

**WSR 13-17-122**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)

[Filed August 21, 2013, 11:41 a.m., effective August 21, 2013, 11:41 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To amend and add new sections to chapter 388-845 WAC, DDD home and community-based services (HCBS) waivers, to be in compliance with the requirements of SSB 6384 and related federal waivers recently renewed through Centers for Medicare and Medicaid Services (CMS). These changes add dental services as a waiver service and align this chapter with the changes being made to those in chapter 388-828 WAC for community services. This is a subsequent request to the previous CR-103E filed as WSR 13-10-020.

Citation of Existing Rules Affected by this Order: Amending WAC 388-845-0110, 388-845-0205, 388-845-0210, 388-845-0215, 388-845-0220, 388-845-0225, 388-845-0505, 388-845-0800, 388-845-0820, 388-845-1110, 388-845-1105, 388-845-1150, 388-845-1400, 388-845-1410, 388-845-2110, 388-845-2205, and 388-845-2210.

Statutory Authority for Adoption: RCW 71A.12.030 General authority of secretary—Rule adoption and 34.05.350 (1)(c) Emergency rules and amendments.

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

Reasons for this Finding: The amendments in this filing were originally adopted by emergency rule on September 1, 2012, in order to add dental care as an additional HCBS waiver service and to modify community access services as required by SSB 6384. Because changes to department rules regarding HCBS waivers need to be coordinated with the CMS, and because related rules in chapter 388-828 WAC need amendment, these amendments could not be adopted as permanent before the expiration of the previous emergency filing. A CR-102 has been filed as WSR 13-17-112 and a hearing is scheduled for October 22, 2013.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 17, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 17, Repealed 0.

Date Adopted: August 21, 2013.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-0110 Are there limitations to the waiver services I can receive?** There are limitations to waiver services. In addition to the limitations to your access to nonwaiver services cited for specific services in WAC 388-845-0115, the following limitations apply:

(1) A service must be offered in your waiver and authorized in your plan of care or individual support plan.

(2) Mental health stabilization services may be added to your plan of care or individual support plan after the services are provided.

(3) Waiver services are limited to services required to prevent ICF/MR placement.

(4) The cost of your waiver services cannot exceed the average daily cost of care in an ICF/MR.

(5) Waiver services cannot replace or duplicate other available paid or unpaid supports or services.

(6) Waiver funding cannot be authorized for treatments determined by DSHS to be experimental.

(7) The Basic and Basic Plus waivers have yearly limits on some services and combinations of services. The combination of services is referred to as aggregate services (~~(or employment/day program services)~~).

(8) Your choice of qualified providers and services is limited to the most cost effective option that meets your health and welfare needs.

(9) Services provided out-of-state, other than in recognized bordering cities, are limited to respite care and personal care during vacations.

(a) You may receive services in a recognized out-of-state bordering city on the same basis as in-state services.

(b) The only recognized bordering cities are:

(i) Coeur d'Alene, Moscow, Sandpoint, Priest River and Lewiston, Idaho; and

(ii) Portland, The Dalles, Hermiston, Hood River, Rainier, Milton-Freewater and Astoria, Oregon.

(10) Other out-of-state waiver services require an approved exception to rule before DDD can authorize payment.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

**WAC 388-845-0205 Basic waiver services.**

BASIC WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior management and consultation Community guide Environmental accessibility adaptations Occupational therapy Physical therapy Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	May not exceed \$1454 per year on any combination of these services
	EMPLOYMENT( <del>(/DAY)</del> ) PROGRAM SERVICES: ( <del>Community access</del> ) Person-to-person Prevocational services Supported employment	( <del>May not exceed \$6804 per year</del> ) Limits are determined by <u>DDD assessment and employment status</u>
	<del>DAY PROGRAM SERVICES:</del> <del>Community access</del>	<del>Limits are determined by DDD assessment</del>
	Sexual deviancy evaluation	Limits are determined by DDD
	Respite care	Limits are determined by the DDD assessment
	Personal care	Limits are determined by the CARE tool used as part of the DDD assessment
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits are determined by a mental health professional or DDD

BASIC WAIVER	SERVICES	YEARLY LIMIT
	Emergency assistance is only for aggregate services and/or employment/day program services contained in the Basic waiver	\$6000 per year; Preauthorization required

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

**WAC 388-845-0210 Basic Plus waiver services.**

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior management and consultation Community guide Environmental accessibility adaptations Occupational therapy Physical therapy Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	May not exceed \$6192 per year on any combination of these services
	<del>EMPLOYMENT(<del>(/DAY)</del>) PROGRAM SERVICES:</del> <del>(Community access Person to person)</del> Prevocational services Supported employment <u>Individual technical assistance</u>	<del>(May not exceed \$9944 per year)</del> <del>((This amount may be increased to a maximum of \$19,888 per year by exception to rule based on client need))</del> <u>Limits are determined by DDD assessment and employment status</u>
	<del>DAY PROGRAM SERVICES:</del> <del>Community Access</del>	<del>Limits are determined by DDD assessment</del>



COMMUNITY PROTECTION WAIVER	SERVICES	YEARLY LIMIT
	Behavior management and consultation Community transition Environmental accessibility adaptations Occupational therapy Physical therapy Sexual deviancy evaluation Skilled nursing Specialized medical equipment and supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	Determined by the plan of care or individual support plan, not to exceed the average cost of an ICF/MR for any combination of services
	Residential habilitation	
	<del>((Person-to-person))</del> <u>Employment Program Services:</u>	<u>Limits determined by DDD assessment and employment status</u>
	Prevocational services Supported employment <u>Individual technical assistance</u>	
	<u>Adult dental services</u>	<u>Limits are determined by chapter 182-535 WAC</u>
	MENTAL HEALTH STABILIZATION SERVICES: Behavioral management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits determined by a mental health professional or DDD

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-0225 Children's intensive in-home behavioral support (CIIBS) waiver services.**

CIIBS Waiver	Services	Yearly Limit
	<ul style="list-style-type: none"> <li>• Behavior management and consultation</li> <li>• Staff/family consultation and training</li> <li>• Environmental accessibility adaptations</li> <li>• Occupational therapy</li> <li>• Physical therapy</li> <li>• Sexual deviancy evaluation</li> <li>• Nurse delegation</li> <li>• Specialized medical equipment/supplies</li> <li>• Specialized psychiatric services</li> <li>• Speech, hearing and language services</li> <li>• Transportation</li> <li>• Assistive technology</li> <li>• Therapeutic equipment and supplies</li> <li>• Specialized nutrition and clothing</li> <li>• Vehicle modifications</li> </ul>	Determined by the individual support plan. Total cost of waiver services cannot exceed the average cost of \$4,000 per month per participant.
	Personal care	Limits determined by the DDD assessment. Costs are included in the total average cost of \$4000 per month per participant for all waiver services.
	Respite care	Limits determined by the DDD assessment. Costs are included in the total average cost of \$4000 per month per participant for all waiver services.

CIIBS Waiver	Services	Yearly Limit
	<u>Behavioral health</u> <u>Stabilization services:</u> <u>Behavioral support and consultation</u> <u>Crisis diversion bed services</u> <u>Specialized psychiatric services</u>	<u>Limits determined by mental health specialist</u>

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-0505 Who is a qualified provider of behavior ((management)) support and consultation?** Under the Basic, Basic Plus, Core, and Community Protection waivers, the provider of behavior ((management)) support and consultation must be one of the following professionals contracted with DDD and duly licensed, registered or certified to provide this service:

- (1) Marriage and family therapist;
- (2) Mental health counselor;
- (3) Psychologist;
- (4) Sex offender treatment provider;
- (5) Social worker;
- (6) Registered nurse (RN) or licensed practical nurse (LPN);
- (7) Psychiatrist;
- (8) Psychiatric advanced registered nurse practitioner (ARNP);
- (9) Physician assistant working under the supervision of a psychiatrist;
- (10) Counselors registered or certified in accordance with the requirements of chapter 18.19 RCW; ((or))
- (11) Polygrapher; or
- (12) State operated behavior support agency limited to behavioral health stabilization services.

NEW SECTION

**WAC 388-845-0780 What is adult dental services?** Adult dental services are provided to individuals age twenty-one years and older. Dental services provide comprehensive dental coverage as defined in chapter 182-535 WAC. Adult dental service coverage is limited to individuals on the Basic Plus, Core and Community Protection waivers.

NEW SECTION

**WAC 388-845-0785 Who are qualified providers of adult dental services?** Providers for adult dental services covered under the waiver program must have a current state license and have core provider agreement with the state medicaid agency.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-0800 What is emergency assistance?** Emergency assistance is a temporary increase to the yearly aggregate services and ~~((or employment/day program services))~~ dollar limit specified in the Basic and Basic Plus waiver when additional waiver services are required to prevent ICF/MR placement. These additional services are limited to the services provided in your waiver.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

**WAC 388-845-0820 Are there limits to my use of emergency assistance?** All of the following limitations apply to your use of emergency assistance:

- (1) Prior approval by the DDD regional administrator or designee is required based on a reassessment of your plan of care or individual support plan to determine the need for emergency services;
- (2) Payment authorizations are reviewed every thirty days and cannot exceed six thousand dollars per twelve months based on the effective date of your current plan of care or individual support plan;
- (3) Emergency assistance services are limited to the aggregate services ~~((and employment/day program services))~~ in the Basic and Basic Plus waivers;
- (4) Emergency assistance may be used for interim services until:
  - (a) The emergency situation has been resolved; or
  - (b) You are transferred to alternative supports that meet your assessed needs; or
  - (c) You are transferred to an alternate waiver that provides the service you need.

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

**WAC 388-845-1105 Who is a qualified provider of mental health crisis diversion bed services?** Providers of mental health crisis diversion bed services must be:

- (1) DDD certified residential agencies per chapter 388-101 WAC; ~~((or))~~
- (2) Other department licensed or certified agencies; or
- (3) State operated agency.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-1110 What are the limits of mental health crisis diversion bed services?** (1) Mental health crisis diversion bed services are intermittent and temporary. The duration and amount of services you need to stabilize your crisis is determined by a mental health professional and/or DDD.

(2) These services are available in the Basic, CIIBS, Basic Plus, Core, and Community Protection waivers administered by DDD as mental health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160.

(3) The costs of mental health crisis diversion bed services do not count toward the dollar limits for aggregate services in the Basic and Basic Plus waivers.

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-1150 What are mental health stabilization services?** Mental health stabilization services assist persons who are experiencing a mental health crisis. These services are available in the Basic, Basic Plus, Core, CIIBS and Community Protection waivers to ~~((adults))~~ individuals determined by mental health professionals or DDD to be at risk of institutionalization in a psychiatric hospital without one of more of the following services:

- (1) Behavior management and consultation;
- (2) Specialized psychiatric services; or
- (3) Mental health crisis diversion bed services.

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

AMENDATORY SECTION (Amending WSR 10-22-088, filed 11/1/10, effective 12/2/10)

**WAC 388-845-1400 What are prevocational services?** (1) Prevocational services occur in a specialized or segregated settings and include monthly employment related activities in the community. Prevocational services are designed to prepare you for gainful employment in an integrated setting through training and skill development.

(2) Prevocational services are available in the Basic, Basic Plus, Core and Community Protection waivers.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

**WAC 388-845-1410 Are there limits to the prevocational services I can receive?** The following limitations apply to your receipt of prevocational services:

(1) You must be age twenty and graduating from high school prior to your July or August twenty-first birthday, age twenty-one and graduated from high school, or age twenty-two or older to receive prevocational services.

(2) New referrals for prevocational services require prior approval by the DDD regional administrator and county coordinator or their designees.

(3) Prevocational services are a time limited step on the pathway toward individual employment and are dependent on your demonstrating steady progress toward gainful employment over time. Your annual vocational assessment will include exploration of integrated settings within your next service year. Criteria that would trigger a review of your need for these services include, but are not limited to:

- (a) Compensation at more than fifty percent of the prevailing wage;
- (b) Significant progress made toward your defined goals;
- (c) Your expressed interest in competitive employment; and/or
- (d) Recommendation by your individual support plan team.

(4) You will not be authorized to receive prevocational services in addition to community access services or supported employment services.

~~(5) ((The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of service you may receive.~~

~~(6))~~ Your service hours are determined by the assistance you need to reach your employment outcomes as described in WAC 388-828-9235.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

**WAC 388-845-2110 Are there limits to the supported employment services I can receive?** The following limitations apply to your receipt of supported employment services:

(1) You must be age twenty and graduating from high school prior to your July or August twenty-first birthday, age twenty-one and graduated from high school, or age twenty-two or older to receive supported employment services.

(2) Payment will be made only for the employment support you require as a result of your disabilities.

(3) Payment for individual supported employment excludes the supervisory activities rendered as a normal part of the business setting.

(4) You will not be authorized to receive supported employment services in addition to community access or prevocational services.

~~(5) ((The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of supported employment service you may receive.~~

~~(6))~~ Your service hours are determined by the assistance you need to reach your employment outcomes as described in WAC 388-828-9235 and might not equal the number of hours you spend on the job or in job related activities.

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

**WAC 388-845-2205 Who is qualified to provide transportation services?** (1) The provider of transportation services can be an individual or agency contracted with DDD.

(2) For adult dental services only, provider can be contracted as a transportation broker through medicaid.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

**WAC 388-845-2210 Are there limitations to the transportation services I can receive?** The following limitations apply to transportation services:

(1) Transportation to/from medical or medically related appointments is a medicaid transportation service and is to be considered and used first.

(2) Transportation is offered in addition to medical transportation but cannot replace medicaid transportation services.

(3) Transportation is limited to travel to and from a waiver service.

(4) Transportation does not include the purchase of a bus pass.

(5) Reimbursement for provider mileage requires prior approval by DDD and is paid according to contract.

(6) This service does not cover the purchase or lease of vehicles.

(7) Reimbursement for provider travel time is not included in this service.

(8) Reimbursement to the provider is limited to transportation that occurs when you are with the provider.

(9) You are not eligible for transportation services if the cost and responsibility for transportation is already included in your provider's contract and payment.

(10) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive unless provided by a contracted transportation broker to access adult dental services.

(11) Transportation services require prior approval by the DDD regional administrator or designee, unless provided by transportation broker for adult dental services.

(12) If your individual personal care provider uses his/her own vehicle to provide transportation to you for essential shopping and medical appointments as a part of your personal care service, your provider may receive up to sixty miles per month in mileage reimbursement. If you work with more than one individual personal care provider, your limit is still a total of sixty miles per month. This cost is not counted toward the dollar limitation for aggregate services in the Basic or Basic Plus waiver.

**WSR 13-18-010**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 13-206—Filed August 22, 2013, 4:54 p.m., effective August 22, 2013, 4:54 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-24-04000X.

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

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

Reasons for this Finding: A closure of the troll fishery is necessary to negotiate how to proceed and meet the season objectives. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans and the National Marine Fisheries Service from an in-season call. There is insufficient time to adopt permanent rules.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: August 22, 2013.

Lori Preuss  
for Philip Anderson  
Director

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 220-24-04000X All-citizen commercial salmon troll.  
(13-198)

**WSR 13-18-011**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 13-205—Filed August 22, 2013, 5:14 p.m., effective August 22, 2013, 5:14 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 232-28-62000Z; and amending WAC 232-28-620.

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

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

Reasons for this Finding: Enough salmon remains in the overall chinook quota to allow a two-salmon daily limit. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 22, 2013.

Lori Preuss  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 232-28-62000A Coastal salmon—Saltwater seasons and daily limits.** Notwithstanding the provisions of WAC 232-28-620, effective immediately until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) **Catch Record Card Area 1:** Daily limit of 2 salmon. Release wild coho.

(2) **Catch Record Card Area 2:** Daily limit of 2 salmon; release wild coho.

(3) **Catch Record Card Area 3:** Daily limit of 2 salmon plus 2 additional pink salmon; release wild coho. September 28 through October 13: Daily limit of 2 salmon plus 2 additional pink salmon; release wild coho. Opening restricted to the area north of 47 degrees 50 minutes 00 seconds N. lat. and south of 48 degrees 00 minutes 00 seconds N lat.

(4) **Catch Record Card Area 4:** Daily limit of 2 salmon plus 2 additional pink salmon; release wild coho salmon. Release Chinook salmon caught east of the Bonilla-Tatoosh line; and release chum salmon.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-62000Z Coastal salmon—Saltwater seasons and daily limits. (13-188)

**WSR 13-18-013  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 13-207—Filed August 23, 2013, 1:52 p.m., effective August 25, 2013, 9:00 p.m.]

Effective Date of Rule: August 25, 2013, 9:00 p.m.

Purpose: The purpose of this rule making is to allow nontreaty commercial fishing opportunities in the Columbia River while protecting fish listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes, federal law governing Washington's relationship with Oregon, and Washington fish

and wildlife commission policy guidance for Columbia River fisheries.

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

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

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

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

Reasons for this Finding: Sets additional fishing periods for the 2013 fall season for non-Indian commercial fisheries in the mainstem Columbia River. The seasons are consistent with the 2008-2017 interim management agreement. Salmon and sturgeon are available for harvest during fall season fisheries. The regulation is consistent with compact action of July 25, 2013, and August 22, 2013. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

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

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

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

Date Adopted: August 23, 2013.

Philip Anderson  
Director

## NEW SECTION

**WAC 220-33-01000F Columbia River season below Bonneville.** Notwithstanding the provisions of WAC 220-33-010 and WAC 220-33-020, it is unlawful for a person to take or possess salmon or sturgeon for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections.

### **1. Mainstem Columbia River**

a. SEASON: 9 PM Sunday, August 25, to 6 AM Monday, August 26.

b. AREA: SMCRA 1D, 1E. The deadline at the lower end of SMCRA 1D is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation buoy #1 and continuing to the Washington shore.

c. GEAR: Drift gillnets only. 9-inch minimum mesh size.

d. SANCTUARIES: Washougal and Sandy Rivers.

e. ALLOWABLE POSSESSION: Salmon and white sturgeon. A maximum of four white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). The sturgeon landing limit is specific to the mainstem only.

f. Effective August 1-31, 2013: Sturgeon possession is prohibited while fishing gear is deployed in the portion of Commercial Zone 5 (SMCRA 1E) that is upstream of Skamania Island (Navigation Marker 82 on the Oregon shore, westerly to the boundary marker on the Washington shore upstream of Fir Point). Only vessels in transit through the area may have sturgeon onboard.

### **2. Blind Slough/Knappa Slough Select Area.**

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights from August 26 through October 31, 2013. Open hours are 7 PM to 7 AM through September 13, and 6 PM to 8 AM thereafter.

b. AREA: Blind Slough and Knappa Slough. An area closure of an approximately 100-foot radius at the mouth of Big Creek is in effect. Concurrent jurisdiction waters include all

areas in Knappa Slough and downstream of the Railroad Bridge in Blind Slough.

c. GEAR: Gillnet. Monofilament gear is allowed. 9 3/4-inch maximum mesh size. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights and/or anchors attached directly to the lead line is allowed.

### **3. Tongue Point/South Channel Select Area.**

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights from August 26 through October 31, 2013. Open 7 PM to 7 AM through September 13, and 4 PM to 10 AM thereafter.

b. AREA: Tongue Point and South Channel. All waters in this fishing area are concurrent-jurisdiction waters.

c. GEAR: Gillnet. 6-inch maximum mesh. Maximum length of 250 fathoms.

Tongue Point fishing area: Weight not to exceed two pounds on any one fathom. Fishers participating in the Tongue Point fishery may have onboard un-stored gillnets legal for the South Channel fishing area.

South Channel area: No weight restriction on lead line. Use of additional weights and/or anchors attached directly to the lead line is allowed.

### **4. Deep River Select Area.**

a. SEASON: Monday and Thursday nights, August 26 and August 29, 2013.

Monday, Tuesday, Wednesday and Thursday nights from September 2-13.

Sunday, Monday, Tuesday, Wednesday and Thursday nights from September 15-27.

Monday, Tuesday, Wednesday and Thursday nights from September 30- October 11.

Monday and Thursday nights, October 14 and October 17, 2013.

Open hours are 7 PM to 7 AM.

b. AREA: The Deep River Select Area. Concurrent-jurisdiction waters extend downstream of the Highway 4 Bridge.

c. GEAR: Gillnet. Monofilament gear is allowed. 9 3/4-inch maximum mesh size through September 13, and 6-inch maximum mesh thereafter. Net length, 100 fathoms maximum. No weight restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets may not be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gillnet gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. All other provisions of the permanent regulation remain in effect (WAC 220-20-015(1)).

### **5. Additional regulations for all Select Area commercial fisheries:**

a. Nets not specifically authorized for use may be onboard the vessel if properly stored, consistent with WAC 220-33-001, unless otherwise provided in this rule.

b. ALLOWABLE POSSESSION: Salmon and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sun-

day through Saturday). Sturgeon landing limit specific to Select Areas only.

**6. Quick Reporting:** 24-hour quick-reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick-reporting is required, Columbia River reports must be submitted within 24 hours of the closure of each fishing period. This quick-reporting requirement applies to all seasons described above (Columbia River and Select Areas).

**7. Miscellaneous:** Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

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

REPEALER

The following section of the Washington Administrative Code is repealed 9:00 p.m. August 25, 2013:

WAC 220-33-01000E Columbia River season below Bonnevillle. (13-198)

**WSR 13-18-016  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 13-208—Filed August 23, 2013, 5:01 p.m., effective August 23, 2013, 5:01 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-31100B and 220-47-50100R; and amending WAC 220-47-311.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation provides for Pacific Salmon Commission authorized fisheries in Areas 7 and 7A targeting the United States share of Fraser River pink salmon. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 23, 2013.

Lori Preuss  
for Philip Anderson  
Director

NEW SECTION

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

**Area 10:**  
Limited Participation Fishery (5 boats):  
Open 8/26 7 AM – 7 PM  
Closed 8/27

NEW SECTION

**WAC 220-47-50100R Puget Sound all-citizen commercial salmon fishery—Open periods.** Notwithstanding the provisions of chapter 220-47 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

**Areas 7 and 7A:**  
Area 7A is closed in waters north and west of the Iwersen Dock Line as defined in WAC 220-47-269.

(1) **Purse Seines** - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5:00 AM - 9:00 PM	8/27

(a) It is unlawful to retain sockeye, Chinook, coho and chum.

(b) Purse seine's are required to brail, and fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

(c) All salmon and rockfish must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next brail may be brought on the deck. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(d) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(2) **GillNets** – Open to gillnet gear with 5 inch minimum and 5 ½ inch maximum mesh size according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
8:00 AM - 11:59 PM	8/27

(a) It is unlawful to retain sockeye and rockfish.

(b) It is unlawful to fish for salmon with gillnet gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(3) **Reef Nets** – Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5:00 AM - 9:00 PM	8/24 and 8/25

(a) It is unlawful to retain sockeye, unmarked Chinook, unmarked coho, and chum.

(b) It is unlawful to retain marked Chinook unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook. All retained marked Chinook must be recorded in the log book in accordance with requirements of WAC 220-47-401.

(c) It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department issued certification card.

(4) **"Quick Reporting Fisheries"**:

All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030), are designated as "Quick Reporting Required" per WAC 220-47-001.

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

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 28, 2013:

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

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 28, 2013:

WAC 220-47-50100R Puget Sound all-citizen commercial salmon fishery—Open periods.

**WSR 13-18-027  
EMERGENCY RULES  
HEALTH CARE AUTHORITY  
(Medicaid Program)**

[Filed August 27, 2013, 1:49 p.m., effective August 27, 2013, 1:49 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: These rules establish the medicaid agency's authority to designate willing providers as nonbilling providers and establish the rules applicable to those providers who may apply for this new designation. Nonbilling providers are health care professionals who wish to enroll with the agency to only be an ordering, referring, prescribing provider for the Washington medicaid program and who is not otherwise enrolled as a medicaid provider with the agency. This is required for medicaid to be compliant with the Affordable Care Act (ACA), while retaining access to clients for providers who qualify for this designation. These emergency rules also add definitions of the terms "nursing facility long-term care services" and "nursing facility rehabilitative services" to support implementation of the ACA.

Citation of Existing Rules Affected by this Order: Amending WAC 182-500-0075, 182-500-0080, 182-500-0085, 182-502-0005, and 182-530-1000.

Statutory Authority for Adoption: RCW 41.05.021.

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

Reasons for this Finding: Client's access to services ordered, prescribed or referred by providers who would qualify as nonbilling would be adversely affected and consequently their health status may be compromised, as these services include diagnostics, admissions and medication. If the service ordered were a mental health medication public safety could be compromised. The agency is proceeding with the permanent rule adoption process and has a public hearing scheduled for September 10, 2013, under WSR 13-16-035. After which, the agency will file the permanent adoption of the final rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 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 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 5, Repealed 0.

Date Adopted: August 27, 2013.

Kevin M. Sullivan  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-500-0075 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 health care 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)) 182-500-0100.

**"Nonbilling provider"** is a health care professional enrolled with the agency only as an ordering, referring, prescribing provider for the Washington medicaid program and who is not otherwise enrolled as a medicaid provider with the agency.

**"Noncovered service"** see "covered service" in WAC ((388-500-0020)) 182-500-0020.

**"Nursing facility"** see "institution" in WAC ((388-500-0050)) 182-500-0050.

**"Nursing facility long-term care services"** are services in a nursing facility when a person does not meet the criteria for rehabilitation. Most long-term care assists people with support services. (Also called custodial care.)

**"Nursing facility rehabilitative services"** are the planned interventions and procedures which constitute a continuing and comprehensive effort to restore a person to the person's former functional and environmental status, or alternatively, to maintain or maximize remaining function.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-500-0080 Medical assistance definitions—**  
**O. "Ordering and referring provider"** means any physician or other health care professional who orders or refers items or services for clients eligible for Washington's health care programs administered by the agency.

**"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.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-500-0085 Medical assistance definitions—**  
**P. "Patient transportation"** means client transportation to and/or from covered health care services under federal and state health 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.

**"Prescribing provider"** means any physician or other health care professional authorized by law or rule to prescribe drugs for current clients of Washington's health care programs administered by the agency.

**"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 health care service or write a prescription in advance of the client receiving the health care 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 health care, 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 health care, goods, and/or services to eligible medical assistance clients enrolled in the MCO plan.

**"Public institution"** see "institution" in WAC ((388-500-0050)) 182-500-0050.

AMENDATORY SECTION (Amending WSR 12-12-032, filed 5/29/12, effective 7/1/12)

**WAC 182-502-0005 Core provider agreement (CPA).** (1) The agency only pays claims submitted by or on behalf of a health care professional, health care entity, supplier or contractor of service that has an approved core provider agreement (CPA) with the agency ~~((or)),~~ is a performing provider on an approved CPA with the agency, or has an approved agreement with the agency as a nonbilling provider in accordance with WAC 182-502-0006.

(2) Performing providers of services to a medical assistance client must be enrolled under the billing providers' CPA.

(3) Any ordering, prescribing, or referring providers must be enrolled in the agency's claims payment system in order for any services or supplies ordered, prescribed, or referred by them to be paid. The national provider identifier (NPI) of any referring, prescribing, or ordering provider must be included on the claim form. Refer to WAC 182-502-0006 for enrollment as a nonbilling provider.

(4) For services provided out-of-state, refer to WAC 182-501-0180, 182-501-0182, and 182-501-0184.

(5) The agency does not pay for services provided to clients during the CPA application process or application for nonbilling provider process, regardless of whether the agency later approves or denies the ~~((CPA))~~ application, except as provided in subsection (6) of this section or WAC 182-502-0006(5).

(6) Enrollment of a provider applicant is effective on the date the agency approves the provider application.

(a) A provider applicant may ask for an effective date earlier than the agency's approval of the provider application by submitting a written request to the agency's chief medical officer. The request must specify the requested effective date and include an explanation justifying the earlier effective date. The chief medical officer will not authorize an effective date that is:

(i) Earlier than the effective date of any required license or certification; or

(ii) More than three hundred sixty-five days prior to the agency's approval of the provider application.

(b) The chief medical officer or designee may approve exceptions as follows:

(i) Emergency services;

(ii) Agency-approved out-of-state services;

(iii) Medicaid provider entities that are subject to survey and certification by CMS or the state survey agency;

(iv) Retroactive client eligibility; or

(v) Other critical agency need as determined by the agency's chief medical officer or designee.

(c) For federally qualified health centers (FQHCs), see WAC 182-548-1200. For rural health clinics (RHCs), see WAC 182-549-1200.

(d) Exceptions granted under this subsection (6) do not supersede or otherwise change the agency's timely billing requirements under WAC 182-502-0150.

NEW SECTION

**WAC 182-502-0006 Enrollment for nonbilling individual providers.** (1) The agency pays for health care services, drugs, supplies or equipment prescribed, ordered, or referred by a health care professional only when the health care professional has one of the following approved agreements with the agency and all other conditions of payment have been met (see WAC 182-501-0050):

(a) Core provider agreement, in accordance with WAC 182-502-0005; or

(b) Nonbilling provider agreement, in accordance with subsection (4) of this section.

(2) Only a licensed health care professional whose scope of practice under their licensure includes ordering, prescribing, or referring may enroll as a nonbilling provider.

(3) Nothing in this chapter obligates the agency to enroll any health care professional who requests enrollment as a nonbilling provider.

**(4) Enrollment.**

(a) To enroll as a nonbilling provider with the medicaid agency, a health care professional must, on the date of application:

(i) Not already be enrolled with the medicaid agency as a billing or servicing provider;

(ii) Be currently licensed, certified, accredited, or registered according to Washington state laws and rules;

(iii) Be enrolled with medicare, when required in specific program rules;

(iv) Have current professional liability coverage, individually or as a member of a group;

(v) Have a current federal drug enforcement agency (DEA) certificate, if applicable to the profession's scope of practice;

(vi) Pass the agency's screening process, including license verifications, data base checks, site visits, and criminal background checks, including fingerprint-based criminal background checks as required by 42 C.F.R. 455.434 if considered high-risk under 42 C.F.R. 455.450. The agency uses the same screening level risk categories that apply under medicare. For those provider types that are not recognized under medicare, the agency assesses the risk of fraud, waste, and abuse using similar criteria to those used in medicare;

(vii) Meet the conditions in this chapter and other chapters regulating the specific type of health care practitioner;

(viii) Sign, without modification, a Medicaid Enrollment Application and Agreement for Nonbilling Individual Providers form (HCA 13-002). The medicaid agency and each provider signing a Medicaid Enrollment Application and Agreement for Nonbilling Individual Providers form (HCA 13-002) will hold each other harmless from a legal action based on the negligent actions or omissions of either party under the terms of this agreement.

(b) The medicaid agency does not enroll a nonbilling provider for reasons which include, but are not limited to, the following:

(i) The agency determines that:

(A) There is a quality of care issue with significant risk factors that may endanger client health and/or safety (see WAC 182-502-0030 (1)(a)); or

(B) There are risk factors that affect the credibility, honesty, or veracity of the health care practitioner (see WAC 182-502-0030 (1)(b)).

(ii) The health care professional:

(A) Is excluded from participation in medicare, medicaid or any other federally funded health care program;

(B) Has a current formal or informal pending disciplinary action, statement of charges, or the equivalent from any state or federal professional disciplinary body at the time of initial application;

(C) Has a suspended, terminated, revoked, or surrendered professional license as defined under chapter 18.130 RCW;

(D) Has a restricted, suspended, terminated, revoked, or surrendered professional license in any state;

(E) Is noncompliant with the department of health's or other state health care agency's stipulation of informal disposition, agreed order, final order, or similar licensure restriction;

(F) Is suspended or terminated by any agency within the state of Washington that arranges for the provision of health care;

(G) Fails a background check, including a fingerprint-based criminal background check, performed by the agency. See WAC 182-502-0014, except that subsection (2) of this section does not apply to nonbilling providers;

(H) Does not have sufficient liability insurance according to (a)(i) of this subsection for the scope of practice; or

(I) Fails to meet the requirements of a site visit, as required by 42 C.F.R. 455.432.

(5) **Effective date of enrollment of nonbilling provider.** Enrollment of a nonbilling provider applicant is effective on the date the agency approves the nonbilling provider application.

(a) A nonbilling provider applicant may ask for an effective date earlier than the agency's approval of the nonbilling provider application by submitting a written request to the agency's chief medical officer. The request must specify the requested effective date and include an explanation justifying the earlier effective date. The chief medical officer will not authorize an effective date that is:

(i) Earlier than the effective date of any required license or certification; or

(ii) More than three hundred sixty-five days prior to the agency's approval of the nonbilling provider application.

(b) The chief medical officer or designee may approve exceptions as follows:

(i) Emergency services;

(ii) Agency-approved out-of-state services;

(iii) Medicaid provider entities that are subject to survey and certification by CMS or the state survey agency;

(iv) Retroactive client eligibility; or

(v) Other critical agency need as determined by the agency's chief medical officer or designee.

(6) **Continuing requirements.** To continue eligibility, a nonbilling provider must:

(a) Only order, refer, or prescribe for clients consistent with the scope of their department of health (DOH) licensure and agency program rules;

(b) Provide all services without discriminating on the grounds of race, creed, color, age, sex, sexual orientation, religion, national origin, marital status, the presence of any sensory, mental or physical handicap, or the use of a trained dog guide or service animal by a person with a disability;

(c) Document that the client was informed that the provider:

(i) May bill the client for any billable item or service. The rules in WAC 182-502-0160 do not apply; and

(ii) Is enrolled with the agency for the sole purpose of ordering, prescribing, or referring items or services for clients.

(d) Inform the agency of any changes to the provider's Medicaid Enrollment Application and Agreement for Non-billing Individual Providers form (HCA 13-002) including, but not limited to, changes in:

(i) Address or telephone number;

(ii) Business name.

(e) Retain a current professional state license, registration, certification and applicable business license for the service being provided, and update the agency of all changes;

(f) Inform the agency in writing within seven business days of receiving any informal or formal disciplinary order, decision, disciplinary action or other action(s) including, but not limited to, restrictions, limitations, conditions and suspensions resulting from the practitioner's acts, omissions, or conduct against the provider's license, registration, or certification in any state;

(g) Maintain professional liability coverage requirements;

(h) Not surrender, voluntarily or involuntarily, his or her professional state license, registration, or certification in any state while under investigation by that state or due to findings by that state resulting from the practitioner's acts, omissions, or conduct;

(i) Furnish documentation or other assurances as determined by the agency in cases where a provider has an alcohol or chemical dependency problem, to adequately safeguard the health and safety of medical assistance clients that the provider:

(i) Is complying with all conditions, limitations, or restrictions to the provider's practice both public and private; and

(ii) Is receiving treatment adequate to ensure that the dependency problem will not affect the quality of the provider's practice.

(j) Submit to a revalidation process at least every five years. This process includes, but is not limited to:

(i) Updating provider information;

(ii) Submitting forms as required by the agency including, but not limited to, a new Medicaid Enrollment Application and Agreement for Nonbilling Individual Providers form (HCA 13-002); and

(iii) Passing the agency's screening process as specified in subsection (4)(a)(vi) of this section.

(k) Follow the laws and rules that govern the agency's programs. A nonbilling provider may contact the agency with questions regarding the agency's programs. However, the agency's response is based solely on the information provided

to the agency's representative at the time of inquiry, and in no way exempts a nonbilling provider from this requirement.

**(7) Audit or investigation.**

(a) Audits or investigations may be conducted to determine compliance with the rule and regulations of the program.

(b) If an audit or investigation is initiated, the provider must retain all original records and supportive materials until the audit is completed and all issues are resolved even if the period of retention extends beyond the required six year period.

**(8) Inspection; maintenance of records.** For six years from the date of services, or longer if required specifically by law, the nonbilling provider must:

(a) Keep complete and accurate medical records that fully justify and disclose the extent of the services or items ordered, referred or prescribed.

(b) Make available upon request appropriate documentation, including client records, supporting material for review by the professional staff within the agency or the U.S. Department of Health and Human Services. The nonbilling provider understands that failure to submit or failure to retain adequate documentation may result in the termination of the nonbilling provider's enrollment.

**(9) Terminations.**

(a) The agency may immediately terminate a nonbilling provider's agreement, and refer the nonbilling provider to the appropriate state health professions quality assurance commission for:

(i) Any of the reasons in WAC 182-502-0030 termination for cause (except that subsection (1)(a)(ix) and (b)(i) do not apply); and

(ii) Failure to comply with the requirements of subsections (4), (6), and (8) of this section.

(b) Either the agency or the provider may terminate this agreement for convenience at any time with thirty calendar days' written notification to the other.

(c) If this agreement is terminated for any reason, the agency will pay for services ordered, referred, or prescribed by the provider only through the date of termination.

**(10) Termination disputes.**

(a) To dispute terminations of a nonbilling provider agreement under subsection (9)(a) of this section, the dispute process in WAC 182-502-0050 applies.

(b) Nonbilling providers cannot dispute terminations under subsection (9)(b) of this section.

**AMENDATORY SECTION** (Amending WSR 13-04-095, filed 2/6/13, effective 3/9/13)

**WAC 182-530-1000 Outpatient drug program—**

**General.** (1) The purpose of the outpatient drug program is to reimburse providers for outpatient drugs, vitamins, minerals, devices, and drug-related supplies according to medicaid agency rules and subject to the limitations and requirements in this chapter.

(2) The agency reimburses for outpatient drugs, vitamins, minerals, devices, and pharmaceutical supplies that are:

(a) Covered. Refer to WAC 182-530-2000 for covered drugs, vitamins, minerals, devices, and drug-related supplies and to WAC 182-530-2100 for noncovered drugs and drug-related supplies;

(b) Prescribed by a provider with prescriptive authority (see exceptions for family planning and emergency contraception for women eighteen years of age and older in WAC 182-530-2000 (1)(b), and over-the-counter (OTC) drugs to promote smoking cessation in WAC 182-530-2000 (1)(g));

(c) Prescribed by:

(i) A provider with an approved core provider agreement; ~~((or))~~

(ii) A provider who is enrolled as a performing provider on an approved core provider agreement; or

(iii) A provider who is enrolled as a nonbilling provider.

(d) Within the scope of an eligible client's medical assistance program;

(e) Medically necessary as defined in WAC 182-500-0070 and determined according to the process found in WAC 182-501-0165;

(f) Authorized, as required within this chapter;

(g) Billed according to WAC 182-502-0150 and 182-502-0160; and

(h) Billed according to the requirements of this chapter.

(3) Coverage determinations for the agency are made by the agency's pharmacists or medical consultants in accordance with applicable federal law. The agency's determination may include consultation with the drug use review (DUR) board.

**WSR 13-18-030**

**EMERGENCY RULES**

**DEPARTMENT OF**

**FISH AND WILDLIFE**

[Order 13-209—Filed August 27, 2013, 4:04 p.m., effective August 27, 2013, 11:59 p.m.]

Effective Date of Rule: August 27, 2013, 11:59 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100H and 220-69-24000D; and amending WAC 220-52-051, 220-52-075, and 220-69-240.

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

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

Reasons for this Finding: The 2013 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) closes Shrimp Management Areas 1A, 1C, Catch Area 23B and the eastern portion of Catch Area 23A-W to spot shrimp fishing, as the quotas will be reached; (2) changes the biweekly catch accounting limit to a weekly catch accounting limit; and (3)

reflects a temporary change to the shrimp reporting fax number. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 0, Repealed 2.

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

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

Date Adopted: August 27, 2013.

Joe Stohr  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 220-52-05100I Puget Sound shrimp pot and beam trawl fishery—Season.** Notwithstanding the provisions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound, except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1A, 1C, 3, 4, and 6 are open to the harvest of all shrimp species, effective immediately, until further notice, except as provided for in this section:

i) All waters of the Discovery Bay Shrimp District and Catch Area 23A-W east of the W 123° 03' longitude line are closed;

ii) All waters of Shrimp Management Areas 4 and 6 and Marine Fish/Shellfish Management and Catch Reporting Area (Catch Area) 23A-C, 23A-E and 25A are closed to the harvest of spot shrimp; and

iii) All waters of Shrimp Management Areas 1A and 1C are closed to the harvest of all shrimp species other than spot shrimp.

iv) Effective 11:59 p.m. September 3, 2013, all waters of Shrimp Management Areas 1A, 1C and Catch Area 23B are closed.

(b) The spot shrimp catch accounting week is Wednesday through Tuesday.

(c) Effective immediately until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week.

(d) It is unlawful to pull shellfish pots in more than one catch area per day.

(e) Only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp.

i) Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1 3/4-inch stretch measure.

ii) Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(2) The following areas are open to Shrimp beam trawl gear, effective immediately, until further notice.

(a) Shrimp Management Area (SMA) 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D). Sequim Bay includes those waters of Catch Area 25A south of a line projected west from Travis Spit on the Miller Peninsula.

(b) Those portions of Catch Areas 20B, 21A and 22A within SMA 1B.

(c) All waters of Catch Area 20A.

(3) It is unlawful to sell shrimp taken under this section to any person who is not a licensed Washington wholesale fish dealer.

#### NEW SECTION

**WAC 220-52-07500M Shellfish harvest logs.** Notwithstanding the provisions of WAC 220-52-075, effective immediately, until further notice, it is unlawful for vessel operators engaged in commercial harvest of shrimp from Puget Sound with shellfish pot gear to fail to report their daily catch by text message, e-mail or FAX to WDFW by 10:00 a.m. the day after the shrimp are harvested. Text message and e-mail daily catch reports must be submitted to [shrimpreport@dfw.wa.gov](mailto:shrimpreport@dfw.wa.gov), and FAX reports must be transmitted to FAX number 360.466.0515. Daily catch reports must include the following information as it is recorded on the fish receiving ticket: Fisher name, buyer name, pounds landed per shrimp species, catch area, date of harvest, date of sale, and complete fish ticket serial number, including the first alphanumeric letter. If the fish receiving ticket is faxed as the daily harvest report, the date of harvest must be recorded on the bottom half of the ticket.

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

#### NEW SECTION

**WAC 220-69-24000E Duties of commercial purchasers and receivers.** Notwithstanding the provisions of WAC 220-69-240, effective immediately until further notice, it is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound to fail to report in the following manner:

(1) For Puget Sound shrimp - Pot gear: All buyers of shrimp taken by pot gear (including fishers who buy their own catch) are no longer required to report the previous week's purchases by phone or FAX.

(2) Puget Sound shrimp - Trawl gear: All buyers of shrimp taken by trawl gear (including fishers who buy their own catch) must report the previous day's purchases by 10:00 a.m. the following morning. Reports must be made by text

message, e-mail or FAX. Text message and e-mail reports must be submitted to [shrimpreport@dfw.wa.gov](mailto:shrimpreport@dfw.wa.gov), and FAX reports must be transmitted to FAX number 360.466.0515. Reports must include dealer name, fisher name, pounds sold per shrimp species, catch area, date sold, and the complete fish ticket serial number, including the first alphanumeric letter. Violation of this subsection is a gross misdemeanor, punishable under RCW [77.15.560](#).

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

### REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. August 27, 2013:

WAC 220-52-05100H Puget Sound shrimp beam trawl fishery—Season. (13-203)

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 31, 2013.

WAC 220-69-24000D Duties of commercial purchasers and receivers. (13-113)

**WSR 13-18-031**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 13-211—Filed August 27, 2013, 4:52 p.m., effective August 28, 2013, 9:00 p.m.]

Effective Date of Rule: August 28, 2013, 9:00 p.m.

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

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

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

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

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of

notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Sets an additional fishing period for the 2013 fall season for non-Indian commercial fisheries in the mainstem Columbia River. The seasons are consistent with the 2008-2017 interim management agreement. Salmon and sturgeon are available for harvest during fall season fisheries. The regulation is consistent with compact action of July 25, 2013, August 22, 2013, and August 27, 2013. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

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

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

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

Date Adopted: August 27, 2013.

Joe Stohr  
for Philip Anderson  
Director

## NEW SECTION

**WAC 220-33-01000G Columbia River season below Bonneville.** Notwithstanding the provisions of WAC 220-33-010 and WAC 220-33-020, it is unlawful for a person to take or possess salmon or sturgeon for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections.

### **1. Mainstem Columbia River**

a. SEASON: 9 PM Wednesday August 28 to 2 AM Thursday August 29.

b. AREA: SMCRA 1D, 1E. The deadline at the lower end of SMCRA 1D is defined as a straight line projected from the Warrior Rock Lighthouse on the Oregon shore easterly through the green navigation buoy #1 and continuing to the Washington shore.

c. GEAR: Drift gillnets only. 9-inch minimum mesh size.

d. SANCTUARIES: Washougal and Sandy Rivers.

e. ALLOWABLE POSSESSION: Salmon and white sturgeon. A maximum of four white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). The Sturgeon landing limit is specific to the mainstem only.

f. Effective immediately through August 31, 2013: Sturgeon possession is prohibited while fishing gear is deployed in the portion of Commercial Zone 5 (SMCRA 1E) that is upstream of Skamania Island (Navigation Marker 82 on the Oregon shore, westerly to the boundary marker on the Washington shore upstream of Fir Point). Only vessels in transit through the area may have sturgeon onboard.

### **2. Blind Slough/Knappa Slough Select Area.**

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 31. Open hours are 7 PM to 7 AM through September 13, and 6 PM to 8 AM thereafter.

b. AREA: Blind Slough and Knappa Slough. An area closure of an approximately 100-foot radius at the mouth of Big Creek is in effect. Concurrent jurisdiction waters include all areas in Knappa Slough and downstream of the Railroad Bridge in Blind Slough.

c. GEAR: Gillnet. Monofilament gear is allowed. 9 3/4-inch maximum mesh size. Maximum net length of 100 fathoms. No weight restriction on lead line. Use of additional weights and/or anchors attached directly to the lead line is allowed.

### **3. Tongue Point/South Channel Select Area.**

a. SEASON: Monday, Tuesday, Wednesday, and Thursday nights immediately through October 31, 2013. Open 7 PM to 7 AM through September 13, and 4 PM to 10 AM thereafter.

b. AREA: Tongue Point and South Channel. All waters in this fishing area are concurrent-jurisdiction waters.

c. GEAR: Gillnet. 6-inch maximum mesh. Maximum length of 250 fathoms maximum

Tongue Point fishing area: Weight not to exceed two pounds on any one fathom. Fishers participating in the Tongue Point fishery may have onboard un-stored gillnets legal for the South Channel fishing area.

South Channel area: No weight restriction on lead line. Use of additional weights and/or anchors attached directly to the lead line is allowed.

### **4. Deep River Select Area.**

a. SEASON: Thursday night, August 29, 2013.

Monday, Tuesday, Wednesday and Thursday nights from September 2-13.

Sunday, Monday, Tuesday, Wednesday and Thursday nights from September 15-27.

Monday, Tuesday, Wednesday and Thursday nights from September 30- October 11.

Monday and Thursday nights, October 14 and October 17, 2013.

Open hours are 7 PM to 7 AM

b. AREA: The Deep River Select Area. Concurrent-jurisdiction waters extend downstream of the Highway 4 Bridge.

c. GEAR: Gillnet. Monofilament gear is allowed. 9 3/4-inch maximum mesh size through September 13, and 6-inch maximum mesh thereafter. Net length, 100 fathoms maximum. No weight restriction on the lead line. Use of additional weights or anchors attached directly to the lead line is allowed. Nets may not be tied off to stationary structures. Nets may not fully cross the navigation channel. It is unlawful to operate in any river, stream or channel any gillnet gear longer than three-fourths the width of the river, stream, or channel. "River, stream, or channel width" is defined as bank-to-bank, where the water meets the banks, regardless of the time of tide or the water level. This emergency provision shall supersede the permanent regulation and all other regulations that conflict with it. All other provisions of the permanent regulation remain in effect (WAC 220-20-015(1)).

### **5. Additional regulations for all Select Area commercial fisheries:**

a. Nets not specifically authorized for use may be onboard the vessel if properly stored, consistent with WAC 220-33-001.

b. ALLOWABLE POSSESSION: Salmon and white sturgeon. A maximum of two white sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday). Sturgeon landing limit specific to Select Areas only.

**6. Quick Reporting:** 24-hour quick-reporting required for Washington wholesale dealers, pursuant to WAC 220-69-240. When quick-reporting is required, Columbia River reports must be submitted within 24 hours of the closure of each fishing period. This quick-reporting requirement applies to all seasons described above (Columbia River and Select Areas).

**7. Miscellaneous:** Nets fished any time between official sunset and official sunrise must have lighted buoys on both ends of the net. If the net is attached to the boat, then one lighted buoy on the end of the net opposite the boat is required.

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

REPEALER

The following section of the Washington Administrative Code is repealed 9:00 p.m. August 28, 2013:

WAC 220-33-01000F Columbia River season below Bon-neville. (13-207)

**WSR 13-18-036****EMERGENCY RULES****HEALTH CARE AUTHORITY**

(Medicaid Program)

[Filed August 28, 2013, 1:21 p.m., effective August 28, 2013, 1:21 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: In response to a court-approved settlement agreement, the agency is adopting WAC 182-531-1410 concerning coverage for applied behavioral analysis (ABA) services for children with autism spectrum disorders. The new rules address prior authorization for services, evaluating and prescribing provider requirements, ABA provider requirements, and payment.

Statutory Authority for Adoption: RCW 41.05.021.

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

Reasons for this Finding: The agency has been working with stakeholders and experts in autism spectrum disorders to craft rules to ensure public health and safety; however, the agency must file an emergency WAC for the short-term to meet the agreed upon January 2, 2013, deadline.

The agency is proceeding with the permanent rule adoption process initiated by the CR-101 filed under WSR 12-14-100. The agency has been working closely with stakeholders to draft the permanent rule and anticipates filing the CR-102 sometime in September 2013.

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

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

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

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

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

Date Adopted: August 28, 2013.

Kevin M. Sullivan  
Rules Coordinator

NEW SECTION

**WAC 182-531-1410 Applied behavior analysis (ABA).** (1) Applied behavior analysis (ABA) assists children with autism spectrum disorders and their families to improve the core symptoms associated with autism spectrum disorders.

(2) The agency pays for ABA services when the services:

(a) Are covered;

(b) Are medically necessary;

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

(d) Are within currently accepted standards of evidence-based medical practice;

(e) Do not replicate ABA services being rendered in other settings;

(f) Are authorized, as required within this section, chapters 182-501 and 182-502 WAC, and the agency's applicable, published medicaid provider guides; and

(g) Are billed according to this section, chapters 182-501 and 182-502 WAC, and the agency's applicable, published medicaid provider guides.

(3) **Definitions.** The following definitions and those found in chapter 182-500 WAC, medical assistance definitions, and this chapter, physician-related services, apply to this section.

**ABA treatment plan** - An individualized, goal-directed treatment plan developed by a lead behavior analysis therapist meeting the criteria in subsection (15)(a)(i)(A) of this section.

**Applied behavior analysis or ABA** - Applied behavior analysis (ABA) involves the systematic application of scientifically validated principles of human behavior to change socially significant behaviors. Behavior analysis uses scientific methodology to reliably demonstrate that behavioral improvements are caused by the prescribed interventions. ABA's focus on social significance promotes a family-centered and whole-life approach to intervention. Common methods include: Behavioral assessment consisting of caregiver interviews, direct observation, and collection of data on targeted behaviors; use of single-case design to demonstrate the relationship between the environment and behavior as a means to promote lasting change; and implementation of client-specific plans and goals. ABA is an empirically validated approach to improve behavior and skills related to core impairments associated with autism and a number of other developmental disabilities. ABA also includes the implementation of functional behavior assessment to identify environmental variables that maintain challenging behavior and allow for more effective interventions to be developed that reduce challenging behaviors and teach appropriate replacement behavior.

**Autism** - A diagnosis along the autism spectrum disorder as defined by the most current DSM criteria and made by a licensed health care professional who is associated with an agency-recognized center of excellence (COE).

**Autism diagnostic tool** - A tool used to establish the presence (or absence) of autism and to make a definitive diagnosis which will be the basis for treatment decisions and

the development of a treatment plan. Examples of autism diagnostic tools include:

- (a) Autism diagnosis interview (ADI); and
- (b) Autism diagnostic observation schedule (ADOS).

**Autism screening tool** - A tool used to detect indicators or risk factors for autism and may indicate a suspicion of the condition which would then require confirmation. Examples of screening tools include:

- (a) Ages and stages questionnaire (ASQ);
- (b) Communication and symbolic behavior scales (CSBS);
- (c) Parent's evaluation and developmental status (PEDS);
- (d) Modified checklist for autism in toddlers (MCHAT); and
- (e) Screening tools for autism in toddlers and young children (STAT).

**Centers of excellence** or **COE** - A hospital, medical center, or other health care provider that meets or exceeds standards set by the agency for specific treatments or specialty care.

**Comprehensive evaluation diagnostic assessment** - An evaluation and assessment meeting the criteria in subsection (8) of this section.

**Day services program** - An agency approved, structured, nonresidential, facility-based group program designed to meet the needs of enrolled children with autism and developmental disabilities through individualized plans of care. The program is comprehensive, providing a variety of health, social, therapeutic activities (occupational, speech, and physical therapy), supervision, support, and in some cases personal care. These services support learning and assistance in any of the following areas: Self-care, receptive and expressive language, learning, mobility, and self-direction.

**Diagnostic and statistical manual of mental disorders (DSM)"** - A manual published by the American Psychiatric Association that provides a common language and standard criteria for the classification of mental disorders.

**Lead behavior analysis therapist** or **LBAT** - A person meeting the qualifications for lead behavior analysis therapist (LBAT) as described in subsection (15)(a) of this section and having sufficient competency to complete an individualized ABA treatment plan and oversee its implementation.

**Therapy assistant** - A person meeting the qualifications for therapy assistants as described in subsection (15)(a)(ii) (A) of this section and having sufficient competence to perform the tasks of a therapy assistant as described in subsection (15)(a)(ii)(B) of this section.

(4) The agency covers ABA services when the following requirements are met:

- (a) Client eligibility, as described in subsection (5) of this section;
- (b) Completion of stages, as described in subsections (7) through (13) of this section; and
- (c) Provider requirements, as described in subsections (14) and (15) of this section.

(5) **Eligibility.** To be eligible for ABA services, clients must meet all of the following:

- (a) Program eligibility:
- (i) Be twenty years of age and younger;

(ii) Be covered under one of the following agency programs:

(A) Children's health care programs as defined in WAC 182-505-0210, Apple health for kids and other children's medical assistance programs;

- (B) Categorically needy program (CNP); or
- (C) Medically needy program (MNP); and

(ii) Be younger than eighteen years of age and younger and covered under the agency's medical care services as described in WAC 182-505-0210 (within Washington state or bordering city only, as described in WAC 182-501-0175).

(b) Clinical eligibility:

(i) The client may be screened using a valid autism screening tool;

(ii) The client's health care record contains documentation by a clinician which may incorporate family member observations, establishing the presence of any of the core symptoms of autism: Functional impairment; delay in communication, behavior, and/or social interaction; or repetitive or stereotyped behavior;

(iii) There is documentation by a clinician which may incorporate family member observations, that the client's behaviors are having an adverse impact on either development or communication, or both, such that:

(A) The client cannot adequately participate in home, school, or community activities because the behavior or skill deficit(s) interferes with these activities; or

(B) The child exhibits behavior in the nature of self-injury, aggression towards others, destruction of property, stereotyped/repetitive behaviors, elopement, or severe disruptive behavior, where the behavior may be construed that the physical health or safety of the person or others may be placed in serious jeopardy; and

(iv) The agency's recognized center of excellence (COE) has confirmed:

(A) The client has a diagnosis on the autism spectrum disorder, as defined by the most current DSM version;

(B) Either of the following:

(I) That less intrusive or less intensive behavioral interventions have been tried and have not been successful; or

(II) There is no equally effective and substantially less costly alternative available for reducing interfering behaviors, increasing prosocial behaviors, or maintaining desired behaviors; and

(C) There is a reasonable expectation that the requested services will result in measurable improvement in either the client's behavior, skills, or both.

(6) The following stages must be completed:

(a) Stage one - Referral to a COE for evaluation, treatment plan, and order/prescription;

(b) Stage two - ABA assessment and treatment plan; and

(c) Stage three - Delivery of ABA services with agency's authorization.

**Stage one - Referral to a COE for evaluation and order**

(7) A client who may meet the eligibility criteria in subsection (5) of this section may be referred to a COE for an evaluation and treatment plan by:

(a) The primary care provider or other licensed health care practitioner including, but not limited to, a speech therapist or occupational therapist;

(b) A school-based health care professional as the result of an individual education plan (IEP);

(c) The client's parent or guardian; or

(d) As required by their managed care plan coverage, if indicated.

(8) The COE must provide a comprehensive evaluation and treatment plan that includes:

(a) Routine developmental surveillance performed by providers at well child visits, as available;

(b) Audiology and vision assessment results, as available, or documentation that vision and hearing were determined to be within normal limits during assessment and not a barrier to completing a valid evaluation;

(c) The name of the completed autism screening questionnaire, including date completed and significant results, as available;

(d) Documentation of how diagnosis was confirmed by COE physician or psychologist:

(i) Results of formal diagnostic procedures performed by an experienced clinician, including name of measure, dates, and results, as available; or

(ii) Clinical findings and observations used to confirm diagnosis;

(e) Documentation of a formal cognitive and/or developmental assessment performed by a qualified clinician, including name of measure, dates, results, and standardized scores providing verbal, nonverbal, and full-scale scores, as available. Examples of these assessment tools are:

(i) Mullen;

(ii) Weschler; or

(iii) Bayley;

(f) Documentation of a formal adaptive behavior assessment performed by a qualified clinician, including name of measure, dates, results, and standardized scores providing scores of each domain, as available. Examples of these assessment tools are:

(i) Vineland adaptive behavior scales; or

(ii) Adaptive behavior assessment system (ABAS);

(g) Documentation that the client's behaviors are having an adverse impact on development or communication, or demonstrating injurious behavior, such that:

(i) The client cannot adequately participate in home, school, or community activities because behavior or skill deficit(s) interferes with these activities; or

(ii) The client presents a safety risk to self or others;

(h) Expanded laboratory evaluation, if indicated;

(i) Documentation that:

(i) Less intrusive or less intensive behavioral interventions have been tried and not been successful; or

(ii) There is no equally effective alternative available for reducing interfering behaviors, increasing prosocial behaviors, or maintaining desired behaviors, if ABA is included in the plan;

(j) A multidisciplinary individualized treatment plan (ITP) with recommendations that consider the full range of autism treatments with ABA as a treatment component, if clinically indicated;

(k) A statement that the evaluating and prescribing provider expects that the requested ABA services will result in measurable improvement in the client's behavior or skills; and

(l) An order/prescription for ABA services. If ordered/prescribed, a copy of the comprehensive evaluation and treatment plan must be forwarded to the family selected ABA provider in subsection (15) of this section or provided to the parent to forward to the selected ABA provider.

### **Stage two - ABA assessment and plan development**

(9) If the COE's evaluating and prescribing provider orders ABA services, the client may begin stage two - ABA assessment and treatment plan development.

(10) ABA services are rendered in one of the following settings. Prior authorization is required by the agency prior to providing any direct care services:

(a) Day services program - Available to children two to five years of age. This is an agency-approved, outpatient facility or clinic-based program that:

(i) Provides multidisciplinary services in a short-term day treatment program setting;

(ii) Delivers comprehensive intensive services;

(iii) Embeds early, intensive behavioral interventions in developmentally appropriate context;

(iv) Provides individualized treatment;

(v) Includes family support and training; and

(vi) Includes multidisciplinary team members as clinically indicated to include an applied behavioral therapist, occupational therapist, speech therapist, physical therapist, psychologist, and dietitians.

(b) Home, office, and community-based program (i.e., natural setting) - Available to all clients twenty years of age and younger. This is a program that:

(i) May be used after discharge from a day services program (see (a) of this subsection);

(ii) Provides an individualized, developmentally appropriate ABA treatment plan developed for each child;

(iii) Provides ABA services in the home, office, or community setting, as required to accomplish the treatment plan. Examples of community-based services are: The park, restaurant, or school and must be included in the ABA treatment plan with services being provided by the medicaid-enrolled LBAT or therapy assistant approved to provide services via authorization;

(iv) Requires recertification of medical necessity through continued authorization; and

(v) Includes family support and training.

(11) After the client and family select the setting in which to receive services, a functional assessment must be conducted and an individualized ABA treatment plan developed by an LBAT in the chosen setting. The ABA treatment plan must follow the agency's ABA treatment plan report template and:

(a) Be signed by the LBAT responsible for the plan development and oversight;

(b) Be time-limited (e.g., three months) and based on the comprehensive evaluation (see subsection (8) of this section) that took place no more than twelve months before the functional assessment;

(c) Address the behaviors, skill deficit(s), and symptoms that prevent the client from adequately participating in home, school, community activities, or present a safety risk to self or others;

(d) Be specific and individualized to the client;

(e) Be multidisciplinary in nature, client-centered, family-focused, community based, culturally competent and minimally intrusive;

(f) Take into account all school or other community resources available to the client, provide evidence that the requested services are not redundant to other services already being provided or otherwise available, and coordinate therapies (e.g., from school and special education) with other interventions and treatments (e.g., speech therapy, occupational therapy, physical therapy, family counseling, and medication management);

(g) Focus on family engagement and training;

(h) Identify and describe in detail the targeted behaviors and symptoms;

(i) Include objective, baseline measurement levels for each target behavior/symptom in terms of frequency, intensity, and duration, including use of curriculum-based measures, single-case studies, or other generally accepted assessment tools;

(j) Include a comprehensive description of treatment interventions, or type of treatment interventions, and techniques specific to each of the targeted behaviors/symptoms, including documentation of the number of service hours, in terms of frequency and duration for each intervention;

(k) Establish treatment goals and objective measures of progress for each intervention specified to be accomplished in a three- to six-month treatment period;

(l) Incorporate strategies for generalized learning skills;

(m) Integrate family education, goals, training, and support services;

(n) Incorporate strategies for coordinating treatment with school-based special education programs, and plan for transition through a continuum of treatments, services, and settings; and

(o) Include measurable discharge criteria and a discharge plan.

### Stage three - Delivery of ABA services

(12) The agency requires prior authorization of ABA services prior to delivery. The LBAT must submit the comprehensive evaluation and treatment plan from the COE described in subsection (8) of this section and the ABA treatment plan described in subsection (11) of this section to the agency as described in WAC 182-501-0163 and other documents required as described in the agency's Medicaid provider guides.

(13) After the individual ABA treatment plan is developed by an LBAT, the ABA treatment plan is implemented by the LBAT or a therapy assistant. If services are rendered via a therapy assistant, the therapy assistant must:

(a) Assess the client's response to techniques and report that response to the LBAT;

(b) Provide direct on-site services in the client's natural setting found in the home, office, or community;

(c) Be supervised by a licensed behavior analysis therapist for a minimum of five percent of total direct care per week (e.g., one hour per twenty hours of care);

(d) Consult with the LBAT when considering modification to technique, when barriers and challenges occur that prohibit implementation of plan, and as otherwise clinically indicated;

(e) Assure family involvement and training to support generalization and maintenance of achieved behaviors;

(f) Keep documentation of daily visits with the client and family to include targeted behavior, interventions, response, modifications in techniques, and plan for next visit along with behavior tracking sheets that record and graph data collected for each visit; and

(g) Keep documentation of parent or guardian's confirmation that visit occurred recording signature and date.

### Provider requirements

(14) **Stage one.** The COE's evaluating and prescribing providers must function as a multidisciplinary team whether facility-based or practitioner-based.

(a) The qualifications for a center of excellence are:

(i) The entity or individual employs:

(A) A person or persons licensed under Title 18 RCW who is experienced in the diagnosis and treatment of autism spectrum disorders and has a specialty in one of the following:

(I) Neurology;

(II) Pediatric neurology;

(III) Developmental pediatrics;

(IV) Psychology;

(V) Pediatric psychiatry; or

(VI) Psychiatry; and

(B) A licensed midlevel practitioner (i.e., advanced registered nurse practitioner (ARNP) or physician assistant (PA)) who works under the tutelage of one of the specialists in (a)(i)(A) of this subsection and meets the qualifications in (a)(ii) of this subsection;

(ii) The entity or individual has been prequalified by the Medicaid agency as meeting or employing persons meeting the following criteria:

(A) For physicians or psychologists only, have sufficient expertise to diagnose or confirm the diagnosis of autism spectrum disorder using a validated diagnostic tool or through observation of client's behavior, review of documentation available from client's primary care provider, child's individualized education plan (IEP), and interview of family members;

(B) Have sufficient experience in or knowledge of the medically necessary use of ABA; and

(C) Are sufficiently qualified to conduct and document both a comprehensive evaluation diagnostic assessment, and a treatment plan as described in subsection (12)(d) of this section; and

(iii) The entity or individual has a core provider agreement (CPA) with the agency or is a performing provider on an approved CPA with the agency.

(b) Examples of providers who can qualify and be paid for these services as a designated COE are:

(i) Multidisciplinary clinics;

- (ii) Individual physician offices; and
- (iii) Neurodevelopment centers.

(15) **Stages two and three.** Regardless of the service delivery option, ABA providers must meet the specified minimum qualifications and comply with applicable state laws:

- (a) LBAT.
- (i) Requirements.
- (A) The LBAT must be:

(I) Able to practice independently by being licensed by the department of health (DOH) as a physician, psychologist, or mental health professional under Title 18 RCW in good standing with no license restrictions;

(II) Employed by or contracted with an agency that is enrolled as a participating provider and licensed under DOH as a hospital, a mental health facility, a home health agency, or an in-home agency with certification by DOH to provide ABA services, and be able to practice independently by being licensed by DOH as a physician, psychologist, mental health professional, or credentialed as a counselor under Title 18 RCW in good standing with no license restrictions; or

(III) Employed or contracted with an agency that is enrolled as a participating provider and licensed by the department of social and health services' division of behavioral health and recovery (DBHR) with certification to provide ABA services, and be able to meet the staff requirements specified in WAC 388-865-0469 (5)(a);

- (B) The LBAT must:

(I) Enroll as a performing/servicing provider and be authorized to supervise ancillary providers; and

(II) Provide proof of board certification as an applied behavior analyst; or

(III) Have two hundred forty hours of course work related to behavior analysis and seven hundred fifty hours of supervised experience, or two years of practical experience in designing and implementing comprehensive ABA treatment plans.

- (ii) Role. The LBAT must:

(A) Develop and maintain a comprehensive ABA treatment plan; and

(B) Supervise a minimum of five percent of the total direct care provided by the therapist assistant per week (e.g., one hour per twenty hours of care).

- (b) Therapist assistant.
- (i) Requirements.

- (A) Therapy assistants must be:

(I) Able to practice independently by being licensed by DOH as a mental health professional or credentialed as a counselor under Title 18 RCW in good standing with no license restrictions;

(II) Employed by or contracted with an agency that is enrolled as a participating provider and licensed under DOH as a hospital, a mental health facility, a home health agency, or an in-home agency with certification by DOH to provide ABA services, and be able to practice independently by being licensed by DOH as a mental health professional or credentialed as a counselor under Title 18 RCW in good standing with no license restrictions; or

(III) Employed by or contracted with an agency that is enrolled as a participating provider and licensed by DBHR as a community mental health agency with certification to pro-

vide ABA services, and be able to meet the staff requirements specified in WAC 388-865-0469 (5)(a);

- (B) The therapist assistant must:

(I) Have sixty hours of ABA training that includes applicable ABA principles and techniques, services, and caring for a child with core symptoms with autism;

(II) Have a written letter of attestation signed by the lead LBAT that the therapist assistant has demonstrated compliance in implementing ABA treatment plans and delivering ABA services prior to providing services to covered clients; and

- (III) Enroll as a providing/servicing provider.

- (C) Role. The therapist assistant must:

(I) Deliver services according to the ABA treatment plan;

(II) Be supervised by an LBAT who meets the requirements in (a)(i) of this subsection; and

(III) Obtain approval and review of the ABA treatment plan every two weeks and review progress with the LBAT.

(c) Licensure for facility-based day program setting. This applies to the model described in subsection (10)(a) of this section. Outpatient hospital facilities providing these services must meet the applicable DOH licensure requirements. Providers rendering direct ABA services must meet the applicable licensure or certification requirements as described in this subsection and meet the qualifications described in this subsection, as applicable. Other providers serving as members of the multidisciplinary care team must be licensed under Title 18 RCW, as required.

**(16) Prior authorization and recertification of ABA services.**

(a) The agency requires prior authorization and recertification of the medical necessity of ABA services.

(b) Requirements for prior authorization requests are described in subsection (13) of this section.

(c) The following are requirements for recertification of ABA services:

(i) Continued ABA services require the agency's authorization. Authorization is granted in three-month increments, or longer at the agency's discretion;

(ii) The LBAT must request authorization of continuation of services three weeks prior to the expiration date of the current authorization. A reevaluation and revised ABA treatment plan which documents the client's progress showing measurable changes in the frequency, intensity, and duration of the targeted behavior/symptoms addressed in the previously authorized ABA treatment plan must be submitted with this request. Documentation must include:

- (A) Projection of eventual outcome;
- (B) Assessment instruments;
- (C) Developmental markers of readiness; and
- (D) Evidence of coordination with providers; and

(iii) In deciding whether to authorize continued ABA services, the agency may obtain the evaluating and prescribing COE provider's review and recommendation. This COE provider must review the ABA treatment date, conduct a face-to-face visit, facilitate a multidisciplinary record review of the client's progress, hold a parent conference, or request a second opinion before recommending continued ABA services.

(d) Basis for denial of services includes, but is not limited to, the following:

- (i) Lack of medical necessity;
- (ii) Failure to respond to ABA services, even after trying different ABA techniques and approaches, if applicable;
- (iii) There are no meaningful, measurable, functional improvement changes or progress has plateaued without documentation of significant interfering events (e.g., serious physical illness, major family disruption, change of residence, etc.), if applicable. For changes to be meaningful they must be:

- (A) Confirmed through data;
- (B) Documented in charts and graphs;
- (C) Durable over time beyond the end of the actual treatment session; and
- (D) Generalizable outside of the treatment setting to the client's residence and the larger community within which the client resides; and

(iv) Noncompliance (e.g., failure to keep appointments, failure for parents to attend all treatment sessions, failure for parents to attend scheduled parent training sessions, etc.), if applicable.

**(17) Coverage.**

(a) The agency covers only the following ABA services delivered in settings described in stage three, as noted in subsections (9) and (10) of this section, for eligible clients:

- (i) The ABA assessments to determine the relationship between environmental events and behaviors;
- (ii) The direct provision of ABA services by the therapy assistant or LBAT;
- (iii) Development of a written, initial ABA treatment plan, limited to one per year;
- (iv) Revision of the treatment plan to meet client's needs, limited to four per year;
- (v) Supervision of the therapy assistant;
- (vi) Training of family members, caregivers, or others to carry out the approved ABA treatment plans;
- (vii) Observation of caregiver (or other plan implementer) and individual's behavior to assure correct implementation of the approved ABA treatment plan;
- (viii) Observation of client's behavior to determine effectiveness of the approved ABA treatment plan; and
- (ix) On-site assistance in a difficult or crisis situation.

(b) The agency covers the following services which may be provided in conjunction with ABA services under other agency programs:

- (i) Speech and language therapy;
- (ii) Occupational therapy;
- (iii) Physical therapy;
- (iv) Auditory and sensory therapy; and
- (v) Counseling.

(c) The agency does not authorize ABA services if the services are duplicative of services being rendered in another setting.

(d) The agency does not cover the following services including, but not limited to:

- (i) Dolphin therapy;
- (ii) Equine therapy;
- (iii) Hippo therapy;
- (iv) Language development training;

- (v) Primarily educational services;
- (vi) Recreational therapy;
- (vii) Respite care;
- (viii) Safety monitoring services;
- (ix) School-based services;
- (x) Social skills training;
- (xi) Vocational rehabilitation;
- (xii) Life coaching; and
- (xiii) Treatment that is unproven or investigational (e.g., holding therapy, Higashi (day life therapy), auditory integration therapy, etc.).

(18) Limits in amount or frequency of the covered services described in this section are subject to the provisions in WAC 182-501-0169, limitation extension.

**WSR 13-18-041**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 13-212—Filed August 29, 2013, 1:39 p.m., effective August 29, 2013, 1:39 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:  
Amending WAC 220-24-040.

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

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

Reasons for this Finding: A harvestable quota of salmon is available for the troll fleet in Areas 1 and 2. The northern areas remain closed to stay within the preseason cap on chinook and meet the season objectives. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans and the National Marine Fisheries Service from an in-season call. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 29, 2013.

Philip Anderson  
Director

### NEW SECTION

**WAC 220-24-04000Y All-citizen commercial salmon troll.** Notwithstanding the provisions of WAC 220-24-040, effective immediately until further notice, it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided for in this section:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3, and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude, open:

August 30 through September 3, 2013;

September 6 through September 10, 2013; and

September 13 through September 17, 2013.

(2) Landing and possession limit of 35 Chinook and 40 coho per boat per each entire open period for the entire Catch Areas 1 and 2. Catch Areas 3 and 4 are closed to commercial salmon trolling. Under no circumstance can a boat land more than a total of 35 Chinook or 40 coho in any open period.

(3) The Grays Harbor and Columbia River Control Zones are closed.

(4) Minimum size for Chinook salmon is 28 inches in length. Minimum size for Coho salmon is 16 inches in length. No minimum size for pink, sockeye, or chum salmon, except no chum retention north of Cape Alava, Washington, in August and September. It is unlawful to possess wild coho salmon.

(5) Lawful troll gear is restricted to all legal troll gear with single-point, single-shank barbless hooks.

(6) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section, and vessels fishing or in possession of salmon while fishing north of Leadbetter Point must land and deliver their fish within the area and north of Leadbetter Point. Vessels fishing or in possession of salmon while fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

(7) Grays Harbor Control Zone is defined as the area inside a line from the Westport Lighthouse (46°53.18' N latitude; 124°07.01' W longitude) to Buoy #2 (46°52.42' N latitude; 124°12.42' W longitude) to Buoy #3 (46°55.00' N latitude; 124°14.48' W longitude) to the Grays Harbor north jetty (46°36.00' N latitude; 124°10.51' W longitude).

(8) Columbia Control Zone - This is defined as an area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09" N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line, which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07" W. long, to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°14'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat.,

124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(9) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon; and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(10) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279, or faxing the information to (360) 902-2949, or e-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the dealer license number, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

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

### **WSR 13-18-042**

#### **EMERGENCY RULES**

#### **DEPARTMENT OF**

#### **FISH AND WILDLIFE**

[Order 13-213—Filed August 29, 2013, 1:40 p.m., effective August 29, 2013, 1:40 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62000A; and amending WAC 232-28-620.

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

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

Reasons for this Finding: Enough quota remains in each ocean sport subarea coho quota to allow the daily limit to include keeping wild coho in Marine Areas 1 and 2. Beginning on September 1 and September 6, respectively. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 29, 2013.

Philip Anderson  
Director

NEW SECTION

**WAC 232-28-62000B Coastal salmon—Saltwater seasons and daily limits.** Notwithstanding the provisions of WAC 232-28-620, effective immediately until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) **Catch Record Card Area 1:** Daily limit of 2 salmon. Release wild coho. Effective September 1 through September 30: Daily limit of 2 salmon.

(2) **Catch Record Card Area 2:** Daily limit of 2 salmon; release wild coho. Effective September 6 through September 30: Daily limit of 2 salmon.

(3) **Catch Record Card Area 3:** Daily limit of 2 salmon plus 2 additional pink salmon; release wild coho. Effective September 28 through October 13: Daily limit of 2 salmon plus 2 additional pink salmon; release wild coho. Opening restricted to the area north of 47 degrees 50 minutes 00 seconds N. lat. and south of 48 degrees 00 minutes 00 seconds N lat.

(4) **Catch Record Card Area 4:** Open through September 22, daily limit of 2 salmon plus 2 additional pink salmon; release wild coho salmon. Release Chinook salmon caught east of the Bonilla-Tatoosh line; and release chum salmon.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-62000A Coastal salmon—Saltwater seasons and daily limits. (13-205)

**WSR 13-18-043  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 13-215—Filed August 29, 2013, 4:25 p.m., effective August 30, 2013]

Effective Date of Rule: August 30, 2013.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100S.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation provides for Pacific Salmon Commission authorized fisheries in Areas 7 and 7A targeting the United States share of Fraser River pink salmon. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 30 [29], 2013.

Philip Anderson  
Director

NEW SECTION

**WAC 220-47-50100S Puget Sound all-citizen commercial salmon fishery—Open periods.** Notwithstanding the provisions of chapter 220-47 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

**Areas 7 and 7A:**

Area 7A is closed in waters north and west of the Iwersen Dock Line as defined in WAC 220-47-269

(1) **Purse Seines** - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5:00 AM - 9:00 PM	8/30, 9/2

(a) It is unlawful to retain sockeye, Chinook, coho and chum.

(b) Purse seine are required to brail and fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

(c) All salmon and rockfish must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next brail may be brought on the deck. However, small numbers of

fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(d) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(2) **Gill Nets** - Open to gill net gear with 5 inch minimum and 5 1/2 inch maximum mesh size according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
8:00 AM - 11:59 PM	8/30, 9/2

(a) It is unlawful to retain sockeye and rockfish.

(b) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department issued certification card.

(3) **Reef Nets** - Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5:00 AM - 9:00 PM	8/30, 8/31, 9/1, 9/2, 9/3

(a) It is unlawful to retain sockeye, unmarked Chinook, unmarked coho, and chum.

(b) It is unlawful to retain marked Chinook unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook. All retained marked Chinook must be recorded in the log book in accordance with requirements of WAC 220-47-401.

(c) It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department issued certification card.

**(4) "Quick Reporting Fisheries":**

All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030), are designated as "Quick Reporting Required" per WAC 220-47-001.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 9:01 p.m. September 3, 2013:

WAC 220-47-50100S Puget Sound all-citizen commercial salmon fishery—Open periods.

**WSR 13-18-044  
EMERGENCY RULES  
DEPARTMENT OF  
EARLY LEARNING**

[Filed August 30, 2013, 8:16 a.m., effective September 1, 2013]

Effective Date of Rule: September 1, 2013.

Purpose: To amend sections of, and add a section to, chapter 170-290 WAC, Working connections and seasonal child care subsidy programs, to comply with sections 8 and 9 of recently enacted 2SHB 1723, enrolled as chapter 323, Laws of 2013, that took effect on July 28, 2013, and 3ESSB 5034, enrolled as chapter 4, Laws of 2013, that took effect on June 30, 2013. As a result, rules for the working connections child care (WCCC) and seasonal child care (SCC) programs are revised to:

- Increase the base rate for all WCCC child care providers by two percent.
- Increase the subsidy rate by two percent for WCCC child care providers enrolling in level 2 in the early achievers program.

Providers must complete level 2 and advance to level 3 within thirty months in order to maintain this increase.

Citation of Existing Rules Affected by this Order: Amending WAC 170-290-0200, 170-290-0205, and 170-290-0240.

Statutory Authority for Adoption: Chapter 43.215 RCW, RCW 43.215.135, 43.215.545.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, 2011, 2012 or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: The proposed rules implement 2013 2SHB 1723 and 3ESSB 5034. The former requires department of early learning, effective September 1, 2013, to increase the base rate for all WCCC child care providers and to increase the subsidy rate for providers enrolling in level 2 in early achievers. The latter funded those increases at two percent each.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 3, Repealed 0.

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

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

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

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

Date Adopted: August 30, 2013.

Elizabeth M. Hyde  
Director

**AMENDATORY SECTION** (Amending WSR 12-21-008, filed 10/5/12, effective 11/5/12)

**WAC 170-290-0200 Daily child care rates—Licensed or certified child care centers and DEL contracted seasonal day camps.** (1) **Base rate.** DSHS pays the lesser of the following to a licensed or certified child care center or DEL contracted seasonal day camp:

- (a) The provider's private pay rate for that child; or
- (b) The maximum child care subsidy daily rate for that child as listed in the following table:

		Infants			
		(One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 1	Full-Day	\$((28.53))	\$((23.99))	\$((22.67))	\$((21.34))
	Half-Day	<u>29.10</u>	<u>24.47</u>	<u>23.12</u>	<u>21.77</u>
		\$((14.28))	\$((12.00))	\$((11.34))	\$((10.67))
		<u>14.57</u>	<u>12.24</u>	<u>11.57</u>	<u>10.88</u>
Spokane County	Full-Day	\$((29.18))	\$((24.54))	\$((23.19))	\$((21.83))
	Half-Day	<u>29.76</u>	<u>25.03</u>	<u>23.65</u>	<u>22.27</u>
		\$((14.61))	\$((12.28))	\$((11.61))	\$((10.91))
		<u>14.90</u>	<u>12.53</u>	<u>11.84</u>	<u>11.13</u>
Region 2	Full-Day	\$((28.81))	\$((24.05))	\$((22.30))	\$((19.73))
	Half-Day	<u>29.39</u>	<u>24.53</u>	<u>22.75</u>	<u>20.12</u>
		\$((14.41))	\$((12.03))	\$((11.15))	\$((9.88))
		<u>14.70</u>	<u>12.27</u>	<u>11.37</u>	<u>10.08</u>
Region 3	Full-Day	\$((38.13))	\$((31.79))	\$((27.46))	\$((26.67))
	Half-Day	<u>38.89</u>	<u>32.43</u>	<u>28.01</u>	<u>27.20</u>
		\$((19.07))	\$((15.89))	\$((13.73))	\$((13.34))
		<u>19.45</u>	<u>16.21</u>	<u>14.00</u>	<u>13.61</u>
Region 4	Full-Day	\$((44.38))	\$((37.06))	\$((31.09))	\$((28.00))
	Half-Day	<u>45.27</u>	<u>37.80</u>	<u>31.71</u>	<u>28.56</u>
		\$((22.63))	\$((18.54))	\$((15.55))	\$((14.00))
		<u>23.08</u>	<u>18.91</u>	<u>15.86</u>	<u>14.28</u>
Region 5	Full-Day	\$((32.54))	\$((28.00))	\$((24.65))	\$((21.88))
	Half-Day	<u>33.19</u>	<u>28.56</u>	<u>25.14</u>	<u>22.32</u>
		\$((16.26))	\$((14.00))	\$((12.32))	\$((10.95))
		<u>16.59</u>	<u>14.28</u>	<u>12.57</u>	<u>11.17</u>

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 6	Full-Day	\$((31.99))	\$((27.46))	\$((23.99))	\$((23.46))
	Half-Day	<u>32.63</u>	<u>28.01</u>	<u>24.47</u>	<u>23.93</u>
		\$((16.01))	\$((13.73))	\$((12.00))	\$((11.74))
		<u>16.33</u>	<u>14.00</u>	<u>12.24</u>	<u>11.97</u>

- (i) Centers in Clark County are paid Region 3 rates.
- (ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates.

(2) The child care center WAC 170-295-0010 allows providers to care for children from one month up to and including the day before their thirteenth birthday. The provider must obtain a child-specific and time-limited exception from their child care licensor to provide care for a child outside the age listed on the center's license. If the provider has an exception to care for a child who has reached his or her thirteenth birthday, the payment rate is the same as subsection (1) of this section, and the five through twelve year age range column is used for comparison.

(3) If the center provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited exception and the child must meet the special needs requirement according to WAC 170-290-0220.

**AMENDATORY SECTION** (Amending WSR 12-21-008, filed 10/5/12, effective 11/5/12)

**WAC 170-290-0205 Daily child care rates—Licensed or certified family home child care providers.** (1) **Base rate.** DSHS pays the lesser of the following to a licensed or certified family home child care provider:

- (a) The provider's private pay rate for that child; or
- (b) The maximum child care subsidy daily rate for that child as listed in the following table.

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 1	Full-Day	\$((24.29)) <u>24.78</u>	\$((24.29)) <u>24.78</u>	\$((21.12)) <u>21.54</u>	\$((21.12)) <u>21.54</u>	\$((18.78)) <u>19.16</u>
	Half-Day	\$((12.14)) <u>12.38</u>	\$((12.14)) <u>12.38</u>	\$((10.56)) <u>10.77</u>	\$((10.56)) <u>10.77</u>	\$((9.39)) <u>9.58</u>
Spokane County	Full-Day	\$((24.84)) <u>25.34</u>	\$((24.84)) <u>25.34</u>	\$((21.60)) <u>22.03</u>	\$((21.60)) <u>22.03</u>	\$((19.21)) <u>19.59</u>
	Half-Day	\$((12.42)) <u>12.67</u>	\$((12.42)) <u>12.67</u>	\$((10.80)) <u>11.02</u>	\$((10.80)) <u>11.02</u>	\$((9.60)) <u>9.79</u>
Region 2	Full-Day	\$((25.65)) <u>26.16</u>	\$((25.65)) <u>26.16</u>	\$((22.30)) <u>22.75</u>	\$((19.95)) <u>20.35</u>	\$((19.95)) <u>20.35</u>
	Half-Day	\$((12.82)) <u>13.08</u>	\$((12.82)) <u>13.08</u>	\$((11.15)) <u>11.37</u>	\$((9.97)) <u>10.17</u>	\$((9.97)) <u>10.17</u>
Region 3	Full-Day	\$((34.03)) <u>34.71</u>	\$((34.03)) <u>34.71</u>	\$((29.33)) <u>29.92</u>	\$((25.81)) <u>26.33</u>	\$((23.46)) <u>23.93</u>
	Half-Day	\$((17.02)) <u>17.36</u>	\$((17.02)) <u>17.36</u>	\$((14.67)) <u>14.96</u>	\$((12.91)) <u>13.17</u>	\$((11.74)) <u>11.97</u>
Region 4	Full-Day	\$((40.04)) <u>40.84</u>	\$((40.04)) <u>40.84</u>	\$((34.81)) <u>35.51</u>	\$((29.33)) <u>29.92</u>	\$((28.16)) <u>28.72</u>
	Half-Day	\$((20.03)) <u>20.43</u>	\$((20.03)) <u>20.43</u>	\$((17.42)) <u>17.77</u>	\$((14.67)) <u>14.96</u>	\$((14.08)) <u>14.36</u>
Region 5	Full-Day	\$((26.99)) <u>27.53</u>	\$((26.99)) <u>27.53</u>	\$((23.46)) <u>23.93</u>	\$((22.30)) <u>22.75</u>	\$((19.95)) <u>20.35</u>
	Half-Day	\$((13.50)) <u>13.77</u>	\$((13.50)) <u>13.77</u>	\$((11.74)) <u>11.97</u>	\$((11.15)) <u>11.37</u>	\$((9.97)) <u>10.17</u>
Region 6	Full-Day	\$((26.99)) <u>27.53</u>	\$((26.99)) <u>27.53</u>	\$((23.46)) <u>23.93</u>	\$((23.46)) <u>23.93</u>	\$((22.30)) <u>22.75</u>
	Half-Day	\$((13.50)) <u>13.77</u>	\$((13.50)) <u>13.77</u>	\$((11.74)) <u>11.97</u>	\$((11.74)) <u>11.97</u>	\$((11.15)) <u>11.37</u>

(2) The family home child care WAC 170-296A-0010 and 170-296A-5550 allows providers to care for children from birth up to and including the day before their thirteenth birthday.

(3) If the family home provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited exception and the child must meet the special needs requirement according to WAC 170-290-0220.

(4) DSHS pays family home child care providers at the licensed home rate regardless of their relation to the children (with the exception listed in subsection (5) of this section). Refer to subsection (1) and the five through twelve year age range column for comparisons.

(5) DSHS cannot pay family home child care providers to provide care for children in their care if the provider is:

- (a) The child's biological, adoptive or step-parent;
- (b) The child's legal guardian or the guardian's spouse or live-in partner; or
- (c) Another adult acting in loco parentis or that adult's spouse or live-in partner.

**NEW SECTION**

**WAC 170-290-0210 Tiered reimbursement.** Starting September 1, 2013, providers receiving payment under the WCCC program will receive a two percent increase in the subsidy rate, calculated on the base rate, for enrolling in level 2 in the early achievers program. Providers must complete level 2, advance to level 3 within thirty months, and maintain a level 3 rating in order to maintain this increase.

**AMENDATORY SECTION** (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

**WAC 170-290-0240 Child care subsidy rates—In-home/relative providers.** (1) **Base rate.** When a consumer employs an in-home/relative provider, DSHS pays the lesser of the following to an eligible in-home/relative provider for child care:

- (a) The provider's private pay rate for that child; or
- (b) The maximum child care subsidy rate of two dollars and ~~((twenty))~~ twenty-four cents per hour for the child who needs the greatest number of hours of care and two dollars and ~~((seventeen))~~ twenty-one cents per hour for the care of each additional child in the family.

(2) DSHS may pay above the maximum hourly rate for children who have special needs under WAC 170-290-0235.

(3) DSHS makes the WCCC payment directly to a consumer's eligible provider.

(4) When applicable, DSHS pays the employer's share of the following:

- (a) Social Security and medicare taxes (FICA) up to the wage limit;
- (b) Federal Unemployment Taxes (FUTA); and
- (c) State unemployment taxes (SUTA).

(5) If an in-home/relative provider receives less than the wage base limit per family in a calendar year, DSHS refunds all withheld taxes to the provider.

**WSR 13-18-052**

**EMERGENCY RULES**

**DEPARTMENT OF REVENUE**

[Filed August 30, 2013, 3:03 p.m., effective August 30, 2013, 3:03 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: To correct a transcription error resulting in the elimination of "San Juan" from the list of counties assigned a property tax component for purposes of valuing classified farm and agricultural lands.

Citation of Existing Rules Affected by this Order: Amending WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component.

Statutory Authority for Adoption: RCW 84.34.360, 84.34.065, and 84.34.141.

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

Reasons for this Finding: "San Juan" was deleted from the list of counties assigned a property tax component of the 2013 interest rate. Allowing San Juan County to proceed with accurate property tax assessments for farm and agricultural lands is necessary for the preservation of public welfare.

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

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

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

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

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

Date Adopted: August 30, 2013.

Alan R. Lynn  
Assistant Director

**AMENDATORY SECTION** (Amending WSR 13-02-053, filed 12/26/12, effective 1/1/13)

**WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component.** For assessment year 2013, the interest rate and the property tax component that are to be used to value classified farm and agricultural lands are as follows:

- (1) The interest rate is 5.24 percent; and
- (2) The property tax component for each county is:

COUNTY	PERCENT	COUNTY	PERCENT
Adams	1.30	Lewis	1.04
Asotin	1.27	Lincoln	1.26

COUNTY	PERCENT	COUNTY	PERCENT
Benton	1.15	Mason	0.95
Chelan	1.01	Okanogan	1.02
Clallam	1.03	Pacific	1.24
Clark	1.37	Pend Oreille	0.88
Columbia	1.13	Pierce	1.39
Cowlitz	1.18	<u>San Juan</u>	0.56
Douglas	1.12	Skagit	1.13
Ferry	0.92	Skamania	0.90
Franklin	1.29	Snohomish	1.24
Garfield	1.03	Spokane	1.33
Grant	1.27	Stevens	0.98
Grays Harbor	1.16	Thurston	1.27
Island	0.84	Wahkiakum	0.90
Jefferson	0.92	Walla Walla	1.27
King	1.14	Whatcom	1.06
Kitsap	1.17	Whitman	1.33
Kittitas	0.80	Yakima	1.23
Klickitat	0.90		

**WSR 13-18-053  
EMERGENCY RULES  
OFFICE OF  
INSURANCE COMMISSIONER**

[Insurance Commissioner No. R 2013-21—Filed August 30, 2013, 3:12 p.m., effective August 30, 2013, 3:12 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The 2013 legislature enacted chapter 65, Laws of 2013 (HB 1035) which provides that title insurance companies and their agents must report financial information to a statistical reporting agent for use in preparation of their title insurance rates to be filed with the commissioner. This emergency rule amends the existing rule to postpone the date by which title insurance companies must file their rates under RCW 48.29.147 with the commissioner so that the title insurance companies will not incur unnecessary administrative cost and effort.

Citation of Existing Rules Affected by this Order: Amending WAC 284-29A-030.

Statutory Authority for Adoption: RCW 48.02.060 and 48.29.005.

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

Reasons for this Finding: Without an emergency rule, title insurance companies would be required to file new title insurance rates with the commissioner in a manner that is not consistent with recently enacted legislation.

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

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

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

Date Adopted: August 30, 2013.

Mike Kreidler  
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 12-15-049, filed 7/16/12, effective 8/16/12)

**WAC 284-29A-030 Transition to prior approval system.** (1) On and after January 1, (~~2014~~) 2016, all rates used in Washington state must be filed and approved under RCW 48.29.147.

(2) Title insurers must submit the rate filings required under RCW 48.29.147 and subsection (1) of this section to the commissioner by September 1, (~~2013~~) 2015, for rates to be effective on January 1, (~~2014~~) 2016. This rule allows the commissioner time to take final action on rates filed under this chapter before the effective date of January 1, (~~2014~~) 2016.

(3) Rates filed under RCW 48.29.140(2) must not be used for commitments issued on or after January 1, (~~2014~~) 2016.

**WSR 13-18-054  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 13-216—Filed August 30, 2013, 4:01 p.m., effective August 30, 2013, 4:01 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The nontreaty share of pink salmon in Area 8A has been harvested, making a closure for purse seines and gillnets necessary. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 30, 2013.

Philip Anderson  
Director

#### NEW SECTION

**WAC 220-47-31100C Purse seine—Open periods.** Notwithstanding the provisions of WAC 220-47-311, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the areas and open periods indicated below. Unless otherwise amended, all permanent rules remain in effect.

**Area 8A is closed to purse seines on September 3, 2013.**

#### NEW SECTION

**WAC 220-47-41100T Gillnet—Open periods.** Notwithstanding the provisions of WAC 220-47-411, effective immediately until further notice, it is permissible to take, fish for, or possess salmon taken with gillnet gear for commercial purposes from the following designated Puget Sound Salmon Management and Catch Reporting Areas during the times indicated below. Unless otherwise amended, all permanent rules remain in effect.

**Area 8A is closed to gillnets on September 4, 2013.**

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 10:01 p.m. September 4, 2013:

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

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

**WSR 13-18-055**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 13-214—Filed August 30, 2013, 4:15 p.m., effective September 1, 2013, 12:01 a.m.]

Effective Date of Rule: September 1, 2013, 12:01 a.m.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-619 and 220-56-105.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Steelhead returns to the Tucannon River are not meeting management goals for conservation or for maintaining fisheries, and therefore, the fishery for hatchery steelhead must be constrained to provide more protection of naturally produced steelhead in the Tucannon River. The emergency regulation is intended to focus the fishery on removal of stray hatchery steelhead that primarily enter the Tucannon River in late summer and fall to prevent them from spawning naturally, as well as provide a refuge area above Marengo to protect early returning wild steelhead. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 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: August 30, 2013.

Lori Preuss  
for Philip Anderson  
Director

#### NEW SECTION

**WAC 220-56-10500I River mouth definitions.** Notwithstanding the provisions of WAC 220-56-105, effective September 1, 2013, until further notice, the Tucannon River is defined as the water lying south of a line of sight from an orange diamond-shaped sign attached to the Hwy 261 guard rail (northwest of the Tucannon River and adjacent to the rest-area turn off), running southeast across to the eastern,

unsubmerged shoreline of the Tucannon River (point of land spit). The large embayment between the eastern shoreline of the Tucannon River and the rock bluff to the east along the south shore of the Snake River is considered part of the Snake River.

NEW SECTION

**WAC 232-28-61900G Exceptions to statewide rules—Tucannon River.** Notwithstanding the provisions of WAC 232-28-619, effective September 1, 2013, until further notice, in waters of the Tucannon River, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

- (1) Steelhead:
  - (a) All steelhead with a missing adipose fin (hatchery origin) must be retained. Catch and release of hatchery steelhead is not allowed.
  - (b) The daily limit is 2 hatchery steelhead per day.
  - (c) Barbless hooks required.
  - (d) Release all wild steelhead.
  - (e) The area from Marengo (at Turner Road Bridge) upstream is closed to steelhead fishing.

**WSR 13-18-078**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 13-217—Filed September 3, 2013, 5:01 p.m., effective September 3, 2013, 5:01 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-47-50100T; and amending WAC 220-47-501.

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

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

Reasons for this Finding: This regulation provides for Pacific Salmon Commission-authorized fisheries in Areas 7 and 7A targeting the United States share of Fraser River pink salmon. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: September 3, 2013.

Lori Preuss  
for Philip Anderson  
Director

NEW SECTION

**WAC 220-47-50100T Puget Sound all-citizen commercial salmon fishery—Open periods.** Notwithstanding the provisions of chapter 220-47 WAC, effective immediately until further notice, it is unlawful to take, fish for, or possess salmon taken for commercial purposes in Puget Sound Salmon Management and Catch Reporting Areas except in accordance with the open periods, mesh size, areas, species restrictions, notification, and landing requirements set forth in this section, provided that unless otherwise amended, all permanent rules remain in effect:

**Areas 7 and 7A:**

(1) **Purse Seines** - Open to purse seine gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5:00 AM - 9:00 PM	9/5

(a) It is unlawful to retain sockeye, Chinook, coho and chum.

(b) Purse seiners are required to brail, and fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

(c) All salmon and rockfish must be immediately sorted, and those required to be released must be placed in an operating recovery box or released into the water before the next brail may be brought on the deck. However, small numbers of fish may be brought on board the vessel by pulling the net in without mechanical or hydraulic assistance.

(d) It is unlawful to fish for salmon with purse seine gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department-issued certification card.

(2) **Gillnets** - Open to gillnet gear with 5-inch minimum and 5 1/2-inch maximum mesh size according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
8:10 AM - 11:59 PM	9/5

(a) It is unlawful to retain sockeye and rockfish.

(b) It is unlawful to fish for salmon with gillnet gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department-issued certification card.

(3) **Reef Nets** - Open to reef net gear according to the times, dates, and conditions as prescribed and listed here:

Hours	Dates
5:00 AM - 9:00 PM	9/4, 9/5, 9/6

(a) It is unlawful to retain sockeye, unmarked Chinook, unmarked coho, and chum.

(b) It is unlawful to retain marked Chinook unless the reef net operator is in immediate possession of a Puget Sound Reef Net Logbook. All retained marked Chinook must be recorded in the log book in accordance with requirements of WAC 220-47-401.

(c) It is unlawful to fish for salmon with reef net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in immediate possession of a department-issued certification card.

(4) **"Quick Reporting Fisheries"**: All fisheries opened under this section, and any fishery opening under authority of the Fraser Panel for sockeye in Puget Sound Salmon Management and Catch Reporting Areas (WAC 220-22-030), are designated as "Quick Reporting Required" per WAC 220-47-001.

REPEALER

The following section of the Washington Administrative Code is repealed, effective at 9:01 PM on September 6, 2013:

WAC 220-47-50100T Puget Sound all-citizen commercial salmon fishery—Open periods