Bay include the marine waters east of a line connecting 46°44.76 N, 124°05.76 W and 46°38.93 N, 124°04.33 W.

(b) Licenses and vessels designated to those licenses that participate in the coastal commercial Dungeness crab fishery in the waters from Point Arena, California, to Klipsan Beach, Washington (46°28.00), including Willapa Bay, before the area north of Klipsan Beach (46°28.00) opens, are prohibited from fishing in the following area for the duration specified:

i. The waters between Oysterville (46°33.00) and US/Canada Border until 8:00 A.M. March 18, 2025.

(2) The Quinault primary special management area (PSMA) is closed to fishing for Dungeness crab until further notice. The PSMA includes the area shoreward of a line approximating the 27-fathom depth curve between Raft River (47°28.00) and Copalis River (47°08.00) according to the following coordinates:

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

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

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

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

(3) The Quileute special management area (SMA) is closed to fishing for Dungeness crab until further notice. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

(a) Northeast Corner (Cape Johnson): 47°58.00'N. Lat. 124°40.40'W. Lon.

(b) Northwest Corner: 47°58.00'N. Lat. 124°49.00'W. Lon.

(c) Southwest Corner: 47°40.50'N. Lat. 124°40.00'W. Lon.
(d) Southeast Corner (Destruction Island): 47°40.50'N. Lat. 124°24.43'W. Lon.

(4) The Makah special management area (SMA) is closed to fishing until 8:00 AM March 13, 2025. The SMA includes the waters between 48°02.15 N. Lat. and 48°19.50 N. Lat. east of a line connecting those points and approximating the 25-fathom line according to the following coordinates:
(a) Northeast Corner: (Tatoosh Island)
(b) Northwest Corner: 48°19.50'N. Lat. 124°50.45'W. Lon.
(c) Southwest Corner: 48°02.15'N. Lat. 124°50.45'W. Lon.
(d) Southeast Corner: 48°02.15'N. Lat. 124°41.00'W. Lon.

(5) Unless otherwise amended all other provisions of the permanent rule remain in effect.

REPEALER

The following sections of the Washington Administrative Code are repealed effective 8:00 a.m. March 13, 2025:

WAC 220-340-75000C	Commercial crab fishery—Unlawful acts. (25-14)
WAC 220-340-75000V	Commercial crab fishery—Seasons and areas—Coastal. (25-14)

WSR 25-07-013
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 25-36—Filed March 7, 2025, 3:51 p.m., effective March 12, 2025, 8:00 a.m.]

Effective Date of Rule: March 12, 2025, 8:00 a.m.

Purpose: This rule opens a limited Cowlitz River recreational fishery for eulachon smelt.

Citation of Rules Affected by this Order: Repealing WAC 220-315-03000G; and amending WAC 220-315-030.

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: This rule sets a limited Cowlitz River recreational fishery for eulachon smelt. Recent landings in the mainstem Columbia River commercial fishery indicate the eulachon smelt run size is large enough to support these recreational openings, per management guidance found in the 2023 Washington and Oregon Eulachon Management Plan. There is insufficient time to adopt permanent regulations.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: March 7, 2025.

Kelly Susewind
Director

NEW SECTION

WAC 220-315-03000G Smelt—Areas and seasons Notwithstanding the provisions of WAC 220-315-030, the Columbia River and Washington tributaries are closed to fishing for eulachon smelt except as provided below:

Open Dates: Wednesday, March 12, 2025 and Saturday, March 15, 2025, from 8:00 a.m. to 1:00 p.m. (5-hour period).

Open Area: Cowlitz River (bank only) from the HWY 432 Bridge upstream to the Al Helenberg Memorial Boat Ramp located approximately 1,300 feet upstream of the HWY 411/A Street Bridge in Castle Rock.

Daily Limit: 10 pounds. Possession limit equal to one daily limit.

Gear: Smelt may be taken with dip net only.

REPEALER

The following section of the Washington Administrative Code is repealed effective 1:01 p.m. March 15, 2025:

WAC 220-315-03000G Smelt—Areas and seasons

WSR 25-07-014
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 25-37—Filed March 7, 2025, 3:54 p.m., effective March 10, 2025]

Effective Date of Rule: March 10, 2025.

Purpose: The purpose of this emergency rule is to close green sea urchin harvest in Districts 3, 4, and 5; and red sea urchin harvest in District 2.

Citation of Rules Affected by this Order: Repealing WAC 220-340-75000P; and amending WAC 220-340-750.

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 closes commercial harvest of green sea urchins in Districts 3, 4, and 5; and red sea urchins in District 2, because these quotas will be reached by March 9, 2025. 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: March 7, 2025.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-75000Q Commercial sea urchin fisheries. Effective March 10, 2025, until further notice, the provisions of WAC 220-340-750 regarding commercial harvest of sea urchins shall be modified as described below. All other provisions of WAC 220-340-750 not addressed herein remain in effect unless otherwise amended by emergency rule:

1. It is unlawful for any person to fish for, take, or possess for commercial purposes any green sea urchins less than 2.25 inches; or red sea urchins measuring less than 3.25 inches or greater than 5 inches. All measurements are caliper measurements of the largest shell (test) diameter, exclusive of the spines.

2. The following areas are open for red sea urchin harvest, seven days-per-week: Sea Urchin District 5.

3. It is unlawful for any harvester to fish for, take, or possess for commercial purposes more than 1,500 pounds of red sea urchin per license for each weekly fishery opening period.

REPEALER

The following section of the Washington Administrative Code is repealed effective March 10, 2025:

WAC 220-340-75000P Commercial sea urchin fisheries. (25-26)

WSR 25-07-016
RESCISSION OF EMERGENCY RULES
EVERETT COMMUNITY COLLEGE
[Filed March 10, 2025, 7:02 a.m., effective March 10, 2025, 7:02 a.m.]

Everett Community College (college) is rescinding emergency rule making WSR 24-24-068, filed November 27, 2024, for chapter 132E-122 WAC.

The college is rescinding this emergency rule because the federal regulations which these rule changes effectuated have been vacated by a federal court. The federal government has clearly indicated it will neither be appealing the court's decision nor will they reissue these federal regulations. As such, the conditions necessitating this emergency rule making no longer exist.

Josh Ernst
Rules Coordinator

WSR 25-07-021
EMERGENCY RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2025-01—Filed March 10, 2025, 10:28 a.m., effective March 10, 2025, 10:28 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The office of the insurance commissioner (OIC) must review and approve all individual health plan rates prior to their use. This emergency rule adjusts health insurer rate development components for plan year 2026 to preserve consumer affordability and stability in Washington state's individual health insurance market. It applies a uniform cost-sharing reduction silver load adjustment factor to rates for silver level qualified health plans (QHPs) sold on the Washington state health benefit exchange (HBE). This emergency rule is necessary for the preservation of the public health, safety, or general welfare by keeping health insurance affordable for up to 80,000 individuals who are at risk of losing health insurance when the enhanced advance premium tax credits (eAPTCs) expire on December 31, 2025.

Citation of Rules Affected by this Order: New WAC 284-43-6800, 284-43-6810, and 284-43-6820; and amending WAC 284-43-6520.

Statutory Authority for Adoption: RCW 48.02.060, 48.44.050, 48.46.200, and 48.43.733.

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 federal Affordable Care Act (ACA) (P.L. 111-148, as amended) and state law (chapter 43.71 RCW) allow eligible Washingtonians to enroll in QHPs through HBE. Federal advance premium tax credits (APTCs) and eAPTCs, as well as state premium assistance (Cascade Care Savings), work together to lower consumer premiums, thereby making health care affordable and accessible, especially for individuals with income under 250 percent of the federal poverty level (FPL). The APTCs, eAPTCs, and Cascade Care Savings are based on a consumer's income. HBE's 2025 open enrollment preview report (https://www.wahbexchange.org/content/dam/wahbe-assets/materials/communications/enrollment/2025/2025EnrollmentPreviewReport_20250203.pdf), which includes data as of January 17, 2025, found that:

- Seventy-seven percent of the 309,000 consumers who selected a QHP in the 2024 open enrollment period are receiving eAPTCs or Cascade Care Savings.
- The eAPTCs and Cascade Care Savings are reducing the average premium these consumers pay to $163 per member per month, compared to the average unsubsidized premium of $601 per member per month.
- The eAPTCs are essential for consumers to access and maintain health insurance coverage.

Under current federal law, eAPTCs will expire on December 31, 2025, absent congressional action, making them unavailable to consumers beginning on January 1, 2026, i.e., plan year 2026. The original APTCs are permanently authorized in federal law and would remain when eAPTCs expire; however, the original APTCs offer a lower level of pre-

mium subsidies than the eAPTCs. eAPTCs enhance affordability by lowering net premiums for households with income above 400 percent of FPL ($62,600 per year for an individual in 2025) and by increasing subsidy levels for people with income below 400 percent of FPL who were originally eligible for APTCs. The eAPTCs have particularly made health care more affordable for people ages 55 to 64 who face high health care costs but are not yet eligible for medicare. For this population, HBE estimates that the eAPTCs have decreased annual net premium costs by $1,900. Under current state law, Cascade Care Savings are also set to expire on June 30, 2025, absent state legislative action to fund them for state fiscal years 2026 and 2027 (ESSB 5950, chapter 376, Laws of 2024; RCW 43.71.110).

HBE has conducted an analysis estimating that up to 80,000 currently enrolled individuals will drop health insurance coverage due to expiration of the eAPTCs (https://www.wahbexchange.org/content/dam/wahbe-assets/materials/communications/policy/2025/FinalDraftPY2026CascadeCareSavingsPolicy.pdf; https://www.wahbexchange.org/content/dam/wahbe-assets/materials/communications/legislative/2025/IntroductionPresentationToHouseHealthCare_20250116.pdf). HBE expects these enrollees to not renew their coverage because their premiums will become unaffordable. Individuals without health insurance coverage can face devastating health and financial consequences (https://aspe.hhs.gov/sites/default/files/documents/9376755db2480ad7288aaa5ec38f3d8c/improving-access-to-coverage.pdf; https://www.kff.org/855449e/). They may delay seeking care when they are ill or injured, and they are more likely to be hospitalized for chronic conditions such as diabetes or hypertension. These individuals incur high medical debt when they do access care. They also are more likely to use costly and intensive hospital emergency room services due to exacerbations of current or new medical or behavioral health conditions. Consumers with more severe health conditions, who cannot afford timely or corrective care before their conditions become severe, will enter the health care system when they are sicker and at more advanced disease stages than people with health insurance. They will face increased risk of death and use more intensive and costly services than would have been needed had they sought care earlier. In addition, children without health insurance are less likely to get vaccinations, increasing their risk of contracting and spreading communicable diseases.

Being uninsured and thus seeking care later increases consumer medical debt and places increasing uncompensated care demands on hospitals and health care providers. Based upon a 2024 survey of consumers in Washington state, 31 percent of Washington residents already live in a household with medical debt (https://fairhealthprices.org/wp-content/uploads/2024/08/Report-2024-WA-Health-Care-Affordability-Survey.pdf). Losing health insurance coverage would exacerbate this problem.

Being uninsured has a significant economic impact in the form of lost earnings due to fewer years of healthy life and lower productivity while at work. These economic costs are substantial and represent a hidden cost of uninsurance, over and above the cost of the medical care used by people without health insurance.

In addition, OIC expects the eAPTC expiration to lead to risk to the stability of the individual health insurance market. If up to 80,000 people leave the individual market, it likely will result in adverse selection in the individual market. This occurs when individu-

als who are sicker and know they will need care need to retain their coverage and are willing to pay higher premiums. Younger and healthier individuals do not have a comparable incentive or reason to pay the higher costs for their coverage and are more likely to forgo it. This results in a higher risk and shrinking individual health insurance market risk pool, reducing health insurers' ability to distribute costs across both healthy individuals and those with chronic medical or behavioral health conditions. This older and less healthy individual market risk pool will likely lead to increased premiums, making affordability challenges even greater, and risking individual market stability. It also could lead to insurers reducing their service area, particularly in rural communities, which already have more limited plan choices than urban counties. These factors introduce uncertainty and financial risk, disadvantaging insurers and disrupting market competition.

OIC's mission to protect consumers and its role to ensure a healthy insurance market necessitates emergency rule making to mitigate these negative impacts before they occur in 2026. Under RCW 48.43.733, OIC must review and approve individual health plan design and rates prior to their use. This extensive review process requires that carriers submit their proposed plan designs and rates in May of the year prior to their health plans being offered, i.e., in May 2025 for health plans to be offered in 2026. As a result, OIC must give insurers rate development instructions sufficiently in advance of the May filing date. This emergency rule provides such instructions and thus must be filed as an emergency rule to protect consumers and the stability of the individual health insurance market in time for plan year 2026. The May 2025 deadline for carriers' proposed plan design and rate submissions is imminent; therefore, observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Under the ACA, APTCs and eAPTCs are calculated using the "benchmark" plan, which is the second lowest cost "silver" plan (https://www.kff.org/faqs/faqs-health-insurance-marketplace-and-the-aca/what-are-premium-tax-credits-and-how-do-they-work/). The ACA uses "metal levels" to define the richness of different plans; in silver plans, the insurer pays 70 percent of costs while the enrollee pays 30 percent of costs (https://www.healthcare.gov/choose-a-plan/plans-categories/).

The ACA also establishes that health plans must offer cost-sharing reduction (CSR) plan variations to individuals with income up to 250 percent of the federal poverty level. Since 2018, the federal government has ceased funding the CSRs directly, instead allowing insurers to compensate for this cost through on-exchange silver plan premium adjustments called CSR silver loading. For eAPTC-eligible individuals enrolled in a nonsilver plan, this "silver loading" practice has reduced net premiums and increased enrollment, while leaving the net premiums of silver plans unchanged (https://www.brookings.edu/articles/the-case-for-replacing-silver-loading/).

Current federal rules allow state insurance regulators to make rate development adjustments (Notice of Benefit and Payment Parameters 2026 Final Rule, CMS-9888-F, amending 45 C.F.R. Parts 153, 156, and 158, https://www.federalregister.gov/d/2025-00640). Multiple states have adopted similar rate development adjustments.

OIC is adjusting insurer rate development components in three ways:

(1) Uniform CSR Silver Load Adjustment: Sets a uniform CSR silver load adjustment for the individual on-exchange health plans.

(2) Standardized Induced Demand Factors (IDFs): Sets IDFs for individual and small group market health plans.

(3) Pricing Actuarial Value (AV) Guardrails: Establishes restrictions on AV pricing value to ±3 percent of the plan's federal AV metal value for individual and small group market health plans.

OIC expects these adjustments to lessen the negative impact of the eAPTC expiration. Overall, OIC expects these adjustments to result in a higher level of premium tax credits (APTCs), thereby reducing net premiums for HBE consumers enrolled in a silver plan and mitigating negative impacts on consumers who choose to enroll in nonsilver plans. HBE consumers enrolled in a nonsilver plan represent about half of all HBE enrollees, according to HBE data shared with OIC in 2024. OIC expects these changes to have the overall effect of keeping more enrollees covered by lessening the premium increases that consumers would otherwise experience in 2026. This in turn will result in better health outcomes for up to 80,000 Washingtonians, promote individual health insurance market stability, and reduce potential increased uncompensated care demands for health care facilities and providers.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 3, Amended 1, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 1, Repealed 0.

Date Adopted: March 10, 2025.

Patty Kuderer
Insurance Commissioner

RDS-6222.1

AMENDATORY SECTION (Amending WSR 16-03-018, filed 1/8/16, effective 1/8/16)

WAC 284-43-6520 Definitions. For the purpose of this subchapter:

(1) "Contract" means an agreement to provide health care services or pay health care costs for or on behalf of a "subscriber" or group of "subscribers" and such eligible dependents as may be included therein.

(2) "Contract form" means the prototype of a "contract" and any associated riders and endorsements filed with the commissioner by a carrier.

(3) "Covered person" or "enrollee" has the same meaning as that contained in RCW 48.43.005.

(4) "Dependent" has the same meaning as that contained in RCW 48.43.005.

(5) "Health carrier" or "carrier" means an insurer that issues disability insurance regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020, and includes "issuers" as that term is used in the federal Patient Protection and Affordable Care Act (Public Law 111-148).

(6) "Individual market" has the same meaning as that contained in RCW 48.43.005.

(7) "Individual health plan" means a health plan issued in the individual market.

(8) "Large group contracts" or "large group plans" include group health benefit plans and stand-alone dental plans or stand-alone vision plans that are not small group plans and are not individual plans.

((~~(7)~~)) (9) "Limited health care service contractor" means a health care service contractor that offers one and only one limited health care service.

((~~(8)~~)) (10) "Negotiated contract" form means a health benefit plan or stand-alone dental plan or stand-alone vision plan where benefits and other terms and conditions, including the applicable rate schedules, are negotiated and agreed to by the carrier or limited health care service contractor and the policy or contract holder. The only plans that carriers can negotiate are large group plans. The negotiated policy form and associated rate schedule must otherwise comply with state and federal laws governing the content and schedule of rates for the negotiated plans.

((~~(9)~~)) (11) "Premium" means all sums charged, received, or deposited as consideration for a contract or the continuance of a contract. Any assessment, or any "membership," "policy," "survey," "inspection," "service," or similar fee or charge made by the carrier in consideration for a contract is part of the premium. Premium does not include amounts paid as enrollee point-of-service cost-sharing.

((~~(10)~~)) (12) "Rate" or "rates" means all classification manuals, rate manuals, rating schedules, class rates, and rating rules.

((~~(11)~~)) (13) "Rate schedule" means the schedule of rates that includes the description of methodology used to obtain the premium rate for a specific individual or group, if given the necessary information such as the demographic data and plan design of the individual or group. For a single negotiated contract form, the rate schedule also includes the premium for the employer.

((~~(12)~~)) (14) "Small employer" ((~~means an employer that fits within the definition of small employer as that term is used in the federal Patient Protection and Affordable Care Act (Public Law 111-148)~~)) has the same meaning as defined in 42 U.S.C. 18024.

((~~(13)~~)) (15) "Small group plans" means the class of "group contracts" issued to "small employers." For the purposes of this section, "small group contracts" and "small group plans" also apply to stand-alone dental plans or stand-alone vision plans.

((~~(14)~~)) (16) "Stand-alone dental plan" means coverage for a set of benefits limited to oral care including, but not necessarily limited to, pediatric oral care.

((~~(15)~~)) (17) "Stand-alone vision plan" means coverage for a set of benefits limited to vision care including, but not necessarily limited to, materials.

((~~(16)~~)) (18) "Subscriber" means a person on whose behalf a "contract" or "certificate" is issued.

NEW SECTION

WAC 284-43-6800 Definitions. For the purpose of WAC 284-43-6810 and 284-43-6820:

(1) "Actuarial value metal value" or "AV metal value" means the actuarial value that results from use of the Federal Actuarial Value Calculator, or a permissible alternative method prescribed in 45 C.F.R. § 156.135(b).

(2) "Actuarial value and cost-sharing design of the plan" has the same meaning as defined in 45 C.F.R. § 156.80(d) and as used in rate development for individual and small group health plans in the Unified Rate Review Template published by Centers for Medicare and Medicaid Services (CMS).

(3) "Actuarial value pricing value" or "AV pricing value" means the rate development component of the "actuarial value and cost-sharing design of the plan" adjustment that estimates the expected paid-to-allowed claims ratio for essential health benefits of the plan but does not consider the morbidity or health status of members.

(4) "Cost sharing" has the same meaning as defined in 45 C.F.R. § 155.20.

(5) "Cost-sharing reductions" has the same meaning as defined in 45 C.F.R. § 155.20.

(6) "Cost-sharing reduction silver load" or "CSR silver load" means the rate development component of the "actuarial value and cost-sharing design of the plan" adjustment that accounts for the cost and risk from unfunded cost-sharing reduction amounts provided to eligible enrollees as authorized by 45 C.F.R. § 156.80.

(7) "Cost-sharing reduction variants" or "CSR variants" are silver plan variations defined in 45 C.F.R. § 156.420 that have different actuarial values.

(8) "Essential health benefits" has the same meaning as defined in 45 C.F.R. § 156.110(a).

(9) "Grandfathered health plan" has the same meaning as defined in RCW 48.43.005.

(10) "Percentage of the total allowed costs of benefits" has the same meaning as defined in 45 C.F.R. § 156.20.

(11) "Level of coverage" means one of four standardized actuarial value levels as defined in 42 U.S.C. 18022.

(12) "Induced demand factor" means the rate development component of the "actuarial value and cost-sharing design of the plan" adjustment that reflects the anticipated induced demand associated with the plan's cost-sharing level but does not reflect differences in the plan members' morbidity or health status, as referenced in the federal risk adjustment transfer formula for the individual and small group markets and Unified Rate Review Template Instructions published by Centers for Medicare and Medicaid Services (CMS).

(13) "Qualified health plan" has the same meaning as defined in 45 C.F.R. § 155.20.

(14) "Unified Rate Review Template (URRT)" means a spreadsheet that comprises Part I of the rate filing justification, as described in 45 C.F.R. § 154.215, concerning submission of rate filing justification.

NEW SECTION

WAC 284-43-6810 Standardized induced demand factors and AV pricing value guardrails. This section applies to all nongrandfathered individual and small group health plans for plan year 2026.

(1) The allowed underlying rate development components of the "actuarial value and cost-sharing design of the plan" adjustment are:

(a) AV pricing value;

(b) Induced demand factor;

(c) Cost-sharing reduction silver load (if applicable); and

(d) Exclusion of funds for abortion services per 45 C.F.R. § 156.280(e) (if applicable).

(2) To ensure consistency in the rate development, align the rating methodology with the federal risk adjustment model and development of CSR silver load, and to promote fair competition, the induced demand factors used in the individual and small group health plan rate filings may vary by plan design but must be consistent with the federal risk transfer formula published by Centers for Medicare and Medicaid Services (CMS).

(3) Except to the extent provided otherwise in this subsection, to promote fair competition by ensuring consumers can compare plans based on consistent metal level categories and pricing methodologies, the AV pricing value must be within ±2% of a plan's designated AV metal value. The allowable range of AV pricing value may be increased or decreased by 1% and must not result in a total adjustment exceeding ±3%, if the plan has significant features that are not considered in the AV metal value calculation. Applicable plan features may include, but are not limited to, an embedded pediatric dental benefit, aggregate family deductible, or significant out-of-network utilization. The actuarial memorandum in the rate filing must include the following information related to AV metal value and AV pricing value:

(a) Each plan's AV metal value, AV pricing value, and the method used to develop AV pricing values.

(b) The methodology used to develop the AV pricing value be based on a standardized population. The carrier must identify all material changes in the AV pricing value development and their impacts.

NEW SECTION

WAC 284-43-6820 Uniform cost-sharing reduction silver load adjustment factor. (1) This section applies to all individual silver level plans offered on the Washington health benefit exchange (WAHBE) during plan year 2026.

(2) The following assumptions are used in the cost-sharing reduction (CSR) silver load calculation:

(a) Actuarial values: Based on federal risk transfer formula factors published by Centers for Medicare and Medicaid Services (CMS).

(b) The actuarial value for limited cost-share silver variant is 70 percent based on qualified health plan application instructions.

(c) Induced demand factors: Based on federal risk transfer formula factors published by CMS.

(d) Membership distribution and enrollment assumptions: For plan year 2026 CSR silver load adjustment factor, the membership distribution and enrollment assumptions are based on the prior year experience, provided by WAHBE, and with the following adjustments for WAHBE plan mapping procedures.

(i) Members ineligible for CSR subsidies will not enroll in silver plans. These members will be mapped to a lower-cost gold plan with a higher AV metal value.

(ii) Members eligible for the silver 73 percent CSR variant subsidies will not enroll in silver plans. These members will be mapped to a lower-cost gold plan with a higher AV metal value.

(3) The methodology and formula used to calculate the CSR silver loading factor for plan year 2026 is as follows:

(a) For each exchange silver plan variant, compute the enrollment-weighted product of the plan's actuarial value and induced demand factor.

(b) Sum the results from the step in (a) of this subsection.

(c) Divide the result from the step in (b) of this subsection by the product of the actuarial value and induced demand factor for the base silver plan (i.e., values for the 70 percent AV metal level plan).

(d) The result in step (c) of this subsection is the final CSR silver load factor for the plan, which applies only to exchange silver plans. The result must be incorporated into premium rate development as a component of the "actuarial value and cost-sharing design of the plan" adjustment.

(4) Based on the calculation in subsection (3) of this section and the assumptions in subsection (2) of this section, the final CSR silver loading factor for plan year 2026 is 1.435.

WSR 25-07-026
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 25-34—Filed March 10, 2025, 4:43 p.m., effective March 16, 2025]

Effective Date of Rule: March 16, 2025.

Purpose: This emergency rule limits adult salmon daily limits and seasons in Klickitat River, opens hatchery steelhead seasons for Salmon Creek, and limits adult salmon daily limits in Wind River.

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: This emergency rule is needed to reduce adult salmon daily limits and seasons for Klickitat River, open hatchery steelhead retention for Salmon Creek, and reduce adult salmon daily limits for Wind River.

Reduced adult salmon daily limits and seasons are necessary for Klickitat River to ensure hatchery broodstock collection goals are achieved while providing recreational harvest opportunity for spring Chinook. The estimated 2025 return of adult spring Chinook to Klickitat River is 1,201, the lowest since 2009.

The Salmon Creek Hatchery steelhead program is replacing early returning winter steelhead stocks with local stocks that exhibit a later run timing as a result of the Mitchell Act biological opinion. This provides anglers with additional time to harvest these fish from Salmon Creek.

Reduced adult salmon daily limits are necessary for Wind River to help ensure spring Chinook broodstock collection goals for Carson National Fish Hatchery are achieved while providing recreational harvest opportunity. The 2025 preseason forecast for returning Wind River spring Chinook is 4,888 adults.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: March 10, 2024 [2025].

Amy H. Windrope
for Kelly Susewind
Director

NEW SECTION

WAC 220-312-03000B Freshwater exceptions to statewide rules—Southwest. Effective March 16, 2025, until further notice, the provisions of WAC 220-312-030 regarding Klickitat River salmon and steelhead seasons, Salmon Creek hatchery steelhead seasons, and Wind River salmon and steelhead seasons shall be modified during times and as described in this section. All other provisions of WAC 220-312-030 not addressed in this section remain in effect unless otherwise amended by emergency rule:

(1) Klickitat River (Klickitat Co.):

(a) From the mouth (BNSF Railroad Bridge) to Fisher Hill Bridge:

(i) Effective April 1 through May 21, 2025:

Salmon and hatchery steelhead open Mondays, Wednesdays, and Saturdays only; daily limit 2 including no more than 1 adult salmon. Release wild Chinook.

(ii) Effective May 22, 2025, until further notice: Salmon closed.

(b) From 400 feet upstream from #5 fishway to boundary markers below Klickitat Salmon hatchery:

Effective May 24, 2025, until further notice: Salmon: Closed.

(2) Salmon Creek (Clark Co.): From the mouth to the 182nd Avenue Bridge:

Effective March 16 through May 23, 2025: Hatchery steelhead daily limit 3; Selective gear rules in effect, except use of barbed hooks is allowed.

(3) Wind River (Skamania Co.):

(a) From the boundary line markers at mouth to 400 feet downstream of Shipherd Falls:

Effective March 16, 2025, until further notice: Salmon and hatchery steelhead daily limit is 6, up to 2 adults including no more than 1 adult Chinook may be retained. Release all salmon other than hatchery Chinook and hatchery coho.

(b) From 100 feet upstream of Shipherd Falls to 800 Yards downstream of Carson National Fish Hatchery:

Effective May 1, 2025, until further notice: Salmon and hatchery steelhead daily limit is 6, up to 2 adults including no more than 1 adult Chinook may be retained. Release all salmon other than Chinook and hatchery coho.

WSR 25-07-039
EMERGENCY RULES
COLUMBIA BASIN COLLEGE
[Filed March 11, 2025, 2:04 p.m., effective March 13, 2025]

Effective Date of Rule: March 13, 2025.

Purpose: To bring Columbia Basin College's public records officer up-to-date.

Citation of Rules Affected by this Order: Amending WAC 132S-10-060.

Statutory Authority for Adoption: RCW 28B.50.140(13).

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: Need to update the public records officer information.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: March 11, 2025.

Corey Osborn, Vice President
Human Resources and Legal Affairs

RDS-6233.1

AMENDATORY SECTION (Amending WSR 16-12-039, filed 5/25/16, effective 6/25/16)

WAC 132S-10-060 Public records officer. (1) Any person wishing to request access to public records of Columbia Basin College, or seeking assistance in making such a request should contact the public records officer of the college:

((~~Camilla Glatt,~~)) Vice President for
Human Resources & Legal Affairs
Columbia Basin College
2600 North 20th Avenue
Pasco, WA 99301
Phone: 509-542-5548
Fax: 509-544-2029

Email: ((~~cglatt@columbiabasin.edu~~)) vphr@columbiabasin.edu

Information is also available at the college's website at www.columbiabasin.edu.

(2) The public records officer will oversee compliance with the act but another college staff member may process requests. Therefore, these rules will refer to the public records officer or designee.

WSR 25-07-043
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 25-40—Filed March 12, 2025, 9:20 a.m., effective March 14, 2025]

Effective Date of Rule: March 14, 2025.

Purpose: This emergency rule closes sturgeon retention in the John Day Pool.

Citation of Rules Affected by this Order: Repealing WAC 220-312-06000F; and amending WAC 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: This rule is needed to close recreational sturgeon retention in the John Day reservoir. The projected total catch through March 13, 2025, is 95 fish as compared to the harvest guideline of 105 fish. Therefore, not enough fish remain under the guideline to allow for additional retention opportunity. This rule is necessary to remain within allowable harvest guidelines for non-treaty recreational fisheries for this reservoir. These populations are managed under sustainable harvest guidelines. This action is consistent with decisions made by the states of Washington and Oregon during the Columbia River compact hearing on March 11, 2025. 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: March 12, 2025.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-06000H Freshwater exceptions to statewide rules—Columbia River. Effective March 14 through April 30, 2025, the provisions of WAC 220-312-060, WAC 220-312-030, and WAC 220-316-010 regarding white sturgeon retention seasons from Bonneville Dam to McNary Dam are as follows. All other provisions of WAC 220-312-060, WAC

220-316-010, and WAC 220-312-030 not addressed herein remain in effect unless otherwise amended by emergency rule:

From Bonneville Dam upstream to McNary Dam, including adjacent tributaries:

White sturgeon: Closed to retention; open to catch-and-release fishing only.

REPEALER

The following section of Washington Administrative Code is repealed, effective March 14, 2025:

WAC 220-312-06000F Freshwater exceptions to statewide rules—Columbia River. (25-28)

WSR 25-07-044
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 25-39—Filed March 12, 2025, 9:22 a.m., effective March 12, 2025, 9:22 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule opens commercial smelt fisheries in the Columbia River.

Citation of Rules Affected by this Order: Repealing WAC 220-358-06000H; and amending WAC 220-358-060.

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: This rule extends the limited Columbia River commercial fishery for eulachon smelt. The fishery helps to monitor run strength and timing and to collect biological data. The general public welfare is protected with the immediate and limited duration opening of commercial smelt fishing in the mainstem Columbia River. This limited harvest opportunity allows for maintenance and monitoring of a sustainable fish population. There is insufficient time to adopt permanent regulations.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: March 12, 2025.

Kelly Susewind
Director

NEW SECTION

WAC 220-358-06000I Commercial fisheries—Columbia River below Bonneville Dam—Smelt. Notwithstanding the provisions of WAC 220-358-060, the Columbia River and Washington tributaries are closed to fishing for eulachon smelt except as provided below:

Open Dates: Immediately through March 27, 2025: Open Mondays, Wednesdays, and Thursdays only, from 5:00 a.m. to 5:00 p.m. (12-hour periods).

Open Area: Columbia River - SMCRA 1A, 1B, 1C.

Gear: It is unlawful to use anything other than gillnets. Gillnets must meet the following specifications per WAC 220-358-060: mesh size not to exceed 2 inches stretch measure; not to exceed 1,500 feet in length along the cork line. Use of monofilament nets is permissible.

Allowable sales: Smelt.

Other: 24-hour quick-reporting is required for Washington wholesale dealers, as provided in WAC. 220-352-315.

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

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 immediately:

WAC 220-358-06000H	Commercial fisheries—Columbia River below Bonneville Dam—Smelt. (25-09)

WSR 25-07-054
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 25-38—Filed March 12, 2025, 2:57 p.m., effective March 13, 2025]

Effective Date of Rule: March 13, 2025.

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 220-359-02000Q; 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 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). *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: This rule maintains previously adopted Zone 6 treaty sturgeon fisheries and adds a treaty winter season research commercial fishery targeting carp in specific areas of the John Day Pool which allows for treaty commercial sales to nontreaty buyers in 2025. This rule is consistent with actions of the Columbia River compact on January 16 and March 11, 2025. Conforms state rules with tribal rules. The general public welfare is protected with the immediate opening of nontreaty buyers purchasing fish from treaty fisheries. This harvest opportunity allows for the tribal use and public access to the resource as well as the maintenance of sustainable fish populations. There is insufficient time to adopt 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 2018-2027 *United States v. Oregon* Management Agreement (February 26, 2018) (Doc. No. 2607-1). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under ESA. On February 23, 2018, 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 2018-2027 *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 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: March 11, 2025.

Kelly Susewind
Director

NEW SECTION

WAC 220-359-02000R 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 March 13 through March 29, 2025, 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 (SMRCA) 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 1H (John Day Pool):

Railroad Island slough (45.72504, -120.69580) - only the slough side waters up from the railroad tracks.

Paterson Slough (45.70664, -120.46430) - only the slough side to the north of Hwy 14. Sundale slough (45.72008, -120.31364) - only the slough side waters up from the railroad tracks.

Jones Canyon slough (45.71576, -121.24522) - only the slough south of the railroad tracks.

Willow Creek slough (45.79306, -120.01470) - only waters south of the eastbound lanes of I-84.

Alderdale slough (45.83741, -119.92876) - only waters north of Hwy 14.

(a) Season: 6 AM Thursday, March 13, 2025, until 6 PM Saturday, March 29, 2025.

(b) Gear: Gillnets only.

(c) Allowable sales: Yellow perch, bass, walleye, catfish, carp, and northern pikeminnow may be sold. These species may be sold after the permit fishing period concludes. All other species including salmon, steelhead and sturgeon must be released.

(d) These areas do not include any standard closed areas applicable to gillnet gear.

(2) Open Areas: SMCRA 1F, 1G, 1H (Zone 6)

(a) Season: Immediately, until 6 PM Friday, March 21, 2025.

(b) Gear: Hoop nets/bag nets, dip nets, and rod and reel with hook and line.

(c) Allowable sales: Sturgeon from 38 to 54 inches fork length in the Bonneville Pool and from 43 to 54 inches fork length in The Dalles and John Day pools may be kept for subsistence purposes. Sturgeon within the legal-size limits and caught in the platform and hook and line fishery may only be sold if caught during the open period and open Pool of an open setline fishery. 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.

(3) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-352-315, 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).

(4) Fish caught during the open period may be sold after the period concludes.

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 March 13, 2025:

WAC 220-359-02000Q	Columbia River salmon seasons above Bonneville Dam. (25-30)

WSR 25-07-057
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 25-42—Filed March 13, 2025, 9:04 a.m., effective March 13, 2025, 9:04 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this emergency rule is to amend commercial crab fishing regulations in Puget Sound:

WAC 220-340-45500X closes Region 3-2 on March 17, 2025; and

WAC 220-340-47000U eliminates pot limits in closed areas and maintains pot limits in open areas.

Citation of Rules Affected by this Order: Repealing WAC 220-340-45500W and 220-340-47000T; and amending WAC 220-340-455 and 220-340-470.

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: Commercial harvest in Region 3-2 will close on March 17, 2025, due to the projected attainment of available share. There is sufficient allocation remaining to allow continued harvest in Puget Sound commercial crab fisheries in Region 3-3 until further notice. These provisions are in conformity with agreed management plans with applicable tribes. Comanagement plans are entered into as required by court order. The Puget Sound commercial season is structured to meet harvest allocation objectives negotiated with applicable treaty tribes and outlined in the management plans. Further adjustments of the season structure may be made pending updated harvest data.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: March 13, 2025.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-45500X Commercial crab fishery—Seasons and areas—Puget Sound. Notwithstanding the provisions of WAC 220-340-455, effective immediately, until further notice:

Harvest of Dungeness crab in Puget Sound is permitted during the "Open period" indicated in the following table. On the opening date, harvest will be permitted starting at 8:00 a.m. Harvest for these areas after the opening date is permitted starting one hour before official sunrise until further notice. Any closures will take effect one hour after official sunset unless otherwise indicated.

Geographical Management Unit (WAC 220-320-110)	Open Period
Region 1, MFSF Catch Areas 21A, 21B, and 22B	Closed, until further notice.
Region 1, Marine Fish-Shellfish Catch Areas 22A, 20A, and 20B	Closed, until further notice.
Region 2E, excluding Everett Flats CSMA (WAC 220-320-120(3))	Closed, until further notice.
Region 2E, Everett Flats CSMA (WAC 220-320-120(3))	Closed, until further notice.
Region 2W, not including Port Townsend Bay CSMA (WAC 220-320-120(5))	Closed, until further notice.
Region 2W, Port Townsend Bay CSMA (WAC 220-320-120(5))	Closed, until further notice.
Subregion 3-1	Closed, until further notice.
Subregion 3-2, not including Discovery Bay CSMA (WAC 220-230-120 (1)(a)), Sequim Bay CSMA (WAC 220-320-120(6)), or the Port Angeles Harbor CSMA (WAC 220-320-120(4)).	Immediately, until through March 17, 2025.
Subregion 3-2, Discovery Bay CSMA (WAC 220-320-120 (1)(a))	Immediately, until through March 17, 2025.
Subregion 3-2, Sequim Bay CSMA (WAC 220-320-120(6))	Immediately, until through March 17, 2025.
Subregion 3-2, the Port Angeles Harbor CSMA (WAC 220-320-120(4)).	Closed, due to ongoing public health concerns.
Subregion 3-3	Immediately, until further notice.
Subregion 3-4	Closed, until further notice.

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

NEW SECTION

WAC 220-340-47000U Commercial crab fishery—Gear limits—Puget Sound and Marine Fish-Shellfish Management and Catch Reporting Areas Notwithstanding the provisions of 220-340-470, effective immediately, until further notice:

Effective during the "Open period" listed in WAC 220-340-45500X it is unlawful for any person to harvest crabs with more than the "Pot limit" per license per buoy tag number indicated within each "geographical management unit".

Geographical Management Unit (WAC 220-320-110)	Pot limit
Region 1, MFSF Catch Areas 21A, 21B, and 22B	0
Region 1, Marine Fish-Shellfish Catch Areas 22A, 20A, and 20B	0
Region 2E, excluding Everett Flats CSMA (WAC 220-320-120(3))	0
Region 2E, Everett Flats CSMA (WAC 220-320-120(3))	0
Region 2W, not including Port Townsend Bay CSMA (WAC 220-320-120(5))	0

Region 2W, Port Townsend Bay CSMA (WAC 220-320-120(5))	0
Subregion 3-1	0
Subregion 3-2, not including Discovery Bay CSMA (WAC 220-230-120 (1)(a)), Sequim Bay CSMA (WAC 220-320-120(6)), or the Port Angeles Harbor CSMA (WAC 220-320-120(4)).	60
Subregion 3-2, Discovery Bay CSMA (WAC 220-320-120 (1)(a))	20
Subregion 3-2, Sequim Bay CSMA (WAC 220-320-120(6))	20
Subregion 3-2, the Port Angeles Harbor CSMA (WAC 220-320-120(4)).	0
Subregion 3-3	50
Subregion 3-4	0

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 sections of Washington Administrative Code are repealed, effective immediately:

WAC 220-340-45500W	Commercial crab fishery—Seasons and areas—Puget Sound. (25-24)
WAC 220-340-47000T	Commercial crab fishery—Gear limits—Puget Sound and Marine Fish-Shellfish Management and Catch Reporting Areas. (25-24)

WSR 25-07-059
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 25-41—Filed March 13, 2025, 10:51 a.m., effective March 13, 2025, 10:51 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This emergency rule closes recreational fishing in an area immediately below Cle Elum Dam.

Citation of Rules Affected by this Order: Amending WAC 220-312-050.

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 to close a portion of Cle Elum River to recreational fishing. Ongoing construction of fish passage facilities near the dam, including planned in-channel work, is impacting both banks of the river. To reduce impact on fish life during construction, this reach of the river must be closed to angling until work is completed. 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: March 13, 2025.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-05000B Freshwater exceptions to statewide rules—Eastside. Effective immediately, until further notice, the following provisions of WAC 220-312-050, regarding recreational fishing seasons for Cle Elum River shall be modified as follows. All other provisions of WAC 220-312-050 remain in effect unless modified by emergency rule:

Cle Elum River from the green bridge approximately 2,000 feet downstream of Cle Elum Dam, upstream to the Dam: Closed waters.

WSR 25-07-064
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 25-43—Filed March 13, 2025, 4:43 p.m., effective March 15, 2025]

Effective Date of Rule: March 15, 2025.

Purpose: This emergency rule opens additional recreational smelt harvest periods in lower Cowlitz River.

Citation of Rules Affected by this Order: Repealing WAC 220-315-03000G and 220-315-03000H; and amending WAC 220-315-030.

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: This rule opens additional periods for the limited Cowlitz River recreational fishery for eulachon smelt. Recent landings in the mainstem Columbia River commercial fishery indicate the eulachon smelt run size is large enough to support additional recreational openings, per management guidance found in the 2023 Washington and Oregon Eulachon Management Plan. There is insufficient time to adopt permanent regulations.

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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: March 13, 2025.

Kelly Susewind
Director

NEW SECTION

WAC 220-315-03000H Smelt—Areas and seasons Notwithstanding the provisions of WAC 220-315-030, effective March 15 through March 22, 2025, the Columbia River and Washington tributaries are closed to fishing for eulachon smelt except as provided below:

Open Dates: Saturday, March 15, 2025, Wednesday, March 19, 2025, and Saturday, March 22, 2025; from 8:00 a.m. to 1:00 p.m. (5-hour period).

Open Area: Cowlitz River (bank only) from the Highway 432 Bridge upstream to the Al Helenberg Memorial Boat Ramp located approximately 1,300 feet upstream of the Highway 411/A Street Bridge in Castle Rock.

Daily Limit: 10 pounds. Possession limit is one daily limit.

Gear: Smelt may be taken with dip net only.

REPEALER

The following section of the Washington Administrative Code is repealed effective March 15, 2025:

WAC 220-315-03000G Smelt—Areas and seasons (25-36)

The following section of the Washington Administrative Code is repealed effective 1:01 p.m. March 22, 2025:

WAC 220-315-03000H Smelt—Areas and seasons (25-43)

WSR 25-07-067
RESCISSION OF EMERGENCY RULES
EDMONDS COLLEGE
[Filed March 14, 2025, 10:22 a.m., Effective March 14, 2025]

Edmonds College (college) is requesting that the current emergency rules in place for chapter 132Y-125 WAC, Student code of conduct, and chapter 132Y-300 WAC, Nondiscrimination and harassment policy, be rescinded effective March 14, 2025. The college submitted a CR-103E form on November 26, 2024, which was assigned WSR 24-24-048. Both WAC were amended to comply with United States Department of Education (DOE) Title IX guidelines issued on April 19, 2024, with a compliance date of August 1, 2024.

On January 9, 2025, the United States District Court for the Eastern District of Kentucky issued a decision that vacated the entirety of the 2024 Title IX rule nationwide. On January 20, 2025, President Trump issued an executive order, "Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government," ordering all agencies and departments within the federal executive branch to "enforce all sex-protective laws to promote [the] reality" that there are "two sexes, male and female," and that "[t]hese sexes are not changeable and are grounded in fundamental and incontrovertible reality."

On February 4, 2025, DOE issued a "Dear Colleague" letter stating:

"In light of the recent federal court decision vacating the 2024 Title IX Rule, and consistent with President Trump's Defending Women Executive Order, the binding regulatory framework for Title IX enforcement includes the principles and provisions of the 2020 Title IX Rule and the longstanding Title IX regulations outlined in 34 C.F.R. 106 et seq., but excludes the vacated 2024 Title IX Rule,"

On March 14, 2025, the college board of trustees approved rescission of the current emergency rule at a regular board meeting, resolution #25-3-1.

Katherine M. Smith
Title IX Coordinator

WSR 25-07-070
EMERGENCY RULES
DEPARTMENT OF HEALTH
[Filed March 14, 2025, 11:30 a.m., effective March 14, 2025, 11:30 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Creating certified agency affiliated counselor (AAC) and licensed AAC credentials. Amending WAC 246-810-010, 246-810-015, and 246-810-990 in chapter 246-810 WAC, Counselors.

2SHB 1724 (chapter 425, Laws of 2023) made several immediate changes impacting behavioral health agencies, including amending the definition of "mental health professional" (MHP) and creating two new AAC credentials. Because 2SHB 1724's amendments to the MHP definition and AAC credentials went into effect immediately and were designated as necessary for the immediate preservation of the public health, safety, or general welfare, the department of health (department) implemented these changes by emergency rule under WSR 23-16-031, filed on July 21, 2023, and continued them under WSR 23-23-136, filed November 17, 2023; WSR 24-07-062, filed March 15, 2024; WSR 24-07-100, filed March 20, 2024; WSR 24-15-077, filed July 18, 2024; and WSR 24-23-051, filed November 15, 2024.

This emergency rule continues without changes the previous emergency rule package's amendments to chapter 246-810 WAC, which expand existing language to establish two new credentials, the certified AAC and the licensed AAC. The amendments align rule language with statute and revise the registered AAC fees to apply to all AAC types. These emergency rules will be in effect until the permanent rules adopted on February 20, 2025, under WSR 25-06-010 become effective on July 1, 2025, which will permanently create the new AAC credentials.

Citation of Rules Affected by this Order: Amending WAC 246-810-010, 246-810-015, and 246-810-990.

Statutory Authority for Adoption: RCW 18.19.050.

Other Authority: 2SHB 1724 (chapter 425, Laws of 2023).

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 legislature established in 2SHB 1724, section 33 that many sections of the bill are "necessary for the immediate preservation of the public peace, health, or support of the state government and its existing public institutions and take effect immediately." Sections 13 through 20, which create the new AAC credentials and amend the definition of MHP, are among the sections that became effective immediately.

Under 2SHB 1724, RCW 71.05.020 was amended to define an MHP as an individual practicing within their credential's scope of practice. Qualifying credentials include the certified and licensed AAC credentials, but not the AAC registration. Prior to the passage of 2SHB 1724, many MHPs performed assessments and made diagnoses with only a registration. After 2SHB 1724 became effective, however, they were required to obtain an AAC certification, AAC license, or other qualifying credential in order to continue providing these services. Establishing the new AAC credentials immediately by emergency rule and continuing these emergency rules allows MHPs to transition into the new

credentials and continue providing essential behavioral health services while permanent rules are in progress.

If the department had waited to make these amendments through standard rule making, MHPs with an AAC registration would be both unable to continue assessing and diagnosing due to the changed MHP definition and unable to obtain a higher AAC credential that would allow them to continue that work. Continuing these emergency rules will allow MHPs who are AACs to continue serving Washington residents with behavioral health needs until the permanent rules become effective.

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

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

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

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

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

Date Adopted: March 14, 2025.

Kristin Peterson, JD
Chief of Policy
for Jessica Todorovich, MS
Acting Secretary of Health

OTS-4679.2

AMENDATORY SECTION (Amending WSR 11-22-087, filed 11/1/11, effective 12/2/11)

WAC 246-810-010 Definitions. The definitions in this section apply throughout this chapter unless the content clearly requires otherwise.

(1) "Agency" means:

(a) An agency or facility operated, licensed, or certified by the state of Washington to provide a specific counseling service or services;

(b) A federally recognized Indian tribe located within the state; or

(c) A county as listed in chapter 36.04 RCW.

(2) "Agency affiliated counselor" means a person registered, certified, or licensed under chapter 18.19 RCW, and this chapter, who is engaged in counseling and employed by an agency listed in WAC 246-810-016 or an agency recognized under WAC 246-810-017 to provide a specific counseling service or services.

(3) "Certified adviser" means a person certified under chapter 18.19 RCW, and this chapter, who is engaged in private practice counseling to the extent authorized in WAC 246-810-021.

(4) "Certified counselor" means a person certified under chapter 18.19 RCW, and this chapter, who is engaged in private practice counseling to the extent authorized in WAC 246-810-0201.

(5) "Client" means an individual who receives or participates in counseling or group counseling.

(6) "Consultation" means the professional assistance and practice guidance that a certified counselor receives from a counseling-related professional credentialed under chapter 18.130 RCW. This may include:

(a) Helping the certified counselor focus on counseling practice objectives;

(b) Refining counseling modalities;

(c) Providing support to progress in difficult or sensitive cases;

(d) Expanding the available decision-making resources; and

(e) Assisting in discovering alternative approaches.

(7) "Counseling" means employing any therapeutic techniques including, but not limited to, social work, mental health counseling, marriage and family therapy, and hypnotherapy, for a fee that offer, assist, or attempt to assist, an individual or individuals in the amelioration or adjustment of mental, emotional, or behavioral problems, and includes therapeutic techniques to achieve sensitivity and awareness of self and others and the development of human potential. For the purpose of this chapter, nothing may be construed to imply that the practice of hypnotherapy is necessarily limited to counseling.

(8) "Counselor" means an individual who engages in the practice of counseling to the public for a fee, including for the purposes of this chapter, agency affiliated counselors, certified counselors, certified advisers, hypnotherapists, and until July 1, 2010, registered counselors.

(9) "Department" means the Washington state department of health.

(10) "Fee" as referred to in RCW 18.19.030 means compensation received by the counselor for counseling services provided, regardless of the source.

(11) "Hypnotherapist" means a person registered under chapter 18.19 RCW, and this chapter, who is practicing hypnosis as a modality.

(12) "Licensed health care practitioner" means a licensed practitioner under the following chapters:

(a) Physician licensed under chapter 18.71 RCW.

(b) Osteopathic physician licensed under chapter 18.57 RCW.

(c) Psychiatric registered nurse practitioner licensed under chapter 18.79 RCW.

(d) Naturopathic physician licensed under chapter 18.36A RCW.

(e) Psychologist licensed under chapter 18.83 RCW.

(f) Independent clinical social worker, marriage and family therapist, or advanced social worker licensed under chapter 18.225 RCW.

(13) "Private practice counseling" means the practice of counseling by a certified counselor or certified adviser as specified in WAC 246-810-0201 or 246-810-021.

(14) "Psychotherapy" means the practice of counseling using diagnosis of mental disorders according to the fourth edition of the *Diagnostic and Statistical Manual of Mental Disorders*, and the development of treatment plans for counseling based on diagnosis of mental disorders in accordance with established practice standards.

(15) "Recognized" means acknowledged or formally accepted by the secretary.

(16) "Recognized agency or facility" means an agency or facility that has requested and been recognized under WAC 246-810-017 to employ agency affiliated counselors to perform a specific counseling service, or services for those purposes only.

(17) "Secretary" means the secretary of the department of health or the secretary's designee.

(18) "Supervision" means the oversight that a counseling-related professional credentialed under chapter 18.130 RCW provides.

(19) "Unprofessional conduct" means the conduct described in RCW 18.130.180.

AMENDATORY SECTION (Amending WSR 20-12-074, filed 6/1/20, effective 7/2/20)

WAC 246-810-015 Agency affiliated counselor: Scope of practice and credentialing requirements. (1) ((~~An~~)) (a) A registered agency affiliated counselor may only provide counseling services as part of ((~~his or her~~)) their employment ((~~as an agency affiliated counselor~~)) for a recognized agency.

(b) A certified agency affiliated counselor may provide counseling services and may provide provisional mental health assessment and diagnosis services under supervision as required by chapter 18.19 RCW, and as part of their employment for a recognized agency.

(c) A licensed agency affiliated counselor may provide counseling services, independently conduct mental health assessments, and make mental health diagnoses as part of their employment for a recognized agency.

(2) An applicant for ((~~an~~)) any agency affiliated counselor credential must be employed by, or have an offer of employment from, an agency or facility identified in WAC 246-810-016.

(3)(a) An applicant for a certified agency affiliated counselor credential must meet the education and experience requirements of RCW 18.19.090(3).

(b) An applicant for a licensed agency affiliated counselor credential must meet the education and experience requirements of RCW 18.19.090(4).

(4)(a) Applicants must submit an application to the department within the first ((~~thirty~~)) 30 days of employment at an agency in order to continue working while the application is processed.

(b) Applicants must complete any outstanding deficiencies within ((~~ninety~~)) 90 days of the date the department issues a deficiency letter. If the applicant does not satisfy the outstanding licensure requirements within ((~~ninety~~)) 90 days, the applicant must stop working.

AMENDATORY SECTION (Amending WSR 23-07-057, filed 3/9/23, effective 6/1/23)

WAC 246-810-990 Counselors fees and renewal cycle. (1) Under chapter 246-12 WAC, a counselor must renew their credential every year on the practitioner's birthday.

(2) Examination and reexamination fees are the responsibility of the applicant and are paid directly to the testing company.

(3) The following nonrefundable fees will be charged:

Title	Fee
Registered hypnotherapist:	
Application and registration	$155.00
Renewal	$80.00
Late renewal penalty	$75.00
Expired registration reissuance	$75.00
Duplicate registration	$10.00
Verification of registration	$25.00
Certified counselor:	
Application and certification	$680.00
Examination or reexamination	$85.00
Renewal	$800.00
Late renewal penalty	$300.00
Expired credential reissuance	$100.00
Duplicate credential	$10.00
Verification of credential	$25.00
Certified adviser:	
Application and certification	$620.00
Examination or reexamination	$85.00
Renewal	$745.00
Late renewal penalty	$300.00
Expired credential reissuance	$100.00
Duplicate credential	$10.00
Verification of credential	$25.00
((~~Registered~~)) Agency affiliated counselor:	
Application and ((~~registration~~)) credentialing	$175.00
Renewal	$185.00
Late renewal penalty	$95.00
Expired ((~~registration~~)) credential reissuance	$50.00
Duplicate ((~~registration~~)) credential	$10.00
Verification of ((~~registration~~)) credential	$25.00

WSR 25-07-072
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 25-44—Filed March 14, 2025, 1:05 p.m., effective April 1, 2025]

Effective Date of Rule: April 1, 2025.

Purpose: This emergency rule closes fishing in Hoh River and Quillayute River systems during the month of April.

Citation of Rules Affected by this Order: Amending WAC 220-312-020.

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 closes fishing in Hoh River and Quillayute River systems during the month of April. This closure is needed as a conservation measure for protection of wild steelhead. This closure will provide protection for steelhead during peak spawn timing and downstream kelt migration. 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: March 14, 2025.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-02000U Freshwater exceptions to statewide rules—Coast. Effective April 1 through April 30, 2025, the following provisions of WAC 220-312-020, regarding recreational fishing seasons for Quillayute River and Hoh River systems shall be modified as described in this section. All other provisions of WAC 220-312-020 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Effective April 1 through April 30 the following areas are Closed Waters:

(a) Bogachiel River (Clallam Co.), from the mouth upstream to Olympic National Park Boundary;

(b) Calawah River (Clallam Co.), from the mouth to the forks;

(c) Dickey River (Clallam Co.), from the Olympic National Park boundary upstream, including East and West Forks;

(d) Hoh River (Jefferson Co.), from Olympic National Park boundary (near mouth) upstream to Olympic National Park boundary below mouth of South Fork Hoh River;

(e) Hoh River, South Fork (Jefferson Co.), outside of Olympic National Park boundary;

(f) Quillayute River (Clallam Co.), from Olympic National Park boundary upstream to confluence of Sol Duc and Bogachiel rivers;

(g) Sol Duc River (Clallam Co.), From mouth to Hwy. 101 Bridge upstream of Klahowya campground.

WSR 25-07-091
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 25-45—Filed March 18, 2025, 9:46 a.m., effective April 1, 2025]

Effective Date of Rule: April 1, 2025.

Purpose: This emergency rule closes fishing in Naselle River April 1 through 15.

Citation of Rules Affected by this Order: Amending WAC 220-312-020.

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 closes fishing in Naselle River beginning April 1. This closure is needed as a conservation measure for protection of wild steelhead. This closure will provide protection for steelhead during peak spawn timing and downstream kelt migration. 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: March 18, 2025.

Kelly Susewind
Director

NEW SECTION

WAC 220-312-02000V Freshwater exceptions to statewide rules—Coast. Effective April 1 through April 15, 2025, the following provisions of WAC 220-312-020, regarding recreational fishing seasons for Naselle River shall be modified as described in this section. All other provisions of WAC 220-312-020 not addressed herein, or unless otherwise amended by emergency rule, remain in effect:

Naselle River, from the Highway 101 Bridge (mouth) to the North Fork: Closed waters.

WSR 25-07-095
EMERGENCY RULES
COMMUNITY COLLEGES
OF SPOKANE

[Filed March 18, 2025, 1:40 p.m., effective March 18, 2025, 1:40 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To bring the Community Colleges of Spokane's student conduct code into compliance with United States Department of Education (DOE) regulations, as altered by a federal court decision in *Tennessee v. Cardona*, No. 2:24-00072 (Jan. 9, 2025), vacating the 2024 Title IX final rule. In light of the court's decision, education institutions are responsible for complying with the 2020 Title IX final rule.

Citation of Rules Affected by this Order: Amending chapter 132Q-10 WAC.

Statutory Authority for Adoption: RCW 28B.50.140(13).

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

Reasons for this Finding: On January 9, 2025, a federal court decision in *Tennessee v. Cardona*, No. 2:24-00072 (Jan. 9, 2025), vacated the 2024 Title IX final rule, the provisions of which the agency had previously adopted into its student conduct code. DOE indicated in a "Dear Colleague" letter dated February 4, 2025, that in light of the court's decision, it will enforce Title IX under the provisions of the 2020 Title IX rule, effective immediately. As such, institutions of higher education are required to adopt student disciplinary procedures compliant with the former rule.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 9, 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: March 18, 2025.

John O'Rourke
Rules Coordinator

RDS-6224.2

AMENDATORY SECTION (Amending WSR 25-02-032, filed 12/19/24, effective 1/19/25)

WAC 132Q-10-600 ((~~Sex discrimination—Supplemental student conduct code and procedures—~~))Order of precedence. This supplemental ((~~student conduct code and~~)) procedure applies to allegations of ((~~sex discrimination for incidents occurring on or after August 1, 2024,~~)) sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with ((~~the Community Colleges of Spokane's~~)) Spokane Colleges standard disciplinary procedures, WAC 132Q-10-101 through 132Q-10-503, these supplemental procedures shall take precedence. Spokane Colleges may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct administrative panel and panel chair.

AMENDATORY SECTION (Amending WSR 25-02-032, filed 12/19/24, effective 1/19/25)

WAC 132Q-10-601 ((~~Sex discrimination—~~))Prohibited conduct ((~~and definitions~~)) under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. ((~~Sec.~~)) § 1681, ((~~the Community Colleges of~~)) Spokane Colleges may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "((~~sex discrimination~~)) sexual harassment."

For purposes of this supplemental procedure, "sexual harassment" means conduct on the basis of sex that satisfies one or more of the following ((~~definitions apply~~)):

(1) ((~~"Complainant" means the following individuals who are alleged to have been subjected to conduct that would constitute sex discrimination:~~

~~(a) A student or employee; or~~

~~(b) A person other than a student or employee who was participating or attempting to participate in the college's education program or activity at the time of the alleged discrimination.~~

~~(2) "Pregnancy or related conditions" means:~~

~~(a) Pregnancy, childbirth, termination of pregnancy, or lactation;~~

~~(b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or~~

~~(c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.~~

~~(3) "Program" or "programs and activities" means all operations of the college.~~

~~(4) "Relevant" means related to the allegations of sex discrimination under investigation. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decision maker in determining whether the alleged sex discrimination occurred.~~

~~(5) "Remedies" means measures provided to a complainant or other person whose equal access to the college's educational programs and~~

~~activities has been limited or denied by sex discrimination. These measures are intended to restore or preserve that person's access to educational programs and activities after a determination that sex discrimination has occurred.~~

~~(6) "Respondent" is a student who is alleged to have violated the student conduct code.~~

~~(7) "Sex discrimination" includes sex-based harassment, and may occur when a respondent causes more than de minimis (insignificant) harm to an individual by treating them different from a similarly situated individual on the basis of: Sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Conduct that prevents an individual from participating in an education program or activity consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.~~

~~(a) Sex-based harassment. "Sex-based harassment" is a form of sex discrimination and means sexual harassment or other harassment on the basis of sex, including the following conduct:~~

~~(i)~~)) Quid pro quo harassment. A ((~~student,~~)) Spokane Colleges employee((~~, agent, or other person authorized by the college to provide an aid, benefit, or service under the college's education program or activity explicitly or impliedly~~)) conditioning the provision of ((~~such~~)) an aid, benefit, or service of the Spokane Colleges on ((~~a person's~~)) an individual's participation in unwelcome sexual conduct.

((~~(ii)~~)) (2) Hostile environment. Unwelcome ((~~sex-based~~)) conduct ((~~that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:~~

~~(A) The degree to which the conduct affected the complainant's ability to access the college's education program or activity;~~

~~(B) The type, frequency, and duration of the conduct;~~

~~(C) The parties' ages, roles within the college's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;~~

~~(D) The location of the conduct and the context in which the conduct occurred; and~~

~~(E) Other sex-based harassment in the college's education program or activity.~~

~~(iii)~~)) determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Spokane Colleges educational programs or activities.

(3) Sexual ((~~violence~~)) assault. ((~~"Sexual violence"~~)) Sexual assault includes ((~~nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, incest, statutory rape, domestic violence, dating violence, and stalking.~~

~~(A)~~)) the following conduct:

(a) Nonconsensual sexual intercourse ((~~is~~)). Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

((~~(B)~~)) (b) Nonconsensual sexual contact ((~~(fondling) is~~)). Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

((~~(C)~~)) (c) Incest ((~~is~~)). Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of 18.

((~~(D) Statutory rape (rape of a child) is nonforcible sexual intercourse with a person who is under the statutory age of consent~~)) (d) Statutory rape. Nonforcible sexual intercourse between someone who is 18 years of age or older and someone who is under the age of 16.

((~~(E)~~)) (4) Domestic violence ((~~is~~)). Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, coercive control, damage or destruction of personal property, stalking, or any other conduct prohibited under RCW 10.99.020, committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.55.010.

((~~(F)~~)) (5) Dating violence ((~~is~~)). Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

((~~(I)~~)) (i) The length of the relationship;

((~~(II)~~)) (ii) The type of relationship; and

((~~(III)~~)) (iii) The frequency of interaction between the persons involved in the relationship.

((~~(G)~~)) (6) Stalking ((~~means~~)). Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for ((~~the person's~~)) their safety or the safety of others, or ((~~to~~)) suffer substantial emotional distress.

((~~(b) "Consent." For purposes of this code, "consent" means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity.~~

~~(i) Each party has the responsibility to make certain that the other has consented before engaging in the activity.~~

~~(ii) For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.~~

~~(iii) A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.~~

~~(iv) Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.~~

~~(c) "Title IX retaliation" means intimidation, threats, coercion, or discrimination against any person by a student, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in a sex discrimination investigation, proceeding, or hearing under this part, including during an informal resolution process, during a Title IX investigation, or during any disciplinary proceeding involving allegations of sex discrimination.~~

~~(8) "Student employee" means an individual who is both a student and an employee of the college. When a complainant or respondent is a student employee, the college must make a fact-specific inquiry to determine whether the individual's primary relationship with the college is to receive an education and whether any alleged student conduct code violation including, but not limited to, sex-based harassment, occurred while the individual was performing employment-related work.~~

~~(9) "Student group" is a student organization, athletic team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups.~~

~~(10) "Supportive measures" means reasonably available, individualized and appropriate, nonpunitive and nondisciplinary measures offered by the college to the complainant or respondent without unreasonably burdening either party, and without fee or charge for purposes of:~~

~~(a) Restoring or preserving a party's access to the college's educational program or activity, including measures that are designed to protect the safety of the parties or the college's educational environment; or providing support during the college's investigation and disciplinary procedures, or during any informal resolution process; or~~

~~(b) Supportive measures may include, but are not limited to: Counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of campus; restriction on contact applied to one or more parties; a leave of absence; change in class or work schedules, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; and training and education programs related to sex-based harassment.~~

~~(11) "Title IX coordinator" is the administrator responsible for processing complaints of sex discrimination, including sex-based harassment, overseeing investigations and informal resolution processes, and coordinating supportive measures, in accordance with college policy.~~))

AMENDATORY SECTION (Amending WSR 25-02-032, filed 12/19/24, effective 1/19/25)

WAC 132Q-10-602 ((~~Sex discrimination~~)) Title IX jurisdiction.

(1) This supplemental procedure applies only if the alleged misconduct ((~~meets the definition of "sex discrimination" as that term is defined in WAC 132Q-10-601 and occurs:~~

~~(1) On college premises;~~

~~(2) At or in connection with college programs or activities; or~~

~~(3) Off college premises, if in the judgment of the college, the conduct has an adverse impact on the college community, the pursuit of its objectives, or the ability of a student or staff to participate in the college's programs and activities~~)):

(a) Occurred in the United States;

(b) Occurred during a Spokane Colleges educational program or activity; and

(c) Meets the definition of sexual harassment as that term is defined in this supplemental procedure.

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which the Spokane Colleges exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the Spokane Colleges.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this supplemental procedure does not prohibit the Spokane Colleges from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the Spokane Colleges student conduct code, WAC 132Q-10-101 through 132Q-10-503.

(4) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

AMENDATORY SECTION (Amending WSR 25-02-032, filed 12/19/24, effective 1/19/25)

WAC 132Q-10-603 ((~~Sex discrimination—Dismissal and~~)) Initiation of discipline. ((~~(1) Any member of the college community may file a complaint against a student or student group for conduct which may constitute sex discrimination.~~

~~(2) The college's Title IX coordinator or designee shall review, process, and, if applicable, investigate complaints or other reports of sex discrimination, including sex-based harassment. The disciplinary process for allegations of sex discrimination, including sex-based harassment, against a student shall be addressed through the student conduct code.~~

~~(3) Both the respondent and the complainant in cases involving allegations of sex discrimination shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the disciplinary process and to appeal any disciplinary decision.~~

~~(4) When interim suspension or other restriction proceedings are conducted under WAC 132Q-10-320, the complainant shall be notified that an interim suspension has been imposed on the same day that the interim suspension notice is served on the respondent. The college will also provide the complainant with timely notice of any subsequent changes to the interim suspension order.~~

~~(5) The student conduct officer shall review the investigation report provided by the Title IX coordinator, and determine whether, by a preponderance of the evidence, there was a violation of the student conduct code; and if so, what disciplinary sanction(s) and/or remedies will be recommended. The student conduct officer shall, within five business days of receiving the investigation report, serve respondent, complainant, and the Title IX coordinator with a written recommendation, setting forth the facts and conclusions supporting their recommendation. The time for serving a written recommendation may be extended by the student conduct officer for good cause.~~

~~(a) The complainant and respondent may either accept the student conduct officer's recommended disciplinary sanction(s) or request a hearing before a student conduct administrative panel.~~

~~(b) The complainant and respondent shall have 21 calendar days from the date of the written recommendation to request a hearing before a student conduct administrative panel.~~

~~(c) The request for a hearing may be verbal or written, but must be clearly communicated to the student conduct officer.~~

~~(d) The student conduct officer shall promptly notify the other party of the request.~~

~~(e) The student conduct officer may recommend dismissal of the complaint if:~~

~~(i) The college is unable to identify respondent after taking reasonable steps to do so;~~

~~(ii) Respondent is not participating in the college's educational programs or activities;~~

~~(iii) The complainant has voluntarily withdrawn any or all of the allegations in the complaint, and the Title IX coordinator has declined to initiate their own complaint. In cases involving allegations of sex-based harassment, the complainant must withdraw their complaint in writing;~~

~~(iv) The college determines that, even if proven, the conduct alleged by the complainant would not constitute sex discrimination; or~~

~~(v) The conduct alleged by the complainant falls outside the college's disciplinary jurisdiction.~~

~~(f) If no request for a full hearing is provided to the student conduct officer, the student conduct officer's written recommendation shall be final and implemented immediately following the expiration of 21 calendar days from the service of the written recommendation.~~

~~(g) Upon receipt of the student conduct officer's written recommendation, the Title IX coordinator or their designee shall review all supportive measures and, within five business days, provide written direction to the complainant and respondent as to any supportive measures that will be implemented, continued, modified, or terminated. If either party is dissatisfied with the supportive measures, the party may seek review in accordance with the college's Title IX investigation procedure.~~

~~(h) If the respondent is found responsible for engaging in sex discrimination, the Title IX coordinator shall also take prompt steps to coordinate and implement any necessary remedies to ensure that sex discrimination does not recur and that complainant has equal access to the college's programs and activities.~~)) (1) Upon receiving a Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(2) If the student conduct officer determines that there are sufficient grounds to proceed under these supplemental procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct administrative panel and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

(a) Set forth the basis for Title IX jurisdiction;

(b) Identify the alleged Title IX violation(s);

(c) Set forth the facts underlying the allegation(s);

(d) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);

(e) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:

(i) The advisors will be responsible for questioning all witnesses on the party's behalf;

(ii) An advisor may be an attorney; and

(iii) Spokane Colleges will appoint an advisor of the college's choosing at no cost to the party, if the party fails to do so.

(f) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

AMENDATORY SECTION (Amending WSR 25-02-032, filed 12/19/24, effective 1/19/25)

WAC 132Q-10-604 ((~~Sex discrimination—~~))Prehearing procedure.

((~~(1) For cases involving allegations of sex discrimination, including sex-based harassment, members of the student conduct administrative panel must receive training on serving impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias. The chair must also receive training on the student conduct process for sex discrimination cases, as well as the meaning and application of the term "relevant," in relations to questions and evidence, and the types of evidence that are impermissible, regardless of relevance in accordance with 34 C.F.R. §§ 106.45 and 106.46.~~

~~(2) In sex discrimination cases, the college may, in its sole and exclusive discretion, contract with an administrative law judge or other qualified person to act as the presiding officer, authorized to exercise any or all duties of the student conduct administrative panel and/or committee chair.~~

~~(3) In cases involving allegations of sex discrimination, the complainant has a right to participate equally in any part of the disciplinary process, including appeals. Respondent and complainant both have the following rights:~~

~~(a) Notice. The college must provide a notice that includes all information required in WAC 132Q-10-315, and a statement that the parties are entitled to an equal opportunity to access relevant and permissible evidence, or a description of the evidence upon request.~~

~~(b) Advisors. The complainant and respondent are both entitled to have an advisor present, who may be an attorney retained at the party's expense.~~

~~(c) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the~~

~~hearing date, in accordance with the procedures set forth in subsection (4)(b) of this section.~~

~~(d) Evidence. In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.~~

~~(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but are not limited to, directives by the student conduct officer or chair pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.~~

~~(4) In cases involving allegations of sex-based harassment, the following additional procedures apply:~~

~~(a) Notice. In addition to all information required by WAC 132Q-10-315, the prehearing notice must also inform the parties that:~~

~~(i) The respondent is presumed not responsible for the alleged sex-based harassment;~~

~~(ii) The parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decision maker;~~

~~(iii) They may have an advisor of their choice, who may be an attorney, to assist them during the hearing;~~

~~(iv) They are entitled to an equal opportunity to access relevant and not otherwise impermissible evidence in advance of the hearing; and~~

~~(v) The student conduct code prohibits knowingly making false statements or knowingly submitting false information during a student conduct proceeding.~~

~~(b) Extensions of time. The chair may, upon written request of any party and a showing of good cause, extend the time for disclosure of witness and exhibit lists, accessing and reviewing evidence, or the hearing date. The party requesting an extension must do so no later than 48 hours before any date specified in the notice of hearing or by the chair in any prehearing conference. The written request must be served simultaneously by email to all parties and the chair. Any party may respond and object to the request for an extension of time no later than 24 hours after service of the request for an extension. The chair will serve a written decision upon all parties, to include the reasons for granting or denying any request. The chair's decision shall be final. In exceptional circumstances, for good cause shown, the chair may, in their sole discretion, grant extensions of time that are made less than 48 hours before any deadline.~~

~~(c) Advisors. The college shall provide an advisor to the respondent and any complainant, if the respondent or complainant have not otherwise identified an advisor to assist during the hearing.~~

~~(d) Evidence. In advance of the hearing, the student conduct officer shall provide reasonable assistance to the respondent and complainant in accessing and reviewing the investigative report and relevant and not otherwise impermissible evidence that is within the college's control.~~

~~(e) Confidentiality. The college shall take reasonable steps to prevent the unauthorized disclosure of information obtained by a party solely through the disciplinary process, which may include, but is not limited to, directives by the student conduct officer or chair issuing~~

~~directives pertaining to the dissemination, disclosure, or access to evidence outside the context of the disciplinary hearing.~~

~~(f) Separate locations. The chair may, or upon the request of any party, must conduct the hearing with the parties physically present in separate locations, with technology enabling the committee and parties to simultaneously see and hear the party or the witness while that person is speaking.~~

~~(g) Withdrawal of complaint. If a complainant wants to voluntarily withdraw a complaint, they must provide notice to the college in writing before a case can be dismissed.~~)) (1) Upon receiving the disciplinary notice, the chair of the student conduct administrative panel will send a hearing notice to all parties, in compliance with WAC 132Q-10-315. In no event will the hearing date be set less than 10 days after the Title IX coordinator provided the final investigation report to the parties.

(2) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the panel chair with copies to all parties and the student conduct officer.

(3) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether Spokane Colleges intends to offer the evidence at the hearing.

AMENDATORY SECTION (Amending WSR 25-02-032, filed 12/19/24, effective 1/19/25)

WAC 132Q-10-606 ((~~Sex discrimination—Presentation of~~)) Evidence. ((~~In cases involving allegations of sex-based harassment, the complainant and respondent may not directly question one another or other witnesses. In such circumstances, the chair will determine whether questions will be submitted to the chair, who will then ask questions of the parties and witnesses, or allow questions to be asked directly of any party or witnesses by a party's attorney or advisor. The committee chair may revise this process if, in the chair's determination, the questioning by any party, attorney, or advisor, becomes contentious or harassing.~~

~~(1) Prior to any question being posed to a party or witness, the chair must determine whether the question is relevant and not otherwise impermissible; and must explain any decision to exclude a question that is deemed not relevant, or is otherwise impermissible. The chair will retain for the record copies of any written questions provided by any party.~~

~~(2) The chair must not permit questions that are unclear or harassing; but shall give the party an opportunity to clarify or revise such a question.~~

~~(3) The chair shall exclude and the committee shall not consider legally privileged information unless the individual holding the privilege has waived the privilege. Privileged information includes, but is not limited to, information protected by the following:~~

~~(a) Spousal/domestic partner privilege;~~

~~(b) Attorney-client communications and attorney work product privilege;~~

~~(c) Clergy privileges;~~

~~(d) Medical or mental health providers and counselor privileges;~~

~~(e) Sexual assault and domestic violence advocate privileges; and~~

~~(f) Other legal privileges set forth in RCW 5.60.060 or federal law.~~

~~(4) The chair shall exclude and the committee shall not consider questions or evidence that relate to the complainant's sexual interests or prior sexual conduct, unless such question or evidence is offered to prove someone other than the respondent committed the alleged conduct, or is evidence of specific instances of prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.~~

~~(5) The committee may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The committee must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.~~)) The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(1) Relevance: The panel chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(2) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(3) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(a) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(b) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(4) Complainant and respondent may not ask questions directly of one another. Questions may be asked through a party's advisor or by the chair, after the chair determines the question is relevant and not privileged or otherwise impermissible. The chair has discretion to follow this procedure for other witnesses, as well.

(5) No negative inference: The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(6) Privileged evidence: The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(a) Spousal/domestic partner privilege;

(b) Attorney-client and attorney work product privileges;

(c) Privileges applicable to members of the clergy and priests;

(d) Privileges applicable to medical providers, mental health therapists, and counselors;

(e) Privileges applicable to sexual assault and domestic violence advocates; and

(f) Other legal privileges identified in RCW 5.60.060.

AMENDATORY SECTION (Amending WSR 25-02-032, filed 12/19/24, effective 1/19/25)

WAC 132Q-10-607 ((~~Sex discrimination—~~))Initial order. ((~~(1) The student conduct administrative panel will comply with WAC 132Q-10-330.~~

~~(2) In cases involving sex-based harassment, the initial decision shall be served on all parties simultaneously, as well as the Title IX coordinator.~~)) In addition to complying with WAC 132Q-10-333, the student conduct administrative panel will be responsible for conferring and drafting an initial order that:

(1) Identifies the allegations of sexual harassment;

(2) Describes the procedural steps taken from receipt of the formal complaint through the determination, including any notifications to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(3) Makes findings of fact supporting the determination;

(4) Reaches conclusions applying the conduct code to the facts;

(5) Contains a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;

(6) Describes any disciplinary sanctions or conditions imposed against the respondent, if the committee determines the respondent violated the conduct code;

(7) Determines whether remedies designed to restore or preserve complainant's equal access to the Spokane Colleges education programs or activities will be provided by Spokane Colleges; and

(8) Describes the process for appealing initial orders from Spokane Community College to Spokane Falls Community College's vice president of student affairs or initial orders from Spokane Falls Community College to Spokane Community College's vice president of student services.

(9) The panel chair will serve the initial order on the parties simultaneously.

AMENDATORY SECTION (Amending WSR 25-02-032, filed 12/19/24, effective 1/19/25)

WAC 132Q-10-608 ((~~Sex discrimination—~~))Appeals. ((~~(1) Any party, including a complainant in sex-based harassment cases, may appeal the committee's decision to the president by filing a written appeal with the appropriate vice president's office (appeal authority) within 21 calendar days of service of the committee's decision. Failure to file a timely appeal constitutes a waiver of the right and the decision shall be deemed final. For appeals coming from Spokane Community College, the vice president of student affairs at Spokane Falls Community College will process the appeal as the appeal authority. For appeals coming from Spokane Falls Community College, the vice president of student services at Spokane Community College will process the appeal as the appeal authority.~~

~~(2) The written appeal must identify the specific findings of fact and/or conclusions of law in the decision that are challenged and must contain argument why the appeal should be granted. Appeals may be based upon, but are not limited to:~~

~~(a) Procedural irregularity that would change the outcome;~~

~~(b) New evidence that would change the outcome and that was not reasonably available when the initial decision was made; and~~

~~(c) The investigator, decision maker, or Title IX coordinator had a conflict of interest or bias for or against a respondent or complainant individually or respondents or complainants generally.~~

~~(3) Upon receiving a timely appeal, the appeal authority will promptly serve a copy of the appeal on all nonappealing parties, who will have 10 business days from the date of service to submit a written response addressing the issues raised in the appeal to the president or a designee, and serve it on all parties. Failure to file a timely response constitutes a waiver of the right to participate in the appeal.~~

~~(4) If necessary to aid review, the appeal authority may ask for additional briefing from the parties on issues raised on appeal. The appeal authority's review shall be restricted to the hearing record made before the student conduct administrative panel and will normally be limited to a review of those issues and arguments raised in the appeal.~~

~~(5) The appeal authority shall serve a written decision on all parties and their attorneys, if any, within 20 calendar days after receipt of the appeal. This decision shall be final and subject to judicial review pursuant to chapter 34.05 RCW, Part V.~~

~~(6) In cases involving allegations of sex-based harassment, the appeal decision must be served simultaneously on the complainant, respondent, and Title IX coordinator.~~

~~(7) The appeal authority shall not engage in an ex parte communication with any of the parties regarding an appeal.~~)) (1) All parties, including the student conduct officer in their capacity as a representative of the college, have the right to appeal from the determination of responsibility and/or from a dismissal, in whole or part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the appropriate vice president's office within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions in the initial order or notice of dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or notice of dismissal shall be deemed final.

(2) For appeals coming from Spokane Community College, the vice president of student affairs at Spokane Falls Community College will process the appeal. For appeals coming from Spokane Falls Community College, the vice president of student services at Spokane Community College will process the appeal.

(3) Upon receiving a timely appeal, the appropriately identified vice president's office will serve a copy of the appeal on all parties, who will have 10 days from the date of service to submit written responses to the appropriate vice president's office addressing issues raised in the appeal. Failure to file a timely response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the appropriate vice president shall serve copies of the responses to the other parties.

(4) Parties receiving a copy of the responses shall have five days in which to submit a written reply addressing issues raised in the responses to the appropriate vice president's office.

(5) The appropriate vice president or their delegate, based on their review of parties' submission and the hearing or investigative

record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal is affirmed or denied, or if the disciplinary sanctions and conditions imposed in the initial order are affirmed, vacated, or amended, and if amended, set forth the new disciplinary sanctions and conditions.

(6) The appropriate vice president of student affairs/services shall serve the final decision on the parties simultaneously.

(7) All administrative decisions reached through this process may be judicially appealed pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542.

NEW SECTION

WAC 132Q-10-609 Rights of parties. (1) Spokane Colleges student conduct procedures, WAC 132Q-10-101 through 132Q-10-503, and this supplemental procedure shall apply equally to all parties.

(2) Spokane Colleges bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(3) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(4) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing, and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

WSR 25-07-098
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 25-46—Filed March 18, 2025, 2:41 p.m., effective March 21, 2025, 8:00 a.m.]

Effective Date of Rule: March 21, 2025, 8:00 a.m.

Purpose: This emergency rule opens a portion of Quinault Special Management Area (SMA) to state commercial crab fishers.

Citation of Rules Affected by this Order: Repealing WAC 220-340-42000D and 220-340-45000W; and amending WAC 220-340-420 and 220-340-450.

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 to open a portion of the Quinault SMA, with a pot limit, to state fishers. Tribal SMA descriptions conform with state/tribal agreements and state/tribal discussions regarding in-season modifications. 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: March 18, 2025.

Kelly Susewind
Director

NEW SECTION

WAC 220-340-42000E Commercial crab fishery—Unlawful acts. Notwithstanding the provisions of WAC 220-340-420, 8:00 AM March 21, 2025, until further notice:

(1) It is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, Columbia River, or Washington coastal or adjacent waters of the Pacific Ocean from any vessel, unless:

(a) A valid Washington crab vessel inspection certificate has been issued to the delivering vessel. Vessel hold inspection certificates dated from January 14, 2025, through February 9, 2025, are only

valid for the area south of 46°28.00 N. Lat. until 8:00 A.M. March 18, 2025; and

(b) The vessel inspection certificate numbers are recorded on all shellfish tickets completed for coastal Dungeness crab landings until March 18, 2025.

(2) It is unlawful for a vessel to use more than 200 pots in the Makah SMA beginning 8:00 A.M. March 13, 2025, until 8:00 A.M. April 12, 2025. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the following methods:

• E-mail to Jamie Fuller at Jamie.Fuller@dfw.wa.gov; or

• Telephone call to Jamie Fuller at 360-580-0875.

(3) It is unlawful for a vessel to use more than a total of 100 pots in the Quinault SMA as described below from 8:00 AM on March 21, 2025, until 8:00 AM on April 21, 2025. The area of the Quinault SMA open to state fishers is defined by the following coordinates:

(a) Raft River (East): 47°28.00'N. Lat. 124°20.70'W. Lon.
(b) Raft River (West): 47°28.00'N. Lat. 124°34.00'W. Lon.
(c) Split Rock (East): 47°24.50'N. Lat. 124°20.00'W. Lon.
(d) Split Rock (West): 47°24.50'N. Lat. 124°28.50'W. Lon.
(e) Joe Creek (East): 47°12.25'N. Lat. 124°12.28'W. Lon.
(f) Joe Creek (West): 47°12.25'N. Lat. 124°19.00'W. Lon.
(g) Copalis River (East): 47°08.00'N. Lat. 124°11.20'W. Lon.
(h) Copalis River (West): 47°08.00'N. Lat. 124°25.50'W. Lon.

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

• E-mail to Jamie Fuller at Jamie.Fuller@dfw.wa.gov; or

• Telephone call to Jamie Fuller at 360-580-0875.

(4) Unless otherwise amended all other provisions of the permanent rule remain in effect.

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

NEW SECTION

WAC 220-340-45000X Commercial crab fishery—Seasons and areas—Coastal. Notwithstanding the provisions of WAC 220-340-450 8:00 AM March 21, 2025, until further notice: it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided in this section.

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

(a) For the purposes of this section, the waters of Willapa Bay include the marine waters east of a line connecting 46°44.76'N, 124°05.76'W and 46°38.93'N, 124°04.33'W.

(b) Licenses and vessels designated to those licenses that participate in the coastal commercial Dungeness crab fishery in the waters from Point Arena, California, to Klipsan Beach, Washington (46°28.00), including Willapa Bay, before the area north of Klipsan Beach (46°28.00') opens, are prohibited from fishing in the following area for the duration specified:

The waters between Oysterville (46°33.00') and US/Canada Border until 8:00 A.M. March 18, 2025.

(c) The Makah special management area (SMA) includes the waters between 48°02.15'N. Lat. and 48°19.50'N. Lat. east of a line connecting those points and approximating the 25-fathom line according to the following coordinates:

(i) Northeast Corner: (Tatoosh Island)

(ii) Northwest Corner: 48°19.50'N. Lat. 124°50.45'W. Lon.

(iii) Southwest Corner: 48°02.15'N. Lat. 124°50.45'W. Lon.

(iv) Southeast Corner: 48°02.15'N. Lat. 124°41.00'W. Lon.

(2) The Quinault secondary special management area (SSMA) is closed to fishing for Dungeness crab. The SSMA includes the area shoreward of a line approximating the 17-fathom depth curve between Split Rock (47°24.50') and Joe Creek (47°12.25') according to the following coordinates:

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

(b) Northwest Corner: 47°24.50'N. Lat. 124°28.50'W. Lon.

(c) Southwest Corner: 47°12.25'N. Lat. 124°19.00'W. Lon.

(d) Southeast Corner (Joe Creek): 47°12.25'N. Lat. 124°12.28'W. Lon.

(3) The Quileute special management area (SMA) is closed to fishing for Dungeness crab until further notice. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following coordinates:

(a) Northeast Corner (Cape Johnson): 47°58.00'N. Lat. 124°40.40'W. Lon.

(b) Northwest Corner: 47°58.00'N. Lat. 124°49.00'W. Lon.

(c) Southwest Corner: 47°40.50'N. Lat. 124°40.00'W. Lon.

(d) Southeast Corner (Destruction Island): 47°40.50'N. Lat. 124°24.43'W. Lon.

(4) Unless otherwise amended all other provisions of the permanent rule remain in effect.

REPEALER

The following sections of Washington Administrative Code are repealed, effective 8 AM March 21, 2025:

WAC 220-340-42000D	Commercial crab fishery—Unlawful acts. (25-35)
WAC 220-340-45000W	Commercial crab fishery—Seasons and areas—Coastal. (25-35)