

WSR 11-14-053
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed June 29, 2011, 12:20 p.m., effective July 30, 2011]

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

Purpose: The new rules: (1) Support recently filed rules that meet the Governor's Executive Order 10-06 exemption criteria for rule making because they are necessary to manage budget shortfalls, maintain fund solvency, or for revenue generating activities for fiscal year ending June 30, 2011; (2) assure consistency with how terms are defined and used throughout department medical assistance program rules; (3) meet the requirements of 2E2SHB 1738, the legislation that authorizes the medical purchasing administration and the health care authority (HCA) to merge into one agency effective July 1, 2011, by changing any references to "the department" (DSHS) to "the agency or the agency's designee"; and (4) place defined words and phrases into their own alpha sections which allows readers to locate a definition quickly.

Citation of Existing Rules Affected by this Order:
Amending WAC 388-500-0005.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: 2E2SHB 1738.

Adopted under notice filed as WSR 11-07-077 on March 22, 2011.

Changes Other than Editing from Proposed to Adopted Version: **Added the following cross-references (underlined) to definitions in chapter 388-500 WAC:**

WAC 388-500-0020 "**Couple**" See "spouse:" in WAC 388-500-0100.

WAC 388-500-0050 "**Ineligible spouse**" See "spouse:" in WAC 388-500-0100.

WAC 388-500-0050 "**Institution for mental diseases (IMD)**" See "institution:" in this section.

WAC 388-500-0050 "**Institutionalized spouse**" See "spouse:" in WAC 388-500-0100.

WAC 388-500-0050 "**Intermediate care facility for the mentally retarded (ICF/MR)**" See "institution:" in this section.

WAC 388-500-0070 "**Medical institution**" See "institution:" in WAC 388-500-0050.

WAC 388-500-0075 "**Nonapplying spouse**" See "spouse:" in WAC 388-500-0100.

WAC 388-500-0075 "**Noncovered service**" See "covered service:" in WAC 388-500-0020.

WAC 388-500-0075 "**Nursing facility**" See "institution:" in WAC 388-500-0050.

WAC 388-500-0085 "**Public institution**" See "Institution:" in WAC 388-500-0050.

Changed "the department" (DSHS) (~~strikethrough~~) to "the agency" (HCA) or "the agency's designee" (underlined):

WAC 388-500-0005 Chapter 388-500 WAC, other ~~department agency or agency's designee~~ WAC, ... other ~~department agency or agency's designee~~ WAC, the definition in the specific WAC prevails.

WAC 388-500-0010 "**Authorization**" means the ~~department's~~ agency's or the agency's designee's determinations ...

to the ~~department's~~ agency's or the agency's designee's decision ...

WAC 388-500-0015 "**By report (BR)**" means ... the ~~department agency or the agency's designee~~ determines ... in the ~~department's~~ agency's or the agency's designee(s) published fee schedules.

WAC 388-500-0025 "**Delayed certification**" means ~~department agency or the agency's designee~~ approval ...

WAC 388-500-0025 "**Dental consultant**" means ... by the ~~department agency or the agency's designee.~~

WAC 388-500-0030 "**Early and periodic screening, diagnosis and treatment (EPSDT)**" is a ... for any ~~department~~ agency healthcare program.

WAC 388-500-0030 "**Expedited prior authorization (EPA)**" means ... to indicate to the ~~department agency or the~~ agency's designee which acceptable ... or ~~department agency or agency's designee~~-defined criteria ...

WAC 388-500-0035 "**Fee-for-service (FSS)**" The general payment method the ~~department agency or agency's designee~~ uses ... under the ~~department's~~ agency's prepaid managed care programs.

WAC 388-500-0045 "**Health maintenance organization (HMO)**" means ... the ~~department agency~~ on a ...

WAC 388-500-0050 "**Institution**" ... (3) "Medical institution" (b)(i) "Hospice care center" - an entity ... and approved by the ~~department agency or the agency's designee~~ to be ...

WAC 388-500-0050 "**Institution**" ... (3) "Medical institution" (b)(v) "Psychiatric residential treatment facility (PRTF)"—a nonhospital ... by the ~~department agency or the~~ agency's designee to provide ...

WAC 388-500-0050 "**Institution**" ... (3) "Medical institution" (c) medical institutions do not ... by the ~~department agency or the agency's designee~~ as adult family homes ...

WAC 388-500-0070 "**Medical assistance**" for the purposes of ... by the ~~department agency or the agency's designee~~ that provide ...

WAC 388-500-0070 "**Medical assistance administration (MAA)**" is the former ... now administered by the agency, formerly the medicaid purchasing administration (MPA), of formerly the health and recovery services administration (HRSA).

WAC 388-500-0075 "**NCCI edit**" is a ... state regulations, ~~department agency or the agency's designee~~ fee schedules ... The ~~department agency or the agency's designee~~ has the final decision ... NCCI standards or ~~department agency or agency's designee~~ policy.

WAC 388-500-0085 "**Prior authorization**" is the requirement ... the ~~department's~~ agency's or the agency's designee's approval to render ... The ~~department's~~ agency's or the agency's designee's approval ...

WAC 388-500-0085 "**Provider**" means ... (1) Has signed a...with the ~~department agency or the agency's designee~~, and is ... (2) Has authorization ... with the ~~department agency or the agency's designee~~ to provide ...

WAC 388-500-0095 "**Regional support network (RSN)**" means ...which the ~~department agency or the~~ agency's designee contracts for ...

WAC 388-500-0100 "**Spenddown**" is a term used ... by the ~~department agency.~~

WAC 388-500-0105 "**Third party**" means an entity other than the ~~department~~ agency or the agency's designee that is ...

Other changes:

WAC 388-500-0010 "**Agency**" means the Washington state health care authority, created pursuant to chapter 41.05 RCW.

WAC 388-500-0020 "**Covered service**" is a healthcare service contained within a "service category;" that is included in a medical assistance benefits package as described in WAC 388-501-0060, ~~included in the medical assistance program's benefit package.~~ For conditions of payment, see WAC 388-501-0050(5). A noncovered service is a specific healthcare service (for example, cosmetic surgery), contained within a service category that is included in a medical assistance benefits package, for which the agency requires an approved exception to rule (ETR) (see WAC 388-501-0160). A noncovered service is not an excluded service (see WAC 388-501-0060).

WAC 388-500-0030 "**Emergency medical expense requirement (EMER)**" See WAC 388-865-0217(3).

WAC 388-500-0030 "**Evidence-based medicine (EBM)**" means the applications of a set of principles ... and beneficial when making: (1) ~~p~~Population-based healthcare coverage policies (see WAC 388-501-0055 describes how the department determines coverage of services for its healthcare programs by using evidence and criteria based on health technology assessments), ~~or;~~ and (2) ~~i~~Individual medical necessity decisions (see WAC 388-501-0165 describes how the department uses the best evidence available to determine if a service is medically necessary as defined in WAC 388-500-0030).

WAC 388-500-0030 "**Extended care services**" means nursing and rehabilitative care in a skilled nursing facility provided to a recently hospitalized medicare patient needing relatively short term skilled nursing and rehabilitative care in a skilled nursing facility.

WAC 388-500-0045 Move definition of "**Healthcare Professional**" to after the definition of "**Health maintenance organization (HMO)**".

WAC 388-500-0045 Add: "**Healthcare service category**" means a grouping of healthcare services listed in the table in WAC 388-501-0060. A healthcare service category is included or excluded depending on the client's medical assistance benefits package.

WAC 388-500-0070 "**Medical facility**" means a medical institution or a ~~medical~~ clinic that provides healthcare services. ~~A medical clinic does not meet the criteria to be considered a medical institution (see "medical institution").~~

WAC 388-500-0075 "**Noncovered service(s)**" means a specific healthcare service(s) or item(s) the department has determined it will not cover or pay for any client under any medical assistance program. ~~Noncovered services are identified in WAC 388-50-0070 and in specific healthcare program rules. See "covered service" in WAC 388-500-0020.~~

WAC 388-500-0100 "~~Scope of healthcare service categories~~" are the groupings of healthcare services listed in the table in WAC 388-501-0060 that are available under each medical assistance program's benefits package.

WAC 388-500-0100 "**State supplemental payment (SSP)**" is a state funded cash benefit for certain individuals who are either recipients of the Title XVI supplemental security income (SSI) program or who are clients of the division of developmental disabilities. The SSP allotment for Washington state is a fixed amount of \$28.9 million and must be shared between all individuals who fall into one of the groups listed below. The amount of the SSP may vary each year depending on the number of individuals who qualify. The following groups are eligible for an SSP:

(1) Mandatory SSP group—SSP made to a mandatory income level client (MIL) who was grandfathered into the SSI program. To be eligible in this group, an individual must have been receiving cash assistance in December 1973 under the department's former old age assistance program or aid to the blind and disability assistance. Individuals in this group receive an SSP to bring their income to the level they received prior to the implementation of the SSI program in 1973.

(2) Optional SSP group—SSP made to any of the following:

(a) An individual who receives SSI and has an ineligible spouse.

(b) An individual who receives SSI based on meeting the age criteria of sixty-five or older.

(c) An individual who receives SSI based on blindness.

(d) An individual who has been determined eligible for SSP by the division of developmental disabilities.

(e) An individual who is eligible for SSI as a foster child as described in WAC 388-474-0012.

WAC 388-500-0100 "**Supplementary payment (SSP)**" means the state money payment to a person receiving benefits under Title XVI, or who would, but for the person's income, be eligible for such benefits, as assistance based on need in supplementation of SSI benefits. This payment includes: "~~Mandatory state supplement~~"—the state money payment to a person who, for December 1973, was a client receiving cash assistance under the department's former programs of old age assistance, aid to the blind and disability assistance; and "~~Optional state supplement~~"—the elective state money payment to a person eligible for SSI benefits or who, except for the level of the person's income, would be eligible for SSI benefits.

A final cost-benefit analysis is available by contacting Gail Kreiger, P.O. Box 45500, Olympia, WA 98504-5500, phone (360) 725-1949, fax (360) 725-9152, e-mail gail.kreiger@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 18, 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 18, Amended 1, Repealed 0.

Date Adopted: June 24, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-11-047, filed 5/15/08, effective 6/15/08)

WAC 388-500-0005 Medical definitions. ((Unless defined in this chapter or in other chapters of the *Washington Administrative Code*, use definitions found in the *Webster's New World Dictionary*. This section contains definitions of words and phrases the department uses in rules for medical programs. Definitions of words used for both medical and financial programs are defined under WAC 388-22-030.

"Assignment of rights" means the client gives the state the right to payment and support for medical care from a third party.

"Base period" means the time period used in the limited casualty program which corresponds with the months considered for eligibility.

"Beneficiary" means an eligible person who receives:

*A federal cash Title XVI benefit; and/or

*State supplement under Title XVI; or

*Benefits under Title XVIII of the Social Security Act.

"Benefit period" means the time period used in determining whether medicare can pay for covered Part A services. A benefit period begins the first day a beneficiary is furnished inpatient hospital or extended care services by a qualified provider. The benefit period ends when the beneficiary has not been an inpatient of a hospital or other facility primarily providing skilled nursing or rehabilitation services for sixty consecutive days. There is no limit to the number of benefit periods a beneficiary may receive. Benefit period also means a "spell of illness" for medicare payments.

"Cabulance" means a vehicle for hire designed and used to transport a physically restricted person.

"Carrier" means:

*An organization contracting with the federal government to process claims under Part B of medicare; or

*A health insurance plan contracting with the department.

"Categorical assistance unit (CAU)" means one or more family members whose eligibility for medical care is determined separately or together based on categorical relatedness.

"Categorically needy" means the status of a person who is eligible for medical care under Title XIX of the Social Security Act. See WAC 388-503-0310, chapter 388-517 WAC and WAC 388-523-2305.

"Children's health program" means a state-funded medical program for children under age eighteen:

*Whose family income does not exceed one hundred percent of the federal poverty level; and

*Who are not otherwise eligible under Title XIX of the Social Security Act.

"Coinsurance medicare" means the portion of reimbursable hospital and medical expenses, after subtraction of any deductible, which medicare does not pay. Under Part A, coinsurance is a per day dollar amount. Under Part B, coinsurance is twenty percent of reasonable charges.

"Community services office (CSO)" means an office of the department which administers social and health services at the community level.

"Couple" means, for the purposes of an SSI-related client, an SSI-related client living with a person of the opposite sex and both presenting themselves to the community as husband and wife. The department shall consider the income and resources of such couple as if the couple were married except when determining institutional eligibility.

"Deductible medicare" means an initial specified amount that is the responsibility of the client.

"Part A of medicare inpatient hospital deductible" means an initial amount of the medical care cost in each benefit period which medicare does not pay.

"Part B of medicare physician deductible" means an initial amount of medicare Part B covered expenses in each calendar year which medicare does not pay.

"Delayed certification" means department approval of a person's eligibility for medicaid made after the established application processing time limits.

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

"Early and periodic screening, diagnosis and treatment (EPSDT)" also known as the "healthy kids" program; means a program providing early and periodic screening, diagnosis and treatment to persons under twenty-one years of age who are eligible for medicaid or the children's health program.

"Electronic fund transfers (EFT)" means automatic bank deposits to a client's or provider's account.

"Emergency medical condition" means the sudden onset of a medical condition (including labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

*Placing the patient's health in serious jeopardy;

*Serious impairment to bodily functions; or

*Serious dysfunction of any bodily organ or part.

"Emergency medical expense requirement" means a specified amount of expenses for ambulance, emergency room or hospital services, including physician services in a hospital, incurred for an emergency medical condition that a client must incur prior to certification for the medically indigent program.

"Essential spouse" see **"spouse."**

"Extended care patient" means a recently hospitalized medicare patient needing relatively short-term skilled nursing and rehabilitative care in a skilled nursing facility.

"Garnishment" means withholding an amount from earned or unearned income to satisfy a debt or legal obligation.

"Grandfathered client" means:

*A noninstitutionalized person who meets all current requirements for medicaid eligibility except the criteria for blindness or disability; and

*Was eligible for medicaid in December 1973 as blind or disabled whether or not the person was receiving cash assistance in December 1973; and

*Continues to meet the criteria for blindness or disability and other conditions of eligibility used under the medicaid plan in December 1973; and

*An institutionalized person who was eligible for medicaid in December 1973 or any part of that month, as an inpatient of a medical institution or resident of an intermediate care facility that was participating in the medicaid program and for each consecutive month after December 1973 who:

*Continues to meet the requirements for medicaid eligibility that were in effect under the state's plan in December 1973 for institutionalized persons; and

*Remains institutionalized.

"Health maintenance organization (HMO)" means an entity licensed by the office of the insurance commissioner to provide comprehensive medical services directly to an eligible enrolled client in exchange for a premium paid by the department on a prepaid capitation risk basis.

"Healthy kids," see **"EPSDT."**

"Home health agency" means an agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence.

"Hospital" means an institution licensed as a hospital by the department of health.

"Income for an SSI-related client," means the receipt by an individual of any property or service which the client can apply either directly, by sale, or conversion to meet the client's basic needs for food, clothing, and shelter.

***"Earned income"** means gross wages for services rendered and/or net earnings from self-employment.

***"Unearned income"** means all other income.

"Institution" means an establishment which furnishes food, shelter, medically related services, and medical care to four or more persons unrelated to the proprietor. This includes medical facilities, nursing facilities, and institutions for the mentally retarded.

***"Institution public"** means an institution, including a correctional institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

***"Institution for mental diseases"** means an institution primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases including medical attention, nursing care, and related services.

***"Institution for the mentally retarded or a person with related conditions"** means an institution that:

*Is primarily for the diagnosis, treatment or rehabilitation of the mentally retarded or a person with related conditions; and

*Provides, in a protected residential setting, on-going care, twenty-four hour supervision, evaluation, and planning to help each person function at the greatest ability.

***"Institution for tuberculosis"** means an institution for the diagnosis, treatment, and care of a person with tuberculosis.

***"Medical institution"** means an institution:

*Organized to provide medical care, including nursing and convalescent care;

*With the necessary professional personnel, equipment and facilities to manage the health needs of the patient on a continuing basis in accordance with acceptable standards;

*Authorized under state law to provide medical care; and

*Staffed by professional personnel. Services include adequate physician and nursing care.

"Intermediary" means an organization having an agreement with the federal government to process medicare claims under Part A.

"Legal dependent" means a person for whom another person is required by law to provide support.

"Limited casualty program (LCP)" means a medical care program for medically needy, as defined under WAC 388-503-0320 and for medically indigent, as defined under WAC 388-503-0370.

"Medicaid" means the federal aid Title XIX program under which medical care is provided to persons eligible for:

*Categorically needy program as defined in WAC 388-503-0310; or

*Medically needy program as defined in WAC 388-503-0320.

"Medical assistance." See **"medicaid."**

"Medical assistance administration (MAA)" means the unit within the department of social and health services authorized to administer the Title XIX medicaid and the state-funded medical care programs.

"Medical assistance unit (MAU)" means one or more family members whose eligibility for medical care is determined separately or together based on financial responsibility.

"Medical care services" means the limited scope of care financed by state funds and provided to general assistance (GAU) and ADATSA clients.

"Medical consultant" means a physician employed by the department.

"Medical facility" see **"Institution."**

"Medically indigent (MI)" means a state-funded medical program for a person who has an emergency medical condition requiring hospital-based services.

"Medically necessary" is a term for describing requested service which is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent worsening of conditions in the client that endanger life, or cause suffering or pain, or result in an illness or infirmity, or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction. There is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the client requesting the service. For the purpose of this section, "course of treatment" may include mere observation or, where appropriate, no treatment at all.

"Medically needy (MN)" is the status of a person who is eligible for a federally matched medical program under Title XIX of the Social Security Act, who, but for income above the categorically needy level, would be eligible as categorically needy. Effective January 1, 1996, an AFDC-related adult is not eligible for MN.

"Medicare" means the federal government health insurance program for certain aged or disabled clients under Titles

II and XVIII of the Social Security Act. Medicare has two parts:

***"Part A"** covers the medicare inpatient hospital, post-hospital skilled nursing facility care, home health services, and hospice care.

***"Part B"** is the supplementary medical insurance benefit (SMIB) covering the medicare doctor's services, outpatient hospital care, outpatient physical therapy and speech pathology services, home health care, and other health services and supplies not covered under Part A of medicare.

"Medicare assignment" means the method by which the provider receives payment for services under Part B of medicare.

"Month of application" means the calendar month a person files the application for medical care. When the application is for the medically needy program, at the person's request and if the application is filed in the last ten days of that month, the month of application may be the following month.

"Nursing facility" means any institution or facility the department [of health] licenses as a nursing facility, or a nursing facility unit of a licensed hospital, that the:

*Department certifies; and

*Facility and the department agree the facility may provide skilled nursing facility care.

"Outpatient" means a nonhospitalized patient receiving care in a hospital outpatient or hospital emergency department, or away from a hospital such as in a physician's office, the patient's own home, or a nursing facility.

"Patient transportation" means client transportation to and from covered medical services under the federal medicaid and state medical care programs.

"Physician" means a doctor of medicine, osteopathy, or podiatry who is legally authorized to perform the functions of the profession by the state in which the services are performed.

"Professional activity study (PAS)" means a compilation of inpatient hospital data, conducted by the commission of professional and hospital activities, to determine the average length of hospital stay for patients.

"Professional review organization for Washington (PRO-W)" means the state level organization responsible for determining whether health care activities:

*Are medically necessary;

*Meet professionally acceptable standards of health care; and

*Are appropriately provided in an outpatient or institutional setting for beneficiaries of medicare and clients of medicaid and maternal and child health.

"Prosthetic devices" means replacement, corrective, or supportive devices prescribed by a physician or other licensed practitioner of the healing arts within the scope of his or her practice as defined by state law to:

*Artificially replace a missing portion of the body;

*Prevent or correct physical deformity or malfunction;

or

*Support a weak or deformed portion of the body.

"Provider" or **"provider of service"** means an institution, agency, or person:

*Who has a signed agreement with the department to furnish medical care, goods, and/or services to clients; and

*Is eligible to receive payment from the department.

"Resources for an SSI-related client," means cash or other liquid assets or any real or personal property that an individual or spouse, if any, owns and could convert to cash to be used for support or maintenance.

*If an individual can reduce a liquid asset to cash, it is a resource.

*If an individual cannot reduce an asset to cash, it is not considered an available resource.

*Liquid means properties that are in cash or are financial instruments which are convertible to cash such as, but not limited to, cash, savings, checking accounts, stocks, mutual fund shares, mortgage, or a promissory note.

*Nonliquid means all other property both real and personal evaluated at the price the item can reasonably be expected to sell for on the open market.

"Retroactive period" means the three calendar months before the month of application.

"Spell of illness" see **"benefit period."**

"Spendedown" means the process by which a person uses incurred medical expenses to offset income and/or resources to meet the financial standards established by the department.

"Spouse" means:

***"Community spouse"** means a person living in the community and married to an institutionalized person or to a person receiving services from a home and community-based waiver program as described under chapter 388-515 WAC.

***"Eligible spouse"** means an aged, blind or disabled husband or wife of an SSI eligible person, with whom such a person lives.

***"Essential spouse"** means, a husband or wife whose needs were taken into account in determining old age assistance (OAA), aid to the blind (AB), or disability assistance (DA) client for December 1973, who continues to live in the home and to be the spouse of such client.

***"Ineligible spouse"** means the husband or wife of an SSI eligible person, who lives with the SSI eligible person and who has not applied or is not eligible to receive SSI.

***"Institutionalized spouse"** means a married person in an institution or receiving services from a home or community-based waiver program.

***"Nonapplying spouse"** means an SSI eligible person's husband or wife, who has not applied for assistance.

"SSI-related" means an aged, blind or disabled person not receiving an SSI cash grant.

"Supplemental security income (SSI) program, Title XVI" means the federal grant program for aged, blind, and disabled established by section 301 of the Social Security amendments of 1972, and subsequent amendments, and administered by the Social Security Administration (SSA).

"Supplementary payment (SSP)" means the state money payment to persons receiving benefits under Title XVI, or who would, but for the person's income, be eligible for such benefits, as assistance based on need in supplementation of SSI benefits. This payment includes:

***"Mandatory state supplement"** means the state money payment to a person who, for December 1973, was a

client receiving cash assistance under the department's former programs of old age assistance, aid to the blind and disability assistance; and

"Optional state supplement" means the elective state money payment to a person eligible for SSI benefits or who, except for the level of the person's income, would be eligible for SSI benefits.

"Third party" means any entity that is or may be liable to pay all or part of the medical cost of care of a medical program client.

"Title XIX" is the portion of the federal Social Security Act that authorizes grants to states for medical assistance programs. Title XIX is also called medicaid.

"Transfer" means any act or omission to act when title to or any interest in property is assigned, set over, or otherwise vested or allowed to vest in another person; including delivery of personal property, bills of sale, deeds, mortgages, pledges, or any other instrument conveying or relinquishing an interest in property. Transfer of title to a resourcee occurs by:

*An intentional act or transfer; or

*Failure to act to preserve title to the resourcee.

"Value fair market for an SSI-related person" means the current value of a resourcee at the price for which the resourcee can reasonably be expected to sell on the open market.

"Value of compensation received" means, for SSI-related medical eligibility, the gross amount paid or agreed to be paid by the purchaser of a resourcee.

"Value uncompensated" means, for SSI-related medical eligibility, the fair market value of a resourcee, minus the amount of compensation received in exchange for the resourcee)) Chapter 388-500 WAC contains definitions of words and phrases used in rules for medical assistance programs. When a term is not defined in this chapter, other agency or agency's designee WAC, or state or federal law, the medical definitions found in the Taber's Cyclopedic Medical Dictionary will apply. For general terms not defined in this chapter, other agency or agency's designee WAC, or state or federal law, the definitions in Webster's New World Dictionary apply. If a definition in this chapter conflicts with a definition in another chapter of Title 388 WAC, the definition in the specific WAC prevails.

NEW SECTION

WAC 388-500-0010 Medical assistance definition - A. "Agency" means the Washington state health care authority, created pursuant to chapter 41.05 RCW.

"Allowable costs" are the documented costs as reported after any cost adjustment, cost disallowances, reclassifications, or reclassifications to nonallowable costs which are necessary, ordinary and related to the outpatient care of medical care clients are not expressly declared nonallowable by applicable statutes or regulations. Costs are ordinary if they are of the nature and magnitude which prudent and cost-conscious management would pay.

"Ancillary services" means additional services ordered by the provider to support the core treatment provided to the patient. These services may include, but are not limited to,

laboratory services, radiology services, drugs, physical therapy, occupational therapy, and speech therapy.

"Apple health for kids" is the umbrella term for health-care coverage for certain groups of children that is funded by the state and federal governments under Title XIX medicaid programs or Title XXI Children's Health Insurance Program, or solely through state funds (including the program formerly known as the children's health program). Funding for any given child depends on the program for which the child is determined to be eligible. Children who may be eligible for medical assistance but who are not included under the apple health for kids umbrella are described in WAC 388-505-0210.

"Authorization" means the agency's or the agency's designee's determination that criteria are met, as one of the preconditions to the agency's or the agency's designee's decision to provide payment for a specific service or device. (See also "expedited prior authorization" and "prior authorization.")

NEW SECTION

WAC 388-500-0015 Medical assistance definitions - B. "Benefit package" means the set of healthcare service categories included in a client's eligibility program. See the table in WAC 388-501-0060.

"Benefit period" means the time period used in determining whether medicare can pay for covered Part A services. A benefit period begins the first day a beneficiary is furnished inpatient hospital or extended care services by a qualified provider. The benefit period ends when the beneficiary has not been an inpatient of a hospital or other facility primarily providing skilled nursing or rehabilitation services for sixty consecutive days. There is no limit to the number of benefit periods a beneficiary may receive. Benefit period also means a "spell of illness" for medicare payments.

"Blind" is a category of medical program eligibility that requires a central visual acuity of 20/200 or less in the better eye with the use of a correcting lens, or a field of vision limitation so the widest diameter of the visual field subtends an angle no greater than twenty degrees from central.

"By report (BR)" means a method of payment in which the agency or the agency's designee determines the amount it will pay for a service when the rate for that service is not included in the agency's or the agency's designee(s) published fee schedules. The provider must submit a "report" which describes the nature, extent, time, effort and/or equipment necessary to deliver the service.

NEW SECTION

WAC 388-500-0020 Medical assistance definitions - C. "Carrier" means an organization that contracts with the federal government to process claims under medicare Part B.

"Categorically needy (CN) or categorically needy program (CNP)" is the state and federally-funded health-care program established under Title XIX of the Social Security Act for persons within medicaid-eligible categories, whose income and/or resources are at or below set standards.

"Categorically needy (CN) scope of care" is the range of healthcare services included within the scope of service

categories described in WAC 388-501-0060 available to individuals eligible to receive benefits under a CN program. Some state-funded healthcare programs provide CN scope of care.

"Centers for Medicare and Medicaid Services (CMS)" means the agency within the federal department of health and human services (DHHS) with oversight responsibility for the medicare and medicaid programs.

"Children's health program or children's healthcare programs" See "Apple health for kids."

"Community spouse" See "spouse" in WAC 388-500-0100.

"Couple" See "spouse" in WAC 388-500-0100.

"Covered service" is a healthcare service contained within a "service category" that is included in a medical assistance benefits package described in WAC 388-501-0060. For conditions of payment, see WAC 388-501-0050(5). A noncovered service is a specific healthcare service (for example, cosmetic surgery), contained within a service category that is included in a medical assistance benefits package, for which the agency or the agency's designee requires an approved exception to rule (ETR) (see WAC 388-501-0160). A noncovered service is not an excluded service (see WAC 388-501-0060).

NEW SECTION

WAC 388-500-0025 Medical assistance definitions - D. "Delayed certification" means agency or the agency's designee approval of a person's eligibility for medical assistance made after the established application processing time limits.

"Dental consultant" means a dentist employed or contracted by the agency or the agency's designee.

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

"Disabled" means unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that:

- (1) Can be expected to result in death;
- (2) Has lasted or can be expected to last for a continuous period of not less than twelve months; or
- (3) In the case of a child age seventeen or younger, means any physical or mental impairment of comparable severity.

Decisions on SSI-related disability are subject to the authority of federal statutes and rules codified at 42 USC Sec 1382c and 20 CFR, parts 404 and 416, as amended, and controlling federal court decisions, which define the old-age, survivors, and disability insurance (OASDI) and SSI disability standard and determination process. See WAC 388-500-0015 for definition of "blind."

"Domestic partner" means an adult who meets the requirements for a valid state registered domestic partnership as established by RCW 26.60.030 and who has been issued a certificate of state registered domestic partnership from the Washington Secretary of State.

"Dual eligible client" means a client who has been found eligible as a categorically needy (CN) or medically needy (MN) medicaid client and is also a medicare benefi-

ciary. This does not include a client who is only eligible for a medicare savings program as described in chapter 388-517 WAC.

NEW SECTION

WAC 388-500-0030 Medical assistance definitions - E. "Early and periodic screening, diagnosis and treatment (EPSDT)" is a comprehensive child health program that entitles infants, children, and youth to preventive care and treatment services. EPSDT is available to persons twenty years of age and younger who are eligible for any agency healthcare program. Access and services for EPSDT are governed by federal rules at 42 CFR, Part 441, Subpart B. See also chapter 388-534 WAC.

"Emergency medical condition" means the sudden onset of a medical condition (including labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

- (1) Placing the patient's health in serious jeopardy;
- (2) Serious impairment to bodily functions; or
- (3) Serious dysfunction of any bodily organ or part.

"Emergency medical expense requirement (EMER)" see WAC 388-865-0217(3).

"Evidence-based medicine (EBM)" means the application of a set of principles and a method for the review of well-designed studies and objective clinical data to determine the level of evidence that proves to the greatest extent possible, that a healthcare service is safe, effective, and beneficial when making:

- (1) Population-based healthcare coverage policies (WAC 388-501-0055 describes how the agency or the agency's designee determines coverage of services for its healthcare programs by using evidence and criteria based on health technology assessments); and
- (2) Individual medical necessity decisions (WAC 388-501-0165 describes how the agency or the agency's designee uses the best evidence available to determine if a service is medically necessary as defined in WAC 388-500-0030).

"Exception to rule" See WAC 388-501-0160.

"Expedited prior authorization (EPA)" means the process for obtaining authorization for selected healthcare services in which providers use a set of numeric codes to indicate to the agency or the agency's designee which acceptable indications, conditions, or agency or agency's designee-defined criteria are applicable to a particular request for authorization. EPA is a form of "prior authorization."

"Extended care services" means nursing and rehabilitative care in a skilled nursing facility provided to a recently hospitalized medicare patient.

NEW SECTION

WAC 388-500-0035 Medical assistance definitions - F. "Fee-for-service (FSS)" - The general payment method the agency or agency's designee uses to pay for covered medical services provided to clients, except those services covered under the agency's prepaid managed care programs.

"Fiscal intermediary" means an organization having an agreement with the federal government to process medicare claims under Part A.

NEW SECTION

WAC 388-500-0040 Medical assistance definitions -

G. "Grandfathered client" means a noninstitutionalized person who meets all current requirements for medicaid eligibility except the criteria for blindness or disability; and:

(1) Was eligible for medicaid in December 1973 as blind or disabled whether or not the person was receiving cash assistance in December 1973;

(2) Continues to meet the criteria for blindness or disability and other conditions of eligibility used under the medicaid plan in December 1973; or

(3) Was an institutionalized person who:

(a) Was eligible for medicaid in December 1973, or any part of that month, as an inpatient of a medical institution or a resident of a facility that is known as an intermediate care facility that was participating in the medicaid program and for each consecutive month after December 1973; and

(b) Continues to meet the requirements for medicaid eligibility that were in effect under the state's plan in December 1973 for institutionalized persons and remains institutionalized.

NEW SECTION

WAC 388-500-0045 Medical assistance definitions -

H. "Health maintenance organization (HMO)" means an entity licensed by the office of the insurance commissioner to provide comprehensive medical services directly to an eligible enrolled client in exchange for a premium paid by the agency on a prepaid capitation risk basis.

"Healthcare professional" means a provider of healthcare services licensed or certified by the state in which they practice.

"Healthcare service category" means a grouping of healthcare services listed in the table in WAC 388-501-0060. A healthcare service category is included or excluded depending on the client's medical assistance benefits package.

"Home health agency" means an agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence.

"Hospital" means an entity that is licensed as an acute care hospital in accordance with applicable state laws and rules, or the applicable state laws and rules of the state in which the entity is located when the entity is out-of-state, and is certified under Title XVIII of the federal Social Security Act. The term "hospital" includes a medicare or state-certified distinct rehabilitation unit or a psychiatric hospital.

NEW SECTION

WAC 388-500-0050 Medical assistance definitions -

I. "Ineligible spouse" See "spouse" in WAC 388-500-0100.

"Institution" means an entity that furnishes (in single or multiple facilities) food, shelter, and some treatment or ser-

vices to four or more persons unrelated to the proprietor. Eligibility for medical assistance program may vary depending upon the type of institution in which an individual resides. For the purposes of medical assistance programs, "institution" includes all of the following:

(1) **"Institution for mental diseases (IMD)"** — a hospital, nursing facility, or other institution of more than sixteen beds that is primarily engaged in providing diagnosis, treatment or care of persons with mental diseases, including medical attention, nursing care and related services. An IMD may include inpatient chemical dependency facilities of more than sixteen beds which provide residential treatment for alcohol and substance abuse.

(2) **"Intermediate care facility for the mentally retarded (ICF/MR)"** — an institution or distinct part of an institution that is:

(a) Defined in 42 CFR 440.150;

(b) Certified to provide ICF/MR services under 42 CFR 483, Subpart I; and

(c) Primarily for the diagnosis, treatment, or rehabilitation for persons with mental retardation or a related condition (see WAC 388-823-0700 for information about what qualifies as a "related condition").

(3) **"Medical institution"** — an entity that is organized to provide medical care, including nursing and convalescent care. The terms "medical facility" and "medical institution" are sometimes used interchangeably throughout title 388 WAC.

(a) To meet the definition of medical institution, the entity must:

(i) Be licensed as a medical institution under state law;

(ii) Provide medical care, with the necessary professional personnel, equipment, and facilities to manage the health needs of the patient on a continuing basis in accordance with acceptable standards; and

(iii) Include adequate physician and nursing care.

(b) Medical institutions include all of the following:

(i) "Hospice care center" — an entity licensed by the department of health (DOH) to provide hospice services. Hospice care centers must be medicare-certified, and approved by the agency or the agency's designee to be considered a medical institution.

(ii) "Hospital" — defined in WAC 388-500-0045.

(iii) "Nursing facility (NF)" — an entity certified to provide skilled nursing care and long-term care services to medicaid recipients under Section 1919(a) of the Social Security Act. Nursing facilities that may become certified include nursing homes licensed under chapter 18.51 RCW, and nursing facility units within hospitals licensed by the department of health (DOH) under chapter 70.41 RCW. This includes the nursing facility section of a state veteran's facility.

(iv) "Psychiatric hospital" — an institution, or a psychiatric unit located in a hospital, licensed as a hospital in accordance with applicable Washington state laws and rules, that is primarily engaged to provide psychiatric services for the diagnosis and treatment of mentally ill persons under the supervision of a physician.

(v) "Psychiatric residential treatment facility (PRTF)" — a nonhospital residential treatment center licensed by department of health, and certified by the agency or the agency's

designee to provide psychiatric inpatient services to medic-aid-eligible individuals twenty-one years of age and younger. A PRTF must be accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or any other accrediting organization with comparable standards recognized by Washington state. A PRTF must meet the requirements in 42 CFR 483, Subpart G, regarding the use of restraint and seclusion.

(vi) "Residential habilitation center (RHC)" — a residence operated by the state under chapter 71A.20 RCW that serves individuals who have exceptional care and treatment needs due to their developmental disabilities by providing residential care designed to develop individual capacities to their optimum. RHCs provide residential care and may be certified to provide ICF/MR services and/or nursing facility services.

(c) Medical institutions do not include entities licensed by the agency or the agency's designee as adult family homes (AFHs) and boarding homes. AFHs and boarding homes include assisted living facilities, adult residential centers, enhanced adult residential centers, and developmental disability group homes.

(4) "**Public institution**" means an entity that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

(a) Public institutions include all of the following:

(i) Correctional facility — an entity such as a state penitentiary or county jail, (includes placement in a work release program or outside of the institution, including home detention).

(ii) Eastern and Western State mental hospitals. (Medicaid coverage for these institutions is limited to individuals age twenty-one and younger, and individuals age sixty-five and older.)

(iii) Certain facilities administered by Washington state's department of veteran's affairs (see (b) of this subsection for facilities that are not considered public institutions).

(b) Public institutions do not include intermediate care facilities, entities that meet the definition of medical institution (such as Harborview Medical Center and University of Washington Medical Center), or facilities in Retsil, Orting, and Spokane that are administered by the department of veteran's affairs and licensed as nursing facilities.

"**Institution for mental diseases (IMD)**" See "institution" in this section.

"**Institutionalized spouse**" See "spouse" in WAC 388-500-0100.

"**Intermediate care facility for the mentally retarded (ICF/MR)**" See "institution" in this section.

NEW SECTION

WAC 388-500-0065 Medical assistance definitions - L. "Limitation extension" See WAC 388-501-0169.

"**Limited casualty program (LCP)**" means the medically needy (MN) program.

NEW SECTION

WAC 388-500-0070 Medical assistance definitions - M. "Medicaid" is the federal aid Title XIX program of the

Social Security Act under which medical care is provided to eligible persons.

"**Medical assistance**" for the purposes of chapters 388-500 through 388-561 WAC, means the various healthcare programs administered by the agency or the agency's designee that provide federally funded and/or state-funded healthcare benefits to eligible clients.

"**Medical assistance administration (MAA)**" is the former organization within the department of social and health services authorized to administer the federally funded and/or state-funded healthcare programs that are now administered by the agency, formerly the medicaid purchasing administration (MPA), of the health and recovery services administration (HRSA).

"**Medical care services (MCS)**" means the limited scope of care financed by state funds and provided to disability lifeline and alcohol and drug addiction services clients.

"**Medical consultant**" means a physician employed or contracted by the agency or the agency's designee.

"**Medical facility**" means a medical institution or clinic that provides healthcare services.

"**Medical institution**" See "institution" in WAC 388-500-0050.

"**Medically necessary**" is a term for describing requested service which is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent worsening of conditions in the client that endanger life, or cause suffering or pain, or result in an illness or infirmity, or threaten to cause or aggravate a handicap, or cause physical deformity or mal-function. There is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the client requesting the service. For the purposes of this section, "course of treatment" may include mere observation or, where appropriate, no medical treatment at all.

"**Medically needy (MN) or medically needy program (MNP)**" is the state- and federally-funded healthcare program available to specific groups of persons who would be eligible as categorically needy (CN), except their monthly income is above the CN standard. Some long-term care clients with income and/or resources above the CN standard may also qualify for MN.

"**Medicare**" is the federal government health insurance program for certain aged or disabled persons under Titles II and XVIII of the Social Security Act. Medicare has four parts:

(1) "**Part A**" - covers medicare inpatient hospital services, post-hospital skilled nursing facility care, home health services, and hospice care.

(2) "**Part B**" - the supplementary medical insurance benefit (SMIB) that covers medicare doctors' services, outpatient hospital care, outpatient physical therapy and speech pathology services, home health care, and other health services and supplies not covered under Part A of medicare.

(3) "**Part C**" - covers medicare benefits for clients enrolled in a medicare advantage plan.

(4) "**Part D**" - the medicare prescription drug insurance benefit.

"Medicare assignment" means the process by which a provider agrees to provide services to a medicare beneficiary and accept medicare's payment for the services.

"Medicare cost-sharing" means out-of-pocket medical expenses related to services provided by medicare. For medical assistance clients who are enrolled in medicare, cost-sharing may include Part A and Part B premiums, co-insurance, deductibles, and co-payments for medicare services. See chapter 388-517 WAC for more information.

NEW SECTION

WAC 388-500-0075 Medical assistance definitions - N. "National correct coding initiative (NCCI)" is a national standard for the accurate and consistent description of medical goods and services using procedural codes. The standard is based on coding conventions defined in the American Medical Association's Current Procedural Terminology (CPT®) manual, current standards of medical and surgical coding practice, input from specialty societies, and analysis of current coding practices. The centers for medicare and medicaid services (CMS) maintain NCCI policy. Information can be found at: <http://www.cms.hhs.gov/NationalCorrectCodInitEd/>.

"National provider indicator (NPI)" is a federal system for uniquely identifying all providers of healthcare services, supplies, and equipment.

"NCCI edit" is a software step used to determine if a claim is billing for a service that is not in accordance with federal and state statutes, federal and state regulations, agency or the agency's designee's fee schedules, billing instructions, and other publications. The agency or the agency's designee has the final decision whether the NCCI edits allow automated payment for services that were not billed in accordance with governing law, NCCI standards or agency or agency's designee policy.

"Nonapplying spouse" See "spouse" in WAC 388-500-0100.

"Noncovered service" See "covered service" in WAC 388-500-0020.

"Nursing facility" See "institution" in WAC 388-500-0050.

NEW SECTION

WAC 388-500-0080 Medical assistance definitions - O. "Outpatient" means a patient receiving care in a hospital outpatient setting or a hospital emergency department, or away from a hospital such as in a physician's office or clinic, the patient's own home, or a nursing facility.

"Overhead costs" means those costs that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Overhead costs that are allocated must be clearly distinguished from other functions and identified as a benefit to a direct service.

NEW SECTION

WAC 388-500-0085 Medical assistance definitions - P. "Patient transportation" means client transportation to

and/or from covered healthcare services under federal and state healthcare programs.

"Physician" means a doctor of medicine, osteopathy, or podiatry who is legally authorized to perform the functions of the profession by the state in which the services are performed.

"Prior authorization" is the requirement that a provider must request, on behalf of a client and when required by rule, the agency's or the agency's designee's approval to render a healthcare service or write a prescription in advance of the client receiving the healthcare service or prescribed drug, device, or drug-related supply. The agency's or the agency's designee's approval is based on medical necessity. Receipt of prior authorization does not guarantee payment. Expedited prior authorization and limitation extension are types of prior authorization.

"Prosthetic devices" means replacement, corrective, or supportive devices prescribed by a physician or other licensed practitioner of the healing arts within the scope of his or her practice as defined by state law to:

- Artificially replace a missing portion of the body;
- Prevent or correct physical deformity or malfunction; or
- Support a weak or deformed portion of the body.

"Provider" means an institution, agency, or person that is licensed, certified, accredited, or registered according to Washington state laws and rules, and:

(1) Has signed a core provider agreement or signed a contract with the agency or the agency's designee, and is authorized to provide healthcare, goods, and/or services to medical assistance clients; or

(2) Has authorization from a managed care organization (MCO) that contracts with the agency or the agency's designee to provide healthcare, goods, and/or services to eligible medical assistance clients enrolled in the MCO plan.

"Public institution" See "institution" in WAC 388-500-0050.

NEW SECTION

WAC 388-500-0095 Medical assistance definitions - R. "Regional support network (RSN)" means a single or multiple-county authority or other entity operating as a pre-paid health plan through which the agency or the agency's designee contracts for the delivery of community outpatient and inpatient mental health services system in a defined geographic area.

"Retroactive period" means approval of medical coverage for any or all of the retroactive period. A client may be eligible only in the retroactive period or may have both current eligibility and a separate retroactive period of eligibility approved.

NEW SECTION

WAC 388-500-0100 Medical assistance definitions - S. "Spendedown" is a term used in the medically needy (MN) program and means the process by which a person uses incurred medical expenses to offset income and/or resources

to meet the financial standards established by the agency. See WAC 388-519-0110.

"Spouse" means, for the purposes of medicaid, a person who is a husband or wife legally married to a person of the opposite sex. Washington state recognizes other states' determinations of legal and common-law marriages between two persons of the opposite gender.

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

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

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

(2) **"Eligible spouse"** means an aged, blind or disabled husband or wife of an SSI-eligible person, who lives with the SSI-eligible person, and is also eligible for SSI.

(3) **"Essential spouse"** means a husband or wife whose needs were taken into account in determining old age assistance (OAA), aid to the blind (AB), or disability assistance (DA) for a client in December 1973, who continues to live in the home and remains married to the client.

(4) **"Ineligible spouse"** means the husband or wife of an SSI-eligible person, who lives with the SSI-eligible person, and who has not applied or is not eligible to receive SSI.

(5) **"Institutionalized spouse"** means a legally married person who has attained institutional status as described in chapter 388-513 WAC, and receives services in a medical institution or from a home or community-based waiver program described in chapter 388-515 WAC. A person is considered married if not divorced, even when physically or legally separated from his or her spouse.

(6) **"Nonapplying spouse"** means an SSI-related person's husband or wife, who has not applied for medical assistance.

"SSI-related" means an aged, blind or disabled person not receiving an SSI cash grant.

"State supplemental payment (SSP)" is a state-funded cash benefit for certain individuals who are either recipients of the Title XVI supplemental security income (SSI) program or who are clients of the division of developmental disabilities. The SSP allotment for Washington state is a fixed amount of twenty-eight million nine hundred thousand dollars and must be shared between all individuals who fall into one of the groups listed below. The amount of the SSP may vary each year depending on the number of individuals who qualify. The following groups are eligible for an SSP:

(1) **Mandatory SSP group**—SSP made to a mandatory income level client (MIL) who was grandfathered into the SSI program. To be eligible in this group, an individual must have been receiving cash assistance in December 1973 under the department of social and health services former old age assistance program or aid to the blind and disability assistance. Individuals in this group receive an SSP to bring their income to the level they received prior to the implementation of the SSI program in 1973.

(2) **Optional SSP group**—SSP made to any of the following:

(a) An individual who receives SSI and has an ineligible spouse.

(b) An individual who receives SSI based on meeting the age criteria of sixty-five or older.

(c) An individual who receives SSI based on blindness.

(d) An individual who has been determined eligible for SSP by the division of developmental disabilities.

(e) An individual who is eligible for SSI as a foster child as described in WAC 388-474-0012.

"Supplemental security income (SSI) program (Title XVI)" is the federal grant program for aged, blind, and disabled persons, established by section 301 of the Social Security amendments of 1972, and subsequent amendments, and administered by the Social Security Administration (SSA).

NEW SECTION

WAC 388-500-0105 Medical assistance definitions - T. "Third party" means an entity other than the agency or the agency's designee that is or may be liable to pay all or part of the cost of healthcare for a medical assistance client.

"Third party liability (TPL)" means the legal responsibility of an identified third party or parties to pay all or part of the cost of healthcare for a medical assistance client. A medical assistance client's obligation to help establish TPL is described in WAC 388-505-0540.

"Title XIX" is the portion of the federal Social Security Act, 42 USC 1396, that authorizes funding to states for medical assistance programs. Title XIX is also called medicaid.

"Title XXI" is the portion of the federal Social Security Act, 42 USC 1397 et seq, that authorizes funding to states for the children's health insurance program. Title XXI is also called CHIP.

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

(1) An intentional act that changes ownership or title; or

(2) A failure to act that results in a change of ownership or title.

NEW SECTION

WAC 388-500-0110 Medical assistance definitions - U. "Urgent care" means an unplanned appointment for a covered medical service with verification from an attending physician or facility that the client must be seen that day or the following day.

"Usual and customary charge" means the amount a provider typically charges to fifty percent or more of patients who are not medical assistance clients.

WSR 11-14-055

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Medicaid Purchasing Administration)

[Filed June 29, 2011, 12:24 p.m., effective July 30, 2011]

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

Purpose: As a result of the governor's order to reduce budget expenditures for the current fiscal year ending June

30, 2011, by 6.3 percent in the hearing, vision, and dental programs, amendments to the physician-related services rules were also required. To achieve the ordered expenditure reduction, medicaid purchasing administration eliminated optional medical services from program benefit packages for clients twenty-one years of age and older. Chapter 388-531 WAC is being amended to include medical services previously listed in the programs to be eliminated that are necessary to, and included within, appropriate mandatory medical services under federal statutes and rules.

Citation of Existing Rules Affected by this Order: Amending WAC 388-531-0100, 388-531-0150, 388-531-0200, 388-531-0250, 388-531-0400, 388-531-1000, and 388-531-1300.

Statutory Authority for Adoption: RCW 74.08.090.

Adopted under notice filed as WSR 11-10-071 on May 3, 2011.

A final cost-benefit analysis is available by contacting Ellen Silverman, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1570, fax (360) 586-9727, e-mail Ellen.Silverman@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 7, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 7, Repealed 0.

Date Adopted: June 28, 2011.

Susan N. Dreyfus
Secretary

AMENDATORY SECTION (Amending WSR 08-12-030, filed 5/29/08, effective 7/1/08)

WAC 388-531-0100 Scope of coverage for physician-related and healthcare professional services—General and administrative. (1) The department covers healthcare services, equipment, and supplies listed in this chapter, according to department rules and subject to the limitations and requirements in this chapter, when they are:

(a) Within the scope of an eligible client's medical assistance program. Refer to WAC 388-501-0060 and 388-501-0065; and

(b) Medically necessary as defined in WAC 388-500-0005.

(2) The department evaluates a request for a service that is in a covered category under the provisions of WAC 388-501-0165.

(3) The department evaluates requests for covered services that are subject to limitations or other restrictions and

approves such services beyond those limitations or restrictions as described in WAC 388-501-0169.

(4) The department covers the following physician-related services and healthcare professional services, subject to the conditions in subsections (1), (2), and (3) of this section:

- (a) Allergen immunotherapy services;
 - (b) Anesthesia services;
 - (c) Dialysis and end stage renal disease services (refer to chapter 388-540 WAC);
 - (d) Emergency physician services;
 - (e) ENT (ear, nose, and throat) related services;
 - (f) Early and periodic screening, diagnosis, and treatment (EPSDT) services (refer to WAC 388-534-0100);
 - (g) (~~Family planning~~) Reproductive health services (refer to chapter 388-532 WAC);
 - (h) Hospital inpatient services (refer to chapter 388-550 WAC);
 - (i) Maternity care, delivery, and newborn care services (refer to chapter 388-533 WAC);
 - (j) Office visits;
 - (k) Vision-related services~~(s)~~ (refer to chapter 388-544 WAC for vision hardware for clients twenty years of age and younger);
 - (l) Osteopathic treatment services;
 - (m) Pathology and laboratory services;
 - (n) Psychiatry and other rehabilitation services (refer to chapter 388-550 WAC);
 - (o) Foot care and podiatry services (refer to WAC 388-531-1300);
 - (p) Primary care services;
 - (q) Psychiatric services, provided by a psychiatrist;
 - (r) Psychotherapy services for children as provided in WAC 388-531-1400;
 - (s) Pulmonary and respiratory services;
 - (t) Radiology services;
 - (u) Surgical services;
 - (v) Cosmetic, reconstructive, or plastic surgery, and related services and supplies to correct physiological defects from birth, illness, or physical trauma, or for mastectomy reconstruction for post cancer treatment; (~~and~~)
 - (w) Oral healthcare services for emergency conditions for clients twenty-one years of age and older, except for clients of the division of developmental disabilities (refer to WAC 388-531-1025); and
 - (x) Other outpatient physician services.
- (5) The department covers physical examinations for medical assistance clients only when the physical examination is one or more of the following:
- (a) A screening exam covered by the EPSDT program (see WAC 388-534-0100);
 - (b) An annual exam for clients of the division of developmental disabilities; or
 - (c) A screening pap smear, mammogram, or prostate exam.
- (6) By providing covered services to a client eligible for a medical assistance program, a provider who has signed an agreement with the department accepts the department's rules and fees as outlined in the agreement, which includes federal

and state law and regulations, billing instructions, and department issuances.

AMENDATORY SECTION (Amending WSR 10-19-057, filed 9/14/10, effective 10/15/10)

WAC 388-531-0150 Noncovered physician-related and healthcare professional services—General and administrative. (1) Except as provided in WAC 388-531-0100 and subsection (2) of this section, the department does not cover the following:

- (a) Acupuncture, massage, or massage therapy;
- (b) Any service specifically excluded by statute;
- (c) Care, testing, or treatment of infertility, frigidity, or impotency. This includes procedures for donor ovum, sperm, womb, and reversal of vasectomy or tubal ligation;
- (d) Cosmetic treatment or surgery, except for medically necessary reconstructive surgery to correct defects attributable to trauma, birth defect, or illness;
- (e) Experimental or investigational services, procedures, treatments, devices, drugs, or application of associated services, except when the individual factors of an individual client's condition justify a determination of medical necessity under WAC 388-501-0165;
- (f) Hair transplantation;
- (g) Marital counseling or sex therapy;
- (h) More costly services when the department determines that less costly, equally effective services are available;

(i) Vision-related services (~~(listed)~~) as (~~(none covered in chapter 388-544 WAC)~~) follows:

- (i) Services for cosmetic purposes only;
- (ii) Group vision screening for eyeglasses; and
- (iii) Refractive surgery of any type that changes the eye's refractive error. The intent of the refractive surgery procedure is to reduce or eliminate the need for eyeglass or contact lens correction. This refractive surgery does not include intraocular lens implantation following cataract surgery.

(j) Payment for body parts, including organs, tissues, bones and blood, except as allowed in WAC 388-531-1750;

(k) Physician-supplied medication, except those drugs administered by the physician in the physician's office;

(l) Physical examinations or routine checkups, except as provided in WAC 388-531-0100;

(m) (~~Routine foot care. This does not include clients who have a medical condition that affects the feet, such as diabetes or arteriosclerosis obliterans. Routine foot care includes, but is not limited to:~~

- (i) ~~Treatment of mycotic disease;~~
- (ii) ~~Removal of warts, corns, or calluses;~~
- (iii) ~~Trimming of nails and other hygiene care; or~~
- (iv) ~~Treatment of flat feet)) Foot care, unless the client meets criteria and conditions outlined in WAC 388-531-1300, as follows:~~

(i) Routine foot care, such as but not limited to:

- (A) Treatment of tinea pedis;
- (B) Cutting or removing warts, corns and calluses; and
- (C) Trimming, cutting, clipping, or debriding of nails.

(ii) Nonroutine foot care, such as, but not limited to treatment of:

(A) Flat feet;

(B) High arches (cavus foot);

(C) Onychomycosis;

(D) Bunions and tailor's bunion (hallux valgus);

(E) Hallux malleus;

(F) Equinus deformity of foot, acquired;

(G) Cavovarus deformity, acquired;

(H) Adult acquired flatfoot (metatarsus adductus or pes planus);

(I) Hallux limitus.

(iii) Any other service performed in the absence of localized illness, injury, or symptoms involving the foot;

(n) Except as provided in WAC 388-531-1600, weight reduction and control services, procedures, treatments, devices, drugs, products, gym memberships, equipment for the purpose of weight reduction, or the application of associated services.

(o) Nonmedical equipment; (~~and~~)

(p) Nonemergent admissions and associated services to out-of-state hospitals or noncontracted hospitals in contract areas;

(q) Bilateral cochlear implantation; and

(r) Routine or nonemergency medical and surgical dental services provided by a doctor of dental medicine or dental surgery for clients twenty one years of age and older, except for clients of the division of developmental disabilities.

(2) The department covers excluded services listed in (1) of this subsection if those services are mandated under and provided to a client who is eligible for one of the following:

- (a) The EPSDT program;
- (b) A medicaid program for qualified **medicare** beneficiaries (QMBs); or
- (c) A waiver program.

AMENDATORY SECTION (Amending WSR 10-19-057, filed 9/14/10, effective 10/15/10)

WAC 388-531-0200 Physician-related and healthcare professional services requiring prior authorization.

(1) The department requires **prior authorization** for certain services. Prior authorization includes **expedited prior authorization (EPA)** and **limitation extension (LE)**. See WAC 388-501-0165.

(2) The EPA process is designed to eliminate the need for telephone prior authorization for selected admissions and procedures.

(a) The provider must create an authorization number using the process explained in the department's physician-related billing instructions.

(b) Upon request, the provider must provide supporting clinical documentation to the department showing how the authorization number was created.

(c) Selected (~~(nonemergent)~~) nonemergency admissions to contract hospitals require EPA. These are identified in the department billing instructions.

(d) Procedures (~~(requiring)~~) allowing expedited prior authorization include, but are not limited to, the following:

(i) (~~Bladder repair;~~

(ii) ~~Hysterectomy for clients age forty five and younger, except with a diagnosis of cancer(s) of the female reproductive system;~~

~~(iii) Outpatient magnetic resonance imaging (MRI) and magnetic resonance angiography (MRA);~~

~~(iv)) Reduction mammoplasties/mastectomy for ((gynecomastia)) gynecomastia; ((and))~~

~~((+)) (ii) Strabismus surgery for clients eighteen years of age and older;~~

(iii) Meningococcal vaccine;

(iv) Placement of drug eluting stent and device;

(v) Cochlear implants for clients twenty years of age and younger;

(vi) Hyperbaric oxygen therapy;

(vii) Visual exam/refraction for clients twenty-one years of age and older;

(viii) Blepharoplasties; and

(ix) Neuropsychological testing for clients sixteen years of age and older.

(3) The department evaluates new technologies under the procedures in WAC 388-531-0550. These require prior authorization.

(4) Prior authorization is required for the following:

(a) Abdominoplasty;

(b) All inpatient hospital stays for **acute physical medicine and rehabilitation (PM&R);**

(c) ~~Unilateral cochlear implants(, which also:~~

~~(i) For coverage, must be performed in an ambulatory surgery center (ASC) or an inpatient or outpatient hospital facility; and~~

~~(ii) For reimbursement, must have the invoice attached to the claim)) for clients twenty years of age and younger (refer to WAC 388-531-0375);~~

(d) Diagnosis and treatment of eating disorders for clients twenty-one years of age and older;

(e) Osteopathic manipulative therapy in excess of the department's published limits;

(f) Panniculectomy;

(g) Bariatric surgery (see WAC 388-531-1600); and

(h) Vagus nerve stimulator insertion, which also:

(i) For coverage, must be performed in an inpatient or outpatient hospital facility; and

(ii) For reimbursement, must have the invoice attached to the claim.

(i) Osseointegrated/bone anchored hearing aids (BAHA) for clients twenty years of age and younger;

(j) Removal or repair of previously implanted BAHA or cochlear device for clients twenty one years of age and older when medically necessary.

(5) The department may require a second opinion and/or consultation before authorizing any elective surgical procedure.

(6) Children six ~~((year))~~ years of age and younger do not require authorization for hospitalization.

AMENDATORY SECTION (Amending WSR 08-12-030, filed 5/29/08, effective 7/1/08)

WAC 388-531-0250 Who can provide and bill for physician-related and healthcare professional services.

(1) The following enrolled providers are eligible to provide and bill for physician-related and healthcare professional services which they provide to eligible clients:

(a) Advanced registered nurse practitioners (ARNP);

(b) Federally qualified health centers (FQHCs);

(c) Health departments;

(d) Hospitals currently licensed by the department of health;

(e) Independent (outside) laboratories **CLIA** certified to perform tests. See WAC 388-531-0800;

(f) Licensed marriage and family therapists, only as provided in WAC 388-531-1400;

(g) Licensed mental health counselors, only as provided in WAC 388-531-1400;

(h) Licensed radiology facilities;

(i) Licensed social workers, only as provided in WAC 388-531-1400 and 388-531-1600;

(j) Medicare-certified ambulatory surgery centers;

(k) Medicare-certified rural health clinics;

(l) Providers who have a signed agreement with the department to provide screening services to eligible persons in the EPSDT program;

(m) Registered nurse first assistants (RNFA); and

(n) Persons currently licensed by the state of Washington department of health to practice any of the following:

(i) Dentistry (refer to chapter 388-535 WAC);

(ii) Medicine and osteopathy;

(iii) Nursing;

(iv) Optometry; or

(v) Podiatry.

(2) The department does not pay for services performed by any of the following practitioners:

(a) Acupuncturists;

(b) Christian Science practitioners or theological healers;

(c) Counselors, except as provided in WAC 388-531-1400;

(d) Herbalists;

(e) Homeopaths;

(f) Massage therapists as licensed by the Washington state department of health;

(g) Naturopaths;

(h) Sanipractors;

(i) Social workers, except those who have a master's degree in social work (MSW), and:

(i) Are employed by an FQHC;

(ii) Who have prior authorization to evaluate a client for bariatric surgery; or

(iii) As provided in WAC 388-531-1400.

(j) Any other licensed or unlicensed practitioners not otherwise specifically provided for in WAC ~~((388-502-0010))~~ 388-502-0002; or

(k) Any other licensed practitioners providing services which the practitioner is not:

(i) Licensed to provide; and

(ii) Trained to provide.

(3) The department pays practitioners listed in subsection (2) of this section for physician-related services if those services are mandated by, and provided to, clients who are eligible for one of the following:

(a) The EPSDT program;

- (b) A medicaid program for qualified medicare beneficiaries (QMB); or
- (c) A waiver program.

NEW SECTION

WAC 388-531-0375 Audiology services. (1) The department covers, with prior authorization, the implantation of a unilateral cochlear device for clients twenty years of age and younger with the following limitations:

- (a) The client meets one of the following:
 - (i) Has a diagnosis of profound to severe bilateral, sensorineural hearing loss;
 - (ii) Has stimulable auditory nerves but has limited benefit from appropriately fitted hearing aids (e.g., fail to meet age-appropriate auditory milestones in the best-aided condition for young children, or score of less than ten or equal to forty percent correct in the best-aided condition on recorded open-set sentence recognition tests);
 - (iii) Has the cognitive ability to use auditory clues;
 - (iv) Is willing to undergo an extensive rehabilitation program;
 - (v) Has an accessible cochlear lumen that is structurally suitable for cochlear implantation;
 - (vi) Does not have lesions in the auditory nerve and/or acoustic areas of the central nervous system; or
 - (vii) Has no other contraindications to surgery; and
- (b) The procedure is performed in an inpatient hospital setting or outpatient hospital setting.
- (2) The department covers osseointegrated bone anchored hearing aids (BAHA) for clients twenty years of age and younger with prior authorization.
- (3) The department covers replacement parts for BAHA and cochlear devices for clients twenty years of age and younger only. See WAC 388-547-0800.
- (4) The department considers requests for removal or repair of previously implanted bone anchored hearing aids (BAHA) and cochlear devices for clients twenty one years of age and older only when medically necessary. Prior authorization from the department is required.
- (5) For audiology, the department limits:
 - (a) Caloric vestibular testing to four units for each ear; and
 - (b) Sinusoidal vertical axis rotational testing to three units for each direction.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-0400 Client responsibility for reimbursement for physician-related services. Clients may be responsible to reimburse the provider, as described under WAC 388-501-0100, for noncovered services (~~that are not covered under the client's medical care program~~) as defined in WAC 388-501-0050 or for services excluded from the client's benefits package as defined under WAC 388-501-0060. Clients whose care is provided under CHIP may be responsible for copayments as outlined in chapter 388-542 WAC. Also, see WAC 388-502-0160, Billing the client.

AMENDATORY SECTION (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

WAC 388-531-1000 Ophthalmic (~~physician-related~~) services. Refer to chapter 388-544 WAC for (~~ophthalmic and~~) vision-related (services) hardware coverage for clients twenty years of age and younger.

(1) The department covers, without prior authorization, eye examinations, refraction and fitting services with the following limitations:

(a) Once every twenty four months for asymptomatic clients twenty one years of age and older;

(b) Once every twelve months for asymptomatic clients twenty years of age and younger; or

(c) Once every twelve months, regardless of age, for asymptomatic clients of the division of developmental disabilities.

(2) The department covers additional examinations and refraction services outside the limitations described in subsection (1) of this section when:

(a) The provider is diagnosing or treating the client for a medical condition that has symptoms of vision problems or disease;

(b) The client is on medication that affects vision; or

(c) The service is necessary due to lost or broken eyeglasses/contacts. In this case:

(i) No type of authorization is required for clients twenty years of age or younger or for clients of the division of developmental disabilities, regardless of age.

(ii) Providers must follow the department's expedited prior authorization process to receive payment for clients twenty one years of age or older. Providers must also document the following in the client's file:

(A) The eyeglasses or contacts are lost or broken; and

(B) The last examination was at least eighteen months ago.

(3) The department covers visual field exams for the diagnosis and treatment of abnormal signs, symptoms, or injuries. Providers must document all of the following in the client's record:

(a) The extent of the testing;

(b) Why the testing was reasonable and necessary for the client; and

(c) The medical basis for the frequency of testing.

(4) The department covers orthoptics and vision training therapy. Providers must obtain prior authorization from the department.

(5) The department covers ocular prosthetics for clients when provided by any of the following:

(a) An ophthalmologist;

(b) An ocularist; or

(c) An optometrist who specializes in prosthetics.

(6) The department covers cataract surgery, without prior authorization when the following clinical criteria are met:

(a) Correctable visual acuity in the affected eye at 20/50 or worse, as measured on the Snellen test chart; or

(b) One or more of the following conditions:

(i) Dislocated or subluxated lens;

(ii) Intraocular foreign body;

(iii) Ocular trauma;

(iv) Phacogenic glaucoma;

(v) Phacogenic uveitis;

(vi) Phacoanaphylactic endophthalmitis; or

(vii) Increased ocular pressure in a person who is blind and is experiencing ocular pain.

(7) The department covers strabismus surgery as follows:

(a) For clients seventeen years of age and younger. The provider must clearly document the need in the client's record. The department does not require authorization for clients seventeen years of age and younger; and

(b) For clients eighteen years of age and older, when the clinical criteria are met. To receive payment, providers must follow the expedited prior authorization process. The clinical criteria are:

(i) The client has double vision; and

(ii) The surgery is not being performed for cosmetic reasons.

(8) The department covers blepharoplasty or blepharoptosis surgery for clients when all of the clinical criteria are met. To receive payment, providers must follow the department's expedited prior authorization process. The clinical criteria are:

(a) The client's excess upper eyelid skin is blocking the superior visual field; and

(b) The blocked vision is within ten degrees of central fixation using a central visual field test.

NEW SECTION

WAC 388-531-1025 Oral healthcare services provided by dentists for clients age twenty-one and older—General. This section does not apply to clients of the division of developmental disabilities. Refer to WAC 388-535-1099.

(1) Clients age twenty-one and older are eligible for the oral healthcare services listed in this section, subject to coverage limitations. The department pays for oral healthcare services provided by a dentist to clients age twenty-one and older when the services provided:

(a) Are within the scope of the eligible client's medical care program;

(b) Are medically necessary as defined in WAC 388-500-0005;

(c) Are emergency services and meet the criteria of coverage for emergency oral healthcare benefit listed in subsection (7) of this section;

(d) Are documented in the client's record in accordance with chapter 388-502 WAC;

(e) Meet the department's prior authorization requirements, if there are any;

(f) Are within prevailing standard of care accepted practice standards;

(g) Are consistent with a diagnosis of teeth, mouth and jaw disease or condition;

(h) Are reasonable in amount and duration of care, treatment, or service;

(i) Are billed using only the allowed procedure codes listed in the department's published billing instructions and fee schedules; and

(j) Are documented with a comprehensive description of the client's presenting symptoms, diagnosis and services provided, in the client's record, including the following, if applicable:

(i) Client's blood pressure, when appropriate;

(ii) A surgical narrative;

(iii) A copy of the post-operative instructions; and

(iv) A copy of all pre- and post-operative prescriptions.

(2) An appropriate consent form, if required, signed and dated by the client or the client's legal representative must be in the client's record.

(3) An anesthesiologist providing oral healthcare under this section must have a current provider's permit on file with the department.

(4) A healthcare provider providing oral or parenteral conscious sedation, or general anesthesia, must meet:

(a) The provider's professional organization guidelines;

(b) The department of health (DOH) requirements in chapter 246-817 WAC; and

(c) Any applicable DOH medical, dental, and nursing anesthesia regulations.

(5) Department-enrolled dental providers who are not specialized to perform oral and maxillofacial surgery (see WAC 388-535-1070(3)) must use only the current dental terminology (CDT) codes to bill claims for services that are listed in this section.

(6) Oral healthcare services must be provided in a clinic setting, with the exception of trauma related services.

(7) Emergency oral healthcare benefit.

(a) Medical and surgical services provided by a doctor of dental medicine or dental surgery, which, if provided by a physician, are considered a physician service, are included in the emergency oral healthcare benefit when the services are done on an emergency basis. All services are subject to prior authorization when indicated.

(b) The following set of services are covered under the emergency oral healthcare benefit when provided by a dentist to assess and treat pain, infection or trauma of the mouth, jaw, or teeth, including treatment of post-surgical complications, such as dry socket and services that are part of a cancer treatment regimen or part of a pre-transplant protocol:

(i) One emergency examination, per presenting problem, performed as a limited oral evaluation to:

(A) Evaluate the client's symptom of pain;

(B) Make a diagnosis; and

(C) Develop or implement a treatment plan, including a referral to another healthcare professional, such as an oral surgeon; or

(D) A second evaluation if the treatment initiated is conservative, such as prescribed antibiotics, and a subsequent visit is necessary for definitive treatment, such as tooth extraction. The treatment plan must be documented in the client's record.

(ii) Diagnostic radiographs (xrays).

(A) Radiographs include:

(I) Periapical; and

(II) Panoramic films, limited to one every three years.

(B) Radiographs must:

(I) Be required to make the diagnosis;

(II) Support medical necessity;

(III) Be of diagnostic quality, dated and labeled with the client's name;

(IV) Be retained by the provider as part of the client's record. The retained radiograph must be the original.

(C) Duplicate radiographs must be submitted with prior authorization requests or when the department requests a copy of the client's dental record.

(iii) Pulpal debridement. One gross pulpal debridement per client, per tooth, within a twelve-month period.

(iv) Extractions and surgical extractions for symptomatic teeth, limited to:

(A) Extraction of a nearly-erupted or fully erupted tooth or exposed root;

(B) Surgical removal of an erupted tooth only;

(C) Surgical removal of residual tooth roots; and

(D) Extraction of an impacted wisdom tooth when the tooth is not erupted.

(v) Palliative (emergency) treatment for the treatment of dental pain, one per client, per six-month period, during a limited oral evaluation appointment.

(vi) Local anesthesia and regional blocks as part of the global fee for any procedure being provided to a client.

(vii) Inhalation of nitrous oxide, once per day.

(viii) House or extended care facility visits, for emergency care as defined in this section.

(ix) Emergency office visits after regularly scheduled hours. The department limits coverage to one emergency visit per day, per provider.

(x) Therapeutic drug injections including drugs and/or medicaments (pharmaceuticals) only when used with general anesthesia.

(xi) Treatment of post-surgical complications, such as dry socket.

(c) Emergency healthcare benefit services provided by dentists specialized in oral maxillofacial surgery. Services that are covered under the emergency oral healthcare benefit to assess and treat pain, infection or trauma of the mouth, jaw, or teeth, including treatment of post-surgical complications, such as dry socket and services that are part of a cancer treatment regimen or part of a pre-transplant protocol:

(i) May be provided by dentists specialized in oral maxillofacial surgery; and

(ii) Are billed using only the allowed procedure codes listed in the department's published billing instructions and fee schedules.

(8) Prior Authorization for oral healthcare services provided by dentists for clients age twenty-one and older.

(a) The department uses the determination process described in WAC 388-501-0165 for covered oral healthcare services for clients age twenty-one and older for an emergency condition that requires prior authorization.

(b) The department requires a dental provider who is requesting prior authorization to submit sufficient objective clinical information to establish medical necessity. The request must be submitted in writing on the DSHS 13-835 general information for authorization form which may be obtained at <http://dshs.wa.gov/msa/forms/eforms.html>.

(c) The department may request additional information as follows:

(i) Additional radiographs (X rays);

(ii) Study models;

(iii) Photographs; and

(iv) Any other information as determined by the department.

(d) The department may require second opinions and/or consultations before authorizing any procedure.

(e) When the department authorizes an oral healthcare service for a client, that authorization indicates only that the specific service is medically necessary and an emergency, it is not a guarantee of payment. The authorization is valid for six months and only if the client is eligible and the service is covered in the client's healthcare benefit package on the date of service.

(f) The department denies a request for an oral healthcare service when the requested service:

(i) Is not covered in the client's healthcare benefit package;

(ii) Is covered by another department program;

(iii) Is covered by an agency or other entity outside the department; or

(iv) Fails to meet the clinical criteria, limitations, or restrictions in this section.

(9) Refer to chapter 388-535 WAC and WAC 388-531-1850 and 388-531-1900 for the payment methodologies used for the services listed in this section.

AMENDATORY SECTION (Amending WSR 10-19-057, filed 9/14/10, effective 10/15/10)

WAC 388-531-1300 (~~Podiatric physician related services~~) Foot care services for clients twenty-one years of age and older. (1) ~~(The department covers podiatric services as listed in this section when provided by any of the following:~~

~~(a) A medical doctor;~~

~~(b) A doctor of osteopathy; or~~

~~(c) A podiatric physician.~~

~~(2) The department reimburses for the following:~~

~~(a) Nonroutine foot care when a medical condition that affects the feet (such as diabetes or arteriosclerosis obliterans) requires that any of the providers in subsection (1) of this section perform such care;~~

~~(b) One treatment in a sixty-day period for debridement of nails. The department covers additional treatments in this period if documented in the client's medical record as being medically necessary;~~

~~(c) Impression casting. The department includes ninety-day follow-up care in the reimbursement;~~

~~(d) A surgical procedure performed on the ankle or foot, requiring a local nerve block, and performed by a qualified provider. The department does not reimburse separately for the anesthesia, but includes it in the reimbursement for the procedure; and~~

~~(e) Custom fitted and/or custom molded orthotic devices:~~

~~(i) The department's fee for the orthotic device includes reimbursement for a biomechanical evaluation (an evaluation of the foot that includes various measurements and manipulations necessary for the fitting of an orthotic device); and~~

(ii) The department includes an E&M fee reimbursement in addition to an orthotic fee reimbursement if the E&M services are justified and well documented in the client's medical record.

~~(3) The department does not reimburse podiatrists for any of the following radiology services:~~

- ~~(a) X rays for soft tissue diagnosis;~~
- ~~(b) Bilateral X rays for a unilateral condition;~~
- ~~(c) X rays in excess of two views;~~
- ~~(d) X rays that are ordered before the client is examined;~~

~~or~~

~~(e) X rays for any part of the body other than the foot or ankle.)~~ This section addresses care of the lower extremities (foot and ankle) referred to as foot care and applies to clients twenty-one years of age and older.

(2) The department covers the foot care services listed in this section when those services are provided by any of the following healthcare providers and billed to the department using procedure codes and diagnosis codes that are within their scope of practice:

- (a) Physicians or physician's assistants-certified (PA-C);
- (b) Osteopathic physicians, surgeons, or physician's assistant-certified (PA-C);
- (c) Podiatric physicians and surgeons; or
- (d) Advanced registered nurse practitioners (ARNP).

(3) The department covers evaluation and management visits to assess and diagnose conditions of the lower extremities. Once diagnosis is made, the department covers treatment if the criteria in subsection (4) of this section are met.

(4) The department pays for:

(a) Treatment of the following conditions of the lower extremities only when there is an acute condition, an exacerbation of a chronic condition, or presence of a systemic condition such as metabolic, neurologic, or peripheral vascular disease and evidence that the treatment will prevent, cure or alleviate a condition in the client that causes pain resulting in the inability to perform activities of daily living, acute disability, or threatens to cause the loss of life or limb, unless otherwise specified:

(i) Acute inflammatory processes such as, but not limited to tendonitis;

(ii) Circulatory compromise such as, but are not limited to:

- (A) Lymphedema;
- (B) Raynaud's disease;
- (C) Thromboangiitis obliterans; and
- (D) Phlebitis.

(iii) Injuries, fractures, sprains, and dislocations;

(iv) Gout;

(v) Lacerations, ulcerations, wounds, blisters;

(vi) Neuropathies (e.g., reflex sympathetic dystrophy, secondary to diabetes, charcot arthropathy);

(vii) Osteomyelitis;

(viii) Post-op complications;

(ix) Warts, corns, or calluses in the presence of an acute condition such as infection and pain effecting the client's ability to ambulate as a result of the warts, corns, or calluses and meets the criteria in subsection (4) of this section;

(x) Soft tissue conditions, such as, but are not limited to:

- (A) Rashes;

(B) Infections (fungal, bacterial);

(C) Gangrene;

(D) Cellulitis of lower extremities;

(E) Soft tissue tumors; and

(F) Neuroma.

(xi) Nail bed infections (paronychia); and

(xii) Tarsal tunnel syndrome.

(b) Trimming and/or debridement of nails to treat, as applicable, conditions from the list in subsection (4)(a) of this section. The department pays for one treatment in a sixty-day period. The department covers additional treatments in this period if documented in the client's medical record as being medically necessary;

(c) A surgical procedure to treat one of the conditions in subsection (4) of this section performed on the lower extremities, and performed by a qualified provider;

(d) Impression casting to treat one of the conditions in subsection (4) of this section. The department includes ninety-day follow-up care in the reimbursement;

(e) Custom fitted and/or custom molded orthotic devices to treat one of the conditions in subsection (4) of this section.

(i) The department's fee for the orthotic device includes reimbursement for a biomechanical evaluation (an evaluation of the foot that includes various measurements and manipulations necessary for the fitting of an orthotic device); and

(ii) The department includes an evaluation and management (E&M) fee reimbursement in addition to an orthotic fee reimbursement if the E&M services are justified and well documented in the client's medical record.

(5) The department does not pay for:

(a) The following radiology services:

(i) Bilateral X-rays for a unilateral condition; or

(ii) X-rays in excess of three views; or

(iii) X-rays that are ordered before the client is examined.

(b) Podiatric physicians or surgeons for X-rays for any part of the body other than the foot or ankle.

WSR 11-15-001

PERMANENT RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 11-140—Filed July 6, 2011, 12:14 p.m., effective August 6, 2011]

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

Purpose: The purpose of this proposal is to modify the description of the Bonilla-Tatoosh line so that it is consistent with the description in federal rules. The description of the Bonilla-Tatoosh line is listed in C.F.R. Title 50, Part 660.

Reasons supporting proposal: The description of the Bonilla-Tatoosh line is essential to differentiating between adjacent management areas located on the northwest coast of Washington at Cape Flattery. The current rule does not include latitude and longitude coordinates for each reference point and is not consistent with the description in federal regulation. The changes simplify the description of the line and will make it easier for recreational fishers and enforcement officers to identify where the line is drawn.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-16-490.

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

Other Authority: C.F.R. Title 50, Part 660.

Adopted under notice filed as WSR 11-10-091 on May 4, 2011.

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

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

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

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

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

Date Adopted: July 6, 2011.

Philip Anderson
Director

AMENDATORY SECTION (Amending Order 98-120, filed 7/7/98, effective 8/7/98)

WAC 220-16-490 Bonilla-Tatoosh Line. The "Bonilla-Tatoosh Line" is defined as a line projected from the most westerly point on Cape Flattery (48°22.863' N. lat., 124°43.907' W. long.) to the lighthouse on Tatoosh Island, WA (48°23.493' N. lat., 124°44.207' W. long.) then to the ~~((buoy adjacent to Duntz Rock, then to))~~ light on Bonilla Point on Vancouver Island, British Columbia (48°35.73' N. lat., 124°43.00' W. long.).

**WSR 11-15-002
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-141—Filed July 6, 2011, 12:16 p.m., effective August 6, 2011]

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

Purpose: The purpose of this proposal is to modify the description of the lingcod season in Marine Catch Areas 1-3 so that it is consistent with the description in federal rules. The proposed change would align the state regulation with the federal regulation by describing the lingcod season as being open from the Saturday closest to March 15, rather than the Saturday closest to March 16, through the Saturday closest to October 15. The description of the lingcod season is listed in C.F.R. Title 50, Part 660.

Reasons Supporting Proposal: Lingcod seasons were developed during Pacific Fishery Management Council (PFMC) meetings and public process. Input from Washing-

ton recreational fishermen was gathered during the PFMC public process and during public meetings sponsored by the Washington department of fish and wildlife.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-56-250.

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

Other Authority: C.F.R. Title 50, Part 660.

Adopted under notice filed as WSR 11-10-092 on May 4, 2011.

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

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

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

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

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

Date Adopted: July 6, 2011.

Philip Anderson
Director

AMENDATORY SECTION (Amending Order 09-107, filed 6/22/09, effective 7/23/09)

WAC 220-56-250 Lingcod—Areas and seasons. It is unlawful to take, fish for, or possess lingcod for personal use except during the following seasons and areas:

(1) Coastal area:

(a) Catch Record Card Areas 1 through 3: The Saturday closest to March ~~((46))~~ 15, through the Saturday closest to October 15;

(b) Catch Record Card Area 4 west of the Bonilla-Tatoosh line: April 16 through October 15, or the Saturday closest to October 15 if that Saturday comes before October 15, whichever is earlier; and

(c) Catch Record Card Area 4 east of the Bonilla-Tatoosh line: April 16 through October 15.

(2) Catch Record Card Areas 5 through 13: May 1 through June 15 by angling, and May 21 through June 15 by spear fishing.

**WSR 11-15-003
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-142—Filed July 6, 2011, 12:19 p.m., effective August 6, 2011]

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

Purpose: The purpose of this proposal is to align state regulations with federal regulations. The changes would reduce the state's recreational bottomfish aggregate daily limit from fifteen to twelve and implement a sublimit of two cabezon per day in Marine Catch Areas 1-3 and 4, west of the Bonilla-Tatoosh line. The federal aggregate bottomfish daily limit and cabezon sublimit is listed in C.F.R. Title 50, Part 660.

Reasons supporting proposal: This proposal will protect bottomfish resources in Washington's coastal waters and was discussed during public meetings of the Pacific Fisheries Management Council (PFMC) and the Washington department of fish and wildlife. The changes were approved by PFMC as part of its biennial groundfish management cycle.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-235.

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

Other Authority: C.F.R. Title 50, Part 660.

Adopted under notice filed as WSR 11-10-093 on May 4, 2011.

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

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

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

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

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

Date Adopted: July 6, 2011.

Philip Anderson
Director

AMENDATORY SECTION (Amending Order 11-30, filed 3/23/11, effective 4/23/11)

WAC 220-56-235 Possession limits—Bottomfish. It is unlawful for any person to take in any day more than the following quantities of bottomfish for personal use. The possession limit at any time shall not exceed the equivalent of two daily limits in fresh, frozen or processed form. Unless otherwise provided bottomfish fishing is open the entire year.

(1) Coastal (Catch Record Card Areas 1 through 4) - ~~((45))~~ 12 fish in the aggregate, except east of the Bonilla-Tatoosh line - 10 fish in the aggregate, of all species and species groups of bottomfish, which may include no more than:

(a) Lingcod - 2 fish:

(i) Minimum length 22 inches in Catch Record Card Areas 1 through 3.

(ii) Minimum length 24 inches in Catch Record Card Area 4.

(b) Rockfish - 10 fish. Release all canary and yelloweye rockfish. In Marine Area 4 east of the Bonilla Tatoosh Line: 6 fish. Only black or blue rockfish may be retained.

~~((c))~~ ~~((Surfperch (excluding shiner perch) - 15 fish.~~

~~((d)))~~ Wolf-eel - 0 fish from Catch Record Card Area 4.

~~((e)))~~ (d) Cabezon - 2 fish ~~((east of the Bonilla-Tatoosh line)).~~

(2) Inner Puget Sound (Catch Record Card Areas 5 through 13):

(a) Catch Record Card Areas 5 and 6 - 15 fish in the aggregate of all species and species groups of bottomfish, which may include no more than:

Rockfish in Marine Area 5 except 1 fish May 1 through September 30 only black or blue rockfish may be retained.

in Marine Area 5 west of Slip Point 3 fish only black or blue rockfish may be retained.

in Marine Area 6. 0 fish

Surfperch 10 fish

Pacific cod 2 fish

Pollock 2 fish

Flatfish (except halibut) 15 fish

Lingcod 1 fish

Wolf-eel 0 fish

Cabezon 2 fish

Pacific hake 2 fish

(b) Catch Record Card Area 7 - 15 fish in the aggregate of all species of bottomfish, which may include no more than:

Rockfish 0 fish

Surfperch 10 fish

Pacific cod 2 fish

Flatfish (except halibut) 15 fish

Lingcod 1 fish

Wolf-eel 0 fish

Cabezon 2 fish

Pollock 2 fish

Pacific hake 2 fish

(c) Catch Record Card Areas 8-1 through 11 and 13 - 15 fish in the aggregate of all species and species groups of bottomfish, which may include no more than:

Rockfish 0 fish

Surfperch 10 fish

Pacific cod 0 fish

Pollock 0 fish

Flatfish (except halibut) 15 fish

Lingcod 1 fish

Wolf-eel 0 fish

Cabezon 2 fish
Pacific hake 0 fish

(d) Catch Area 12: Closed.

(e) It is unlawful to possess lingcod taken by angling or by spear fishing less than 26 inches in length or greater than 36 inches in length.

(f) It is unlawful to retain cabezon taken from Catch Record Card Areas 5 through 11 and 13 from December 1 through April 30.

(g) It is unlawful to retain six-gill shark taken from Catch Record Card Areas 5 through 13.

(h) In Catch Record Area 5, the daily limit for rockfish is the first legal rockfish caught, except west of Slip Point the daily limit for rockfish is the first three legal rockfish caught. Only black or blue rockfish may be retained. After the daily limit of rockfish is caught, all subsequent rockfish must be released.

(i) In Catch Record Card Area 5, it is unlawful to take rockfish by spear fishing except when this area is open to spear fishing for lingcod.

WSR 11-15-007
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed July 7, 2011, 9:25 a.m., effective August 7, 2011]

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

Purpose: A complete revision of chapter 392-141 WAC was required in order to implement the new student transportation funding system implemented through EHB [ESHB] 2261 (2009).

The 2010 legislature through EHB [SHB] 2776 modified the implementation date to September 1, 2011, and required the office of superintendent of public instruction to report on the language of the rule by December 1, 2010.

A hearing was conducted on December 8, 2010. In response to concerns raised during the December 8, 2010, hearing, the agency has made additional revisions to the proposed language incorporating some recommendations as well as redefining other areas for clarification.

Citation of Existing Rules Affected by this Order: Repealing WAC 392-141-105, 392-141-110, 392-141-115, 392-141-120, 392-141-130, 392-141-135, 392-141-140, 392-141-146, 392-141-147, 392-141-148, 392-141-150, 392-141-152, 392-141-155, 392-141-156, 392-141-157, 392-141-158, 392-141-159, 392-141-160, 392-141-165, 392-141-170, 392-141-180, 392-141-185, 392-141-190, 392-141-195, and 392-141-200.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 11-06-069 on March 2, 2011.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 13, Amended 0, Repealed 25.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 13, Amended 0, Repealed 25.

Number of Sections Adopted Using Negotiated Rule Making: New 13, Amended 0, Repealed 25; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: April 15, 2011.

Randy Dorn
State Superintendent

NEW SECTION

WAC 392-141-300 Authority and purpose. The authority for this chapter is RCW 28A.150.290 which authorizes the superintendent of public instruction to adopt rules and regulations for the administration of chapter 28A.150 RCW, which includes student transportation programs, RCW 28A.160.030, which includes individual and in lieu transportation arrangements, RCW 28A.160.160 which includes hazardous walking conditions, and RCW 28A.160.1921 which includes the transportation reporting requirements. The purpose of this chapter is to establish the method for the allocation of funding for the operation of public school district student transportation programs.

NEW SECTION

WAC 392-141-310 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Superintendent" means the superintendent of public instruction.

(2) "District" means either a school district or an educational service district.

(3) The definition of "school" includes learning centers or other agencies where educational services are provided.

(4) "Eligible student" means any student served by a district transportation program either by bus, district car, or individual arrangements meeting one or more of the following criteria:

(a) A student whose route stop is outside the walk area of the student's enrollment school site; or

(b) A student whose disability is defined by RCW 28A.155.020 and who is either not ambulatory or not capable of protecting his or her own welfare while traveling to or from school.

Districts determine which students are provided with transportation services; however, only eligible students qualify for funding under the operations allocation.

(5) "To and from transportation" means all transportation between route stops and schools both before and after the school day. To and from transportation includes transportation between home and school and transportation between schools, commonly referred to as shuttles. Transportation not authorized for state allocations under this definition

includes, but is not limited to, transportation for students participating in nonacademic extended day programs, field trips, and extracurricular activities.

(6) "Home to school transportation" means all student transportation between route stops and schools both before and after the school day. Home to school transportation does not include transportation between schools.

(7) "Basic program transportation" means students transported between home and school for their basic education. Basic program transportation includes those students who qualify under RCW 28A.155.020 for special services and are capable of protecting his or her own welfare while traveling to or from school and those students who are enrolled in gifted or bilingual programs or homeless students that do not require specialized transportation. Also included in basic program transportation is transportation required to comply with the school choice provisions of the Elementary Secondary Education Act.

(8) "Special program transportation" means home to school transportation for one of the following specialized programs:

(a) Special education programs provided for by chapter 28A.155 RCW and where transportation as a related service is included on the student's individual education plan or where transportation is required under the provisions of Section 504 of the Rehabilitation Act of 1973; or

(b) Students who require special transportation to a bilingual program in a centralized location; or

(c) Students who require special transportation to a gifted program in a centralized location; or

(d) Students who require special transportation to their school of origin as required by the provisions of the McKinney-Vento Homeless Assistance Act; or

(e) Students who require special transportation to a district operated head start, district operated early childhood education assistance program, or other district operated early education program.

(9) "Kindergarten route" means a school bus providing home to school transportation for basic education kindergarten students operated between the beginning and end of the school day.

(10) "Private party contract" means the provision of home to school transportation service using a private provider (not in a school bus). Private party contracts shall require criminal background checks of drivers and other adults with unsupervised access to students and assurances that any students transported be provided with child safety restraint systems that are age and weight appropriate. Vehicles used must meet school bus specifications established in chapter 392-143 WAC if they have a manufacturer's design capacity of greater than ten passengers, including the driver. However, a vehicle manufactured to meet the federal specifications of a multifunction school activity bus may be used.

(11) "In lieu transportation" means a contract to provide home to school transportation with a parent, guardian or adult student, including transportation on rural roads to access a school bus stop.

(12) "Count period" is the three consecutive school day window used for establishing the reported student count on home to school routes.

(13) The school year is divided into three "report periods," as follows: September - October, November - January, and February - April. These report periods are also referred to respectively as the fall, winter and spring reports. The count period must not fall within five school days of the end of the report period.

(14) "Combined student count" is the total number of basic program or special program eligible student riders reported during each report period. The combined student count for the determination of funding consists of the prorated counts from the prior year's spring report and the current year's fall and winter reports. The prior school year's fall, winter and spring student counts are used for the determination of the efficiency rating. The combined student count is prorated based on the number of months in the respective report period. For the 2011-12 school year, the fall 2011 report values will be used to provide values for the spring 2011 report.

(15) "Average distance to school" means the average of the distances from each school bus stop measured by the shortest road path to the assigned student's school of enrollment.

(16) "Prorated average distance" is calculated by taking the average distance to school weighted by the number of months in the corresponding report period. The prorated average distance used in calculating district allocation consists of the prorated average distance from the prior year's spring report and the current year's fall and winter reports. The prior school year's fall, winter and spring average distances are used for the determination of the efficiency rating. The average distance is prorated based on the number of months in the respective report period.

(17) "Land area" is the area of the school district in square miles, excluding water and public lands, as determined by the superintendent. For educational service districts, the land area value will be determined by the superintendent from the contiguous area provided with transportation service.

(18) "Roadway miles" refers to the number of public roadway miles within the land area of the school district, as determined by the superintendent. For educational service districts, the roadway mile value will be determined by the superintendent from the roadway miles within the contiguous area provided with transportation service.

(19) "Walk area" is defined as the area around a school where the shortest safe walking route to school is less than one mile.

(20) "District car route" means home to school transportation where a district motor pool vehicle (not a school bus) is used to transport an eligible student or students. Any regularly scheduled home to school transportation in a district car is required to be driven by an authorized school bus driver.

(21) "District car allocation" is calculated by multiplying the total annual district car route mileage by the rate of reimbursement per mile that is authorized for state employees for the use of private motor vehicles in connection with state business in effect on September 1st of each year.

(22) "Alternate funding system" means an additional funding system as provided in RCW 28A.160.191, defined by OSPI to adjust the allocation for low enrollment school

districts, nonhigh school districts, school districts participating in interdistrict transportation cooperatives, and educational service districts operating special transportation services.

(23) "Expected allocation" means the initial amount of funding resulting from the regression analysis calculation.

(24) "Adjusted allocation" means the expected allocation plus any adjustments.

(25) "Actual allocation" means the lesser of the previous year's actual reported transportation expenditures or the adjusted allocation.

(26) "Efficiency evaluation" refers to the statistical evaluation of efficiency of a district's transportation operation using linear programming of the data required by the funding formula and the number of buses used on home-to-school routes. Each district is separately compared to an individualized statistical model of a district having similar site characteristics. The efficiency evaluation is expressed as a percentage efficiency rating.

NEW SECTION

WAC 392-141-320 District reporting requirements.

(1) Reports shall be submitted by each district to the superintendent prior to the last business day in October, the first business day in February, and the first business day in May. These reports shall reflect to the extent practical the planned student transportation program for the entire report period and which is in operation during the ridership count period. The superintendent shall have the authority to make modifications or adjustments in accordance with the intent of RCW 28A.160.150. Each district shall submit the data required on a timely basis as a condition to the continuing receipt of student transportation allocations.

(2) In each report period, districts shall report such operational data and descriptions, as required by the superintendent to determine the operations allocation for each district, including:

- (a) School bus route information;
- (b) Student count information; and
- (c) An update to the estimated total car mileage for the current school year.

(3) For the fall report, districts shall report to the superintendent as required:

(a) An annual school bus mileage report including the total to and from school bus miles for the previous school year, and other categories as requested;

(b) An annual report of each type of fuel purchased for student transportation service for the previous school year, including quantity and cost; and

(c) An annual report as required by RCW 28A.300.540 of the number of students transported to their school of origin as required by the McKinney-Vento Homeless Assistance Act for the previous school year, and the total mileage and additional cost of such transportation. These costs may include, but are not limited to:

(i) Transportation service that serves only student(s) under McKinney-Vento. Districts shall determine costs based upon route mileage and an average per mile cost for operation of the bus or vehicle. Driver time may be taken

from actual driver costs records if such records are maintained, or may be determined using an average driver costs factor.

(ii) Incremental revisions in route at the start or end of a route to accommodate McKinney-Vento transportation, if separately identified, may be included based upon route mileage and an average per mile cost for operation of the bus or vehicle.

(iii) Costs for public transportation or other contracted services for transporting McKinney-Vento student(s).

(iv) Nondriver transportation staff positions whose job duties are predominately overseeing or routing services to McKinney-Vento students. If the position duties encompass other non-McKinney-Vento areas, then only the costs directly related to McKinney-Vento transportation shall be included and such costs shall be determined using federal time and effort reporting procedures.

No indirect or allocated costs may be included in this reporting.

NEW SECTION

WAC 392-141-330 School bus driver daily logs. Districts shall require drivers to maintain a daily route log that includes the school bus driver's name, bus number, route number, destinations and student counts by destination, pre-trip and post-trip verification, with the date and school bus driver's signature. These daily route logs shall be completed in ink and shall be maintained in the school district files in accordance with the school district record retention schedule. Electronic data collection systems or files may be used for any of this information.

Daily route logs are required to be completed at least once each week. If a district does not require daily route logs on a daily basis, the district must ensure that during each report period a daily log is collected on at least one additional weekday corresponding to each of the days of the count period.

NEW SECTION

WAC 392-141-340 Determination of the walk area.

(1) Each district shall determine the walk area for each school building or learning center where students are enrolled, attend class and transportation is provided. The district is required to use a process to determine the walk area that involves as many of the following groups as possible: Parents, school administrators, law enforcement representatives, traffic engineers, public health or walking advocates and other interested parties. Hazardous conditions requiring transportation service will be documented and will include all roadways, environmental and social conditions included in the evaluation process. The district process will be consistent with the one described in *School Walk and Bike Routes: A Guide for Planning and Improving Walk and Bike to School Options for Students* published by the Washington state department of transportation.

(2) The process will identify preferred walking routes from each neighborhood to each elementary school as required by RCW 28A.160.160(5). Walk areas will be reviewed as conditions change or every two years.

(3) School districts are allowed to provide transportation service within the walk area, but basic program students who are provided transportation from school bus stops within the walk area are not eligible for funding. It is the responsibility of each school district to ensure that noneligible students who are provided with transportation service within the walk area are correctly reported during the count period.

(4) A school district is not required to document the process used to determine that transportation will not be provided from an area. School districts are only required to document the process used to make a decision to transport within one road mile of a school if the district is providing such transportation due to hazardous conditions and reports those students for funding.

NEW SECTION

WAC 392-141-350 Authorization and limitation on district payments for individual and in lieu transportation arrangements. Districts may commit to individual transportation or in lieu arrangements subject to approval by the educational service district superintendent or his or her designee. The following arrangements and limitations apply:

(1) A district shall contract with the custodial parent, parents, guardian(s), person(s) in loco parentis, or adult student(s) to pay the lesser of the following in lieu of transportation by the district:

(a) Mileage and tolls for home to school transportation (in whole or part) for not more than two necessary round trips per school day; or

(b) Mileage and tolls for home to school transportation for not more than five round trips per school year, plus room and board.

(2) The in lieu of transportation mileage, tolls and board and room rates of reimbursement which a district is hereby authorized to pay shall be computed as follows:

(a) Mileage reimbursement shall be computed by multiplying the actual road distance from home to school (or other location specified in the contract) with any type of transportation vehicle that is operated for the purpose of carrying one or more students by the maximum rate of reimbursement per mile that is authorized by law for state employees for the use of private motor vehicles in connection with state business;

(b) Toll reimbursement shall be computed by adding the actual fees paid as a condition to the passage of a transportation vehicle and its student passengers or its operator, or both, across a bridge or upon a ferry, and similar fees imposed as a condition to the passage, ingress, or egress of such vehicle and its student passengers or its operator, or both, while traveling to and from school; and

(c) Board and room reimbursement shall be computed at the rates established by the department of social and health services (inclusive of the basic rates and, in the case of disabled students, the additional amounts for students with special needs, but exclusive of any rates or amounts for clothing and supplies).

NEW SECTION

WAC 392-141-360 Operation allocation computation. (1) The operation allocation shall be calculated using the following factors:

(a) The combined student count of basic program students;

(b) The combined student count of special program students;

(c) The district's prorated average distance;

(d) The district's total land area;

(e) The district's total number of roadway miles;

(f) The district's prorated number of destinations served by home to school routes;

(g) The district's number of kindergarten routes operated during ten consecutive school days that include the count period and are all within the report period; and

(h) If the school district is a nonhigh district, the answer to the following question: Does the district provide transportation service for the high school students residing in the district?

For each district, an expected allocation is determined using the coefficients resulting from a regression analysis of (a) through (h) of this subsection, evaluated statewide against the prior school year's total to and from transportation expenditures. If a data element is determined not to be statistically significant, it shall not be included in the calculation of the allocation. For the 2011-12 school year, the coefficients will be calculated based on the fall 2011 report and the 2010-11 school year transportation expenditures. In the 2012-13 school year and thereafter, the coefficients will be determined using the prior school year fall, winter, and spring reports and prior school year expenditures.

(2) For the calculation of the regression analysis coefficients, the allowable transportation expenditures for each district shall be reduced by the total amount of transportation employee compensation costs in excess of the rate provided in the Omnibus Appropriations Act, including base salary or hourly wage rate, fringe benefit rates, and applicable health care rates.

(3) The adjusted allocation is the result of modifying the expected allocation by:

(a) Adding any district car mileage reimbursement; and

(b) Adding any adjustment resulting from the alternate funding systems identified in WAC 392-141-380; and

(c) Making any deduction resulting from an alternate school year calendar approved by the state board of education under the provisions of RCW 28A.305.141.

(4) Each district's actual allocation for student transportation operations is the lesser of the prior school year's total allowable student transportation expenditures or the adjusted allocation. School districts contracting for student transportation operations shall have any payments in lieu of depreciation under the provisions of WAC 392-142-245 deducted from the district's allowable transportation expenditures.

(5) The funding assumption for the transportation operation allocation is that kindergarten through twelfth grade (K-12, or whatever grades are enrolled in district schools) school transportation services are provided by the district five days per week, to and from school, before and after the regular school day and operating one hundred eighty days per school

year. K-12 service being provided on any other basis is subject to corresponding proration of the operation allocation.

NEW SECTION

WAC 392-141-370 Transition and hold harmless provisions. (1) For the 2011-12 through the 2013-14 school years, the transition process will prorate each district's transportation allocation to the extent funds are available based on the difference between the district's prior year's allocation and the district's allocation determined through the process described in WAC 392-141-360.

(2) For the 2011-12 through the 2013-14 school years, each school district shall receive the lesser of the previous school year's student transportation operations allocation or the total of allowable transportation expenditures identified on the previous school year's final expenditure report plus district indirect expenses calculated using the federal restricted indirect rate calculated in the district annual financial report.

NEW SECTION

WAC 392-141-380 Alternate funding systems for low enrollment districts, nonhigh districts, districts participating in interdistrict transportation cooperatives, and educational service districts operating special transportation services. After the transition period described in WAC 392-141-370, the superintendent shall adjust the amount of the transportation operation allocation for low enrollment, nonhigh, districts in interdistrict transportation cooperatives, and educational service districts operating special transportation services in the following manner:

(1) The allocation calculated under WAC 392-141-360 is compared with the prior year's total approved transportation expenditures for each school district;

(2) The average percentage increase for all districts above the previous year's allocation is calculated; and

(3) The district's allocation shall be either the calculated allocation or the previous year's allocation increased by the average determined in subsection (2) of this section, whichever is greater, but not more than the prior year's transportation expenditures.

No later than the first business day of July of each year, the superintendent will notify school districts of the adjustment process to be used in the coming school year.

NEW SECTION

WAC 392-141-390 Allocation schedule for state payments. The superintendent shall apportion the transportation operation allocation according to the schedule in RCW 28A.510.250. Such allocation may be based on estimated amounts for payments made in September, October, November, December, and January. Prior to the 15th of January of each year the superintendent shall notify school districts of the regression analysis coefficients to be used in the calculation of district transportation allocation.

NEW SECTION

WAC 392-141-400 Efficiency evaluation review. (1) Each district's efficiency evaluation will be reviewed annually by the regional transportation coordinators. If a school district's efficiency rating is less than ninety percent, the regional transportation coordinator shall review the district's transportation operation to identify the factors impacting the ability of the district to operate an efficient student transportation system. Such factors will include those within the district's controls and those factors that are beyond the district's control.

(2) Completed regional transportation coordinator reports on the review of school district efficiency evaluation will be provided to the legislature prior to December 1st of each year. Districts will be provided an opportunity to respond to the conclusions of the regional transportation coordinator evaluation and such comments will be included in the report to the legislature. Also included in the report are any actions identified by a district in response to the regional transportation coordinator evaluation.

NEW SECTION

WAC 392-141-410 Recovery of transportation funds. The superintendent of public instruction shall recover (take back) state pupil transportation allocations that are not expended for the allowable student transportation program costs under the accounting guidance provided by the superintendent. The amount of the recovery shall be calculated as follows:

(1) Determine the district's state allocation for student transportation operations for the school year.

(2) Determine the district's allowable student transportation costs as follows:

(a) Sum the following amounts:

(i) The district's direct expenditures for general fund program 99 pupil transportation, and for educational service district student transportation operations expenditures in program 70 transportation excluding expenditures associated with the regional coordinator and bus driver training grants;

(ii) Allowable indirect charges equal to the expenditures as calculated pursuant to (a)(i) of this subsection times the federal restricted indirect rate as calculated in the district annual financial report;

(b) Subtract the district's revenues for the school year for revenue account 7199 (transportation revenues from other districts).

(3) If the allowable program costs are less than the state allocation, OSPI shall recover the difference.

Funds transferred into the transportation vehicle fund shall not be included as allowable transportation program costs for recovery calculations.

NEW SECTION

WAC 392-141-420 District recordkeeping requirements. All data and forms necessary to develop the district's student transportation report shall be maintained in accordance with the district record retention schedule and shall include the following:

- (1) All school bus route logs and school bus driver daily logs including those required in WAC 392-141-330. If student lists are maintained for each school bus route, a copy (electronic or paper) of the list in effect for each count period;
- (2) All documentation used to verify the number of students boarding the bus at bus stops within the walk area of their school of enrollment;
- (3) All documentation used to report and verify the location of school bus stops used in home to school transportation, including school destinations and transfer points;
- (4) All documentation used to develop the annual school bus mileage report;
- (5) All documentation used to develop the annual fuel report;
- (6) All documentation used to develop the annual report of McKinney-Vento Homeless Act transportation;
- (7) All documentation used to develop the district car mileage report;
- (8) Copies of any and all correspondence, publications, or other materials distributed to parents describing the transportation funding process. School districts may provide educational material regarding the funding process for student transportation. However, school districts may not promote or publicize specific count periods. Districts shall not utilize incentive programs that provide tangible gifts to reward increases in ridership counts; and
- (9) Other operational data and descriptions, as required by the superintendent to determine the operation allocation requirements for each district.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 392-141-105 Authority.
- WAC 392-141-110 Purpose.
- WAC 392-141-115 Definition—Eligible student.
- WAC 392-141-120 Definition—To and from school.
- WAC 392-141-130 Definition—Standard student mile allocation rate.
- WAC 392-141-135 Definition—Prorated bus.
- WAC 392-141-140 Definition—Radius mile.
- WAC 392-141-146 Definition—Basic transportation.
- WAC 392-141-147 Definition—Basic shuttle transportation.
- WAC 392-141-148 Definition—Special transportation.
- WAC 392-141-150 Definition—Midday transportation.
- WAC 392-141-152 Definition—Combined transportation route.

- WAC 392-141-155 Definition—Weighted student unit.
- WAC 392-141-156 Definition—District car allocation rate.
- WAC 392-141-157 Definition—District.
- WAC 392-141-158 Definition—Minimum load factor.
- WAC 392-141-159 Definition—Choice program transportation.
- WAC 392-141-160 District reporting and record-keeping requirements.
- WAC 392-141-165 Adjustment of state allocation during year.
- WAC 392-141-170 Factors used to determine allocation.
- WAC 392-141-180 Limitations on the allocation for transportation between schools and learning centers.
- WAC 392-141-185 Operation allocation computation.
- WAC 392-141-190 Authorization and limitation on district payments for individual and in-lieu transportation arrangements.
- WAC 392-141-195 Allocation schedule for state payments.
- WAC 392-141-200 Recovery of transportation funds.

**WSR 11-15-010
PERMANENT RULES
REDISTRICTING COMMISSION**

[Filed July 7, 2011, 10:34 a.m., effective August 7, 2011]

Effective Date of Rule: Thirty-one days after filing.
 Purpose: The purpose of the changes was to make clear for the public how and where they could submit a third party plan to the redistricting commission.
 Citation of Existing Rules Affected by this Order: Amending WAC 417-01-110, 417-01-125, 417-01-140, 417-01-150, 417-01-155, 417-02-100, 417-02-110, 417-02-115, 417-02-125, 417-02-130, 417-02-135, 417-02-140, 417-02-155, 417-06-130, and 417-06-150.
 Statutory Authority for Adoption: RCW 44.05.080(2).
 Adopted under notice filed as WSR 11-12-014 on May 20, 2011.
 Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 15, 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: July 6, 2011.

Bonnie Bunning
Executive Director

AMENDATORY SECTION (Amending WSR 01-13-123, filed 6/20/01, effective 7/9/01)

WAC 417-01-110 Commission responsibilities and duties. Pursuant to article 2, section 43 of the state constitution and chapter 44.05 RCW, the commission's duties are:

(1) To accomplish state legislative and congressional redistricting;

(2) To act as the legislature's recipient of the final redistricting data and maps from the United States Bureau of the Census;

(3) To disclose and preserve public records as specified in chapters 42.17, 42.17A, and 40.14 RCW;

(4) To hold open public meetings pursuant to the Open Public Meetings Act, RCW 42.30;

(5) To prepare and disclose its minutes pursuant to RCW 42.32.030;

(6) To prepare and adopt agency rules pursuant to the Administrative Procedure Act, chapter 34.05 RCW;

(7) To prepare and publish a report with a redistricting plan as provided in RCW 44.05.080(7);

(8) To distribute census data to counties for local redistricting as required by chapter ~~((29.70))~~ 29A.76 RCW.

AMENDATORY SECTION (Amending WSR 01-13-123, filed 6/20/01, effective 7/9/01)

WAC 417-01-125 Offices. (1) The commission office is located at ~~((505 East Union Avenue, Suite 350))~~ 1063 Capitol Way South, Suite 16, Olympia, Washington. The mailing address is: Washington State Redistricting Commission, P.O. Box 40948, Olympia, WA, 98504-0948. Telephone number: ~~((360) 586-9000))~~ 360-786-0770. Facsimile number: ~~((360) 586-8995))~~ 360-586-0433. Internet address: www.redistricting.wa.gov. Electronic mail address: contact@redistricting.wa.gov. Office hours for the commission shall be from 8 a.m. to 5 p.m. on all normal business days. Office hours for inspection and copying of public records shall be as provided in chapter two hereof.

(2) The commission address and contact information shall remain in effect for the duration of the ~~((2001-2002))~~ 2011-2012 commission. Inquiries after that date shall be directed to the secretary of state.

AMENDATORY SECTION (Amending WSR 01-13-123, filed 6/20/01, effective 7/9/01)

WAC 417-01-150 Meetings. (1) Regular meetings: The commission shall meet regularly during the months of April through December in each year ending in one, at the commission's offices, or other suitable location, in Olympia, as published in the *Washington State Register*.

(2) Special meetings: The commission shall meet at other times and places, at the call of the chair or of a majority of the commissioners. Notice of special meetings shall be given at least twenty-four hours before the time of such meeting as specified in the notice, to the media and to all others who have requested notice of commission meetings.

(3) Agenda: The chair, or the commission majority calling a special meeting, shall propose an agenda for the meeting, which shall be distributed to commissioners, to the media, and to others who have requested notice, at the earliest practical date prior to the meeting.

AMENDATORY SECTION (Amending WSR 01-13-123, filed 6/20/01, effective 7/9/01)

WAC 417-01-155 Conduct of commission business.

(1) Three voting members of the commission shall constitute a quorum for the conduct of business.

(2) The votes of any three of the commissioners shall be required for any official action of the commission: Provided, That the chair shall have the authority on behalf of the commission to execute contracts and leases, and approve expenditures and reimbursements, related to the business of the commission. The chair may, without the prior approval of the commission, authorize expenditures for equipment and supplies not to exceed \$15,000. Expenditures made pursuant to this section shall be reported as a separate item on the agenda at the next commission meeting.

(3) The chair shall not have a vote at any meeting of the commission.

(4) Commission meetings shall be conducted in accordance with the Open Public Meetings Act (chapter 42.30 RCW).

(5) The commission shall not adopt any redistricting plan, or partial redistricting plan, except at a public meeting, notice of which has been given in accordance with these rules.

(6) The commission shall not take any action by secret ballot.

~~((7))~~ ~~((When not inconsistent with the state constitution, statute, or these rules, parliamentary matters before the commission shall be governed by Robert's Rules of Order, Tenth Edition.~~

~~((8))~~ Motions shall not require a second in order to be placed before the commission for a vote.

~~((9))~~ (8) All public meetings of the commission shall be electronically recorded. The minutes and tapes thereof shall be available to the public in accordance with the rules regarding access to public records held by the commission. At all meetings of the commission where public testimony regarding redistricting boundaries is a scheduled agenda item, the commission shall provide for the presence of a court reporter to record such testimony. A typewritten transcript of

such testimony shall be prepared as soon as possible after such hearings and shall be made available to the public in accordance with the rules regarding access to public records held by the commission. The transcript of a court reporter prepared pursuant to this section shall become part of the official records of the commission.

~~((40))~~ (9) Except as provided in this section, the chair shall preside at all meetings. In the event of the chair's absence the commission shall select from among the voting members a temporary chair to preside in the chair's absence. The position of temporary chair shall alternate between a member of the two parties represented on the commission.

AMENDATORY SECTION (Amending WSR 01-17-078, filed 8/16/01, effective 9/4/01)

WAC 417-02-100 Purpose. The purpose of this chapter is to establish methods by which the commission will comply with the provisions of chapter ~~((42-17))~~ 42.56 RCW dealing with public records.

AMENDATORY SECTION (Amending WSR 01-17-078, filed 8/16/01, effective 9/4/01)

WAC 417-02-105 Definitions. As used in this chapter:

(1) All words and phrases defined in chapter one of this title (WAC 417-01-120) and RCW 44.05.020 shall have the same meaning for the purposes of this chapter.

(2) "Public records" shall have the same meaning as defined in RCW ~~((42-17-020))~~ 42.56.010.

AMENDATORY SECTION (Amending WSR 01-17-078, filed 8/16/01, effective 9/4/01)

WAC 417-02-110 Public records available. All public records of the commission are available for public inspection and copying pursuant to these rules except as otherwise provided in RCW ~~((42-17-310))~~ 42.56.010 or other law.

AMENDATORY SECTION (Amending WSR 01-17-078, filed 8/16/01, effective 9/4/01)

WAC 417-02-115 Public records officer. The commission's public records shall be in the charge of the public records officer, who shall be the executive director of the commission. The public records officer shall be responsible for: Implementation of commission policy as to release of public records; authorizing release of records, which authorization shall be in writing; and ensuring staff compliance with the requirements of these rules and the requirements of chapter ~~((42-17))~~ 42.56 RCW. The public records officer may designate in writing an assistant public records officer to perform the duties of public records officer when he or she is absent or unavailable.

AMENDATORY SECTION (Amending WSR 01-17-078, filed 8/16/01, effective 9/4/01)

WAC 417-02-125 Requests of public records. In accordance with chapter ~~((42-17))~~ 42.56 RCW that agencies provide full public access to public records, prevent unrea-

sonable invasion of privacy, protect public records from damage or disorganization and prevent excessive interference with essential functions of the agency, public records may be inspected or copied, or copies of such records may be obtained by members of the public upon compliance with the following procedure:

(1) A request to inspect or copy public records shall be made in writing or upon a form prescribed herein which shall be available at the commission's office. The written request or form shall be presented to the public records officer or designated assistant during the office hours established in this chapter. The written request or form shall include the following information:

- (a) The name of the person requesting the record;
- (b) The time and date on which the request was made;
- (c) A specific identification or description of each requested record;

(d) If the matter requested is referenced within the current index maintained by the commission, a reference to the requested record as it is described in such current index; and

(e) If the requested matter is not identifiable by reference to the current index, an appropriate description of the record requested.

(2) The public records officer or designated assistant will ascertain whether the information requested is exempt from public inspection and copying as defined in RCW ~~((42-17-310))~~ 42.56.210 or other law.

(3) Only after a determination has been made that all or such portion of a public record as is not deleted may be inspected, shall such public record or portion thereof be made available for inspection by a member of the public.

(4) In all cases, it shall be the obligation of the public records officer or designated assistant to:

(a) Locate the specific document(s) requested by the member of the public in the most timely manner possible;

(b) Assist the member of the public in appropriately identifying the public record requested;

(c) Protect and otherwise prevent damage to the public record being inspected and copied;

(d) Prevent the disorganization of file folders or document containers; and

(e) Prevent excessive interference with the other essential functions of the commission.

(5) Only the staff and commissioners may open files to gain access to commission records.

(6) Original copies of public records of the commission may not be taken from the premises of the commission by a member of the public without being accompanied by staff or a commissioner.

(7) Public inspection and copying of commission records shall be done only in such locations as are approved by the public records officer or designated assistant at locations that must provide an opportunity for staff to ensure that no public record of the commission is damaged, destroyed, unreasonably disorganized, or removed from its proper location or order by a member of the public.

(8) Public records of the commission may be copied only on the copying machine of the commission unless the public records officer or designated assistant authorizes other arrangements.

AMENDATORY SECTION (Amending WSR 01-17-078, filed 8/16/01, effective 9/4/01)

WAC 417-02-130 Copying. No fee shall be charged for the inspection of public records. The commission shall charge for copies of public records and the use of commission copy equipment such amount as is necessary to reimburse the commission for its actual cost incident to such copying. The commission shall charge a fee of fifteen cents per page for copying 8.5" x 11" documents as established in RCW ((42-17-300)) 42.56.120. The executive director shall establish other charges based upon actual costs for copying public records. Charges will not be assessed if the total cost involved in a particular request is less than one dollar. If the public records officer or designated assistant deems it more efficient to have copying done outside the office of the commission, the charges will be based on the actual cost of such outside copying service.

AMENDATORY SECTION (Amending WSR 01-17-078, filed 8/16/01, effective 9/4/01)

WAC 417-02-135 Exemptions. (1) The public records officer or designated assistant shall delete information from any record prior to permitting public inspection or copying if the information is exempt from disclosure pursuant to RCW ((42-17-310)) 42.56.210 or other law. After such information is deleted, the remainder of the record shall be made available.

(2) To the extent allowed by law, the commission reserves the right to allow the public to inspect but not copy certain public records where there is reason to believe that the ability to copy such records would be a violation of copyright agreements, contracts, or census bureau or other governmental requirements.

(3) Pursuant to RCW ((42-17-260)) 42.56.070, the commission reserves the right to delete identifying details when it makes available or publishes any public record in any cases where there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter ((42-17)) 42.56 RCW. The public records officer or designated assistant will justify such deletion in writing.

(4) All denials of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record or information and a brief explanation of how the exemption applies to the records or information withheld.

AMENDATORY SECTION (Amending WSR 01-17-078, filed 8/16/01, effective 9/4/01)

WAC 417-02-140 Review of denials of public records requests. (1) Any person who objects to the denial of a request for a public record may petition the commission chair for prompt review of such decisions by rendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or designated assistant, which constituted or accompanied the denial.

(2) Immediately after receiving a written request or review of a decision denying a public record, the public records officer or designated assistant denying the request shall refer it to the commission chair. The chair shall immediately consider the matter and either affirm or reverse, in whole or in part, such denial or call a special meeting of the commission as soon as legally possible to review the denial. In any case, the request shall be returned with a final decision from the chair or commission within two business days following the original denial, in accordance with RCW ((42-17-320)) 42.56.520.

(3) Administrative remedies shall not be considered exhausted until the chair, or in the event of a special meeting scheduled to address the denial, the commission has returned the petition with a decision within two business days of the denial, or until the close of the second business day following the denial, whichever occurs first.

AMENDATORY SECTION (Amending WSR 01-17-078, filed 8/16/01, effective 9/4/01)

WAC 417-02-155 Records index. (1) The commission shall implement a records index for the identification and location of official agency records. Those records which are considered exempt for the purposes of this chapter, RCW ((42-17-310)) 42.56.210 and other law shall be noted on the index.

(2) The index shall be available for inspection and copying according to the provisions of WAC 417-02-120.

(3) The index shall be updated quarterly in those months when the commission is convened.

AMENDATORY SECTION (Amending WSR 01-13-123, filed 6/20/01, effective 7/9/01)

WAC 417-06-130 Format for formal plans. (1) Any formal plan submitted to the commission shall be submitted in ((one of)) the following approved formats:

(a) ~~((Paper map submissions: The commission will have available for public purchase paper maps, created using current geographic data provided by the U.S. Bureau of the Census. The maps will be sold for an amount (to be established by the executive director) sufficient to cover the cost to the commission of producing the map copies. Map scale may vary, depending on the population density in the area covered. Maps may be purchased singly or in sets. Formal plan paper map submissions from individuals and groups shall be made on the maps provided by the commission, or on full-size copies thereof. Explanations of the commission's maps, and instructions to users for submission of formal plans, shall be made available free of charge from the commission.~~

~~((b))~~ Electronic submissions: Formal plan electronic submissions from individuals and groups are encouraged and shall be made on ((3.5-inch floppy disks or on)) either:

(i) CD-ROMs containing a table of equivalencies file giving the census block to district assignments as assignment files in ((dBase, INFO,)) Excel or Access; or

(ii) Text file format containing polygon identification and polygon district assignment columns; or

(iii) As district files containing a district identification number; or

(iv) As a shape file or geodatabase; or

(v) In a format approved by the U.S. Department of Justice.

(b) Paper map submissions: The commission will have available for public purchase paper maps, created using current geographic data provided by the U.S. Bureau of the Census. The maps will be sold for an amount (to be established by the executive director) sufficient to cover the cost to the commission of producing the map copies. Map scale may vary, depending on the population density in the area covered. Maps may be purchased singly or in sets. Formal plan paper map submissions from individuals and groups shall be made on the maps provided by the commission, or on full-size copies thereof. Explanations of the commission's maps, and instructions to users for submission of formal plans, shall be made available free of charge from the commission.

Materials explaining ~~((this))~~ these format(s) shall be posted on the commission web site (www.redistricting.wa.gov), and made available free of charge from the commission. The commission shall ~~((make electronic information available which shall include))~~ post census and geographic data on the commission web site (www.redistricting.wa.gov). ~~((The electronic information will be made))~~ Such data will also be available on CD-ROM at a charge (to be established by the executive director) sufficient to cover the cost to the commission of producing CD-ROM copies of the electronic files.

Each electronic formal plan submission shall be based upon current and official Bureau of the Census geography and Public Law 94-171 file unique block identity code of state, county, tract, and block, and shall be accompanied by a full description of its contents, including an identification by name and/or location of each data file that is contained, a detailed record layout for each such file, a record count for each such file, and a full description of the format.

(2) Individuals and groups submitting formal plans shall supplement their paper map or electronic submissions with the following information: Name, address and telephone number of a contact person; a submission cover letter; the total number of plans submitted; a narrative explanation of the plan's compliance with the constitutional and statutory requirements identified in WAC 417-06-120; and a description of the original source materials and data used for the submission. They may also include with the formal plan such other supporting materials and data as they deem appropriate.

AMENDATORY SECTION (Amending WSR 01-13-123, filed 6/20/01, effective 7/9/01)

WAC 417-06-150 Time and place of submissions.

Early submission of third party plans is encouraged. All submissions and supporting materials should be mailed or delivered to the commission's office (not to a commissioner) in Olympia, or they may be presented to commission staff at any public hearing held by the commission. Submissions may be electronically mailed to the commission's address identified in WAC 417-01-125 ~~((only if the U.S. Postal Service or other carrier delivers a physical copy of all submission and supporting materials to the commission offices)), or made directly to the commission through any redistricting~~

mapping tool on its web site. The date of the electronically mailed submission shall be the date the delivered materials are received by the commission. The submission envelope, cover letter and all other submission materials should be clearly marked: "Redistricting Plan Submission." The person or organization submitting the plan bears the responsibility and accepts the risk to ensure timely delivery of the plan to the commission. The commission has no responsibility to review untimely or improperly submitted plans.

WSR 11-15-020

PERMANENT RULES

HEALTH CARE AUTHORITY

(Basic Health Plan)

[Filed July 8, 2011, 11:05 a.m., effective August 8, 2011]

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

Purpose: To amend chapters 182-22 and 182-24 WAC to comply with federal rules concerning eligibility and a fair hearings process.

Citation of Existing Rules Affected by this Order: Amending chapters 182-22 and 182-24 WAC.

Statutory Authority for Adoption: Chapter 70.47 RCW. Adopted under notice filed as WSR 11-12-083 on June 1, 2011.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 5, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 1, Amended 5, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 8, 2011

Jason Siems
Rules Coordinator

AMENDATORY SECTION (Amending Order 10-03, filed 11/30/10, effective 12/31/10)

WAC 182-22-110 Definitions. The definitions in this section apply throughout chapters 182-22, 182-23, 182-24, and 182-25 WAC.

"Administrator" means the administrator of the Washington state health care authority (HCA) or designee.

"Appeal procedure" means a formal written procedure for resolution of problems or concerns raised by enrollees or applicants which cannot be resolved in an informal manner to the appellant's satisfaction.

"Basic health plan" or "BHP" means the system of enrollment and payment for subsidized basic health care services administered by the HCA through managed health care systems.

"BHP Plus" means the program of expanded benefits available to children through coordination between the department of social and health services (DSHS) and BHP. Eligibility for BHP Plus is determined by the department of social and health services, based on medicaid eligibility criteria. To be eligible for the program children must be under age nineteen, with a family income at or below two hundred percent of federal poverty level, as defined by the United States Department of Health and Human Services. They must be Washington state residents, not eligible for medicare, and may be required to meet additional DSHS eligibility requirements.

"Copayment" means a payment indicated in the schedule of benefits which is made by an enrollee to a health care provider or to the managed health care system.

"Covered services" means those services and benefits in the applicable BHP or WHP schedule of benefits (as outlined in the member handbook), which an enrollee shall be entitled to receive from a managed health care system in exchange for payment of premium and applicable copayments, coinsurance and deductible.

"Dependent," as it applies to BHP or WHP, means:

(a) The subscriber's lawful spouse, not legally separated, who resides with the subscriber; or

(b) The child of the subscriber or the subscriber's dependent spouse, whether by birth, adoption, legal guardianship, or placement pending adoption, who is younger than age twenty-six, and who has not been relinquished for adoption by the subscriber or the subscriber's dependent spouse; or

(c) A person of any age who is incapable of self-support due to disability, and who is the unmarried child of the subscriber or the subscriber's dependent spouse, whether by birth, adoption, or legal guardianship; or

(d) A child younger than age twenty-six who is residing with the subscriber under an informal guardianship agreement. For a child to be considered a dependent of the subscriber under this provision:

(i) The guardianship agreement must be signed by the child's parent;

(ii) The guardianship agreement must authorize the subscriber to obtain medical care for the child;

(iii) The subscriber must be providing at least fifty percent of the child's support(= and

~~(iv) The child must be on the account for coverage).~~

"Disenrollment" means the termination of coverage for an enrollee.

"Effective date of enrollment" means the first date, as established by BHP or WHP, on which an enrollee is entitled to receive covered services from the enrollee's respective managed health care system.

"Eligible full-time employee" means an employee who meets all applicable eligibility requirements and who is regularly scheduled to work thirty or more hours per week for an employer. The term includes a self-employed individual (including a sole proprietor or a partner of a partnership, and may include an independent contractor) if the individual:

(a) Is regularly scheduled to work thirty hours or more per week; and

(b) Derives at least seventy-five percent of his or her income from a trade or business that is licensed to do business in Washington state.

Persons covered under a health benefit plan pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1986 shall not be considered eligible employees for purposes of minimum participation requirements.

"Eligible part-time employee" means an employee who meets all the criteria in definition "eligible full-time employee" of this section, but who is regularly scheduled to work fewer than thirty hours per week for an employer.

"Employee" means one who is in the employment of an employer, as defined under RCW 50.04.080.

"Employer" means an enterprise licensed to do business in Washington state, as defined under RCW 50.04.080, with employees in addition to the employer, whose wages or salaries are paid by the employer.

"Enrollee" means a person who meets all applicable eligibility requirements, who is enrolled in BHP or WHP, and for whom applicable premium payments have been made.

"Family" means an individual or an individual and eligible spouse and dependents. For purposes of eligibility determination and enrollment, an individual cannot be a member of more than one family.

"Financial sponsor" means a person, organization or other entity, approved by the administrator, that is responsible for payment of all or a designated portion of the monthly premiums on behalf of a subscriber and any dependents.

"Health care authority" or "HCA" means the Washington state health care authority.

"Home care agency" means a private or public agency or organization that administers or provides home care services directly or through a contract arrangement to ill, disabled, or infirm persons in places of temporary or permanent residence, and is licensed by the department of social and health services (DSHS) as a home care agency. In order to qualify, the agency must be under contract with one of the following DSHS programs: Chore, medicaid personal care, community options program entry system (COPES) or respite care (up to level three).

"Institution" means a federal, state, county, city or other government correctional or detention facility or government-funded facility where health care historically has been provided and funded through the budget of the operating agency, and includes, but is not limited to: Washington state department of corrections institutions; federal, county and municipal government jail and detention institutions; Washington state department of veterans affairs soldiers' and veterans' homes; department of social and health services state hospitals and facilities and juvenile rehabilitation institutions and group homes. An institution does not include: Educational institutions, government-funded acute health care or mental health facilities except as provided above, chemical dependency facilities, and nursing homes.

"Institutionalized" means to be confined, voluntarily or involuntarily, by court order or health status, in an institution, as defined in this section. This does not include persons on work release or who are residents of higher education institu-

tions, acute health care facilities, alcohol and chemical dependency facilities, or nursing homes.

"Insurance broker" or "agent" means a person who is currently licensed as a disability insurance broker or agent, according to the laws administered by the office of the insurance commissioner under chapter 48.17 RCW.

"Managed health care system" or "MHCS" means:

(a) Any health care organization (including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof) which has entered into a contract with the HCA to provide health care services; or

(b) A self-funded or self-insured method of providing insurance coverage to subsidized enrollees provided under RCW 41.05.140 and subject to the limitations under RCW 70.47.100(7).

"Maternity benefits through medical assistance," also known as S-Medical, means the coordinated program between BHP and DSHS for eligible pregnant women. This program includes all medicaid benefits, including maternity coverage. Eligible members must be at or below one hundred eighty-five percent of the federal poverty level. Eligibility for this program is determined by DSHS, based on medicaid eligibility criteria.

"Medicaid" means the Title XIX medicaid program administered by the department of social and health services, and includes the medical care programs provided to the "categorically needy" and the "medically needy" as defined in chapter 388-503 WAC.

"Medicare" means programs established by Title XVIII of Public Law 89-97, as amended, "Health Insurance for the Aged and Disabled."

"Nonparticipating provider" means a person, health care provider, practitioner, facility, or entity, acting within their scope of practice, that does not have a written contract to participate in a managed health care system's provider network, but provides health care services to enrollees of programs authorized under this chapter whose health care services are provided by the managed health care system.

"Open enrollment" means a time period designated by the administrator during which enrollees may enroll additional dependents or apply to transfer their enrollment from one managed health care system to another.

"Participating employee" means an employee of a participating employer or home care agency who has met all the eligibility requirements and has been enrolled for coverage.

"Participating employer" means an employer who has been approved for enrollment as an employer group.

"Participating provider" means a person, health care provider, practitioner, facility, or entity, acting within their scope of practice, that has a written contract to participate in a managed health care system's provider network.

"Preexisting condition" means any illness, injury or condition for which, in the six months immediately preceding an enrollee's effective date of enrollment:

(a) Treatment, consultation or a diagnostic test was recommended for or received by the enrollee; or

(b) Medication was prescribed or recommended for the enrollee; or

(c) Symptoms existed which would ordinarily cause a reasonably prudent individual to seek medical diagnosis, care or treatment.

"Premium" means a periodic payment, determined under RCW 70.47.060(2), which an individual, an employer, a financial sponsor, or other entity makes for enrollment in BHP or WHP.

"Program" means BHP, WHP, BHP Plus, maternity benefits through medical assistance, or other such category of enrollment specified within chapters 182-22 through 182-24 WAC.

"Provider" or "health care provider" means a health care professional or institution duly licensed and accredited to provide covered services in the state of Washington.

"Rate" means the amount, including administrative charges and any applicable premium and prepayment tax imposed under RCW 48.14.0201, negotiated by the administrator with and paid to a managed health care system, to provide BHP or WHP health care benefits to enrollees.

"Schedule of benefits" means the health care services adopted and from time to time amended by the administrator for BHP or WHP, as applicable, which an enrollee shall be entitled to receive from a managed health care system in exchange for payment of premium and applicable copayments, as described in the member handbook.

"Service area" means the geographic area served by a managed health care system as defined in its contract with HCA.

"Subscriber" is a person who applies for coverage on his/her own behalf or on behalf of his/her dependents, if any, who is responsible for payment of premiums and to whom the administrator sends notices and communications. The subscriber may be an enrollee or the spouse, parent, or guardian of an enrolled dependent and may or may not be enrolled for coverage. Notices to a subscriber and, if applicable, a financial sponsor or employer shall be considered notice to the subscriber and his/her enrolled dependents.

"Washington health program" means the system of enrollment and payment for nonsubsidized basic health care services administered by the HCA through managed health care systems.

"Washington state resident" or "resident" means a person who physically resides and maintains a residence in the state of Washington.

(a) To be considered a Washington resident, enrollees who are temporarily out of Washington state for any reason:

(i) May be required to demonstrate their intent to return to Washington state; and

(ii) May not be out of Washington state for more than three consecutive calendar months.

(b) Dependent children who are attending school out-of-state may be considered to be residents if they are out-of-state during the school year, provided their primary residence is in Washington state and they return to Washington state during holidays and scheduled breaks. Dependent children attending school out-of-state may also be required to provide proof that they pay out-of-state tuition at an accredited secondary school, college, university, technical college, or school of nursing, vote in Washington state and file their federal income taxes using a Washington state address.

- (c) "Residence" may include, but is not limited to:
- (i) A home the person owns or is purchasing or renting;
 - (ii) A shelter or other physical location where the person is staying in lieu of a home; or
 - (iii) Another person's home.

AMENDATORY SECTION (Amending Order 10-03, filed 11/30/10, effective 12/31/10)

WAC 182-22-330 How to appeal a managed health care system (MHCS) decision nonsubsidized enrollees. (1) Nonsubsidized enrollees who are appealing an MHCS decision, including decisions related to coverage disputes; denial of claims; benefits interpretation; or resolution of complaints must follow their MHCS's complaint/appeals process.

(2) Each MHCS must maintain a complaint/appeals process for enrollees and must provide enrollees with instructions for filing a complaint and/or appeal. This complaint/appeals process must comply with the requirements of chapters 48.43 RCW and 284-43 WAC.

(3) On the request of the enrollee, the HCA may assist an enrollee by:

- (a) Attempting to informally resolve complaints against the enrollee's MHCS;
- (b) Investigating and resolving MHCS contractual issues; and
- (c) Providing information and assistance to facilitate review of the decision by an independent review organization.

NEW SECTION

WAC 182-22-340 How to appeal a managed health care system (MHCS) decision—Subsidized enrollees and federal Health Coverage Tax Credit enrollees. (1) Subsidized enrollees or federal Health Coverage Tax Credit enrollees who are appealing an MHCS decision, including decisions related to coverage disputes; denial of claims; benefits interpretation; or resolution of complaints; may voice a grievance or appeal an action by an MHCS to the MHCS either orally or in writing. For the purposes of this section "managed care organization" (MCO) has the same meaning as "managed health care system" (MHCS).

(2) Each MHCS must maintain a complaint/appeals process for enrollees and must provide enrollees with instructions for filing a complaint and/or appeal. This complaint/appeals process must comply with the requirements of chapters 48.43 RCW and 284-43 WAC.

(3) On the request of the enrollee, the HCA may assist an enrollee by:

- (a) Attempting to informally resolve complaints against the enrollee's MHCS;
- (b) Investigating and resolving MHCS contractual issues; and
- (c) Providing information and assistance to facilitate review of the decision by an independent review organization.

(4) MHCSs must maintain records of subsidized enrollees' grievances and appeals and must review the information as part of the MHCS's quality strategy.

(5) MHCSs must provide information describing the MHCS's grievance system to all providers and subcontractors.

(6) Each MHCS must have a grievance system in place for subsidized enrollees. The system must comply with the requirements of this section and the regulations of the state office of the insurance commissioner (OIC). If a conflict exists between the requirements of this chapter and OIC regulations, the requirements of this chapter take precedence. The MHCS grievance system must include all of the following:

(a) A grievance process for complaints about any matter other than an action, as defined in WAC 388-538-050. See subsection (7) of this section for this process;

(b) An appeal process for an action, as defined in WAC 388-538-050. See subsection (8) of this section for the standard appeal process and subsection (9) of this section for the expedited appeal process;

(c) Access to the HCA's hearing process for actions as defined in WAC 388-538-050. The HCA's hearing process described in chapter 388-02 WAC applies to this chapter. Where conflicts exist, the requirements in this chapter take precedence. See WAC 388-538-112 for the HCA's hearing process for subsidized enrollees;

(d) Access to an independent review (IR) as described in RCW 48.43.535, for actions as defined in WAC 388-538-050; and

(e) Access to the board of appeals (BOA) for actions as defined in WAC 388-538-050.

(7) The MHCS grievance process:

(a) Only a subsidized enrollee may file a grievance with an MHCS; a provider may not file a grievance on behalf of an enrollee.

(b) To ensure the rights of MHCS enrollees are protected, each MHCS's grievance process must be approved by the HCA.

(c) MHCSs must inform enrollees in writing within fifteen days of enrollment about enrollees' rights and how to use the MHCS's grievance process, including how to use the HCA's hearing process. The MHCSs must have HCA approval for all written information the MHCS sends to enrollees.

(d) The MHCS must give enrollees any assistance necessary in taking procedural steps for grievances (e.g., interpreter services and toll-free numbers).

(e) The MHCS must acknowledge receipt of each grievance either orally or in writing, and each appeal in writing, within five working days.

(f) The MHCS must ensure that the individuals who make decisions on grievances are individuals who:

(i) Were not involved in any previous level of review or decision making; and

(ii) If deciding any of the following, are health care professionals who have appropriate clinical expertise in treating the enrollee's condition or disease:

(A) A grievance regarding denial of an expedited resolution of an appeal; or

(B) A grievance involving clinical issues.

(g) The MHCS must complete the disposition of a grievance and notice to the affected parties within ninety days of receiving the grievance.

(8) The MHCS appeal process:

(a) An enrollee, or the enrollee's representative with the enrollee's written consent, may appeal an MHCS action.

(b) To ensure the rights of enrollees are protected, each MHCS's appeal process must be approved by the HCA.

(c) MHCSs must inform enrollees in writing within fifteen days of enrollment about enrollees' rights and how to use the MHCS's appeal process and the HCA's hearing process. The MHCSs must have HCA approval for all written information the MHCS sends to enrollees.

(d) For standard service authorization decisions, an enrollee must file an appeal, either orally or in writing, within ninety calendar days of the date on the MHCS's notice of action. This also applies to an enrollee's request for an expedited appeal.

(e) For appeals for termination, suspension, or reduction of previously authorized services, if the enrollee is requesting continuation of services, the enrollee must file an appeal within ten calendar days of the date of the MHCS mailing the notice of action. Otherwise, the time frames in (d) of this subsection apply.

(f) The MHCS's notice of action must:

(i) Be in writing;

(ii) Be in the enrollee's primary language and be easily understood as required in 42 CFR 438.10(c) and (d);

(iii) Explain the action the MHCS or its contractor has taken or intends to take;

(iv) Explain the reasons for the action;

(v) Explain the enrollee's or the enrollee's representative's right to file an MHCS appeal;

(vi) Explain the procedures for exercising the enrollee's rights;

(vii) Explain the circumstances under which expedited resolution is available and how to request it (also see subsection (9) of this section);

(viii) Explain the enrollee's right to have benefits continue pending resolution of an appeal, how to request that benefits be continued, and the circumstances under which the enrollee may be required to pay the costs of these services (also see subsection (10) of this section); and

(ix) Be mailed as expeditiously as the enrollee's health condition requires, and as follows:

(A) For denial of payment, at the time of any action affecting the claim. This applies only when the client can be held liable for the costs associated with the action.

(B) For standard service authorization decisions that deny or limit services, not to exceed fourteen calendar days following receipt of the request for service, with a possible extension of up to fourteen additional calendar days if the enrollee or provider requests extension. If the request for extension is granted, the MHCS must:

(I) Give the enrollee written notice of the reason for the decision for the extension and inform the enrollee of the right to file a grievance if the enrollee disagrees with that decision; and

(II) Issue and carry out the determination as expeditiously as the enrollee's health condition requires and no later than the date the extension expires.

(C) For termination, suspension, or reduction of previously authorized services, ten days prior to such termination, suspension, or reduction, except if the criteria stated in 42 CFR 431.213 and 431.214 are met. The notice must be mailed by a method which certifies receipt and assures delivery within three calendar days.

(D) For expedited authorization decisions, in cases where the provider indicates or the MHCS determines that following the standard time frame could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function, no later than three calendar days after receipt of the request for service.

(g) The MHCS must give enrollees any assistance necessary in taking procedural steps for an appeal (e.g., interpreter services and toll-free numbers).

(h) The MHCS must acknowledge receipt of each appeal.

(i) The MHCS must ensure that the individuals who make decisions on appeals are individuals who:

(i) Were not involved in any previous level of review or decision making; and

(ii) If deciding any of the following, are health care professionals who have appropriate clinical expertise in treating the enrollee's condition or disease:

(A) An appeal of a denial that is based on lack of medical necessity; or

(B) An appeal that involves clinical issues.

(j) The process for appeals must:

(i) Provide that oral inquiries seeking to appeal an action are treated as appeals (to establish the earliest possible filing date for the appeal), and must be confirmed in writing, unless the enrollee or provider requests an expedited resolution. Also see subsection (9) of this section for information on expedited resolutions;

(ii) Provide the enrollee a reasonable opportunity to present evidence, and allegations of fact or law, in person as well as in writing. The MHCS must inform the enrollee of the limited time available for this in the case of expedited resolution;

(iii) Provide the enrollee and the enrollee's representative opportunity, before and during the appeals process, to examine the enrollee's case file, including medical records, and any other documents and records considered during the appeal process; and

(iv) Include as parties to the appeal, the enrollee and the enrollee's representative, or the legal representative of the deceased enrollee's estate.

(k) MHCSs must resolve each appeal and provide notice, as expeditiously as the enrollee's health condition requires, within the following time frames:

(i) For standard resolution of appeals and notice to the affected parties, no longer than forty-five calendar days from the day the MHCS receives the appeal. This time frame may not be extended.

(ii) For expedited resolution of appeals, including notice to the affected parties, no longer than three calendar days after the MHCS receives the appeal.

(iii) For appeals for termination, suspension, or reduction of previously authorized services, no longer than forty-five calendar days from the day the MHCS receives the appeal.

(l) The notice of the resolution of the appeal must:

(i) Be in writing. For notice of an expedited resolution, the MHCS must also make reasonable efforts to provide oral notice (also see subsection (9) of this section).

(ii) Include the results of the resolution process and the date it was completed.

(iii) For appeals not resolved wholly in favor of the enrollee:

(A) Include information on the enrollee's right to request an HCA hearing and how to do so (also see WAC 388-538-112);

(B) Include information on the enrollee's right to receive services while the hearing is pending and how to make the request (also see subsection (10) of this section); and

(C) Inform the enrollee that the enrollee may be held liable for the cost of services received while the hearing is pending, if the hearing decision upholds the MHCS's action (also see subsection (11) of this section).

(m) If an enrollee does not agree with the MHCS's resolution of the appeal, the enrollee may file a request for an HCA hearing within the following time frames (see WAC 388-538-112 for the HCA's hearing process for enrollees):

(i) For hearing requests regarding a standard service, within ninety days of the date of the MHCS's notice of the resolution of the appeal.

(ii) For hearing requests regarding termination, suspension, or reduction of a previously authorized service, within ten days of the date on the MHCS's notice of the resolution of the appeal.

(n) The enrollee must exhaust all levels of resolution and appeal within the MHCS's grievance system prior to requesting a hearing with the HCA.

(9) The MHCS expedited appeal process:

(a) Each MHCS must establish and maintain an expedited appeal review process for appeals when the MHCS determines (for a request from the enrollee) or the provider indicates (in making the request on the enrollee's behalf or supporting the enrollee's request), that taking the time for a standard resolution could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function.

(b) When approving an expedited appeal, the MHCS will issue a decision as expeditiously as the enrollee's health condition requires, but not later than three business days after receiving the appeal.

(c) The MHCS must ensure that punitive action is not taken against a provider who requests an expedited resolution or supports an enrollee's appeal.

(d) If the MHCS denies a request for expedited resolution of an appeal, it must:

(i) Transfer the appeal to the time frame for standard resolution; and

(ii) Make reasonable efforts to give the enrollee prompt oral notice of the denial, and follow up within two calendar days with a written notice.

(10) Continuation of previously authorized services:

(a) The MHCS must continue the enrollee's services if all of the following apply:

(i) The enrollee or the provider files the appeal on or before the later of the following:

(A) Unless the criteria in 42 CFR 431.213 and 431.214 are met, within ten calendar days of the MHCS mailing the notice of action, which for actions involving services previously authorized, must be delivered by a method which certifies receipt and assures delivery within three calendar days; or

(B) The intended effective date of the MHCS's proposed action.

(ii) The appeal involves the termination, suspension, or reduction of a previously authorized course of treatment;

(iii) The services were ordered by an authorized provider;

(iv) The original period covered by the original authorization has not expired; and

(v) The enrollee requests an extension of services.

(b) If, at the enrollee's request, the MHCS continues or reinstates the enrollee's services while the appeal is pending, the services must be continued until one of the following occurs:

(i) The enrollee withdraws the appeal;

(ii) Ten calendar days pass after the MHCS mails the notice of the resolution of the appeal and the enrollee has not requested an HCA hearing (with continuation of services until the HCA hearing decision is reached) within the ten days;

(iii) Ten calendar days pass after the state office of administrative hearings (OAH) issues a hearing decision adverse to the enrollee and the enrollee has not requested an independent review (IR) within the ten days (see WAC 388-538-112);

(iv) Ten calendar days pass after the IR mails a decision adverse to the enrollee and the enrollee has not requested a review with the board of appeals within the ten days (see WAC 388-538-112);

(v) The board of appeals issues a decision adverse to the enrollee (see WAC 388-538-112); or

(vi) The time period or service limits of a previously authorized service has been met.

(c) If the final resolution of the appeal upholds the MHCS's action, the MHCS may recover the amount paid for the services provided to the enrollee while the appeal was pending, to the extent that they were provided solely because of the requirement for continuation of services.

(11) Effect of reversed resolutions of appeals:

(a) If the MHCS or OAH reverses a decision to deny, limit, or delay services that were not provided while the appeal was pending, the MHCS must authorize or provide the disputed services promptly, and as expeditiously as the enrollee's health condition requires.

(b) If the MHCS or OAH reverses a decision to deny authorization of services, and the enrollee received the disputed services while the appeal was pending, the MHCS must pay for those services.

AMENDATORY SECTION (Amending Order 10-03, filed 11/30/10, effective 12/31/10)

WAC 182-22-450 MHCS duties. (1) When an MHCS assists applicants in the enrollment process, it must provide them with the toll-free number for BHP or WHP and information on all MHCS available within the applicant's county of residence and the estimated premiums for each available MHCS.

(2) An MHCS shall pay a nonparticipating provider no more than the lowest amount paid for that service under the MHCS's contracts with similar providers in the state.

(a) For services provided to plan enrollees on or after the effective date of this section, nonparticipating providers must accept as payment in full the amount paid by the managed health care system under RCW 70.47.100(2) in addition to any deductible, coinsurance, or copayment that is due from the enrollee under the terms and conditions set forth in the MHCS contract with the administrator.

(b) A plan enrollee is not liable to any nonparticipating provider for covered services, except for amounts due for any deductible, coinsurance, or copayment under the terms and conditions set forth in the managed health care system contract with the administrator.

(3) Pursuant to federal managed care access standards, 42 CFR Sec. 438, MHCS's must maintain a network of appropriate providers that is supported by written agreements sufficient to provide adequate access to all services covered under the contract with the authority, including hospital-based physician services.

AMENDATORY SECTION (Amending Order 10-03, filed 11/30/10, effective 12/31/10)

WAC 182-24-010 Definitions. The following definitions apply throughout this chapter.

"BHP enrollee," "subsidized enrollee," or "reduced premium enrollee" means: An individual who is not a full-time student who has received a temporary visa to study in the United States and who otherwise meets the criteria in (a), (b), or (c) of this subsection.

(a) An individual who enrolls in BHP, either as the subscriber or an eligible dependent, whose current gross family income does not exceed ~~((twice))~~ two hundred percent the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, ~~((and))~~ who receives a premium subsidy from the HCA, and who is transition eligible, as determined by the administrator in coordination with the Center for Medicaid Service, with countable income at or below one hundred thirty-three percent of the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services.

(b) An individual who enrolls in BHP, either as the subscriber or an eligible dependent, and who is a foster parent licensed under chapter 74.15 RCW and whose current gross family income does not exceed three hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA.

(c) To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, "subsidized enrollee" also means an individual who enrolls in BHP, either as the subscriber or an eligible dependent, whose current gross family income is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA.

"Subsidy" means the difference between the amount of periodic payment the HCA makes to a managed health care system on behalf of a subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

AMENDATORY SECTION (Amending Order 10-03, filed 11/30/10, effective 12/31/10)

WAC 182-24-020 Eligibility. (1) To be eligible for enrollment in BHP, unless otherwise specified elsewhere in this chapter, an individual must be a Washington state resident, age nineteen to sixty-four, who:

(a) Is not eligible for free or purchased medicare;

(b) Is not eligible for or receiving medical assistance from the department of social and health services (DSHS);

(c) Is not enrolled in WHP;

(d) Is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator;

(e) Is not a full-time student who has received a temporary visa to study in the United States;

(f) Is a U.S. citizen; or a qualified alien who meets the eligibility requirements in Title 8 United States Code (USC), Chapter 14, Subchapter I, Section 1613, five-year limited eligibility of qualified aliens for federal means-tested public benefit;

(g) Resides in an area of the state served by a managed health care system participating in the plan;

~~((g))~~ (h) Chooses to obtain coverage from a particular managed health care system;

~~((h))~~ (i) Pays or has paid on their behalf their portion of the costs for participation in the plan; and

~~((i))~~ (j) Whose gross family income at the time of enrollment meets the definition of a subsidized enrollee.

(2) Persons not meeting these criteria, as evidenced by information submitted on the application for enrollment or otherwise obtained by BHP, will not be enrolled. An enrollee who is no longer a Washington resident or who is later determined to have failed to meet BHP's eligibility criteria at the time of enrollment, will be disenrolled.

(3) Eligibility for BHP Plus and maternity benefits through medical assistance is determined by DSHS, based on medicaid eligibility criteria.

(4)(a) An individual otherwise eligible for enrollment in BHP may be denied enrollment if the administrator has determined that acceptance of additional enrollment would exceed limits established by the legislature, would jeopardize the orderly development of BHP, or would result in an overexpenditure of BHP funds. An individual otherwise eligible for

enrollment in BHP also may be denied enrollment if no managed health care system(s) is accepting new enrollment in that program or from the geographic area where the applicant lives.

(b) If the administrator closes or limits enrollment, to the extent funding is available, BHP will continue to accept and process applications for enrollment from:

(i) Children eligible for BHP, who were referred to DSHS for BHP Plus coverage, but were found ineligible for BHP Plus for reasons other than noncompliance;

(ii) Employees of a home care agency group enrolled or applying for coverage under WAC 182-22-220;

(iii) Eligible individual home care providers;

(iv) Licensed foster care workers;

(v) Persons who disenrolled from BHP in order to enroll in medicaid, and subsequently became ineligible for medicaid;

(vi) Limited enrollment of new employer groups;

(vii) Members of the Washington National Guard and Reserves who served in Operation Enduring Freedom, Operation Iraqi Freedom, or Operation Noble Eagle, and their spouses and dependents; and

(viii) Subject to availability of funding, additional space for enrollment may be reserved for other applicants as determined by the administrator, in order to ensure continuous coverage and service for current individual and group accounts. (For example: Within established guidelines, processing routine income changes that may affect subsidy eligibility for current enrollees; adding new family members to an existing account; transferring enrollees between group and individual accounts; restoring coverage for enrollees who are otherwise eligible for continued enrollment under WAC 182-24-070 (7)(b) after a limited suspension of coverage due to late payment or other health care coverage; adding newly hired employees to an existing employer group; or adding new or returning members of federally recognized Native American tribes to that tribe's currently approved financial sponsor group.)

(c) If the administrator has closed or limited enrollment, applicants for BHP who are not in any of the categories in (b) of this subsection may reserve space on a waiting list to be processed according to the date the waiting list request or application is received by BHP. When enrollment is reopened by the administrator, applicants whose names appear on the waiting list will be notified by BHP of the opportunity to enroll. BHP may require new application forms and documentation from applicants on the waiting list, or may contact applicants to verify continued interest in applying, before determining their eligibility.

WSR 11-15-023

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

[Filed July 8, 2011, 1:13 p.m., effective August 8, 2011]

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

Purpose: DSHS is updating WACs to change the deeming and allocation rules for SSI-related medical programs so they mirror the federal rules. The department is creating new WACs to further clarify deeming rules relating to deeming from ineligible parents to applicant children; deeming between an applicant spouse and a nonapplying spouse; and deeming between spouses when one spouse is institutionalized. DSHS is adding new language in WAC 388-475-0840 to support the student earned income exclusion and adding language in WAC 388-475-0820 to define a student for SSI-related medical. DSHS is repealing WAC 388-506-0620 and incorporating the language to a new rule in the chapter 388-475 WAC series.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-506-0620; amending WAC 388-475-0820, 388-475-0840, and 388-475-0900.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.500.

Adopted under notice filed as WSR 11-11-084 on May 18, 2011.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 3, Repealed 1.

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 3, Repealed 1.

Date Adopted: July 8, 2011.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 11-16 issue of the Register.

WSR 11-15-029

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Medicaid Purchasing Administration)

[Filed July 12, 2011, 8:29 a.m., effective August 12, 2011]

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

Purpose: These amendments reorganize the sections for nonemergency medical transportation; add/remove/update definitions; update client eligibility and responsibility; include a section on "covered trips"; add a new section for "exclusions and limitations"; include a section for "intermediate stops or delays"; add new section regarding local provider and trips outside the client's local community; update the section regarding meals/lodging/escort/guardian; expand

the reimbursement section to clarify when reimbursement for preauthorized expenditures for trips, meals, and lodging must be requested, what documentation is required for reimbursement of mileage, fuel/gas, parking, bridge tolls, etc., and when the broker may retroactively authorize and reimburse transportation costs (including meals and lodging).

Citation of Existing Rules Affected by this Order: Amending WAC 388-546-5000, 388-546-5100, 388-546-5200, 388-546-5300, 388-546-5400, and 388-546-5500.

Statutory Authority for Adoption: RCW 74.04.057, 74.08.090, 74.09.500.

Other Authority: RCW 74.08.090.

Adopted under notice filed as WSR 11-10-070 on May 3, 2011.

Changes Other than Editing from Proposed to Adopted Version: **WAC 388-546-5100 Definitions**, added the following text to the proposed definition of "noncompliance or noncompliant":

"Noncompliance or noncompliant" - When a client:

- Fails to appear at the pick-up point of the trip at the scheduled pick-up time without good cause or without reasonable notification to the broker;
- Fails without good cause to comply with the rules, procedures, and/or policies of the department and/or those of the department's transportation brokers, the brokers' subcontracted transportation providers, and healthcare service providers;

WAC 388-546-5500 Covered trips.

Subsection (1)(a), changed "services is" to "services are."

Subsection (1)(d), changed "the" to "a."

Subsection (1)(g), corrected the reference to "WAC 388-546-6200(7) not (6)."

WAC 388-546-5700 Local provider and trips outside client's local community.

Subsection (3)(a)(ii), changed "locally" to "in the client's local community" for consistency.

Subsection (3)(b)(iii), the text was changed as follows:

Ongoing treatment of ~~the following~~ medical conditions that may qualify for transportation based on continuity of care, include but are not limited to:

- (A) Active cancer treatment;
- (B) Recent transplant (within the last twelve months);
- (C) Scheduled surgery (within the next sixty days);
- (D) Major surgery (within the previous sixty days); or
- (E) Third trimester of pregnancy.

WAC 388-546-6200 Reimbursement.

Subsection (7)(b), the department added subsection (iii) with the following language which:

The trip involves an area that the department's broker considers to be unsafe for the client, other riders, or the driver.

A final cost-benefit analysis is available by contacting Walter Neal, P.O. Box 45530, Olympia, WA 98504-5530, phone (360) 725-1703, fax (360) 586-9727, e-mail Nealw@dshs.wa.gov.

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

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 8, Amended 6, 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 8, Amended 6, Repealed 0.

Date Adopted: July 12, 2011.

Susan N. Dreyfus
Secretary

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 11-16 issue of the Register.

WSR 11-15-038
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed July 13, 2011, 10:50 a.m., effective August 13, 2011]

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

Purpose: Amends WAC 181-79A-150, 181-79A-211 and 181-79A-257, clarifies general requirements for educator licenses given new legislation (2009) permitting nonhigher education programs to offer preparation.

Citation of Existing Rules Affected by this Order: Amending x.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 11-12-031 on May 25, 2011.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 252, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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

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

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

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

Date Adopted: July 7, 2011.

David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 08-03-100, filed 1/20/08, effective 2/20/08)

WAC 181-79A-150 General requirements—Teachers, administrators, educational staff associates and first peoples' language, culture, and oral tribal traditions teachers. The following requirements are to be met by candidates for certification as teachers including career and technical education teachers, administrators, educational staff associates, or first peoples' language, culture, and oral tribal traditions teachers:

(1) Age. No person who is less than eighteen years of age shall receive a certificate to serve in the public or nonpublic schools of Washington state.

(2) Character. Applicants for certificates in Washington state who are not holders of a valid Washington state teacher's, administrator's, educational staff associate's, career and technical education, or first peoples' language, culture, and oral tribal traditions teacher's certificate must give evidence of good moral character and personal fitness as specified in WAC 181-79A-155 and must complete a record check through the Washington state patrol criminal identification system and through the Federal Bureau of Investigation at the applicant's expense as required by RCW 28A.410.010; such record check shall include a fingerprint check using a Washington state patrol approved fingerprint card: Provided, That the superintendent of public instruction may waive the record check for an applicant who has had a record check within the two years prior to application.

(3) Degrees and course work. A candidate for certification shall hold appropriate degrees, licenses, and additional course work as prescribed in chapters 181-79A and 181-77 WAC or have qualified under WAC 181-79A-257 or 181-78A-700.

(4) Approved preparation program. Applicants for certification as teachers, administrators, school counselors, school psychologists and school social workers, except as otherwise provided in WAC 181-79A-257, and 181-79A-231, and in chapter 181-77 WAC, in order to be certified within the state of Washington shall have completed a state approved ~~((college/university))~~ preparation program in the professional field for which certification is to be issued; such program shall have included a defined course of study and a supervised internship. Applicants for certification as first peoples' language, culture, and oral tribal traditions teachers shall have completed a sovereign tribal government's first peoples' language, culture, and oral tribal traditions teaching certification program.

(5) ~~((Certificates—~~

~~(a) Candidates for principal's certificates must hold or have held:~~

~~(i) A valid teacher's certificate, excluding certificates issued under WAC 181-79A-231, or comparable out-of-state certificates; or~~

~~(ii) A valid educational staff associate certificate and have demonstrated successful school-based experience in an instructional role with students. Persons whose teacher or educational staff associate certificates were revoked, suspended, or surrendered are not eligible for principal's certificates.~~

~~(b) Candidates for superintendent's certificates must hold a valid teacher, educational staff associate, program administrator, or principal certificate, excluding certificates issued under WAC 181-79A-231, or comparable out-of-state certificates.~~

~~(6)) Assessments. See RCW 28A.410.220.~~

AMENDATORY SECTION (Amending WSR 09-12-056, filed 5/28/09, effective 6/28/09)

WAC 181-79A-211 Academic and experience requirements for certification—Administrators. Candidates for the respective administrative certificate shall complete the following requirements in addition to those set forth in WAC 181-79A-150 and 181-79A-213.

(1) Superintendent.

(a) Initial.

(i) The candidate shall hold an approved master's degree and have completed subsequent to the baccalaureate degree at least forty-five quarter credit hours (thirty semester credit hours) of graduate level course work in education.

~~(ii) The candidate ((must meet requirements for a superintendent's certificate pursuant to WAC 181-79A-150(4))) shall hold a valid teacher, educational staff associate, program administrator or principal certificate, excluding certificates issued under WAC 181-79A-231, or comparable out-of-state certificates.~~

(b) Continuing.

(i) The candidate shall hold an approved master's degree and have completed subsequent to the baccalaureate degree at least sixty quarter credit hours (forty semester credit hours) of graduate level course work in education or shall hold a doctorate in education.

~~(ii) The candidate ((must meet requirements for a superintendent's certificate pursuant to WAC 181-79A-150(4))) shall hold a valid teacher, educational staff associate, program administrator or principal certificate, excluding certificates issued under WAC 181-79A-231, or comparable out-of-state certificates.~~

(ii) Candidates applying for continuing superintendent's certificate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(2) Principal.

(a) Initial.

(i) The candidate shall hold an approved master's degree and have completed an approved program for the preparation of principals.

(ii) The candidate shall have documented successful school-based experience in an instructional role with students.

(b) Residency.

(i) The candidate shall hold an approved master's degree ~~((and have completed an approved program for the preparation of principals))~~.

(ii) The candidate shall have documented successful school-based experience in an instructional role with students.

(iii) The candidate shall have or have held:

(A) A valid teacher's certificate, excluding certificates issued under WAC 181-79A-231; or

(B) A valid education staff associate certificate, excluding certificates issued under WAC 181-79A-231.

(iv) Persons whose teacher of educational staff associate certificates were revoked, suspended or surrendered are not eligible for principals certificates.

(c) Continuing.

(i) The candidate who holds a valid initial principal's certificate issued prior to August 31, 1998, shall hold an approved master's degree and completed subsequent to the baccalaureate degree at least forty-five hours (thirty semester hours) of graduate level course work in education or shall hold a doctorate in education.

(ii) The candidate who applies on or after August 31, 1998, shall hold a valid initial principal's certificate, an approved master's degree and shall have completed at least fifteen quarter (ten semester) credit hours of graduate course work offered by a college or university with a state approved principal program or one hundred fifty clock hours of study, which meet the state continuing education clock hour criteria pursuant to chapter 181-85 WAC, or a combination of credits and clock hours equivalent to the above. Such study shall:

(A) Be based on the principal performance domains included in WAC 181-78A-270 (2)(a) or (b);

(B) Be taken subsequent to the issuance of the initial principal's certificate; and

(C) Be determined in consultation with and approved by the candidate's employer or the administrator of a state approved principal preparation program.

(iii) Provided, That a candidate who held a valid initial principal's certificate on August 31, 1998, may meet the academic requirement for the continuing certificate described in WAC 181-79A-211 (2)(c)(i), if the candidate meets requirements for and applies for the continuing certificate by the expiration date on that initial certificate.

(iv) The candidate must meet requirements for a principal's certificate pursuant to WAC 181-79A-150(4).

(v) Candidates applying for continuing principal's certificate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer. Candidates applying for the continuing principal's certificate on or after August 31, 1998, shall provide documentation of three contracted school years of full-time employment as a principal or assistant principal.

(vi) Provided, That a candidate who held a valid initial principal's certificate on August 31, 1998, may meet the one hundred-eighty day experience requirement described in

WAC 181-79A-211 (2)(c)(v), if that candidate meets requirements and applies for the continuing certificate by the expiration date on that initial certificate.

(d) Professional certificate.

(i) The candidate shall have completed an approved professional certificate program.

(ii) The candidate shall have documentation of three contracted school years of employment as a principal or assistant principal.

(3) Program administrator.

(a) Initial.

~~((+))~~ The candidate shall hold an approved master's degree and have completed subsequent to the baccalaureate degree at least twenty-four quarter credit hours (sixteen semester credit hours) of graduate level course work in education.

(b) Residency certificate.

The candidate shall hold an approved master's degree and have completed an approved program for the preparation of program administrators.

(c) Continuing.

(i) The candidate shall hold a valid initial program administrator's certificate, an approved master's degree and have completed subsequent to the baccalaureate degree at least thirty quarter credit hours (twenty semester credit hours) of graduate level course work in education or shall hold a doctorate in education.

(ii) Candidates applying for continuing program administrator's certificate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(d) Professional certificate.

The candidate shall have completed an approved professional certificate program.

AMENDATORY SECTION (Amending WSR 09-16-018, filed 7/24/09, effective 8/24/09)

WAC 181-79A-257 Out-of-state candidates. Candidates for certification from other states who meet the general certificate requirements described in WAC 181-79A-150 (1) and (2) shall be eligible for Washington certificates as follows:

(1) ~~((Initial and))~~ Residency certificates. The ~~((initial certificate-))~~residency certificate ~~((for teachers after August 31, 2000-))~~ shall be issued by the superintendent of public instruction to any candidate who meets requirements for the residency certificate including testing requirements as described in RCW 28A.410.220, and who ~~((passes the WEST-B and))~~ meets one of the following:

(a) ~~((Qualifies under provisions of the interstate compact-))~~

~~((b))~~ Holds the appropriate degree and, if applicable, credit hours and/or licensing as set forth in this chapter ~~((and))~~ has completed a state approved preparation program ~~((at a regionally accredited college or university))~~ in the pro-

professional field for which the certificate is to be issued and such additional professional fields as required by WAC 181-79A-150(4). Such programs shall include a defined course of study and a supervised internship.

~~((e))~~ (b) Provided, That if a candidate for teacher, administrator or educational staff associate certification does not meet the qualifications described in (a) ~~((or (b)))~~ of this subsection, ~~((an initial))~~ a residency certificate shall be issued to a candidate who:

(i) Holds an appropriate degree from a regionally accredited college or university ~~((and also))~~.

(ii) Holds or has held a certificate in the role, comparable to ~~((an initial))~~ a residency certificate, issued by another state and has practiced at the P-12 level in ~~((that respective))~~ the role outside the state of Washington for at least three years~~((= Provided further, That the teacher preparation program through which the teacher earned their teaching certificate included a supervised classroom-based internship.~~

~~((d))~~ within the last seven years.

(c) Holds an appropriate degree from a regionally accredited college or university and has practiced three years as an educational staff associate in that role in a state where such certificate was not required.

~~((e))~~ (d) Holds a valid Nationally Certified School Psychologist (NCSP) certificate issued by the National School Psychology Certification Board (NSPCB) after December 31, 1991, and applies for an initial/residency educational staff associated school psychologist certificate.

~~(2) ((Continuing certificate. The continuing certificate shall be issued to administrators and educational staff associates on verification that the candidate has met all requirements for initial and continuing certification in the state of Washington.~~

~~((3))~~ Professional certificate. After August 31, 2000, the professional certificate shall be issued to out-of-state candidates if the candidate meets requirements for the residency certificate including testing requirements as described in RCW 28A.410.220, meets the child abuse course work requirement as described in WAC 181-79A-206 (3)(b), and if one of the following conditions is met:

(a) The candidate has completed an advanced level certification procedure approved by the professional educator standards board as equivalent to the approved program procedure required in Washington; or

(b) The candidate holds a valid teaching certificate issued by the National Board for Professional Teaching Standards; or

(c) The candidate holds a valid school counselor certificate issued by the National Board for Professional Teaching Standards; or

(d) A Washington state college or university with an approved professional certificate program verifies that the candidate has met all the requirements of that institution's approved program. The college/university shall evaluate the candidate's background to determine whether or not course work or certification activities are equivalent to that college/university's approved program.

WSR 11-15-049
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed July 15, 2011, 11:35 a.m., effective August 15, 2011]

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

Purpose: Revises WAC 181-78A-105, and 181-78A-270. Removes physical location requirements from rules governing educator preparation programs. Also requires teacher candidates to complete draft professional growth plan as a graduation [graduation] requirement.

Citation of Existing Rules Affected by this Order: Amending x.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 11-12-029 on May 25, 2011.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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 2, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: July 7, 2011.

David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 11-01-047, filed 12/7/10, effective 1/7/11)

WAC 181-78A-105 Procedures for initial approval of an educator preparation program. Each institution or organization desiring to establish a preparation program shall comply with the following:

(1) Advise the professional educator standards board of its desire to establish a preparation program.

(2) Develop with the assistance of the professional education advisory board a written preproposal plan which addresses all preproposal components adopted and published by the professional educator standards board and submit such plan to the designated official of the professional educator standards board for review and comment.

(3) Submit such plan to the professional educator standards board. The institution or organization may be granted approval for full proposal development or denied approval.

(a) If approved, the institution or organization shall comply with the following:

(i) Establish the appropriate professional education advisory board pursuant to WAC 181-78A-205;

(ii) Develop with assistance of the professional education advisory board a written plan which includes the following:

(A) Timelines for the implementation of all applicable program approval standards during the first year of the program;

(B) The criteria that the program will use to assess, in multiple ways over time, its candidates' knowledge and skills including evidence related to positive impact on student learning (WAC 181-78A-205(4));

(C) How the professional education advisory board was involved in program development, including a letter of support; and

(D) Letters of support from partnership districts and/or other agencies.

(iii) Present the written plan to the professional educator standards board.

(A) The program may be conditionally approved in a specific location(s) for a period of up to twenty-seven months following the beginning of instruction. The institution or organization shall notify the professional educator standards board when instruction has begun. If not approved, the institution or organization may resubmit its revised plan or request a contested hearing via an appeal team appointed by the professional educator standards board.

(B) Prior to the expiration of approval, staff of the professional educator standards board shall conduct a site visit and/or other forms of documentation to determine if the program is in full compliance with the 1997 program approval standards; provided that a college/university with an approved residency principal program which adds an approved program administrator program is not required to have a site visit of the program administrator program until the next regularly scheduled site visit of that institution.

(b) If denied, the institution or organization may resubmit its plan based upon the suggestions of the professional educator standards board.

~~((4) Programs shall be approved for a specific location(s) identified in the written plan presented to the professional educator standards board. Institutions and organizations seeking to expand an existing program to a new location shall submit a request to the professional educator standards board which contains the following:~~

~~(a) A description of the location and facilities;~~

~~(b) Verification that no complaints have been filed against the program in its current location(s);~~

~~(c) A summary of the findings from the most recent site review, including how weaknesses, if any, have been addressed;~~

~~(d) A statement that supports need for the program;~~

~~(e) Cost to the students;~~

~~(f) Mode(s) of the program delivery; and~~

~~(g) Letters of support from program partners. The length of time for which the program approval status shall be granted shall coincide with the length of time for which the program in its current location(s) last received approval. The~~

~~program review cycle for programs at all locations shall be the same.))~~

AMENDATORY SECTION (Amending WSR 10-17-029, filed 8/9/10, effective 9/9/10)

WAC 181-78A-270 Approval standard—Knowledge and skills. Building on the mission to prepare educators who demonstrate a positive impact on student learning based on the Improvement of Student Achievement Act of 1993 (1209), the following evidence shall be evaluated to determine whether each preparation program is in compliance with the program approval standards of WAC 181-78A-220(5):

(1) **TEACHER RESIDENCY CERTIFICATION.**

(a) **EFFECTIVE TEACHING.**

(i) Using multiple instructional strategies, including the principles of second language acquisition, to address student academic language ability levels and cultural and linguistic backgrounds;

(ii) Applying principles of differentiated instruction, including theories of language acquisition, stages of language, and academic language development, in the integration of subject matter across the content areas of reading, mathematical, scientific, and aesthetic reasoning;

(iii) Using standards-based assessment that is systematically analyzed using multiple formative, summative, and self-assessment strategies to monitor and improve instruction;

(iv) Implementing classroom/school centered instruction, including sheltered instruction that is connected to communities within the classroom and the school, and includes knowledge and skills for working with other;

(v) Planning and/or adapting standards-based curricula that are personalized to the diverse needs of each student;

(vi) Aligning instruction to the learning standards and outcomes so all students know the learning targets and their progress toward meeting them;

(vii) Planning and/or adapting curricula that are standards driven so students develop understanding and problem-solving expertise in the content area(s) using reading, written and oral communication, and technology;

(viii) Preparing students to be responsible citizens for an environmentally sustainable, globally interconnected, and diverse society;

(ix) Planning and/or adapting learner centered curricula that engage students in a variety of culturally responsive, developmentally, and age appropriate strategies;

(x) Using technology that is effectively integrated to create technologically proficient learners; and

(xi) Informing, involving, and collaborating with families/neighborhoods, and communities in each student's educational process, including using information about student cultural identity, achievement and performance.

(b) **PROFESSIONAL DEVELOPMENT.** Developing reflective, collaborative, professional growth-centered practices through regularly evaluating the effects of his/her teaching through feedback and reflection.

(c) TEACHING AS A PROFESSION.

(i) Participating collaboratively and professionally in school activities and using appropriate and respectful verbal and written communication.

(ii) Demonstrating knowledge of professional, legal, and ethical responsibilities and policies.

(d) **PERFORMANCE ASSESSMENT.** An approved preparation program for teachers shall require that each candidate engage in an assessment process approved by the professional educator standards board. The assessment will verify that the candidate for a residency teacher certificate can meet the teacher standards in (a), (b) and (c) of this subsection and understands teacher impact on student learning. All candidates shall exit the residency certificate program with a draft professional growth plan oriented toward the expectations for the professional certificate.

(2) PRINCIPAL AND PROGRAM ADMINISTRATOR.

(a) Effective August 31, 1997, through August 31, 2004, principal and program administrator candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in an approved preparation program which shall include:

(i) Specific performance domains. An approved preparation program shall require the candidate to demonstrate in course work and the internship the following:

(A) **Leadership:** Formulating goals with individuals or groups; initiating and maintaining direction with groups and guiding them to the accomplishment of tasks; setting priorities for one's school in the context of community and district priorities and student and staff needs; integrating own and others' ideas for task accomplishment; initiating and planning organizational change.

(B) **Information collection:** Gathering data, facts, and impressions from a variety of sources about students, parents, staff members, administrators, and community members; seeking knowledge about policies, rules, laws, precedents, or practices; managing the data flow; classifying and organizing information for use in decision making and monitoring.

(C) **Problem analysis:** Identifying the important elements of a problem situation by analyzing relevant information; framing problems; identifying possible causes; identifying additional needed information; framing and reframing possible solutions; exhibiting conceptual flexibility; assisting others to form reasoned opinions about problems and issues.

(D) **Judgment:** Reaching logical conclusions and making high quality, timely decisions given the best available information.

(E) **Organizational oversight:** Planning and scheduling one's own and others' work so that resources are used appropriately, and short-term and long-term priorities and goals are met; monitoring projects to meet deadlines.

(F) **Implementation:** Making things happen; putting programs and plans into action; applying management technologies; applying methods of organizational change including collaborative processes; facilitating tasks; establishing progress checkpoints; considering alternative approaches; providing "mid-course" corrections when actual outcomes start to diverge from intended outcomes; adapting to new conditions.

(G) **Delegation:** Assigning projects or tasks together with clear authority to accomplish them and responsibility for their timely and acceptable completion.

(H) **Instructional program:** Envisioning and enabling instructional and auxiliary programs for the improvement of teaching and learning; recognizing the developmental needs of students; insuring appropriate instructional methods that address students' gender and cultural differences; designing positive learning experiences; accommodating differences in cognition and achievement; mobilizing the participation of appropriate people or groups to develop these programs and to establish a positive learning environment.

(I) **Curriculum design:** Interpreting school district curricula; planning and implementing with staff a framework for instruction that shall include the implementation of the state learning goals and essential academic learning requirements; initiating needs analyses and monitoring social and technological developments as they affect curriculum; responding to international content levels; adjusting content as needs and conditions change.

(J) **Student guidance and development:** Providing for student guidance, counseling, and auxiliary services; utilizing community organizations; responding to family needs; enlisting the participation of appropriate people and groups to design and conduct these programs and to connect schooling with plans for adult life; planning for a comprehensive program of student activities.

(K) **Staff development:** Identifying with participants the professional needs of individuals and groups; planning and organizing programs to improve staff effectiveness; supervising individuals and groups; engaging staff and others to plan and participate in recruitment and development; initiating self-development.

(L) **Measurement and evaluation:** Determining what diagnostic information is needed about students, staff, and the school environment; examining the extent to which outcomes meet or exceed previously defined standards, goals, or priorities for individuals or groups; drawing inferences for program revisions; interpreting measurements or evaluations for others; relating programs to desired outcomes; developing equivalent measures of competence.

(M) **Resource allocation:** Planning and developing the budget with appropriate staff; seeking, allocating, and adjusting fiscal, human, and material resources; utilizing the physical plant; monitoring resource use and reporting results.

(N) **Motivating others:** Building commitment to a course of action; creating and channeling the energy of self and others; planning and encouraging participation; supporting innovation; recognizing and rewarding effective performance; providing coaching, guidance, or correction for performance that needs improvement; serving as a role model.

(O) **Sensitivity:** Perceiving the needs and concerns of others; dealing with others tactfully; working with others in emotionally stressful situations or in conflict; managing conflict; obtaining feedback; recognizing multicultural sensitivities.

(P) **Oral expression:** Making oral presentations that are clear and easy to understand; clarifying and restating questions; responding, reviewing, and summarizing for groups;

utilizing appropriate communicative aids; adapting for audiences.

(Q) **Written expression:** Expressing ideas clearly in writing; writing appropriately for different audiences such as students, teachers, and parents; preparing brief memoranda.

(R) **Philosophical and cultural values:** Acting with a reasoned understanding of the role of education in a democratic society and in accord with accepted ethical standards; recognizing philosophical and historical influences in education; reflecting an understanding of American culture, including current social and economic issues related to education; recognizing global influences on students and society.

(S) **Legal and regulatory applications:** Acting in accordance with relevant federal and Washington state laws, rules, and policies; recognizing governmental influences on education; working within local rules, procedures, and directives; administering contracts.

(T) **Policy and political influences:** Identifying relationships between public policy and education; recognizing policy issues; examining and affecting policies individually and through professional and public groups; relating policy initiatives to the welfare of students; addressing ethical issues.

(U) **Public and media relationships:** Developing common perceptions about school issues; interacting with parental and community opinion leaders; understanding and responding skillfully to the electronic and printed news media; initiating and reporting news through appropriate channels; enlisting public participation; recognizing and providing for market segments.

(ii) Performance assessment. An approved preparation program for principals shall require that prior to the internship each candidate shall engage in a performance assessment through a process determined by each preparation program. The results of this assessment shall be utilized by the college/university supervisor, the cooperating principal, and the principal candidate to cooperatively design the internship plan.

(b) Effective September 1, 2004, principal and program administrator candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

(i) Successful demonstration of standards.

(A) A school administrator is an educational leader who promotes the success of each student by leading the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by school and community stakeholders;

(B) A school administrator is an educational leader who promotes the success of each student by leading through advocating, nurturing, and sustaining district/school cultures and coherent instructional programs that are conducive to student learning and staff professional growth;

(C) A school administrator is an educational leader who promotes the success of each student by ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment;

(D) A school administrator is an educational leader who promotes the success of each student by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources;

(E) A school administrator is an educational leader who promotes the success of each student by acting with integrity, fairness, and in an ethical manner; and

(F) A school administrator is an educational leader who promotes the success of each student by understanding, responding to, and influencing the larger political, social, economic, legal and cultural context.

(ii) Performance assessment. An approved preparation program for principals shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan.

(3) **SUPERINTENDENT.** An approved preparation program for superintendents shall require the candidate to demonstrate in course work and the internship the following standards:

(a) A school administrator is an educational leader who promotes the success of each student by leading the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by school and community stakeholders;

(b) A school administrator is an educational leader who promotes the success of each student by leading through advocating, nurturing, and sustaining district/school cultures and coherent instructional programs that are conducive to student learning and staff professional growth;

(c) A school administrator is an educational leader who promotes the success of each student by ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment;

(d) A school administrator is an educational leader who promotes the success of each student by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources;

(e) A school administrator is an educational leader who promotes the success of each student by acting with integrity, fairness, and in an ethical manner; and

(f) A school administrator is an educational leader who promotes the success of each student by understanding, responding to, and influencing the larger political, social, economic, legal, and cultural context.

(4) **SCHOOL COUNSELOR.** Effective August 31, 1997 through August 31, 2005, school counselor candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in which they acquire and apply knowledge about:

(a) Human growth and development (studies that provide an understanding of the nature and needs of individuals at all developmental levels).

(b) Social and cultural foundations (studies that provide an understanding of issues and trends in a multicultural and diverse society).

(c) Helping relationships (studies that provide an understanding of counseling and consultation processes).

(d) Group work (studies that provide an understanding of group development, dynamics, counseling theories, group counseling methods and skills, and other group work approaches).

(e) Career and lifestyle development (studies that provide an understanding of career development and related life factors).

(f) Appraisal (studies that provide an understanding of individual and group approaches to assessment and evaluation), including assessment of the state learning goals and essential academic learning requirements.

(g) Research and program evaluation (studies that provide an understanding of types of research methods, basic statistics, and ethical and legal considerations in research).

(h) Professional orientation (studies that provide an understanding of all aspects of professional functioning including history, roles, organizational structures, ethics, standards, and credentialing).

(i) Foundations of school counseling including:

(i) History, philosophy, and trends in school counseling;

(ii) Role and function of the school counselor in conjunction with the roles of the professional and support personnel in the school;

(iii) Knowledge of the school setting and curriculum including the state learning goals and essential academic learning requirements;

(iv) Ethical standards and guidelines of the American School Counselor Association (ASCA);

(v) State and federal policies, laws, and legislation relevant to school counseling; and

(vi) Implications of sociocultural, demographic, and lifestyle diversity relevant to school counseling.

(j) Studies that provide an understanding of the coordination of counseling program components as they relate to the total school community including:

(i) Referral of children and adolescents for specialized help;

(ii) Coordination efforts with resource persons, specialists, businesses, and agencies outside the school to promote program objectives;

(iii) Methods of integration of guidance curriculum in the total school curriculum;

(iv) Promotion of the use of counseling and guidance activities and programs by the total school community to enhance a positive school climate; and

(v) Methods of planning and presenting guidance-related educational programs for school personnel and parents.

(k) Theory, knowledge and skills for the practice of school counseling including:

(i) Program development, implementation and evaluation. Studies in this area include:

(A) Use of surveys, interviews, and needs assessments;

(B) Design, implementation and evaluation of a comprehensive, developmental school program;

(C) Implementation and evaluation of specific strategies designed to meet program goals and objectives;

(D) Preparation of a counseling schedule reflecting appropriate time commitments and priorities in a developmental school counseling program; and

(E) Use of appropriate technology and information systems.

(ii) Counseling and guidance. Studies in this area include:

(A) Individual and group counseling and guidance approaches appropriate for the developmental stage and needs of children and adolescents;

(B) Group guidance approaches that are systematically designed to assist children and adolescents with developmental tasks;

(C) Approaches to peer helper programs;

(D) Issues which may affect the development and function of children and adolescents (e.g., abuse, eating disorders, attention deficit hyperactivity disorder, exceptionality, substance abuse, violence, suicide, dropout);

(E) Developmental approaches to assist students and parents at points of educational transition (e.g., postsecondary education, career and technical education, and career options);

(F) Crisis intervention and referral; and

(G) System dynamics, including family, school, community, etc.

(iii) Consultation. Studies in this area shall include:

(A) Methods of enhancing teamwork within the school community; and

(B) Methods of involving parents, teachers, administrators, support staff and community agency personnel.

(5) **SCHOOL COUNSELOR.** Effective September 1, 2005, school counselor candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

(a) **Successful demonstration of standards:**

(i) **Foundations of the school counseling profession:** Certified school counselors design, deliver, and evaluate student-centered, data-driven school counseling programs that advance the mission of the school in light of recognized theory, research, exemplary models, community context, and professional standards.

(ii) **School counseling and student competencies:** Certified school counselors integrate academic, career, and personal/social student competencies, including Washington state learning goals and essential academic learning requirements, into the school counseling program; teach counseling and guidance related material by using effective curriculum, instructional strategies, and instructional management; support teachers and parents in helping students develop knowledge and skill for learning, living, and working; and provide information about best practices to a school community.

(iii) **Human growth and development:** Certified school counselors apply comprehensive, in-depth knowledge of human growth and development to improve student learning, well-being, and to enhance resiliency; provide guidance to parents and teachers about developmentally appropriate

practices that support students throughout their schooling experience.

(iv) **Counseling theories and technique:** Certified school counselors demonstrate an understanding of established and emerging counseling theories through effective use of individual and group techniques for working with a diverse population.

(v) **Equity, fairness, and diversity:** Certified school counselors value and show respect for all members of the community; demonstrate fairness, equity, and sensitivity to every student, and advocate for equitable access to instructional programs and activities; use data for designing and implementing plans that remove barriers to learning; and help to close achievement gaps among subgroups of students.

(vi) **School climate:** Certified school counselors establish and foster a safe, inclusive, and nurturing learning environment for students, staff, and families and use strategies designed to prevent or resolve problems that could limit or diminish the capacity of students to learn and achieve at their highest levels.

(vii) **Collaboration with school staff, family, and community:** Certified school counselors work collaboratively with school staff, families and community members to achieve common goals for the education of students, improvement of schools, and advancement of the larger community; know appropriate behavior management strategies and can team with staff and families to improve student achievement; and use their knowledge of community resources to make appropriate referrals based on the needs of students.

(viii) **Information resources and technology:** Certified school counselors select and use informational resources and technology to facilitate delivery of a comprehensive school counseling program that meets student needs; and skillfully use technology to enhance communication.

(ix) **Student assessment and program evaluation:** Certified school counselors understand the basic principles and purposes of assessment; collection and use of data; regularly monitor student progress and are able to communicate the purposes, design, and results of assessments to various audiences; know basic principles of research design, action research, and program evaluation for purposes of program improvement and accountability.

(x) **Leadership and advocacy:** Certified school counselors support practices and policies that promote academic rigor-skills for learning, living, and working; provide leadership that enhances student academic, career, and personal/social development and advocate for guidance as an integral part of a school's educational system; model practices that help students, parents, teachers, and policy makers understand how curriculum, instruction and assessment can help students see the relationship between effort, performance, and success beyond high school. Certified school counselors help promote understanding of graduation requirements, WASL scores, and development of the high school and beyond plan.

(xi) **Professionalism, ethics, and legal mandates:** Certified school counselors develop a professional identity congruent with knowledge of all aspects of professional functions, professional development, and state and national

school counselor organizations. They adhere strictly to the profession's codes of ethics, especially those that have been established by the American Counseling Association (ACA), the American School Counselor Association (ASCA), the National Board for Certified Counselors (NBCC), and other relevant codes of ethics. They are familiar with state and federal policies, laws, and legislation relevant to school counseling.

(xii) **Reflective practice:** Certified school counselors integrate knowledge, skills, and life experiences to respond effectively to new or unexpected critical events and situations; serve as change agents by using their understanding of schools as social, cultural and political systems within a larger organizational context; monitor practice with continuous, in-depth reflection; and make adjustments as needed.

(b) **Performance assessment.** An approved preparation program for school counselors shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan.

(6) **SCHOOL PSYCHOLOGIST.** Effective August 31, 1997, through August 31, 2005, school psychologist candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in which they acquire and apply knowledge about:

(a) Knowledge of the field. The candidate has knowledge and skill in relevant fields of study, including:

(i) Learning theory.

(ii) Personality theory and development.

(iii) Individual and group testing and assessment.

(iv) Individual and group counseling and interviewing theory and techniques.

(v) Basic statistics.

(vi) Child development.

(vii) Exceptional children.

(viii) Social and cultural factors.

(ix) Deviant personality.

(x) Curriculum, including the state learning goals and essential academic learning requirements.

(xi) Research design.

(xii) Physiological and biological factors.

(b) Assessment and diagnosis. The candidate has knowledge and skill necessary to select, administer, score, and interpret instruments and techniques in the following areas:

(i) Intellectual and cognitive assessment.

(ii) Individual and group academic skills: Standardized norm-referenced and criteria-referenced measurements and curriculum-based measurements.

(iii) Personality assessment.

(iv) Assessment of perceptual skills.

(v) Assessment of adaptive behavior; assessment of language skills.

(c) Behavioral observation and analysis. The candidate has knowledge and skill in behavior observation, including:

- (i) Data taking.
- (ii) Frequency measures.
- (iii) Qualitative and quantitative analysis of classroom behavior.

(iv) Developmental and personality analysis, including perceptual, cognitive, social, and affective and language development in children.

(d) Counseling and interviewing. The candidate has the knowledge and skill necessary to:

(i) Provide individual and group counseling to students and parents.

(ii) Conduct interviews essential to information collecting from parents, teachers, and other professionals.

(e) Program development. The candidate has the knowledge and skill to make educational prescriptions, including specification of remedial environmental changes, both curricular and behavioral, for a particular student.

(f) Consultation. The candidate has the knowledge and skill to:

(i) Function on multidisciplinary teams in evaluating and placing students.

(ii) Confer with and make recommendations to parents, specialists, teachers, referral personnel, and others relative to student's characteristics and needs in the educational and home environments.

(g) Program evaluation and recordkeeping. The candidate has the knowledge and skill necessary to develop and implement program evaluation and maintain required records.

(h) Professionalism. The candidate has knowledge of professional standards regarding ethical and legal practices relevant to the practice of school psychology. The candidate demonstrates knowledge and skill in written and oral reporting of assessment and remedial recommendations which will meet ethical and legal standards.

(i) Research. The candidate has knowledge and skill to:

(i) Evaluate and perform research.

(ii) Apply school-oriented research.

(iii) Construct criterion-referenced instruments with reference to such educational decisions as:

(A) Retention in grade.

(B) Acceleration and early entrance.

(C) Early entrance.

(7) **School psychologist.** Effective September 1, 2005, school psychologist candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

(a) **Successful demonstration of standards:**

(i) **Data-based decision making and accountability:** Certified school psychologists have knowledge of varied models and methods of assessment that yield information useful in identifying strengths and needs, in understanding problems, and in measuring progress and accomplishments; use such models and methods as part of a systematic process to collect data and other information, translate assessment results into empirically based decisions about service delivery, evaluate the outcomes of services; and data-based decision making permeates every aspect of professional practice.

(ii) **Consultation and collaboration:** Certified school psychologists have knowledge of behavioral, mental health, collaborative, and/or other consultation models and methods and of their application to particular situations; collaborate effectively with others in planning and decision-making processes at the individual, group, and system levels.

(iii) **Effective instruction and development of cognitive/academic skills:** Certified school psychologists have knowledge of human learning processes, techniques to assess these processes, and direct and indirect services applicable to the development of cognitive and academic skills; collaborate with others, develop appropriate cognitive and academic goals for students with different abilities, disabilities, strengths, and needs; implement interventions to achieve those goals; and evaluate the effectiveness of interventions, including, but not limited to, instructional interventions and consultation.

(iv) **Socialization and development of life skills:** Certified school psychologists have knowledge of human developmental processes, techniques to assess these processes, and direct and indirect services applicable to the development of behavioral, affective, adaptive, and social skills; collaborate with others, develop appropriate behavioral, affective, adaptive, and social goals for students of varying abilities, disabilities, strengths, and needs; implement interventions to achieve those goals; and evaluate the effectiveness of interventions, including, but not limited to, consultation, behavioral assessment/intervention, and counseling.

(v) **Student diversity in development and learning:** Certified school psychologists have knowledge of individual differences, abilities, and disabilities and of the potential influence of biological, social, cultural, ethnic, experiential, socioeconomic, gender-related, and linguistic factors in development and learning; demonstrate the sensitivity and skills needed to work with individuals of diverse characteristics and to implement strategies selected and/or adapted based on individual characteristics, strengths, and needs.

(vi) **School and systems organization, policy development, and climate:** Certified school psychologists have knowledge of general education, special education, and other educational and related services; understanding of schools and other settings as systems; work with individuals and groups to facilitate policies and practices that create and maintain safe, supportive, and effective learning environments for children and others.

(vii) **Prevention, crisis intervention, and mental health:** Certified school psychologists have knowledge of human development and psychopathology and of associated biological, cultural, and social influences on human behavior; provide or contribute to prevention and intervention programs that promote the mental health and physical well-being of students.

(viii) **Home/school/community collaboration:** Certified school psychologists have knowledge of family systems, including family strengths and influences on student development, learning, and behavior, and of methods to involve families in education and service delivery; work effectively with families, educators, and others in the community to promote and provide comprehensive services to children and families.

(ix) **Research and program evaluation:** Certified school psychologists have knowledge of research, statistics, and evaluation methods; evaluate research, translate research into practice, and understand research design and statistics in sufficient depth to plan and conduct investigations and program evaluations for improvement of services.

(x) **School psychology practice and development:** Certified school psychologists have knowledge of the history and foundations of their profession; of various service models and methods; of public policy development applicable to services to children and families; and of ethical, professional, and legal standards, including the Washington Administrative Code; practice in ways that are consistent with applicable standards, are involved in their profession, and have the knowledge and skills needed to acquire career-long professional development.

(xi) **Information technology:** Certified school psychologists have knowledge of information sources and technology relevant to their work; access, evaluate, and utilize information sources and technology in ways that safeguard or enhance the quality of services.

(b) **Performance assessment.** An approved preparation program for school psychologists shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan.

(8) **SCHOOL SOCIAL WORKER.** Effective August 31, 1997, through August 31, 2005, school social worker candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in which they acquire and apply knowledge about:

(a) Knowledge for social work practice. The candidate has knowledge and skills in relevant fields of study including:

- (i) Values.
 - (A) Knowledge of profession including values, skills, and ethics; and
 - (B) National Association of Social Workers (NASW) Code of Ethics and school social work guidelines for practice.
- (ii) Human behavior and the social environment.
 - (A) Community theory and community change (e.g., community organization and development, social planning, networking, and case management);
 - (B) Systems and organizational theory (e.g., school as a bureaucracy);
 - (C) Social disorganization (e.g., poverty, family and community violence, unemployment, addictions, multiple losses), and context of family in a changing society;
 - (D) Family dynamics and theories of family therapy;
 - (E) Human/child growth and development;
 - (F) Diverse populations of: Race, culture, social class, life style, age, gender and the disabled;
 - (G) Theories of personality; and

(H) Use of computer technology for social work practice.

(b) Service delivery and program development. The candidate will have knowledge and skills in the following activities:

- (i) Direct practice.
 - (A) Referring, developing, and coordinating resources and services in the local education agency and community;
 - (B) Knowledge and skills related to families;
 - (C) Case management;
 - (D) Working with vulnerable and "hard to reach" individuals and families, including those from diverse populations;
 - (E) Crisis intervention, conflict resolution, stress management and decision-making skills;
 - (F) Individual and group counseling to improve students' self-knowledge and interactional skills for personal empowerment;
 - (G) Interviewing and counseling students in relation to social-personal problems adjudged to be impairing student's ability to learn;
 - (H) Family interventions including parent education; referral to resources; family counseling;
 - (I) Teaching children communication and interpersonal relationship skills through individual/group/classroom interventions;
 - (J) Collaborating and consulting with parents and community to assure readiness to learn for all students;
 - (K) Multidimensional assessment of student's social-emotional adjustment, adaptive behaviors, individual strengths, and environmental assets;
 - (L) Intervention case planning processes; and
 - (M) Career and academic guidance to students in their school to work transitions.
- (ii) Indirect practice.
 - (A) Liaison and facilitator between and among home, school and community;
 - (B) Collaborate and consult with other educational staff to assure student progress;
 - (C) Use computer technology for practice and efficiency;
 - (D) Develop strategies for increased parental and community involvement with the school;
 - (E) Develop programs of remediation for students and their families;
 - (F) Design, coordinate and facilitate programs such as suicide prevention, truancy and drop-out prevention, and prevention of teenage pregnancy;
 - (G) Provide staff development programs;
 - (H) Work collaboratively with educational staff to develop programs to address school-community identified needs; and
 - (I) Function as change agents.
- (c) Research and evaluation. The candidate will have necessary skills and knowledge to:
 - (i) Collect and interpret data in order to evaluate student, school, and community needs;
 - (ii) Evaluate own practice;
 - (iii) Become consumer of research findings;
 - (iv) Understand use of program evaluation methods; and

(v) Utilize computer technology for research and evaluation.

(d) Context for educational system. The candidate will have necessary knowledge and skills to apply the following:

(i) State learning goals and essential academic learning requirements;

(ii) Theories of learning;

(iii) School law and professional ethics;

(iv) Computer technology in the workplace; and

(v) Understanding of policies, laws, and procedures.

(9) **School social workers.** Effective September 1, 2005, school social worker candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

(a) **Successful demonstration of standards:**

(i) **Core concepts and professional practice foundations:** The certified school social worker understands and applies the core concepts, tools of inquiry, theories, and skills and values of the general field of social work to the educational system; relates these core concepts to the Washington state learning goals, essential academic learning requirement (EALRS), Revised Code of Washington (RCW), Washington Administrative Code (WAC) and the Individuals With Disabilities Education Act (IDEA); and utilizes these constructs to facilitate the educational, social and emotional development of students by working towards reducing the impact of nonacademic barriers to academic success.

(ii) **Planning, ecological assessment and evaluation:** The certified school social worker understands and knows how to apply various formal and informal assessment tools to identify student, family, school and community needs using a strengths and systems perspective; engage students (individually or in groups), families, school staff and/or the larger community in designing interventions and developing programs, which bolsters the strengths and meets the needs identified; uses best practices in evaluation criteria to monitor the success of the intervention; revisions to the intervention plan are based on systematic data collection; and to utilize the principles of research design and program evaluation to improve student learning outcomes.

(iii) **Prevention/intervention services:** The certified school social worker has knowledge of and ability to provide prevention education and skill building in such areas as violence, mediation, bullying, substance misuse and abuse, conflict resolution/management, and stress management; provide direct intervention services to students through crisis management, case management, counseling, skill building, behavior management, teaching of psycho-educational curriculums, personal development skills and classroom presentations; and provide both prevention and intervention services to students individually, in small group or classroom settings as well as with students' families.

(iv) **Home, school and community consultation and collaboration:** The certified school social worker understands and has the ability to develop consultative and collaborative relationships both individually and on a systemic level with students, colleagues, families and the community to support students' learning and social/emotional develop-

ment; assist students and their families in networking with various social support systems in order to benefit student learning; and use their extensive knowledge of community resources to appropriately refer students and families to various community services.

(v) **Advocacy and facilitation:** The certified school social worker understands and has the ability to advocate and facilitate changes that empower students, families, educators and others to gain access to and effectively use school and community resources.

(vi) **Diversity and school climate:** The certified school social worker understands how a student's learning is influenced and impacted by culture, family dynamics, community values, individual learning styles, talents, gender, sexual orientation, language, prior learning, economics and disabilities; utilize this knowledge to design, implement and evaluate programs that enhance student learning and social interaction in school, family and community settings; and how to create and support a safe, nurturing and secure learning environment by designing and using strategies to prevent or resolve ecological barriers that could limit or diminish the capacity of students to learn and achieve at their highest levels.

(vii) **Professional development:** The certified school social worker understands and values the need for professional development and is able to use supervision, consultation, collaboration, continuing education and professional research to evaluate and enhance their practice.

(viii) **Information resources and technology:** The certified school social worker uses informational resources and technology to communicate, monitor student progress and evaluate programs; and access, appraise and utilize information sources and technology in ways that safeguard and enhance their quality of services.

(ix) **Professional code of conduct and ethics:** The certified school social worker understands, maintains and applies the professional codes of conduct and ethical practice guidelines embodied in the National Association of Social Work (NASW) code of ethics and School Social Work standards developed for the field of education; and are familiar with district, state and federal laws and policies relevant to the educational setting.

(b) **Performance assessment.** An approved preparation program for school social workers shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan.

WSR 11-15-051

PERMANENT RULES

PROFESSIONAL EDUCATOR

STANDARDS BOARD

[Filed July 15, 2011, 11:50 a.m., effective August 15, 2011]

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

Purpose: WAC 181-79A-006, 181-79A-123, 181-79A-221, 181-79A-223 and 181-79A-250, provides clarification for professional certification for school counselors and psychologists. Removes initial certification category for educational staff associate certificates. Changes requirements for school social workers.

Citation of Existing Rules Affected by this Order: Amending x.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 11-12-028 on May 25, 2011.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 252, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 5, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 7, 2011.

David Brenna
Legislative and
Policy coordinator

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-79A-006 Purpose. The purposes of this chapter are:

(1) To establish a performance-based certification system to be fully implemented for all teacher candidates applying for the residency certificate after August 31, 2000, and for all teacher candidates applying for the professional certificate after August 31, 2001. A performance-based certification system shall be fully implemented for all principals/program administrators applying for the residency certificate after August 31, 2004, and for all principal/program administrator candidates applying for the professional certificate after August 31, 2006. A performance-based professional certificate system shall be fully implemented for school psychologists(,) and school counselors(, and school social workers) applying for the residency certificate after August 31, 2005, and for the professional certificate after August 31, 2007.

(2) To establish the various certificates which must be held as a condition to employment in the Washington school system. The performance-based certification system shall include the issuance of a residency certificate, a professional

certificate, and other certificates which the professional educator standards board may add in the future.

(3) To establish the conditions and procedures governing issuance and retention of those and other certificates, including endorsements thereon.

AMENDATORY SECTION (Amending WSR 10-16-124, filed 8/3/10, effective 9/3/10)

WAC 181-79A-123 Certificates—Previous standards. (1) Certificates issued under previous standards which were issued for a specific term shall continue to be effective for that term.

(2) Certificates issued under standards prior to September 1, 2000, which were issued for an indefinite period shall continue to be in effect.

(3) All persons who hold any standard teacher, administrator, or specialized personnel certificate issued under previous standards of the professional educator standards board shall be issued a continuing certificate at such time as it is necessary for them to reissue a standard certificate or on application and payment of the fee as specified in WAC 181-79A-130.

(4) Any person who holds a provisional principal's or provisional superintendent's certificate under previous standards of the professional educator standards board shall be issued upon application, including payment of applicable fees, a continuing administrator's certificate for the appropriate role and such certificates shall be subject to the continuing education requirements of chapter 181-85 WAC.

(5) Any person holding a provisional certificate as a school nurse under provisions of chapter 180-84 WAC shall be granted a continuing certificate.

(6) All persons who hold a valid initial certificate granted under previous standards of the professional educator standards board shall be authorized to meet requirements for continuing certification as set forth in the relevant previous standards except as noted below in subsections (7), (8) or (9) of this section.

(7) Any person with a valid initial teacher's certificate granted under previous standards of the professional educator standards board may renew that certificate once after August 31, 2000. The individual shall meet requirements for and apply for the continuing certificate by the expiration date on the renewed certificate or meet requirements for the residency certificate for further certification: Provided, That any person who qualified for initial renewal or continuing certificate under the provisions of WAC 181-79A-250 (1)(a) prior to their expiration date, but whose initial certificate expired after August 31, 2000, because they applied for certification too late, may apply once for such renewal or continuing certificate and will be issued such certificate.

(8) Any person with a valid initial administrator certificate granted under previous standards of the professional educator standards board shall meet requirements for and apply for the continuing certificate by the expiration date on the initial certificate or meet requirements for the residency certificate for further certification: Provided, That any person who qualified for a continuing certificate under the provisions of WAC 181-79A-250 (1)(b) prior to their expiration

date, but whose initial certificate expired after June 30, 2004, because they applied for certification too late, may apply for such continuing certificate and will be issued such certificate.

(9) Any person with a valid initial ESA certificate granted under previous standards of the professional educator standards board shall meet requirements for and apply for the continuing certificate by the expiration date on the initial certificate or meet requirements for the residency certificate for further certification: Provided, That any person who qualified for a continuing certificate under the provisions of WAC 181-79A-250 (1)(c) prior to their expiration date, but whose initial certificate expired after June 30, 2005, because they applied for certification too late, may apply for such continuing certificate and will be issued such certificate.

(10) Any person with a valid residency ESA school social work certificate may meet requirements for and apply for the continuing certificate by the expiration date on the residency certificate.

AMENDATORY SECTION (Amending WSR 08-12-055, filed 6/2/08, effective 7/3/08)

WAC 181-79A-221 Academic and experience requirements for certification—School counselors(~~(?)~~) and school psychologists(~~(-and school social workers)~~). Candidates for school counselor(~~(?)~~) and school psychologist (~~(and school social worker)~~) certification shall complete the following requirements in addition to those set forth in WAC 181-79A-150 and 181-79A-226: Provided, That it shall not be necessary for any candidate who holds a master's or doctorate degree to obtain the specified master's degree if the candidate provides satisfactory evidence to the superintendent of public instruction that he or she has completed all course work requirements relevant to the required master's degree and has satisfactorily completed a comprehensive (~~(written)~~) examination required in such master's degree program. This examination shall be an examination of a regionally accredited institution of higher education or the National Counselor Examination (NCE) of the National Board of Certified Counselors (NBCC) or, in the case of school psychologists, hold the NCSP accreditation from the National Association of School Psychologists (NASP): Provided, That if any candidate has been awarded a master's degree without a comprehensive (~~(written)~~) examination, the candidate, as a condition for certification, shall (~~(arrange to take such an examination with any accredited college or university and provide the superintendent of public instruction with an affidavit from the chair of the department of such academic field that he or she has successfully completed the above noted comprehensive examination)~~) successfully complete the Praxis II exam in the appropriate role.

(1) School counselor.

(a) (~~(Initial-~~

~~(i) The candidate shall have completed all requirements for the master's degree (except special projects or thesis) with a major in counseling.~~

~~(ii) The candidate shall have successfully completed a written comprehensive examination of the knowledge included in the course work for the required master's degree. This examination shall be an examination of a regionally~~

~~accredited institution of higher education or the National Counselor Examination (NCE) of the National Board of Certified Counselors (NBCC).~~

~~(b)) Residency.~~

(i) The candidate shall hold a master's degree with a major in counseling.

(ii) The candidate shall have successfully completed a (~~(written)~~) comprehensive examination of the knowledge included in the course work for the required master's degree. This examination shall be a proctored(~~(-written)~~) examination of a regionally accredited institution of higher education or the candidate may meet this requirement by receiving a passing score on the Praxis II guidance and counseling examination (~~(administered by Educational Testing Service (ETS))~~).

~~((e)) (b) Continuing.~~

(i) The candidate shall hold a master's degree with a major in counseling.

(ii) The candidate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(iii) The candidates must demonstrate their respective knowledge(~~(s)~~) and skills while employed in that role by passing a one-quarter or one-semester college or university course that includes peer review. The college or university shall establish the procedures for the peer review with advice from the respective professional education advisory board.

~~((d)) (c) Professional.~~ The candidate shall have completed an approved professional certificate program, provided, that an individual who holds a school counseling certificate issued by the National Board for Professional Teaching Standards (NBPTS) shall be deemed to have met the requirement for completion of a professional certificate program, in recognition that NBPTS certification is issued only to individuals who have demonstrated highly advanced skills as a school counselor.

(2) School psychologist.

(a) (~~(Initial-~~

~~(i) The candidate shall have completed all requirements for the master's degree (except special projects or thesis) with a major or specialization in school psychology.~~

~~(ii) The candidate shall have successfully completed a written comprehensive examination of the knowledge included in the course work for the required master's degree. This examination shall be an examination from a regionally accredited institution of higher education or the National Certification of School Psychologist (NCSP) examination.~~

~~(b)) Residency.~~

(i) The candidate shall hold a master's degree with a major or specialization in school psychology.

(ii) The candidate shall have successfully completed a (~~(written)~~) comprehensive examination of the knowledge included in the course work for the required master's degree. This examination shall be a proctored(~~(-written)~~) examination of a regionally accredited institution of higher education or the candidate may meet this requirement by receiving a

passing score on the Praxis II school psychology examination ((administered by Educational Testing Service (ETS))).

~~((e))~~ (b) Continuing.

(i) The candidate shall hold a master's degree with a major or specialization in school psychology.

(ii) The candidate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(iii) The candidates must demonstrate their respective knowledge((s)) and skills while employed in that role by passing a one-quarter or one-semester college or university course that includes peer review. The college or university shall establish the procedures for the peer review with advice from the respective professional education advisory board.

~~((d))~~ (c) Professional. The candidate shall have completed an approved professional certificate program: Provided, That an individual who holds an NCSP certificate issued by the National Association of School Psychologists (NASP) shall be deemed to have met the requirement for completion of a professional certificate program, in recognition that NCSP certification is issued only to individuals who have demonstrated highly advanced skills as a school psychologist.

~~((3))~~ School social worker.

(a) Initial.

~~(i) The candidate shall have completed all requirements for a master's degree in social work except special projects or thesis.~~

~~(ii) The candidate shall have successfully completed a written comprehensive examination of the knowledge included in the course work for the required master's degree. This examination shall be an examination from a regionally accredited institution of higher education, the social worker examination of the Academy of Certified Social Workers or the National Teacher Examination—School Social Worker Specialty Area examination required for certification as a school social worker by the National Association of Social Workers.~~

~~(b) Residency.~~

~~(i) The candidate shall hold a master's degree in social work.~~

~~(ii) The candidate shall have successfully completed a written comprehensive examination of the knowledge included in the course work for the required master's degree. This examination shall be a proctored, written examination of a regionally accredited institution of higher education or the candidate may meet the requirement by receiving a passing score on the Praxis II school social work examination administered by Educational Testing Service (ETS).~~

~~(e) Continuing.~~

~~(i) The candidate shall hold a master's degree in social work.~~

~~(ii) The candidate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency,~~

~~college or university, private school, or private school system—and at least thirty days of such employment with the same employer.~~

~~(iii) The candidates must demonstrate their respective knowledges and skills while employed in that role by passing a one-quarter or one-semester college or university course that includes peer review. The college or university shall establish the procedures for the peer review with advice from the respective professional education advisory board.~~

~~(d) Professional. The candidate shall have completed an approved professional certificate program.)~~

AMENDATORY SECTION (Amending WSR 08-08-045, filed 3/26/08, effective 4/26/08)

WAC 181-79A-223 Academic and experience requirements for certification—School nurse, school occupational therapist, school physical therapist ~~((and))~~, school speech-language pathologist or audiologist, or school social worker. Candidates for school nurse, school occupational therapist, school physical therapist ~~((and))~~, school speech-language pathologist or audiologist, and school social worker certification shall apply directly to the professional education and certification office. Such candidates shall complete the following requirements, in addition to those set forth in WAC 181-79A-150, except state approved college/university professional preparation program: Provided, That it shall not be necessary for any candidate who holds a master's or doctorate degree to obtain the specified master's degree if the candidate provides satisfactory evidence to the superintendent of public instruction that he or she has completed all course work requirements relevant to the required master's degree and has satisfactorily completed a comprehensive examination required in such master's degree program: Provided, That if any candidate has been awarded a master's degree without a comprehensive examination, the candidate, as a condition for certification, shall successfully complete the Praxis II exam in the appropriate role.

(1) School nurse.

(a) Initial.

(i) The candidate shall hold a valid license as a registered nurse (RN) in Washington state.

(ii) The candidate shall hold a baccalaureate degree or higher in nursing from a program accredited by the National League for Nursing Accrediting Commission or the Commission on Collegiate Nursing Education.

(iii) The candidate shall successfully complete thirty clock hours or three quarter hours (two semester hours) of course work approved by the professional educator standards board which will include the following course outcomes in which candidates will:

(A) Demonstrate an understanding of school and special education law;

(B) Understand and demonstrate knowledge of working within the culture of the schools, creating an environment that fosters safety, health, and learning for the students;

(C) Demonstrate knowledge of appropriate resources in the school setting;

(D) Demonstrate knowledge of collaboration with team members which may include parents, teachers, administrators, and others to support learning outcomes for all students;

(E) Demonstrate knowledge of how to support the outcomes for all students through strategies such as scientifically based practices, collaborative teaming, and ethical decision making;

(F) Recognize ways ESAs can use national, state, and local policies, as well as professional standards, to support decision making in educational settings;

(G) Demonstrate an understanding of the use of human, community, and technological resources. Provided, That an individual who meets all other requirements but who has not completed the required course work shall be issued a temporary permit valid for one hundred eighty calendar days which will allow the individual to practice in the role. The candidate shall verify to OSPI the completion of the required course work during the one hundred eighty-day period.

(b) Continuing.

(i) The candidate shall have completed the requirements for the initial certificate as a school nurse and have completed forty-five quarter hours (thirty semester hours) of postbaccalaureate course work in education, nursing, or other health sciences.

(ii) The candidate shall provide documentation of one hundred eighty days of full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(2) School occupational therapist.

(a) Initial.

(i) The candidate shall hold a valid license as an occupational therapist in Washington state.

(ii) The candidate shall hold a baccalaureate (or higher) degree from an American Occupational Therapy Association approved program in occupational therapy.

(iii) The candidate shall successfully complete thirty clock hours or three quarter hours (two semester hours) of course work approved by the professional educator standards board which will include the following course outcomes in which candidates will:

(A) Demonstrate an understanding of school and special education law;

(B) Understand and demonstrate knowledge of working within the culture of the schools, creating an environment that fosters safety, health, and learning for the students;

(C) Demonstrate knowledge of appropriate resources in the school setting;

(D) Demonstrate knowledge of collaboration with team members which may include parents, teachers, administrators, and others to support learning outcomes for all students;

(E) Demonstrate knowledge of how to support the outcomes for all students through strategies such as scientifically based practices, collaborative teaming, and ethical decision making;

(F) Recognize ways ESAs can use national, state, and local policies, as well as professional standards, to support decision making in educational settings;

(G) Demonstrate an understanding of the use of human, community, and technological resources. Provided, That an individual who meets all other requirements but who has not completed the required course work shall be issued a temporary permit valid for one hundred eighty calendar days which will allow the individual to practice in the role. The candidate shall verify to OSPI the completion of the required course work during the one hundred eighty-day period.

(b) Continuing.

(i) The candidate shall have completed the requirements for the initial certificate as a school occupational therapist and have completed at least fifteen quarter hours (ten semester hours) of course work beyond the baccalaureate degree in occupational therapy, other health sciences or education.

(ii) The candidate shall provide documentation of one hundred eighty days of full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(3) School physical therapist.

(a) Initial.

(i) The candidate shall hold a valid license as a physical therapist in Washington state.

(ii) The candidate shall hold a baccalaureate (or higher) degree from an American Physical Therapy Association accredited program in physical therapy.

(iii) The candidate shall successfully complete thirty clock hours or three quarter hours (two semester hours) of course work approved by the professional educator standards board which will include the following course outcomes in which candidates will:

(A) Demonstrate an understanding of school and special education law;

(B) Understand and demonstrate knowledge of working within the culture of the schools, creating an environment that fosters safety, health, and learning for the students;

(C) Demonstrate knowledge of appropriate resources in the school setting;

(D) Demonstrate knowledge of collaboration with team members which may include parents, teachers, administrators, and others to support learning outcomes for all students;

(E) Demonstrate knowledge of how to support the outcomes for all students through strategies such as scientifically based practices, collaborative teaming, and ethical decision making;

(F) Recognize ways ESAs can use national, state, and local policies, as well as professional standards, to support decision making in educational settings;

(G) Demonstrate an understanding of the use of human, community, and technological resources. Provided, That an individual who meets all other requirements but who has not completed the required course work shall be issued a temporary permit valid for one hundred eighty calendar days which will allow the individual to practice in the role. The candidate shall verify to OSPI the completion of the required course work during the one hundred eighty-day period.

(b) Continuing.

(i) The candidate shall have completed the requirements for the initial certificate as a school physical therapist and have completed fifteen quarter hours (ten semester hours) of course work beyond the baccalaureate degree in physical therapy, other health sciences or education.

(ii) The candidate shall provide documentation of one hundred eighty days of full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(4) School speech-language pathologist or audiologist.

(a) Initial.

(i) The candidate shall have completed all course work (except special project or thesis) for a master's degree from a college or university program accredited by the American Speech and Hearing Association (ASHA) with a major in speech pathology or audiology. Such program shall include satisfactory completion of a written comprehensive examination: Provided, That if any candidate has not completed a written comprehensive examination, the candidate may present verification from ASHA of a passing score on the National Teacher's Examination in speech pathology or audiology as a condition for certification.

(ii) The candidate shall successfully complete thirty clock hours or three quarter hours (two semester hours) of course work approved by the professional educator standards board which will include the following outcomes in which candidates will:

(A) Demonstrate an understanding of school and special education law;

(B) Understand and demonstrate knowledge of working within the culture of the schools, creating an environment that fosters safety, health, and learning for the students;

(C) Demonstrate knowledge of appropriate resources in the school setting;

(D) Demonstrate knowledge of collaboration with team members which may include parents, teachers, administrators, and others to support learning outcomes for all students;

(E) Demonstrate knowledge of how to support the outcomes for all students through strategies such as scientifically based practices, collaborative teaming, and ethical decision making;

(F) Recognize ways ESAs can use national, state, and local policies, as well as professional standards, to support decision making in educational settings;

(G) Demonstrate an understanding of the use of human, community, and technological resources. Provided, That an individual who meets all other requirements but who has not completed the required course work shall be issued a temporary permit valid for one hundred eighty calendar days which will allow the individual to practice in the role. The candidate shall verify to OSPI the completion of the required course work during the one hundred eighty-day period.

(b) Continuing.

(i) The candidate shall hold a master's degree with a major in speech pathology or audiology, with the exception of a candidate who holds a current and valid Washington

state conditional certificate in speech/language pathology as of June 30, 2003.

(ii) The candidate shall provide documentation of one hundred eighty days of full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(5) School social worker.

(a) Initial.

(i) The candidate shall hold an MSW from a regionally accredited institution of higher learning.

(ii) The candidate shall successfully complete thirty clock hours or three quarter hours (two semester hours) of course work approved by the professional educator standards board which will include the following course outcomes in which candidates will:

(A) Demonstrate an understanding of school and special education law;

(B) Understand and demonstrate knowledge of working within the culture of the schools, creating an environment that fosters safety, health, and learning for the students;

(C) Demonstrate knowledge of appropriate resources in the school setting;

(D) Demonstrate knowledge of collaboration with team members which may include parents, teachers, administrators, and others to support learning outcomes for all students;

(E) Demonstrate knowledge of how to support the outcomes for all students through strategies such as scientifically based practices, collaborative teaming, and ethical decision making;

(F) Use national, state, and local policies, as well as professional standards, to support decision making in educational settings and inform professional growth planning;

(G) Demonstrate an understanding of the use of human, community, and technological resources: Provided, That an individual who meets all other requirements but who has not completed the required course work shall be issued a temporary permit valid for one hundred eighty calendar days which will allow the individual to practice in the role. The candidate shall verify to OSPI the completion of the required course work during the one hundred eighty-day period.

(iii) The candidate shall have a passing score on the Praxis II school social worker examination.

(b) Continuing.

(i) The candidate shall have completed the requirements for the initial certificate as a school social worker and have completed a professional growth plan or forty-five quarter hours (thirty semester hours) or four hundred fifty clock hours specific to the role of the school social worker.

(ii) The candidate shall provide documentation of one hundred eighty days of full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

AMENDATORY SECTION (Amending WSR 10-16-124, filed 8/3/10, effective 9/3/10)

WAC 181-79A-250 Initial and continuing certificates—Renewal, reinstatement, and continuing education requirements. The following shall apply to initial and continuing certificates issued pursuant to this chapter:

(1) Initial certificate.

(a) Teachers.

An initial teacher certificate may be renewed for an additional three-year period on application and verification that the individual has completed all course work requirements from a regionally accredited institution of higher education as defined in WAC 181-78A-010(6) for continuing certification or has completed at least fifteen quarter credit hours (ten semester credit hours) since the certificate was issued or renewed. After August 31, 2000, provisions of WAC 181-79A-123 will apply.

(b) Administrators.

After June 30, 2004, provisions of WAC 181-79A-123(8) will apply.

(c) Educational staff associates.

After June 30, 2005, provisions of WAC 181-79A-123(9) will apply to school psychologists and school counselors.

(2) Continuing certificate.

(a) The continuing certificates of holders who were eligible for such certificates prior to August 31, 1987, and who applied for such certificates prior to July 1, 1988, or who would have been eligible for such certificates prior to August 31, 1987, but for one of the three-year experience requirement and who complete such requirement and apply for such certificate prior to August 31, 1988, will be valid for life. Holders of valid continuing certificates affected by this subsection shall be entitled to have such certificate reissued and subject to the terms and conditions applicable to certification at the time of reissuance including the continuing education requirements of chapter 181-85 WAC.

(b) All continuing certificates not affected by the exception stated in (a) of this subsection shall expire if the holder does not complete the continuing education requirement, to include the filing requirement specified in chapter 181-85 WAC. To reinstate such an expired continuing certificate the individual must complete the requirements for reinstatement stated within chapter 181-85 WAC and must meet the conditions stated in WAC 181-79A-253.

WSR 11-15-084

PERMANENT RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2011-03—Filed July 20, 2011, 8:33 a.m., effective September 1, 2011]

Effective Date of Rule: September 1, 2011.

Purpose: Adopting NAIC model regulation number 815 permits the recognition of preferred mortality tables for use in determining minimum reserve liabilities.

Statutory Authority for Adoption: RCW 48.02.060.

Other Authority: RCW 48.74.030 (1)(b) and 48.02.160 (1).

Adopted under notice filed as WSR 11-12-069 on May 31, 2011.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 5, 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 5, Amended 0, Repealed 0.

Date Adopted: July 20, 2011.

Mike Kreidler

Insurance Commissioner

NEW SECTION

WAC 284-74-470 Purpose. The purpose of these rules, WAC 284-74-470 through 284-74-510, is to recognize, permit and prescribe the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities in accordance with RCW 48.74.030 (1)(a)(iii), and WAC 284-74-340 (1) and (2).

NEW SECTION

WAC 284-74-480 Definitions. (1) "2001 CSO mortality table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO task force from the Valuation Basic Mortality Table developed by the society of actuaries individual life insurance valuation mortality task force, and adopted by the National Association of Insurance Commissioners (NAIC) in December of 2002. The 2001 CSO mortality table is included in the *Proceedings of the NAIC (2nd Quarter 2002)* and supplemented by the 2001 CSO preferred class structure mortality table defined in subsection (2) of this section. Unless the context indicates otherwise, the 2001 CSO mortality table includes both the ultimate form and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables. Mortality tables in the 2001 CSO mortality table include the following:

(a) "2001 CSO mortality table (F)" means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO mortality table.

(b) "2001 CSO mortality table (M)" means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO mortality table.

(c) "Composite mortality tables" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

(d) "Smoker and nonsmoker mortality tables" means mortality tables with separate rates of mortality for smokers and nonsmokers.

(2) "2001 CSO preferred class structure mortality table" means mortality tables with separate rates of mortality for super preferred nonsmokers, preferred nonsmokers, residual standard nonsmokers, preferred smokers, and residual standard smoker splits of the 2001 CSO nonsmoker and smoker tables, as adopted by the NAIC at the September, 2006 national meeting and published in the *NAIC Proceedings (3rd Quarter 2006)*. Unless the context indicates otherwise, the 2001 CSO preferred class structure mortality table includes both the ultimate form of that table and the select and ultimate form of that table. It includes both the smoker and nonsmoker mortality tables. It includes both the male and female mortality tables and the gender composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality table.

(3) "Statistical agent" means an entity with proven systems for protecting the confidentiality of individual insured and insurer information; demonstrated resources for and history of ongoing electronic communications and data transfer ensuring data integrity with insurers, which are its members or subscribers; and a history of and means for aggregation of data and accurate promulgation of the experience modifications in a timely manner.

NEW SECTION

WAC 284-74-490 2001 CSO preferred class structure table. (1) At the election of the company, for each calendar year of issue, for any one or more specific plans of insurance and subject to satisfying the conditions stated in this regulation, the 2001 CSO preferred class structure mortality table may be substituted in place of the 2001 CSO smoker or nonsmoker mortality table as the minimum valuation standard for policies issued on or after January 1, 2007.

(2) For policies issued on or after January 1, 2004, and prior to January 1, 2007, these tables may be substituted with the consent of the commissioner and subject to the conditions of WAC 284-74-500. In determining such consent, the commissioner may rely on the consent of the commissioner of the company's state of domicile. No such election shall be made until the company demonstrates at least twenty percent of the business to be valued on this table is in one or more of the preferred classes.

(3) A table from the 2001 CSO preferred class structure mortality table used in place of a 2001 CSO mortality table, pursuant to the requirements of this rule, will be treated as part of the 2001 CSO mortality table only for purposes of reserve valuation pursuant to the requirements of these rules, WAC 284-74-400 through 284-74-460.

NEW SECTION

WAC 284-74-500 Conditions. (1) For each plan of insurance with separate rates for preferred and standard nonsmoker lives, an insurer may use the super preferred nonsmoker, preferred nonsmoker, and residual standard nonsmoker tables to substitute for the nonsmoker mortality table found in the 2001 CSO mortality table to determine minimum reserves. At the time of election and annually thereafter, except for business valued under the residual standard nonsmoker table, the appointed actuary shall certify that:

(a) The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

(b) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

(2) For each plan of insurance with separate rates for preferred and standard smoker lives, an insurer may use the preferred smoker and residual standard smoker tables to substitute for the smoker mortality table found in the 2001 CSO mortality table to determine minimum reserves. At the time of election and annually thereafter, for business valued under the preferred smoker table, the appointed actuary shall certify that:

(a) The present value of death benefits over the next ten years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation basic table corresponding to the valuation table being used for that class.

(b) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation basic table.

(3) Unless exempted by the commissioner, every authorized insurer using the 2001 CSO preferred class structure table must annually file with the commissioner, with the NAIC, or with a statistical agent designated by the NAIC and acceptable to the commissioner, statistical reports showing mortality and such other information as the commissioner may deem necessary or expedient for the administration of the provisions of this regulation. The form of the reports must be established by the commissioner or the commissioner may require the use of a form established by the NAIC or by a statistical agent designated by the NAIC and acceptable to the commissioner.

(4) The use of the 2001 CSO preferred class structure table for the valuation of policies issued prior to January 1, 2007, must not be permitted in any statutory financial statement in which a company reports, with respect to any policy or portion of a policy coinsured, either of the following:

(a) In cases where the mode of payment of the reinsurance premium is less frequent than the mode of payment of the policy premium, a reserve credit that exceeds, by more than the amount specified in this subsection as Y, the gross reserve calculated before reinsurance. Y is the amount of the gross reinsurance premium that:

(i) Provides coverage for the period from the next policy premium due date to the earlier of the end of the policy year and the next reinsurance premium due date; and

(ii) Would be refunded to the ceding entity upon the termination of the policy.

(b) In cases where the mode of payment of the reinsurance premium is more frequent than the mode of payment of the policy premium, a reserve credit that is less than the gross reserve, calculated before reinsurance, by an amount that is less than the amount specified in this subsection as Z. Z is the amount of the gross reinsurance premium that the ceding entity would need to pay the assuming company to provide reinsurance coverage from the period of the next reinsurance premium due date to the next policy premium due date minus any liability established for the proportionate amount not remitted to the reinsurer.

(c) For purposes of this condition, the reserve:

(i) For the mean reserve method must be defined as the mean reserve minus the deferred premium asset; and

(ii) For the midterminal reserve method must include the unearned premium reserve. A company may estimate and adjust its accounting on an aggregate basis in order to meet the conditions to use the 2001 CSO preferred class structure table.

NEW SECTION

WAC 284-74-510 Effective date. The effective date of this regulation is September 1, 2011.