

WSR 15-20-045
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed September 29, 2015, 2:44 p.m., effective January 1, 2016]

Effective Date of Rule: January 1, 2016.

Purpose: Chapter 388-829 WAC is a new chapter related to training for supported living businesses and their staff, and will be a separate chapter of developmental disability administration (DDA) rules. These new rules will help reduce confusion between the various requirements contained in chapter 388-112 WAC related to residential long-term care and the requirements for supported living businesses and their staff.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120, chapter 74.39A RCW.

Adopted under notice filed as WSR 15-11-072 on May 19, 2015.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-829-0001, added RCW 74.39A.009 to definition of community residential services businesses.

WAC 388-829-0005, changed sentence to "DDA group homes must follow certification requirements described in chapter 388-112 WAC."

WAC 388-829-0010, updated definition of long-term care worker.

WAC 388-829-0015, added additional table information to clarify working in cross settings.

WAC 388-829-0030, included staff who already took DD specialty.

WAC 388-829-0040, removed CEs conversation.

WAC 388-829-0045, changed title.

WAC 388-829-0050, combined time designation for LTCW O and S into a five hour course.

WAC 388-829-0055, added handwashing to safety as this is a safety issue and not an orientation issue.

WAC 388-829-0060, added clarification of time restraint.

WAC 388-829-0080, removed duplicate subsection (e).

WAC 388-829-0100, removed reference to O and S.

WAC 388-829-0105, added body mechanics, infection control, BBP, HIV/AIDS.

WAC 388-829-0145, added title.

WAC 388-829-0150, clarified certificates needed for certification.

WAC 388-829-0200, added subsection (3) to clarify.

WAC 388-829-0235, added curricula.

WAC 388-829-0250, changed "approved" to "authorized."

WAC 388-829-0300, redefined peer coaching in definitions section but added RCW reference.

WAC 388-829-0385, added agency orientation.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 51, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.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 51, Amended 0, Repealed 0.

Date Adopted: September 24, 2015.

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 Rules Coordinator

Chapter 388-829 WAC

Community Residential Service Business Training Requirements

SECTION I - PURPOSE AND DEFINITIONS

NEW SECTION

WAC 388-829-0001 What is the purpose of this chapter? The purpose of this chapter is to describe the following:

- (1) Training and certification requirements that apply to community residential service businesses (CRSB) RCW 74.39A.009 beginning on January 1, 2016;
- (2) Curricula and instructor requirements; and
- (3) Curricula and instructor approval process.

NEW SECTION

WAC 388-829-0005 To whom do the training and certification requirements apply? (1) Long-term care workers (LTCW) and volunteers working for community residential service businesses (CRSB), including supported living services, DDA group homes, group training homes, and licensed staffed residential homes must follow the training requirements of this chapter.

(2) DDA group homes, also licensed as adult family homes or assisted living facilities, must also meet home care aide certification requirements described in WAC 246-980-080. LTCW in all other CRSB settings must comply with the training and curricula requirements of this chapter, but are exempt from home care aide certification through the department of health.

(3) DDA group homes must follow certification requirements described in chapter 388-112 WAC.

NEW SECTION

WAC 388-829-0010 What definitions apply to this chapter? "Activities of daily living (ADL)" means the same as defined in WAC 388-106-0010.

"Agency orientation" is training provided to introduce a new employee to the agency.

"AL TSA" refers to the aging and long-term support administration.

"Approved training" is training that has been submitted to and approved by DSHS as evidenced by a curriculum number.

"Attestation" means to bear witness to the authenticity of a document or documents by signing one's name to it to affirm it is genuine.

"Basic training" includes seventy hours of required training: forty hours of DDA residential training and thirty hours of topics outlined in WAC 388-829-0100 (1)(b).

"Certified home care aide" means a person who has a current home care aide certification through the department of health.

"Challenge test" means a competency test taken for training without first taking the class for which the test is designed.

"Community residential service business" (CRSB) has the same meaning as defined in RCW 74.39A.009.

"Competency" or "core competency" means the integrated knowledge, skills, or behavior expected of a LTCW after completing the training in a required topic area. Learning objectives are associated with each competency.

"Competency testing" including challenge testing, is evaluating a student to determine if they can demonstrate the required level of skill, knowledge, and/or behavior with respect to the identified learning objectives of a particular course.

"DD" refers to developmental disability.

"DDA" refers to the developmental disabilities administration.

"Direct care" services rendered by direct support professionals which includes not only those services defined by "personal care services", but also those which promote habilitation and further life-long independence, growth, and development opportunities for individuals.

"Direct support professional" means a paid individual who provides direct, personal, care services and support to one or more persons with developmental disabilities requiring long-term care. This term is more commonly accepted in CRSBs than LTCW.

"Direct supervision" means oversight by a person who has demonstrated competency in the basic training (and specialty training if required), or has been exempted from the basic training requirements, is on the premises, and is quickly available to the direct support professional.

"DOH" refers to the department of health.

"DSHS" or "department" refers to the department of social and health services.

"Enhancement" means additional time provided for skills practice and additional training materials or classroom activities that help a worker to thoroughly learn the course content and skills. Enhancements can include new student materials such as, videos or DVDs, online materials, and/or additional student activities.

"Entity representative" means the individual designated by a CRSB provider who is or will be responsible for the daily operations of a CRSB.

"Guardian" means a legal representative as defined in chapter 11.88 RCW.

"Habilitation" means services defined to assist participants in acquiring, retaining and improving the self-help, socialization and adaptive skills necessary to reside successfully in home and community-based settings.

"Home" means the place where a person lives.

"Home care aid-certified (HCA-C)" means a person who has holds a current certificate issued by the DOH.

"Indirect supervision" means oversight by a person who has demonstrated competency in the basic training, or who has been exempted from the basic training requirements, and who is quickly and easily available to the LTCW, but not necessarily on-site.

"Individual" means a person who has a developmental disability as defined in RCW 71A.10.020(5) who also has been determined eligible to receive services by the division under chapter 71A.16 RCW. Other terms commonly used include "client" and "resident."

"Individual specific" means topics that are unique to an individual.

"Learning objectives" means measurable, written statements that clearly describe what a LTCW must minimally learn to meet each competency. Learning objectives are identified for each competency. Learning objectives provide consistent, common language and a framework for curriculum designers, the curriculum approval process, and testing.

"Letter of exemption" means a letter provided during the calendar year 2015 which exempts CRSB staff from the seventy-five hours of training as required by Initiative 1163 for staff hired prior to January 1, 2016.

"Long term care worker (LTCW)" includes all persons providing paid, personal care services for the elderly or persons with disabilities, including individual providers of home care services, direct care employees of home care agencies, providers of home care services to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed assisted living facilities, adult family homes, respite care providers, community residential service providers, and any other direct care staff providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

The following persons are not long-term care workers:

(1) Persons who are:

(a) Providing personal care services to individuals who are not receiving state-funded services; and
(b) The person is not employed by an agency or facility that is licensed by the state.

(2) Persons employed by:

(a) Nursing homes licensed under chapter 18.51 RCW;
(b) Facilities certified under 42 C.F.R. Part 483;
(c) Residential habilitation centers under chapter 71A.20 RCW;
(d) Hospitals or other acute care settings;
(e) Hospice agencies licensed under chapter 70.127 RCW;

(f) Adult day care centers or adult day health centers.

(3) Persons whose services are exclusively limited to assistance with "instrumental activities of daily living," as that term is defined in WAC 388-106-0010.

"Mental health specialist" has the same meaning as defined in WAC 388-865-0200.

"Peer coach" means a person who has been trained in twelve hours of coaching skills and who works with new employees to coach them on working with individuals and their support needs. This coaching is a method of transferring

knowledge about the individual to the new employee while building a positive relationship with the new employee and encouraging a positive relationship between the new employee and the individual they support.

"Personal care services" means physical or verbal assistance with activities of daily living, and instrumental activities of daily living which is provided to meet an individual's support needs.

"Population specific" refers to topics such as developmental disabilities, autism, and gerontology that are applicable to a group of people.

"Provider" means any person or entity who is contracted by the department to operate a community residential service business, or certified by the department to provide instruction and support services to meet the needs of persons receiving services under Title 71A RCW.

"Revised fundamentals of care" (RFOC) refers to the basic training curriculum provided by trainers under ALTSA.

"Routine interaction" means contact with an individual that happens regularly.

"Support team" means the individual and persons involved in his or her care. The support team may include family, friends, doctors, nurses, LTCWs, social workers and vocational vendors. The role of the support team is to support the well-being of the individual; however, the individual directs the service plan when able.

"Training entity" means an organization, including an independent contractor, who is providing or may provide training under this section using approved curriculum. Training entities must only deliver DSHS approved curriculum to CRSB staff.

NEW SECTION

WAC 388-829-0015 **What are the training certification requirements for LTCWs in a CRSB and volunteers?** The following chart provides a summary of the training and certification requirements. The remainder of the rules under this chapter contains a more detailed description of the requirements.

Who	Agency orientation	LTCW orientation and safety	DDA residential services curriculum	Peer coaching and/or population specific and/or specialty training	Seventy-five hour certificate	Specialty training	Continuing education	HCA-C
A LTCW who was employed between January 1, 2015 and January 1, 2016 with continuous employment from date of hire to 1/1/2016 and has completed the basic training requirements in effect on the hire date, with exemption letter .				R peer coaching			R	
A LTCW who was employed between Jan 1, 2015 and January 1, 2016 with continuous employment from date of hire to 1/1/2016 and has started the basic training requirements in effect on the hire date transferring to a different agency, with exemption letter .	R			R peer coaching		*	R	
Employed in CRSB hired on or after January 1, 2016 and meets definition of LTCW in WAC 388-829-0005.		R	R	R	R		R	
Employed in CRSB and begins to work for a new agency or moves from an assisted living agency or adult family home, meets the definition of a LTCW and has a HCA-certificate .	R					*	R	R
LTCW with a letter of exemption dated for 2015 with: An intermittent break in service after 1/1/16 of less than three continuous years' time; Uncompleted CEs (<i>has option to complete all delinquent CE's</i>)		R	R*	R	R		R	

Who	Agency orientation	LTCW orientation and safety	DDA residential services curriculum	Peer coaching and/or population specific and/or specialty training	Seventy-five hour certificate	Specialty training	Continuing education	HCA-C
<i>prior to most recent date of hire within three years of termination of last employment)</i>								
LTCW with a letter of exemption dated between 1/12012 and 12/31/2015.							R	
An unpaid person providing direct care (volunteer).		R		R	N/A			
Registered nurses, licensed practical nurses, nurse technicians, or advanced registered nurse practitioner under chapter 18.79 RCW; Nursing assistants-certified under chapter 18.88A RCW; A home health aide who is employed by a medicare-certified home health agency and has met the requirements of 42 C.F.R., Part 483.35; and An individual with special education training and an endorsement granted by the superintendent of public instruction as described in RCW 28A.300.010.	R*					R*	R	

Key: R means required; blank means not required; * Means see WAC text for information.

Note: Other trainings that may be required and not considered to be part of the seventy-five hour certificate are not listed in tables above. Includes but is not limited to nurse delegation WAC 388-101-3375.

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

NEW SECTION

WAC 388-829-0025 When do the training requirements go into effect? (1) The LTCW training requirements described in this chapter go into effect January 1, 2016.

(2) The LTCW training requirements that were in effect on or before December 31, 2015, apply to those individuals who:

- (a) Were hired on or before December 31, 2015; and
- (b) Complete(d) training requirements in existing rules at time of hire by February 29, 2016.

NEW SECTION

WAC 388-829-0030 Who is exempt from the CRSB seventy-five hours of training requirements? Exempt individuals as of January 1, 2016, include:

(1) Staff hired January 1, 2015, through December 31, 2015, with no break in service to January 1, 2016, and hold a letter of exemption. Letters of exemption are portable from agency to agency:

- (a) For staff with continuous employment; and
- (b) For staff with intermittent work over a three year period who have completed their annual continuing education credits; or

(c) For staff who made up the twelve hours of continuing education prior to their date of hire and are current with all required CE credits.

(2) The HCA-C replaces the requirements for the training under the seventy-five hour certificate.

(a) Staff holding a HCA-C must complete agency orientation and individual specific training.

(b) Staff who obtained an HCA-C and took training other than the residential services curriculum prior to January 1, 2016, must also take the eighteen hour DDA specialty training unless they hold a certificate for this training.

(3) A home health aide who is employed by a medicare-certified home health agency and has met the requirements of 42 C.F.R., Part 483.35.

(4) An individual with special education training and an endorsement granted by the superintendent of public instruction as described in RCW 28A.300.010.

(5) Registered nurses, licensed practical nurses, nurse technicians, or advanced registered nurse practitioner under chapter 18.79 RCW; Nursing assistants-certified under chapter 18.88A RCW.

SECTION II - SEVENTY-FIVE HOUR CERTIFICATENEW SECTION

WAC 388-829-0040 What is the seventy-five hour certificate? The seventy-five hour certificate is a combination of trainings and certifications that when complete add up to seventy-five hours. The certificate covers:

- (1) Five hour LTCW orientation and safety (Section III);
- (2) Forty hour residential services curriculum (Section IV); and
- (3) Thirty hours peer coaching, specialty training, population specific training, CPR and blood borne pathogens/HIV training.

NEW SECTION

WAC 388-829-0045 Who must complete the seventy-five hour basic training? The following people must complete the seventy-five hours of training as described:

- (1) Non exempt employees hired as a new employee to work for CRSB agencies as a LTCW.
- (2) Anyone who wants to complete the home care aid certification process.

SECTION III - ORIENTATION AND SAFETYNEW SECTION

WAC 388-829-0050 What is orientation training? There are two types of orientation training: LTCW orientation training and agency orientation training.

(1) LTCW orientation.

Orientation is two hours of DDA developed and approved training regarding the LTCW's role and the applicable terms of employment as described in WAC 388-829-0055. DDA's curriculum is the only approved LTCW training for CRSB. There is no test for this training.

(2) Agency orientation.

Agency orientation is of varied length and provides basic introductory information appropriate to the residential care setting and population served and covers agency specific information. The department does not approve this specific orientation program, materials, or trainers, and there is no test for this orientation.

This orientation must include:

- (a) Current individual instruction and support plans of each client with whom the employee works;
- (b) Emergency procedures for clients;
- (c) The reporting requirements for abuse and neglect under chapter 74.34 RCW; and
- (d) Client confidentiality.

NEW SECTION

WAC 388-829-0055 What content must be included in LTCW orientation? For those individuals working in a CRSB:

- (1) LTCW orientation must be taught by an approved trainer and follow the DDA approved two hour orientation curriculum which includes the following topics:

- (a) The care setting and the agency mission;
- (b) The characteristics and special needs of the population served;
- (c) Fire and life safety, including:
 - (i) Emergency communication (including phone system if one exists);
 - (ii) Evacuation planning (including fire alarms and fire extinguishers);
 - (iii) Ways to handle individual injuries, falls or other accidents; and
 - (iv) Potential risks to individuals or staff (for instance, aggressive individual behaviors and how to handle them)
- (d) The location of home policies and procedures.
- (e) Communication skills and information, including:
 - (i) Methods for supporting effective communication among the individual/guardian/family, staff, and DDA staff;
 - (ii) Use of verbal and nonverbal communication; and
 - (iii) Review of written communication and/or documentation required for the job, including the individual's ISP.
- (f) Expectations about communication with other direct support staff;
- (g) Whom to contact about problems and concerns.
- (h) Proper body mechanics;
- (i) What staff should do if they are ill;
- (j) Individual rights, including:
 - (i) The individual's right to confidentiality of information about the individual;
 - (ii) The individual's right to participate in making decisions about the individual's care, and to refuse care;
 - (iii) Staff's duty to protect and promote the rights of each individual, and assist the individual to exercise his or her rights;
 - (iv) How and to whom staff should report any concerns they may have about an individual's decision concerning the individual's care;
 - (v) Staff's duty to report any suspected abuse, abandonment, neglect, or exploitation of an individual;
 - (vi) Advocates that are available to help individuals (LTC ombudsmen, organizations);
 - (vii) Complaint lines, hot lines, and individual grievance procedures; and
 - (viii) Working in an individual's home compared to working in agency facility or adult family home.
- (2) LTCW orientation is the first part of the five hour certificate.

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

NEW SECTION

WAC 388-829-0060 Who must take LTCW orientation? All staff must take LTCW orientation prior to working with clients when:

- (1) People hired to work in a CRSB who do not have a valid seventy-five hour certificate; or
- (2) LTCWs who were exempt in 2012 or 2015 with a break in service of three or more years will be treated as a new hire and will require the full seventy-five hours of training; and

(3) Volunteers who will have indirect supervision during direct support duties.

NEW SECTION

WAC 388-829-0065 What content must be included in the agency orientation for LTCWs who begin working for a new agency? The purpose of this training is to orient the staff to the agency. Some topics of agency orientation may be covered in LTCW orientation but due to individual support needs, must be trained outside of LTCW orientation.

Agency orientation must include but is not limited to:

- (1) The setting and the agency mission;
- (2) The characteristics and special needs of the population served;
- (3) Fire and life safety, including:
 - (a) Emergency communication (including phone system if one exists);
 - (b) Evacuation planning (including fire alarms and fire extinguishers);
 - (c) Ways to handle individuals' injuries, falls and other accidents; and
 - (d) Potential risks to individuals or staff (for instance, aggressive individual behaviors and how to handle them);
- (4) The location of policies and procedures;
- (5) Communication skills and information, including:
 - (a) Methods for supporting effective communication among the individual/guardian/family, staff, and DDA staff;
 - (b) Use of verbal and nonverbal communication; and
 - (c) Review of written communications and/or documentation required for the job, including the individual's IISP;
- (6) Expectations about communication with other home staff;
- (7) Whom to contact about problems and concerns;
- (8) Rules for working in someone's home as opposed to agency facility; and
- (9) Respect for individual's property including their food, home, water, electricity or anything paid for out of the individual's account.

NEW SECTION

WAC 388-829-0070 Who must take a particular agency's orientation? Staff who have never worked for a particular agency or who have not worked for the agency for more than one year must complete the agency orientation.

NEW SECTION

WAC 388-829-0075 What is safety training, who must complete it and when must it be completed? Safety training is part of the LTCW requirements and must be provided by approved instructors. It is three hours of training developed by DDA and includes basic safety precautions, emergency procedures, and infection control. There is no test for safety training.

NEW SECTION

WAC 388-829-0077 Who must take agency orientation? The following individuals must complete safety training before providing care under indirect supervision:

- (1) All nonexempt LTCWs hired after December 31, 2015, who do not currently hold a safety certificate as described in RCW 18.88B.041.
- (2) Volunteers who will have direct support duties.

NEW SECTION

WAC 388-829-0080 What content must be included in safety training? Safety training must include:

- (1) Safety planning and accident prevention, including but not limited to:
 - (a) Proper body mechanics;
 - (b) Fall prevention;
 - (c) Fire safety;
 - (d) In home hazards;
 - (e) LTCW safety; and
 - (f) Emergency and disaster preparedness.
- (2) Standard precautions and infection control, including but not limited to:
 - (a) Proper hand washing;
 - (b) When to wear gloves and how to correctly put them on and take them off;
 - (c) Basic methods to stop the spread of infection;
 - (d) Protection from exposure to blood and other body fluids;
 - (e) Appropriate disposal of contaminated/hazardous articles;
 - (f) Reporting exposure to contaminated articles; and
 - (g) What to do when the worker or the individual is sick or injured, including to whom to report illness or injury.
 - (h) Safe food handling information must be provided to all staff, prior to handling food for individuals.

LTCWs who complete a DSHS-approved safety training meet the four hours of AIDS education as required by the department of health in WAC 246-980-040.

- (3) Basic emergency policies and procedures, including but not limited to:
 - (a) Medical emergencies;
 - (b) Response to fire;
 - (c) Natural disasters or other community emergencies;
 - (d) Location of any advance directives if available;
 - (e) Missing individuals;
 - (f) Unmanageable individual behavior; and
 - (g) Individuals involved with law enforcement.

SECTION IV - BASIC TRAINING

NEW SECTION

WAC 388-829-0100 What is basic training? (1) Basic training totals seventy hours of training: Basic training is made up of two components; the forty hour residential training and thirty hours of additional topics as defined by subsection (1)(b) of this section.

(a) DDA residential training - forty hours.

- (i) The core competencies and skills that LTCWs need in order to provide services effectively and safely;
- (ii) Practice and demonstration of skills;
- (iii) DD history;
- (iv) Positive behavior support plan;
- (v) Residential guidelines;
- (vi) Individual instruction and support plan (IISP);
- (vii) Effective communication:
- (A) Between staff;
- (B) With family; and
- (C) With individuals;
- (viii) Nutrition and dietary guidelines;
- (ix) Healthcare/ health management;
- (x) Medication management;
- (xi) Abuse and neglect;
- (xii) Confidentiality;
- (xiii) Emergency procedures;
- (xiv) Staff roles, self-care, boundaries; and
- (xv) Grief and loss.

(b) Additional topics - thirty hours.

- (i) Peer coaching as defined in RCW 74.39A.331 for on the job training.
- (ii) Population specific if appropriate.
- (iii) Individual specific.
- (2) The core competencies requirement for DDA must be met by completing:
- (a) The DDA developed forty-hour residential training;
- or**
- (b) The DSHS approved RFOC (or the approved curriculum by DSHS) **and** the eighteen hour DD specialty training.
- (3) Additional training will be required:
- (a) Individual specific training; and
- (b) If changing agencies, the agency orientation;
- (4) The LTCW must be able to ask the instructor questions during the training.
- (5) There is no challenge test for subsection (2)(a) or (b).

NEW SECTION

WAC 388-829-0105 What topics must be taught in the core competencies of basic training for LTCWs? Basic training for LTCWs in a CRSB must include the DDA forty hour residential training. Competencies within this DSHS/ DDA approved curriculum includes but is not limited to:

- (1) Fall prevention;
- (2) Food preparation and handling;
- (3) Communication skills;
- (5) Individual rights and maintaining dignity;
- (6) Abuse, abandonment, neglect, financial exploitation and mandatory reporting;
- (7) Individual directed care;
- (8) Cultural sensitivity;
- (9) Body mechanics;
- (10) Infection control, blood borne pathogens, HIV/ AIDS
- (11) Skin and body care;
- (12) LTCW roles and boundaries;
- (13) Supporting activities of daily living;
- (14) Medication assistance;

- (15) LTCW self-care;
- (16) Problem solving;
- (17) Grief and loss; and
- (18) Building positive relationships.

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

NEW SECTION

WAC 388-829-0115 What documentation is required to show completion of the seventy-five hour training? (1) LTCW training must be documented by the following:

- (a) Agency orientation, LTCW orientation and safety:
- (i) The training and documentation must be issued by the service provider familiar with the agency. Proof must be documented with:
- (A) Original sign in sheets, dated with name of training and instructor; or
- (B) Original check lists used to ensure all training was completed; or
- (C) Personnel records that provide proof of completion.
- (ii) If certificates are used for agency orientation, LTCW orientation and safety the certificates must have:
- (A) The name of the student;
- (B) The name of the training;
- (C) The number of hours of the training;
- (D) The name of the training entity giving the training;
- (E) The instructor's name, printed and signature;
- (F) The training completion date;
- (G) The student's date of hire; and
- (H) The date(s) of the training.
- (b) Basic training:
- (i) Documentation for basic training is the same as subsection (1)(a)(i) in this section.
- (ii) Certificates for basic training must include all of subsection (1)(a)(ii) in this section and the name and identification number of the basic training instructor.
- (c) Agency training for the thirty hours of training: Documentation of the thirty hours is a certificate developed by DDA showing all of the requirements were completed for this training. Documentation must include but is not limited to:
- (i) Training checklists signed by a supervisor or an approved peer coach and the trainee;
- (ii) Other certificates from department approved population specific training; and
- (iii) Other certificates from department specialty training.
- (d) Seventy-five hour certificate:
- (i) A single seventy-five hour training certificate may be issued by a training entity, in lieu of individual certificates if that training entity was wholly responsible for providing all seventy-five of the training hours.
- (ii) The last training entity responsible for providing instruction to a LTCW will be responsible for providing the seventy-five hour certificate.
- (iii) The last training entity must see the other documents if they were provided by a training program, community

instructor or other entity outside of the agency where the staff is currently employed:

(A) The seventy-five hour certificate template was developed by DDA and no other form may be used.

(B) The certificate must be an original.

(C) The issuer of the seventy-five hour certificate must maintain a copy of the seventy-five hour certificate and all supporting documents for six years from the date of issue.

(D) Issuer of the certificate must be approved by the department.

(iv) The LTCW must be given the original seventy-five hour certificate(s) for proof of completion of the training and retain for their own records.

(v) To take the HCA-C exam using the DDA seventy-five hour certificate, the certificate must indicate:

(A) DDA residential curriculum ready for home care aide certificate, or

(B) DDA residential curriculum AND a certificate for residential services curriculum chapter on skills training separately, or

(C) DDA residential curriculum and a CE certificate for residential services curriculum chapter on skills training taken within the first two years of hire and before the end of two years of employment in the field.

(2) LTCWs who are exempt from the seventy-five hours of training, hired prior to January 1, 2016, and not in a different professional exemption category, must have a letter of exemption indicating their training for the year of 2015 is current and met the requirements of working for the CRSB in lieu of a certificate.

(a) Letters of exemption must include:

(i) Name of the agency;

(ii) Name of the staff;

(iii) Date of hire;

(iv) Language regarding completion of current training requirements in 2015;

(v) Date of termination if appropriate;

(vi) Signature and printed name of agency administrator; and

(vii) Date letter was signed.

(b) Letters of exemption expire when the staff does not work in the field for three years.

(c) Letters of exemption expire when staff who work intermittently do not maintain the twelve CEs required annually.

(i) Intermittent workers may complete the CE requirements (twelve per year) prior to hire and continue to use their exemption letter.

(ii) Intermittent workers who do not complete their CE requirements over a three year span forfeit their letter of exemption.

(iii) Staff who forfeit their letter of exemption must start training as a new hire and complete all seventy-five hours of training.

A copy of the exemption letter must remain in the personnel file for six years. The original letter is the responsibility of the staff.

NEW SECTION

WAC 388-829-0120 How long are the training certificates valid? Basic training, LTCW orientation, and safety training certificates remain valid as long as the staff maintains their twelve hours of CE annually. Certificates are portable from one agency to another.

For the purpose of becoming a HCA-C, the seventy-five hour certificates expire after two years. If CRSB staff choose to take the HCA-C exams for certification; their seventy-five hour certificate must meet the DOH requirements as outlined in WAC 246-980-060. Costs incurred for the testing and certification are the sole responsibility of the staff person taking them.

NEW SECTION

WAC 388-829-0130 Who is required to complete basic training, and when? The following individuals must complete basic training requirements:

(1) LTCWs in CRSB within one hundred twenty days of date of hire. Until basic training has been completed, LTCWs can only provide direct care with indirect supervision.

(2) Exempted employees hired after December 31, 2015, returning to work after a three year break in service must complete the seventy-five hours of training as if a new employee to the field.

(3) Exempted employees hired after December 31, 2015, with intermittent work must:

(a) Maintain or complete the CEs to meet the annual requirements prior to hiring date; or

(b) Must complete the seventy-five hours of training as if a new employee to the field.

(4) Volunteers who will provide direct support services with indirect supervision. Family members are not considered to be volunteers.

NEW SECTION

WAC 388-829-0140 Who may instruct basic training for a CRSB and what documentation is required by the agency and the instructor? Entities wanting to instruct staff on the DDA forty hour residential curriculum and meet the requirements of WAC 388-829-0380 must take the train the trainer course offered through DDA. Instructors may be approved through the department and will have only one instructor code. Certificates for the train the trainer course will be required as proof of taking this training and completing the course. Instructors are responsible to maintain their original certificates and may be asked to show them as proof of attendance at the train the trainer. Agencies hiring community instructors or other training programs must maintain a copy of the trainer's original certificate for their records.

NEW SECTION

WAC 388-829-0145 Who may be certified as a home care aide? (1) Staff hired after January 7, 2012, who work in a DDA group home licensed are required to obtain home care aide certification through DOH.

(2) All other CRSB staff are required to meet the training requirements of this chapter, but are exempt from home care aide certification through DOH.

(3) Any staff working for a CRSB who completes the seventy-five hour training described in this chapter, and the residential services training chapter may pursue certification as a home care aide through DOH.

NEW SECTION

WAC 388-829-0150 What documentation is required for a LTCW to apply for the home care aide certification or recertification? DOH is solely responsible for the certification and recertification of home care aides. Please see WAC 246-980-080 and 090 for rules regarding certification.

SECTION V - POPULATION-SPECIFIC

NEW SECTION

WAC 388-829-0160 What is the population specific training component of basic training? (1) The DDA forty hour residential curriculum required for all CRSB staff hired on or after January 1, 2016, includes DD population specific information.

(2) Staff trained using the DDA forty hour residential curriculum are not required to take the eighteen hour DD specialty training course.

(3) Staff may take any approved population specific training as long as it applies to the individuals being supported.

SECTION VI - SPECIALTY TRAINING

NEW SECTION

WAC 388-829-0200 What is specialty training? Specialty or "special needs" training provides instruction in care giving skills that meet the special needs of people living with mental illness, dementia, or developmental disabilities. Specialty trainings are different for each population served and are not interchangeable. Specialty training may be integrated with basic training if the complete content of each training is included. DSHS must approve specialty training curricula for LTCWs.

Specialty training includes:

- (1) Mental health training;
- (2) Dementia training;
- (3) Eighteen hour DD specialty training; and
- (4) Other specialty training as identified as required by the population being supported.

NEW SECTION

WAC 388-829-0205 Who is required to take specialty training? (1) Specialty training requirements are described in WAC 388-112-0110.

(2) Staff with a current HCA-C hired by a CRSB on or after January 1, 2016 must complete the eighteen hour DD specialty training or DDA forty hour residential curriculum within ninety days of working with individuals unless;

(a) They provide proof of prior completion of this training or

(b) Have taken the DDA forty hour residential curriculum training.

SECTION VII - NURSE DELEGATION CORE TRAINING

NEW SECTION

WAC 388-829-0210 What is nurse delegation core training? Nurse delegation training is coursework regarding assisting a person with support needs in the area of taking medications and other delegated tasks. Nurse delegation core training is required before a nursing assistant certified or nursing assistant registered or certified home care aide can be delegated a nursing task. DSHS approves instructors for nurse delegation core training.

Nurse delegation training is not approved for use under the seventy-five hour certificate but may be used for CE following the first one hundred twenty days of employment. Nurse delegation is described in WAC 388-112-0170 through 388-112-0197.

SECTION VIII - CONTINUING EDUCATION

NEW SECTION

WAC 388-829-0220 What is CE? (1) CE is annual training designed to increase a direct support professional staff's knowledge and skills. DSHS must approve CE curricula and instructors. The same CE course cannot be repeated for credit unless it is a new or more advanced training on the same topic. The exceptions to this are:

- (a) Blood-borne pathogens;
- (b) CPR training;
- (c) First aid training;
- (d) Food handling training (thirty minutes allowed); and
- (e) When the agency can demonstrate a need for retraining.

(2) Nurse delegation core and nurse delegation specialized diabetes training may be used to count towards CE.

NEW SECTION

WAC 388-829-0225 Who is required to complete CE training, and how many hours of CE are required each year? Effective January 1, 2016, CRSB staff who provide direct support must complete twelve hours of CE per calendar year. Training must be taken from a DSHS approved instructor with DSHS approved curriculum.

NEW SECTION

WAC 388-829-0226 Can a CRSB employee receive CE credit for training approved by another state agency? CRSB staff may complete their CE by taking any class with curriculum approved through DSHS.

NEW SECTION

WAC 388-829-0230 When must a LTCW complete CE? (1) Effective January 1, 2016, all LTCWs who work for a CRSB must complete twelve hours of CE as described in WAC 388-829-0220 by the end of each calendar year.

(2) For CRSB staff hired on or after January 1, 2016:

(i) CEs must not be credited during the first one hundred twenty days of employment.

(ii) Staff who hold the HCA-C must follow the rules for their certification and complete CE's based on DOH rules per chapter 246-980 WAC.

NEW SECTION

WAC 388-829-0235 What topics may be covered in CE? CE must be on a topic relevant to the care needs of individuals in their support setting, or LTCW career development. Trainers and curricula must be DSHS approved. Topics or courses may include but are not limited to:

- (1) Individual rights, such as freedom from abuse, neglect, abandonment and financial exploitation;
- (2) Personal support/care services;
- (3) Mental illness;
- (4) Dementia;
- (5) Developmental disabilities;
- (6) Depression;
- (7) Medication assistance;
- (8) Communication skills;
- (9) Positive individual behavior support;
- (10) Developing or improving individual centered activities;
- (11) Dealing with wandering or aggressive individual behaviors;
- (12) Medical conditions;
- (13) Staff career development;
- (14) Safe food handling;
- (15) CPR and first aid;
- (16) Nurse delegation core training; or
- (17) Nurse delegation specialized diabetes.

NEW SECTION

WAC 388-829-0240 Can specialty training be used to meet CE requirements? Specialty training, except if completed through a challenge test, may be used to meet CE requirements.

(1) When hours from a specialty training are counted toward basic training requirements, the hours may not be counted toward CE.

(2) Additional hours not used to meet the basic training requirement may be applied toward the CE requirement.

(3) Eighteen hour DD specialty training taken separately from the forty hour curriculum may be used as CEs. Twelve hours count towards the current year and six hours may be carried over to the following year for this training only.

NEW SECTION

WAC 388-829-0245 What are the documentation requirements for CE? The training entity must maintain written documentation of department approved CE for six years:

(1) Training provided by a DSHS approved agency or community instructor. Original or electronic copy of sign-in sheets with the name of the instructor, training and date.

(2) Training curriculum approval form/letter from DDA or ALTSA.

(3) Trainer approval form/letter from DDA or ALTSA.

NEW SECTION

WAC 388-829-0246 What information must be on certificates for CE? Certificates must contain the following information:

- (1) Name of the student;
- (2) Title of the training;
- (3) Number of hours of the training;
- (4) Assigned curriculum approval code;
- (5) Instructor's name, printed and signature;
- (6) Printed name of the training entity giving the training;
- (7) Entity program code; and
- (8) Date(s) of training.

NEW SECTION

WAC 388-829-0250 What is cardiopulmonary resuscitation (CPR) training? When is CPR training required? CPR is an emergency procedure performed in an effort to manually preserve intact brain function until further measures are taken to restore spontaneous blood circulation and breathing in a person who is in cardiac arrest. CPR training must be provided by an authorized CPR instructor. Trainees must successfully complete the CPR course and receive a certificate.

CPR is required to be taken within the first sixty days of hire.

SECTION IX - CURRICULUM APPROVALNEW SECTION

WAC 388-829-0300 Which trainings require department approval of the curriculum and instructor? (1) The department must preapprove the curriculum and instructors for all LTCW orientation, safety, basic, and CE taught as part of the requirements of this chapter.

(2) CRSB training entities must use only the DSHS curriculum for the following:

- (a) Nurse delegation core and diabetes training;
- (b) DDA LTCW orientation and safety (five hours);
- (c) DDA residential services training (forty hours); and
- (d) DDA peer coaching defined in RCW 74.39A.331 as peer mentoring (varied time length).

(3) Approval for all other trainings will be based on curriculum review, as described in WAC 388-829-0305.

NEW SECTION

WAC 388-829-0305 What must be submitted to DDA for CE curriculum approval? Application forms must be submitted at least forty five days in advance of the training date. Approvals must be dated prior to delivery of training. The following must be submitted before the curriculum will be reviewed:

(1) CE curriculum delivery models will only be lead by a DSHS approved instructor. All learners, including online learners, must have access to an approved instructor.

(a) For instructor lead curriculum, developed by the training entity submit a DDA CE approval application that includes all of the information requested on the form, and:

(i) A summary that includes:

(A) The topic; and

(B) A description of how the training is relevant to the support setting, care needs of individuals, or LTCW career development.

(ii) A course outline;

(iii) The number of training hours;

(iv) The learning objectives;

(v) A bibliography listing resources used to develop the curriculum;

(vi) The trainee evaluation; and

(vii) The DDA trainer approval form indicating which trainer will be offering the course with attestation language completed.

(b) For online training courses:

(i) Everything in subsection (1)(a) in this section; and

(ii) On-line course which meet the on-line standards provided at this link: <http://www.altsa.dshs.wa.gov/Professional/training/CE/OnlineCEStandards.htm>

(c) For curriculum developed by a professional curriculum developer who is not the training entity:

(i) Everything listed in subsection (1)(a) in this section; and

(ii) A bill of sale or letter granting the training entity permission to use the curriculum.

Department developed curriculum does not require submission to the department for approval unless otherwise modified.

NEW SECTION

WAC 388-829-0310 What is the curriculum approval process for CE? (1) After review of the curriculum, DSHS will send a written response to the submitter, indicating approval or disapproval of the curriculum.

(2) Reasons for denial will be identified and revised curriculum may be resubmitted for review.

(3) If revised curriculum is not approved and resolution is not reached, the submitter may seek a review of the nonapproval decision from the DDA assistant secretary or designee. The assistant secretary's review decision shall be the final decision of DSHS.

XI - INSTRUCTOR APPROVALNEW SECTION

WAC 388-829-0350 What are the training entity's responsibilities? The training entity is responsible for:

(1) Coordinating and teaching classes;

(2) Assuring the curriculum used is taught as designed;

(3) Assuring the trainer is approved for this curriculum;

(4) Verifying the curriculum is approved and has been assigned a code;

(5) Selecting qualified guest speakers where applicable;

(6) Establishing a method whereby the LTCW can ask the instructor questions;

(7) Administering or overseeing the administration of DSHS competency and challenge tests when appropriate;

(8) Maintaining training records including LTCW attendance records for a minimum of six years;

(9) Reporting training data to DSHS when requested by the department;

(10) Issuing or reissuing training certificates to LTCWs; and

(11) Maintaining documentation as stated in this chapter.

NEW SECTION

WAC 388-829-0360 Must training entities and their instructors be approved by DSHS? (1) For all DSHS contracted training entities:

(a) DDA must approve and/or contract with a training entity and their instructor(s) to conduct LTCW orientation, safety, basic, population specific, LTCW specialty, nurse delegation core and specialized diabetes training, and CE.

(b) DDA may select training entities using any applicable contracting procedures. Contractors must meet the minimum qualifications for instructors under this chapter and any additional qualifications established through the contracting procedure.

(2) Agencies conducting their own training programs using the training curricula developed by DSHS or another curricula approved by DSHS must ensure and attest that their instructors meet the minimum qualifications for instructors under this chapter.

(3) DSHS must approve all other training entities and their instructor(s) not described in subsection (1) and (2) of this section.

(a) Community instructors who contract with DSHS for CE may be utilized for CEs at CRSBs.

(b) Approved community instructors who wish to provide basic training in a CRSB must take the DDA residential services train the trainer course and notify the agency they work with of their certification.

NEW SECTION

WAC 388-829-0365 Can DSHS deny or terminate a contract or rescind approval of an instructor or training entity? (1) DSHS may deny a person or organization seeking a contract with, or approval by, DSHS to conduct training.

(2) DSHS may terminate an existing training contract in accordance with the terms of the contract. The contractor's remedies shall be limited to those specified in the contract.

(3) DSHS may terminate an existing training approval of a person or entity to conduct training.

NEW SECTION

WAC 388-829-0370 What is a guest speaker, and what are the minimum qualifications to be a guest speaker? (1) A guest speaker is a person selected by an approved instructor to teach a specific topic. A guest speaker:

(a) Must have demonstrated background and expertise on the topic;

(b) Must not teach the entire course;

(c) Must not supplant the primary teaching responsibilities of the primary instructor; and

(d) Must cover the DSHS competencies and learning objectives for the topic he or she is teaching.

(2) The approved instructor:

(a) Must select guest speakers based on the guest speaker's knowledge and experience in the specific topic;

(b) Maintain documentation of the guest speaker's qualifications and/or experience;

(c) Supervise and monitor the guest speaker's performance in person to ensure required content is taught; and

(d) Signs and provides the CE certificate.

(3) DSHS does not approve guest speakers.

NEW SECTION

WAC 388-829-0380 What are the minimum qualifications for an instructor for basic, and population specific training? An instructor for basic and population specific training must meet the following minimum qualifications:

(1) Twenty-one years of age or older;

(2) Has not had a professional health care, CRSB, agency, or social services license or certification revoked in Washington state; and

(3) Has the following education and work experience upon initial approval or hire:

(a) Have a bachelor's degree and work experience with persons with disabilities requiring long-term support in a community setting within the last five years; or

(b) Have an associate degree or higher degree in the field of health or human services and six months professional or support experience within the last five years in a community based setting, CRSB through DDA, or home care setting; or

(c) Have a high school diploma, or equivalent, and at least one year of professional or care giving experience within the last five years in a CRSB setting through DDA, or home care setting.

(4) Has the following teaching experience:

(a) Must have one hundred hours of experience teaching adults in an appropriate setting on topics directly related to the basic training; or

(b) Must have forty hours of teaching while being mentored by an instructor who meets these qualifications, and must attend a class on adult education which includes content, student practice, and evaluation of student skills by the instructor in:

(1) Adult education theory and practice principles;

(2) Instructor facilitation techniques;

(3) Facilitating learning activities for adults;

(4) Working with adults with special training needs (for example, English as a second language or learning and literacy issues); and

(5) The instructor must be experienced in care giving practices and capable of demonstrating competency with respect to teaching the course content or units being taught.

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

NEW SECTION

WAC 388-829-0385 What are the minimum qualifications for an instructor for agency orientation, LTCW orientation, safety, and CE? An instructor for LTCW orientation, safety, and CE must have specific knowledge, training, and work experience in the provision of direct, personal support or other relevant services to persons with disabilities requiring long-term support.

NEW SECTION

WAC 388-829-0390 What are the minimum qualifications for instructors for LTCW mental health specialty training? The minimum qualifications for instructors for long term-care worker mental health specialty are defined in WAC 388-112-0385.

NEW SECTION

WAC 388-829-0395 What are the minimum qualifications for instructors for LTCW dementia specialty? The minimum qualifications for instructors for long term-care worker dementia specialty are defined in WAC 388-112-0390.

NEW SECTION

WAC 388-829-0400 What are the minimum qualifications for instructors for LTCW developmental disabilities specialty? The minimum qualifications for instructors for long term-care worker developmental disabilities specialty are defined in WAC 388-112-0395.

SECTION XII - PHYSICAL RESOURCES AND STANDARD PRACTICES FOR TRAINING

NEW SECTION

WAC 388-829-0420 What physical resources are required for classroom training and testing? Classroom facilities and sites must be accessible to students and provide adequate space for learning activities, comfort, lighting, lack of disturbance, and tools for effective teaching and learning. Appropriate supplies and equipment must be provided for teaching and practice of skills in the class being taught.

NEW SECTION

WAC 388-829-0425 What standard training practices must be maintained for classroom training and testing? The following training standards must be maintained for classroom training and testing:

- (1) Training must not exceed eight hours within one day not including breaks and meals;
- (2) Training provided in short time segments must include an entire unit, skill or concept;
- (3) Training must include regular breaks; and
- (4) LTCWs attending a classroom training must attend the entirety of the training to receive credit.

WSR 15-20-054**PERMANENT RULES
DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed September 30, 2015, 4:42 p.m., effective October 31, 2015]

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

Purpose: The department is amending WAC 388-106-0010 to clarify the definitions of eating and set-up help in response to recent board of appeals decisions, add new definitions related to modified adjusted gross income (MAGI) eligibility group and clarify existing definitions related to long-term care services, clarify the definition of informal support in response to decisions from the health care authority board of appeals, and amend existing definitions to include enhanced services facilities.

The department is also amending WAC 388-106-0130 in response to decisions from the health care authority board of appeals.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0010 and 388-106-0130.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 15-09-100 on April 20, 2015.

Changes Other than Editing from Proposed to Adopted Version: Clarified the definition of "activities of daily living (ADL)" in WAC 388-106-0010 by adding examples of activities that are not considered part of the activity of eating.

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

Date Adopted: September 24, 2015.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-13-060, filed 6/12/14, effective 7/13/14)

WAC 388-106-0010 What definitions apply to this chapter? "Ability to make self understood" means how you make yourself understood to those closest to you; express or communicate requests, needs, opinions, urgent problems and social conversations, whether in speech, writing, sign language, symbols, or a combination of these including use of a communication board or keyboard:

- (a) Understood: You express ideas clearly;
- (b) Usually understood: You have difficulty finding the right words or finishing thoughts, resulting in delayed responses, or you require some prompting to make self understood;
- (c) Sometimes understood: You have limited ability, but are able to express concrete requests regarding at least basic needs (e.g. food, drink, sleep, toilet);
- (d) Rarely/never understood: At best, understanding is limited to caregiver's interpretation of client specific sounds or body language (e.g. indicated presence of pain or need to toilet);

(e) Child under three: Proficiency is not expected of a child under three and a child under three would require assistance with communication with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

"Activities of daily living (ADL)" means the following:

(a) Bathing: How you take a full-body bath/shower, sponge bath, and transfer in/out of tub/shower.

(b) Bed mobility: How you move to and from a lying position, turn side to side, and position your body while in bed, in a recliner, or other type of furniture.

(c) Body care: How you perform with passive range of motion, applications of dressings and ointments or lotions to the body and pedicure to trim toenails and apply lotion to feet. In adult family homes, enhanced services facilities, contracted assisted living, enhanced adult residential care, and enhanced adult residential care-specialized dementia care facilities, dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC. Body care excludes:

(i) Foot care if you are diabetic or have poor circulation; or

(ii) Changing bandages or dressings when sterile procedures are required.

(d) Dressing: How you put on, fasten, and take off all items of clothing, including donning/removing prosthesis.

(e) Eating: How you eat and drink, regardless of skill. Eating includes any method of receiving nutrition, e.g., by mouth, tube or through a vein. Eating does not include any set

up help you receive, e.g. bringing food to you or cutting it up in smaller pieces.

(f) Locomotion in room and immediate living environment: How you move between locations in your room and immediate living environment. If you are in a wheelchair, locomotion includes how self-sufficient you are once in your wheelchair.

(g) Locomotion outside of immediate living environment including outdoors: How you move to and return from more distant areas. If you are living in a contracted assisted living, enhanced services facility, adult residential care, enhanced adult residential care, enhanced adult residential care-specialized dementia care facility or nursing facility (NF), this includes areas set aside for dining, activities, etc. If you are living in your own home or in an adult family home, locomotion outside immediate living environment including outdoors, includes how you move to and return from a patio or porch, backyard, to the mailbox, to see the next-door neighbor, etc.

(h) Walk in room, hallway and rest of immediate living environment: How you walk between locations in your room and immediate living environment.

(i) Medication management: Describes the amount of assistance, if any, required to receive medications, over the counter preparations or herbal supplements.

(j) Toilet use: How you use the toilet room, commode, bedpan, or urinal, transfer on/off toilet, cleanse, change pad, manage ostomy or catheter, and adjust clothes.

(k) Transfer: How you move between surfaces, i.e., to/from bed, chair, wheelchair, standing position. Transfer does not include how you move to/from the bath, toilet, or get in/out of a vehicle.

(l) Personal hygiene: How you maintain personal hygiene, ~~((including))~~ such as combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands (including nail care), and perineum (menses care). Personal hygiene does not include hygiene in baths and showers.

"Age appropriate" proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130 for the specific ages.

"Aged person" means a person sixty-five years of age or older.

"Agency provider" means a licensed home care agency or a licensed home health agency having a contract to provide long-term care personal care services to you in your own home.

"Alternative benefit plan" means the scope of services described in WAC 182-501-0060 available to persons eligible to receive health care coverage under the Washington apple health modified adjusted gross income (MAGI)-based adult coverage described in WAC 182-505-0250.

"Application" means a written request for medical assistance or long-term care services submitted to the department by the applicant, the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The applicant must submit the request on a form prescribed by the department.

"Assessment details" means a summary of information that the department entered into the CARE assessment describing your needs.

"Assessment or reassessment" means an inventory and evaluation of abilities and needs based on an in-person interview in your own home or your place of residence, using CARE.

"Assistance available" means the amount of assistance available for a task if status is coded:

(a) Partially met due to availability of other support; or
(b) Shared benefit. The department determines the amount of the assistance available using one of four categories:

(i) Less than one-fourth of the time;
(ii) One-fourth to one-half of the time;
(iii) Over one-half of the time to three-fourths of the time; or

(iv) Over three-fourths but not all of the time.

"Assistance with body care" means you need assistance with:

(a) Application of ointment or lotions;
(b) Trimming of toenails;
(c) Dry bandage changes; or
(d) Passive range of motion treatment.

"Assistance with medication management" means you need assistance managing your medications. You are scored as:

(a) Independent if you remember to take medications as prescribed and manage your medications without assistance.

(b) Assistance required if you need assistance from a nonlicensed provider to facilitate your self-administration of a prescribed, over the counter, or herbal medication, as defined in chapter 246-888 WAC. Assistance required includes reminding or coaching you, handing you the medication container, opening the container, using an enabler to assist you in getting the medication into your mouth, alteration of a medication for self-administration, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.

(c) Self-directed medication assistance/administration if you are an adult with a functional disability who is capable of and who chooses to self-direct your medication assistance/administration.

(d) Must be administered if you must have medications placed in your mouth or applied or instilled to your skin or mucus membrane. Administration must either be performed by a licensed professional or delegated by a registered nurse to a qualified caregiver (per chapter 246-840 WAC). Administration may also be performed by a family member or unpaid caregiver in in-home settings or in residential settings if facility licensing regulations allow. Intravenous or injectable medications may never be delegated except for insulin injections.

"Authorization" means an official approval of a departmental action, for example, a determination of client eligibility for service or payment for a client's long-term care services.

"Blind person" means a person determined blind as described under WAC 182-500-0015 by the division of dis-

ability determination services of the medical assistance administration.

"Categorically needy" means the status of a person who is eligible for medical care under Title XIX of the Social Security Act. See WAC 182-512-0010 and chapter 182-513 WAC.

"Child" means an individual less than eighteen years of age.

"Health action plan" means an individual plan which identifies health-related problems, interventions and goals.

"Client" means an applicant for service or a person currently receiving services from the department.

"Current" means a behavior occurred within seven days of the CARE assessment date, including the day of the assessment. Behaviors that the department designates as current must include information about:

(a) Whether the behavior is easily altered or not easily altered; and

(b) The frequency of the behavior.

"Decision making" means your ability to make, and actual performance in making, everyday decisions about tasks or activities of daily living in the last seven days before the assessment. The department determines whether you ~~((are))~~ were:

(a) Independent: Decisions about your daily routine ~~((are))~~ were consistent and organized; reflecting your lifestyle, choices, culture, and values.

(b) Modified independence/difficulty in new situations: You ~~((have))~~ had an organized daily routine, ~~((are))~~ were able to make decisions in familiar situations, but experienced some difficulty in decision making when faced with new tasks or situations.

(c) Moderately impaired/poor decisions; unaware of consequences: Your decisions ~~((are))~~ were poor and you require reminders, cues and supervision in planning, organizing and correcting daily routines. You attempted to make decisions, although poorly.

(d) Severely impaired/no or few decisions: Decision making ~~((is))~~ was severely impaired; you never/rarely ~~((make))~~ made decisions.

(e) Child under twelve: Proficiency in decision making is not expected of a child under twelve and a child under twelve would require assistance with decision making with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

"Department" means the state department of social and health services, aging and disability administration or its designee.

"Designee" means area agency on aging.

"Developmental milestones table" is a chart showing the age range for which proficiency in the identified task is not expected of a child and assistance with the task would be required whether or not the child has a functional disability.

"Difficulty" means how difficult it is or would be for you to perform an instrumental activity of daily living (IADL). This is assessed as:

(a) No difficulty in performing the activity;

(b) Some difficulty in performing the activity (e.g., you need some help, are very slow, or fatigue easily); or

(c) Great difficulty in performing the activity (e.g., little or no involvement in the activity is possible).

"Disability" is described under WAC 182-500-0025.

"Disabling condition" means you have a medical condition which prevents you from self performance of personal care tasks without assistance.

"Estate recovery" means the department's process of recouping the cost of medicaid and long-term care benefit payments from the estate of the deceased client. See chapter 182-527 WAC.

"Home health agency" means a licensed:

(a) Agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence and reimbursed through the use of the client's medical identification card; or

(b) Home health agency, certified or not certified under medicare, contracted and authorized to provide:

(i) Private duty nursing; or

(ii) Skilled nursing services under an approved medicaid waiver program.

"Income" means income as defined under WAC 182-509-0001.

"Individual provider" means a person employed by you to provide personal care services in your own home. See WAC 388-71-0500 through 388-71-05909.

"Informal support" means:

~~((a person or resource that is available to provide))~~ Assistance that will be provided without home and community program funding. The person ~~((or resource))~~ providing the informal support must be age 18 or older. ~~((Examples))~~ Sources of informal support(s) include but are not limited to: family members, friends, housemates/roommates, neighbors, school, childcare, after school activities, ~~((adult day health))~~ church, and ~~((or))~~ community programs. Except for a situation in which the age of a child or shared benefit determines status, if a person is available and willing to provide unpaid assistance to a client, the department may consider the person to be a source of informal support, even if the person is also an individual provider for the client.

(b) Adult day health is considered a source of informal support, regardless of funding source.

"Institution" means medical facilities, nursing facilities, and institutions for the intellectually disabled. It does not include correctional institutions. See medical institutions in WAC 182-500-0050.

"Instrumental activities of daily living (IADL)" means routine activities performed around the home or in the community and includes the following:

(a) Meal preparation: How meals are prepared (e.g., planning meals, cooking, assembling ingredients, setting out food, utensils, and cleaning up after meals). NOTE: The department will not authorize this IADL to only plan meals or clean up after meals. You must need assistance with ~~((actual))~~ other tasks of meal preparation.

(b) Ordinary housework: How ordinary work around the house is performed (e.g., doing dishes, dusting, making bed, tidying up, laundry).

(c) Essential shopping: How shopping is completed to meet your health and nutritional needs (e.g., selecting items).

Shopping is limited to brief, occasional trips in the local area to shop for food, medical necessities and household items required specifically for your health, maintenance or well-being. This includes shopping with or for you.

(d) Wood supply: How wood is supplied (e.g., splitting, stacking, or carrying wood) when you use wood as the sole source of fuel for heating and/or cooking.

(e) Travel to medical services: How you travel by vehicle to a physician's office or clinic in the local area to obtain medical diagnosis or treatment-includes driving vehicle yourself, traveling as a passenger in a car, bus, or taxi.

(f) Managing finances: How bills are paid, checkbook is balanced, household expenses are managed. The department cannot pay for any assistance with managing finances.

(g) Telephone use: How telephone calls are made or received (with assistive devices such as large numbers on telephone, amplification as needed).

"Long-term care services" means the services administered directly or through contract by the aging and disability services and identified in WAC 388-106-0015.

"MAGI" means modified adjusted gross income. It is a methodology used to determine eligibility for Washington apple health (medicaid), and is defined in WAC 182-500-0070.

"Medicaid" is defined under WAC 182-500-0070.

"Medically necessary" is defined under WAC 182-500-0070.

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

"New Freedom consumer directed services (NFCDS)" means a mix of services and supports to meet needs identified in your assessment and identified in a New Freedom spending plan, within the limits of the individual budget, that provide you with flexibility to plan, select, and direct the purchase of goods and services to meet identified needs. Participants have a meaningful leadership role in:

(a) The design, delivery and evaluation of services and supports;

(b) Exercising control of decisions and resources, making their own decisions about health and well being;

(c) Determining how to meet their own needs;

(d) Determining how and by whom these needs should be met; and

(e) Monitoring the quality of services received.

"New Freedom consumer directed services (NFCDS) participant" means a participant who is an applicant for or currently receiving services under the NFCDS waiver.

"New Freedom spending plan (NFSP)" means the plan developed by you, as a New Freedom participant, within the limits of an individual budget, that details your choices to purchase specific NFCDS and provides required federal medicaid documentation.

"Own home" means your present or intended place of residence:

(a) In a building that you rent and the rental is not contingent upon the purchase of personal care services as defined in this section;

(b) In a building that you own;

(c) In a relative's established residence; or

(d) In the home of another where rent is not charged and residence is not contingent upon the purchase of personal care services as defined in this section.

"Past" means the behavior occurred from eight days to five years of the assessment date. For behaviors indicated as past, the department determines whether the behavior is addressed with current interventions or whether no interventions are in place.

"Personal aide" is defined in RCW 74.39.007.

"Personal care services" means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) due to your functional limitations. Assistance is evaluated with the use of assistive devices.

"Physician" is defined under WAC 182-500-0085.

"Plan of care" means assessment details and service summary generated by CARE.

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

(a) Having a signed department contract to provide long-term care client services; and

(b) Qualified and eligible to receive department payment.

"Reasonable cost" means a cost for a service or item that is consistent with the market standards for comparable services or items.

"Representative" means a person who you have chosen, or has been appointed by a court, whose primary duty is to act on your behalf to direct your service budget to meet your identified health, safety, and welfare needs.

"Residential facility" means a licensed adult family home under department contract; a licensed enhanced services facility under department contract; or licensed assisted living facility under department contract to provide assisted living, adult residential care or enhanced adult residential care.

"Self performance for ADLs" means what you actually did in the last seven days before the assessment, not what you might be capable of doing. ~~((Coding))~~ Self-performance for ADLs is based on the level of performance that occurred three or more times in the seven-day period. ~~((and))~~ Scoring of self-performance for ADLs does not include ~~((support provided as defined in WAC 388-106-0010))~~ physical assistance that occurred fewer than three times in the seven day look back period, or set-up help. Your self performance level is scored as:

(a) Independent if you received no help or oversight, or if you needed help or oversight only once or twice;

(b) Supervision if you received oversight (monitoring or standby), encouragement, or cueing three or more times;

(c) Limited assistance if you were highly involved in the activity and ~~((given physical help in guided maneuvering of limbs or other nonweight bearing assistance))~~ received assis-

tance that involved physical nonweight bearing contact between you and your caregiver or guided maneuvering of limbs on three or more occasions. ~~((For bathing, limited assistance means physical help is limited to transfer only;))~~

(d) Extensive assistance if you performed part of the activity, but on three or more occasions, you needed weight bearing support or you received full performance of a subtask of the activity ~~((during part))~~, but not all, of the activity. ~~((For bathing, extensive assistance means you needed physical help with part of the activity (other than transfer);))~~

(e) Total dependence if you received full caregiver performance of the activity and all subtasks during the entire seven-day period from others. Total dependence means complete nonparticipation by you in all aspects of the ADL; or

(f) Activity did not occur if you or others did not perform an ADL over the last seven days before your assessment. The activity may not have occurred because:

- (i) You were not able (e.g., walking, if paralyzed);
- (ii) No provider was available to assist; or
- (iii) You declined assistance with the task.

"Self performance for IADLs" means what you actually did in the last thirty days before the assessment, not what you might be capable of doing. ~~((Coding))~~ Scoring is based on the level of performance that occurred ~~((three or more times))~~ at least one time in the thirty-day period. Your self performance is scored as:

(a) Independent if you received no help, set-up help, or supervision;

(b) Set-up help/arrangements only if on some occasions you did your own set-up/arrangement and at other times you received help from another person;

(c) Limited assistance if on some occasions you did not need any assistance but at other times in the last thirty days you required some assistance;

(d) Extensive assistance if you were involved in performing the activity, but required cueing/supervision or partial assistance at all times;

(e) Total dependence if you needed the activity fully performed by others; or

(f) Activity did not occur if you or others did not perform the activity in the last thirty days before the assessment.

"Service summary" is CARE information which includes: Contacts (e.g. emergency contact), services the client is eligible for, number of hours or residential rates, personal care needs, the list of formal and informal providers and what tasks they will provide, a provider schedule, referral needs/information, and dates and agreement to the services.

"Shared benefit" means:

(a) A client and their paid caregiver both share in the benefit of an IADL task being performed; or

(b) Two or more clients in a multi-client household benefit from the same IADL task(s) being performed.

"SSI-related" is defined under WAC 182-512-0050.

"Status" means the level of assistance; ~~((available for a task from))~~

(a) that will be provided by informal supports; or

(b) ((the shared benefit)) That will be provided by a care provider who may ((derive from doing a)) share in the benefit of an IADL task being performed for a client or ~~((that))~~ for two or more clients ~~((derive from the same IADL being per-~~

~~formed and the determination of whether a child's need for assistance is due))~~ in a multi-client household; or

(c) That will be provided to a child primarily due to his or her age. The department determines the status of each ADL or IADL and codes the status as follows:

(a) Met, which means the ADL or IADL will be fully provided by an informal support;

(b) Unmet, which means an informal support will not be available to provide assistance with the identified ADL or IADL;

(c) Partially met, which means an informal support will be available to provide some assistance, but not all, with the identified ADL or IADL;

(d) Shared benefit, which means:

(i) A client and their paid caregiver will both share in the benefit of an IADL task being performed; or

(ii) Two or more clients in a multi-client household will benefit from the same IADL task(s) being performed.

(e) Age appropriate or child under (age), means proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. The department presumes children have a responsible adult(s) in their life to provide assistance with personal care tasks. Refer to the developmental milestones table in WAC 388-106-0130; or

(f) Client declines, which means you ~~((do))~~ will not want assistance with the task.

"Supplemental security income (SSI)" means the federal program as described under WAC 182-500-0100.

"Support provided" means the highest level of support provided (to you) by others in the last seven days before the assessment, even if that level of support occurred only once. The department determines support provided as follows:

(a) No set-up or physical help provided by others;

(b) Set-up help only provided, which is the type of help characterized by providing you with articles, devices, or preparation necessary for greater ~~((self))~~ independence in performance of the activity. (For example, set-up help includes but is not limited to giving or holding out an item or cutting up prepared food);

(c) One-person physical assist provided;

(d) Two- or more person physical assist provided; or

(e) Activity did not occur during entire seven-day period.

"You/your" means the client.

AMENDATORY SECTION (Amending WSR 14-04-097, filed 2/4/14, effective 3/7/14)

WAC 388-106-0130 How does the department determine the number of hours I may receive for in-home care? (1) The department assigns a base number of hours to each classification group as described in WAC 388-106-0125.

(2) The department will adjust base hours to account for informal supports, shared benefit, and age appropriate functioning (as those terms are defined in WAC 388-106-0010), and other paid services that meet some of an individual's need for personal care services ~~((including adult day health, as follows))~~:

(a) The CARE tool determines the adjustment for ~~((status and assistance available of))~~ informal supports, shared benefit, and age appropriate functioning. A numeric value is assigned to the status and/or assistance available coding for ADLs and IADLs based on the table below. The base hours assigned to each classification group are adjusted by the numeric value in subsection (b) below.

Meds	Status	Assistance Available	Numeric Value
Medication Management The rules to the right apply for all Self Performance codes except independent which is not counted as a qualifying ADL	Unmet	N/A	1
	Met	N/A	0
	Decline	N/A	0
	Age appropriate functioning	N/A	0
	Partially met	<1/4 time	.9
		1/4 to 1/2 time	.7
		1/2 to 3/4 time	.5
		>3/4 time	.3

Unscheduled ADLs	Status	Assistance Available	Value
Bed mobility, transfer, walk in room, eating, toilet use The rules to the right apply for all Self Performance codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted as qualifying ADLs	Unmet	N/A	1
	Met	N/A	0
	Decline	N/A	0
	Age appropriate functioning	N/A	0
	Partially met	<1/4 time	.9
		1/4 to 1/2 time	.7
		1/2 to 3/4 time	.5
		>3/4 time	.3

Scheduled ADLs	Status	Assistance Available	Value
Dressing, personal hygiene, bathing The rules to the right apply for all Self Performance codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent which are not counted as qualifying ADLs	Unmet	N/A	1
	Met	N/A	0
	Decline	N/A	0
	Age appropriate functioning	N/A	0
	Partially met	<1/4 time	.75
		1/4 to 1/2 time	.55
		1/2 to 3/4 time	.35
		>3/4 time	.15

IADLs	Status	Assistance Available	Value
Meal preparation, Ordinary housework, Essential shopping	Unmet	N/A	1
	Met	N/A	0
	Decline	N/A	0
	Child under (age) (see subsection (7))	N/A	0
	Partially met or Shared benefit	<1/4 time	
1/4 to 1/2 time			.2
1/2 to 3/4 time			.1
>3/4 time			.05

IADLs	Status	Assistance Available	Value
Travel to medical	Unmet	N/A	1
	Met	N/A	0
	Decline	N/A	0
	Child under (age) (see subsection (7))	N/A	0
	Partially met	<1/4 time	
1/4 to 1/2 time			.7
1/2 to 3/4 time			.5
>3/4 time			.3

Key: > means greater than; < means less than

(b) To determine the amount adjusted for informal support, shared benefit and/or age appropriate functioning, the numeric values are totaled and divided by the number of qualifying ADLs and IADLs needs. The result is value A. Value A is then subtracted from one. This is value B. Value B is divided by three. This is value C. Value A and Value C are summed. This is value D. Value D is multiplied by the "base hours" assigned to your classification group and the result is the number of adjusted in-home hours. Values are rounded to the nearest hundredths (e.g., .862 is rounded to .86).

(3) Effective July 1, 2012, after adjustments are made to your base hours, as described in subsection (2), the department may add on hours based on off-site laundry, living more than forty-five minutes from essential services, and wood supply, as follows:

Condition	Status	Assistance Available	Add On Hours	
Offsite laundry facilities, which means the client does not have facilities in own home and the caregiver is not available to perform any other personal or household tasks while laundry is done. The status used for the rules to the right is for housekeeping.	Unmet	N/A	8	
	Met	N/A	0	
	Declines	N/A	0	
	Child under (age) (see subsection (7))	N/A	0	
	Partially met or Shared benefit:	<1/4 time		8
		between 1/4 to 1/2 time		6
		between 1/2 to 3/4 time		4
		>3/4 time		2

Condition	Status	Assistance Available	Add On Hours
Client is >45 minutes from essential services (which means he/she lives more than 45 minutes one-way from a full-service market). The status used for the rules to the right is essential shopping.	Unmet	N/A	5
	Met	N/A	0
	Declines	N/A	0
	Child under (age) (see subsection (7))	N/A	0
	Partially met or Shared benefit	<1/4 time	5
between 1/4 to 1/2 time		4	
between 1/2 to 3/4 time		3	
>3/4 time		2	
Wood supply used as sole source of heat.	Unmet	N/A	8
	Met	N/A	0
	Declines	N/A	0
	Child under (age) (see subsection (7))	N/A	0
	Partially met or Shared benefit	<1/4 time	8
between 1/4 to 1/2 time		6	
between 1/2 to 3/4 time		4	
>3/4 time		2	

(4) In the case of New Freedom consumer directed services (NFCDS), the department determines the monthly budget available as described in WAC 388-106-1445.

(5) The result of ~~((actions))~~ adjustments under subsections (2) and (3) is the maximum number of hours that can be used to develop your plan of care. The department must take into account cost effectiveness, client health and safety, and program limits in determining how hours can be used to address your identified needs. In the case of New Freedom consumer directed services (NFCDS), a New Freedom spending plan (NFSP) is developed in place of a plan of care.

(6) ~~((You and your case manager will work to determine what services you choose to receive))~~ If you are eligible ~~((The))~~, your hours may be used to authorize the following services:

(a) Personal care services from a home care agency provider and/or an individual provider.

(b) Home delivered meals (i.e. a half hour from the available hours for each meal authorized) per WAC 388-106-0805.

(c) Adult day care (i.e. a half hour from the available hours for each hour of day care authorized) per WAC 388-106-0805.

(d) A home health aide (i.e., one hour from the available hours for each hour of home health aide authorized) per WAC 388-106-0300.

(e) A private duty nurse (PDN) if you are eligible per WAC 388-106-1010 or 182-551-3000 (i.e. one hour from the available hours for each hour of PDN authorized).

(f) The purchase of New Freedom consumer directed services (NFCDS).

(7) If you are a child applying for personal care services:

(a) The department presumes that children have legally responsible parents or other responsible adults who provide informal support for the child's ADLs, IADLs and other needs. The department will not provide services or supports that are within the range of activities that a legally responsi-

ble parent or other responsible adult would ordinarily perform on behalf of a child of the same age who does not have a disability or chronic illness.

(b) The department will complete a CARE assessment and use the developmental milestones tables below when assessing your ability to perform personal care tasks.

(c) Your status will be coded as age appropriate for ADLs when your self performance is at a level expected for persons in your assessed age range, as indicated by the developmental milestones table in subpart (e), unless the circumstances in subpart (d) below apply.

(d) The department will code status as other than age appropriate for an ADL, despite your self performance falling within the developmental age range for the ADL on the developmental milestones table in subpart (e) below, if the department determines during your assessment that your level of functioning is related to your disability and not primarily due to your age and the frequency and/or the duration of assistance required for a personal care task is not typical for a person of your age.

(e)

Developmental Milestones for Activities of Daily Living (ADLs)		
ADL	Self-Performance	Developmental Age Range
Medication Management	Independent Self-Directed Assistance Required	Child under 18 years of age
	Must Be Adminis- tered	Child under 12 years of age
Locomotion in Room	Independent Supervision Limited Extensive	Child under 4 years of age
	Total	Child under 13 months of age

Developmental Milestones for Activities of Daily Living (ADLs)		
ADL	Self-Performance	Developmental Age Range
Locomotion Outside Room	Independent Supervision	Child under 6 years of age
	Limited Extensive	Child under 4 years of age
	Total	Child under 25 months of age
Walk in Room	Independent Supervision Limited Extensive	Child under 4 years of age
	Total	Child under 19 months of age
Bed Mobility	Independent Supervision Limited	Child under 37 months of age
	Extensive	Child under 25 months of age
	Total	Child under 19 months of age
Transfers	Independent Supervision Limited Extensive	Child under 3 years of age
	Total	Child under 19 months of age
Toilet Use	Independent Supervision Limited Extensive	Child under 7 years of age
	Total	Child under 37 months of age
Eating	Independent Supervision Limited Extensive	Child under 3 years of age
	Total	Child under 13 months of age
Bathing	Independent Supervision	Child under 12 years of age
	Physical help/Transfer only	Child under 5 years of age
	Physical help/part of bathing	Child under 6 years of age
	Total	Child under 37 months of age
Dressing	Independent Supervision	Child under 12 years of age
	Limited	Child under 8 years of age
	Extensive	Child under 7 years of age
	Total	Child under 25 months of age
Personal Hygiene	Independent Supervision	Child under 12 years of age
	Limited Extensive	Child under 7 years of age
	Total	Child under 37 months of age

(f) For IADLs, the department presumes that children typically have legally responsible parents or other responsible adults to assist with IADLs. Status will be coded as "child under (age)" the age indicated by the developmental milestones table for IADLs in subpart (h) unless the circumstances in subpart (g) below apply. (For example, a sixteen year old child coded as supervision in self-performance for telephone would be coded "child under eighteen.")

(g) If the department determines during your assessment that the frequency and/or the duration of assistance required is not typical for a person of your age due to your disability or your level of functioning, the department will code status as other than described in subpart (h) for an IADL.

(h)

Developmental Milestones for Instrumental Activities of Daily Living			
IADL	Self-Performance	Developmental Age Range	
Finances Telephone Wood Supply	Independent Supervision Limited Extensive Total	Child under 18	
	Transportation	Independent Supervision Limited Extensive	Child under 18
		Total	Child under 16
Essential Shopping Housework Meal Prep	Independent Supervision Limited Extensive	Child under 18	
	Total	Child under 12	

(i) The department presumes that children have legally responsible parents or other responsible adults who provide support for comprehension, decision-making, memory and continence issues. These items will be coded as indicated by the additional developmental milestones table in subpart (k) unless the circumstances in subpart (j) below apply.

(j) If the department determines during your assessment that due to your disability, the support you are provided for comprehension, decision making, memory and continence issues is substantially greater than is typical for a person of your age, the department will code status as other than described in subpart (k) below.

(k)

Additional Developmental Milestones coding within CARE			
Name of CARE panel	Question in CARE Panel	Developmental Milestone coding selection	Developmental Age Range
Speech/Hearing: Comprehension	"By others client is"	Child under 3	Child under 3
Psych Social: MMSE	"Can MMSE be administered?"	= No	Child under 18
Psych Social: Memory/ Short Term	"Recent memory"	Child under 12	Child under 12
Psych Social: Memory/ Long Term	"Long Term memory"	Child under 12	Child under 12
Psych Social: Depression	"Interview"	Unable to obtain	Child under 12
Psych Social: Decision Making	"Rate how client makes decision"	Child under 12	Child under 12
Bladder/Bowel:	"Bladder/Bowel Control" is which of the following:		
	Continent Usually Continent Occasionally Incontinent	Age appropriate	Child under 12
	Frequently Incontinent	Age appropriate	Child under 9
	Incontinent all or most of the time	Age appropriate	Child under 6
Bladder/Bowel:	"Appliance and programs"	Potty Training	Child under 4

(8) If you are a child applying for personal care services and your status for ADLs and IADLs is not coded per the developmental age range indicated on the milestones tables under subsection (7), the department will assess for any informal supports or shared benefit available to assist you with each ADL and IADL. The department will presume that children have legally responsible parents or other responsible adults who provide informal support to them.

(a) The department will code status for an ADL or IADL as met if your assessment shows that your need for assistance with a personal care task is fully met by informal supports.

~~(b) ((The department will presume that you have informal supports, defined in WAC 388-106-0130, available to assist you with your ADLs and IADLs over three-fourths but not all of the time. This presumption may be rebutted if you provide specific information during your assessment to indicate why you do not have support available three-fourths or more of the time to assist you with a particular ADL or IADL.~~

~~(e))~~ Informal supports for school-age children include supports actually available through a school district, regardless of whether you take advantage of those available supports.

~~((c))~~ (c) When you are living with your legally responsible parent(s), the department will ~~((take into account their legal obligation to care for you when determining the availability of informal supports))~~ presume that you have informal supports available to assist you with your ADL and IADLs over three-fourths but not all the time. Legally responsible parents include natural parents, step parents, and adoptive parents. Generally, a legally responsible parent will not be considered unavailable to meet your personal care needs simply due to other obligations such as work or additional children because such obligations do not decrease the parent's

legal responsibility to care for you regardless of your disabilities. However, the department will consider factors that cannot reasonably be avoided and which prevent a legally responsible parent from providing for your personal care needs when determining the amount of informal support available to you. You may rebut the department's presumption by providing specific information during your assessment to indicate why you do not have informal supports available at least three-fourths of time to assist you with a particular ADL or IADL.

WSR 15-21-001
PERMANENT RULES
HEALTH CARE AUTHORITY
 (Washington Apple Health)

[Filed October 8, 2015, 7:50 a.m., effective November 8, 2015]

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

Purpose: The agency is amending this rule to ensure that clients who receive cost-of-living adjustments (COLA) to their Social Security benefits remain eligible for the kidney disease program (KDP). In some cases, a COLA puts clients slightly above the KDP income limit. This amendment will exempt Social Security benefit COLAs and the first \$20 of monthly unearned income from KDP eligibility, consistent with SSI-related medical rules.

Citation of Existing Rules Affected by this Order: Amending WAC 182-540-022.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 15-18-010 on August 21, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 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: October 8, 2015.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-23-065, filed 11/18/13, effective 1/1/14)

WAC 182-540-022 Kidney disease program (KDP)—Income eligibility. (1) A household must have ~~((net))~~ countable income at or below two hundred twenty percent of the federal poverty level ~~((in order))~~ for a person to be eligible for the kidney disease program (KDP). See WAC 182-540-021 to determine who must be included in the household and whose income counts.

(2) The KDP contractor ~~((makes the determination of))~~ determines the household's income based upon the information reported in the KDP application and may request additional verification if the information in the application is not clear. A KDP applicant must provide verification of all household income (and expenses, if self-employed) to the KDP contractor ~~((in order for eligibility for KDP to be determined))~~ for a KDP eligibility determination.

(3) The ~~((following income is not counted))~~ agency does not count the following income:

(a) The first twenty dollars per month of unearned income for the entire household;

(b) Cost-of-living adjustments (COLAs) to Social Security disability benefits and supplemental security income (SSI) benefits that take effect in the calendar year of a KDP eligibility determination and any subsequent COLAs to these benefits received by:

(i) The applicant;

(ii) The applicant's spouse; or

(iii) Other family members included in the household size.

(c) Fifty percent of the gross earned income of any person included in the household size;

~~((b))~~ (d) Income received by a dependent child age eighteen ~~((years of age and))~~ or younger who is not included in the household size; or

~~((e))~~ (e) Any income source which is specifically excluded by federal law.

(4) The agency follows rules for SSI-related ~~((medic-aid))~~ medical described in chapter 182-512 WAC to determine what income types count when determining eligibility for KDP.

WSR 15-21-004
PERMANENT RULES
NORTHWEST CLEAN
AIR AGENCY

[Filed October 8, 2015, 3:03 p.m., effective November 8, 2015]

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

Purpose: The goal of this rule making is three-fold. First is to clarify and reconcile the rule language to better match state laws including adjusting the thresholds for both the first and second stages of impaired air quality and incorporating the ability to call a second stage of impaired air quality without having called a first stage of impaired air quality. Second is to update enforcement of opacity standard language to make implementation consistent and less confusing. Third is to correct a typographical error in the section numbering.

Citation of Existing Rules Affected by this Order: Amending sections 309 and 506 of the Regulation of the Northwest Clean Air Agency.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 15-17-108 on August 18, 2015.

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

Date Adopted: October 8, 2015.

Mark Buford
Deputy Director

AMENDATORY SECTION

SECTION 309 - REASONABLY AVAILABLE CONTROL TECHNOLOGY

309.1 Reasonably Available Control Technology (RACT) is required for all existing sources except as otherwise provided in RCW 70.94.331(9).

309.2 Where current controls are determined by the NWCAA to be less than RACT, the NWCAA shall define RACT for that source or source category and issue a rule or

an order under NWCAA 121 requiring the installation of RACT.

309.3 RACT for each source category containing three or more sources shall be determined by rule, except as provided in NWCAA 309.4.

309.4 Source-specific RACT determinations may be performed under any of the following circumstances:

(A) For replacement or substantial alteration of existing control equipment under NWCAA 300.13;

(B) When required by the federal Clean Air Act;

(C) For sources in source categories containing fewer than three sources;

(D) When an air quality problem, for which the source is a contributor, justifies a source-specific RACT determination prior to development of a categorical RACT rule; or

(E) When a source-specific RACT determination is needed to address either specific air quality problems, for which the source is a significant contributor, or source-specific economic concerns.

309.5 The Control Officer shall have the authority to perform a RACT determination, to hire a consultant to perform relevant RACT analyses in whole or in part, or to order the owner or operator to perform RACT analyses and submit the results to the NWCAA.

~~(309.6)~~ 309.6 In determining RACT, the NWCAA shall utilize the factors set forth in the RACT definition in NWCAA 200 and shall consider RACT determinations and guidance made by the EPA, other states, and local authorities for similar sources, and other relevant factors. In establishing or revising RACT requirements, the NWCAA shall address, where practicable, all air contaminants deemed to be of concern for that source or source category.

309.7 The NWCAA shall assess a fee to be paid by any source included in a RACT determination to cover the direct and indirect costs of developing, establishing, or reviewing categorical or source-specific RACT determinations. The fee for RACT determinations shall be as established in NWCAA 324.6. The amount of the fee may not exceed the direct and indirect costs of establishing the requirement for the particular source or the pro rata portion of the direct and indirect costs of establishing the requirement for the relevant source category.

309.8 Emission standards and other requirements contained in rules or regulatory orders in effect at the time of operating permit issuance shall be considered RACT for purposes of operating permit issuance or renewal.

309.9 Replacement or substantial alteration of control equipment under NWCAA 300.13 shall be subject to the New Source Review fees under NWCAA 324.2, in lieu of RACT fees under this section.

PASSED: March 14, 2013 AMENDED: October 8, 2015

AMENDATORY SECTION

SECTION 506 - SOLID FUEL BURNING DEVICES

506.1 PURPOSE.

This Section establishes emission standards, certification standards and procedures, curtailment rules, and fuel restrictions for solid fuel burning devices in order to maintain com-

pliance with the National Ambient Air Quality Standards (NAAQS) for fine particulates and to further the policy of the NWCAA as stated in Section 102 of this Regulation.

506.2 DEFINITIONS.

Unless a different meaning is clearly required by context, words and phrases used in this Section shall have the following meaning as defined in WAC (~~(Chapter)~~) 173-433-030 (~~(WAC)~~):

ADEQUATE SOURCE OF HEAT - (~~(means)~~) a permanently installed furnace or heating system, connected or disconnected from its energy source, designed to maintain 70 (~~(seventy)~~) degrees Fahrenheit at a point three feet above the floor in all normally inhabited areas of a residence or commercial establishment.

ANTIQUÉ WOOD STOVE - (~~(is)~~) a stove manufactured before 1940 which has a current market value substantially greater than a common wood stove manufactured during the same time period.

CERTIFIED - (~~(means)~~) a solid fuel-burning device that meets emission performance standards when tested by an accredited independent laboratory and labeled according to procedures specified by EPA in 40 CFR 60 (~~(the Code of Federal Regulation—Title 40 Part 60)~~) Subpart AAA - Standards of Performance for Residential Wood Heaters as amended through July 1, 1990; or a solid fuel-burning device that has been determined by Ecology to meet emission performance standards, pursuant to RCW 70.94.457.

COOKSTOVE - (~~(means)~~) a wood-fired appliance designed primarily for cooking food and containing an integrally built in oven, with an internal temperature indicator and oven rack, around which the fire is vented, as well as a shaker grate, ash pan and an ash clean-out below the firebox. Any device with a fan or heat channels used to dissipate heat into the room shall not be considered a cookstove.

ECOLOGY - (~~(means)~~) the Washington State Department of Ecology.

EPA - (~~(means)~~) the United States Environmental Protection Agency.

SEASONED WOOD - (~~(means)~~) wood of any species that has been sufficiently dried so as to contain 20 (~~(twenty)~~) percent or less moisture by weight.

SOLID FUEL BURNING DEVICE - (~~(means)~~) a device that burns wood, coal, or any other non-gaseous or non-liquid fuels, and includes wood stoves or any device burning any solid fuel except those prohibited by WAC 173-433-120. This also includes devices used for aesthetic or space-heating purposes in a private residence or commercial establishment, which have a heat input of less than one million British thermal units per hour.

SUBSTANTIALLY REMODELED - (~~(means)~~) any alteration or restoration of a building exceeding 60 (~~(sixty)~~) percent of the appraised value of such building within a 12 (~~(twelve)~~)-month period.

TREATED WOOD - (~~(means)~~) wood of any species that has been chemically impregnated, painted, or similarly modified to improve resistance to insects, weathering or deterioration.

WOOD STOVE - (~~(means)~~) a wood-fueled appliance, other than a cookstove, capable of and intended for residential space heating and domestic water heating that meets the criteria contained in (⁽²⁾)40 CFR 60 Subpart AAA - Standards

of Performance for Residential Wood Heaters⁽²⁾). Any combination of parts, typically consisting of but not limited to, doors, legs, flue pipe collars, brackets, bolts and other hardware, when manufactured for the purpose of being assembled, with or without additional owner supplied parts, into a wood stove, is considered a wood stove.

506.3 EMISSION PERFORMANCE STANDARDS.

(A) Solid Fuel Burning Devices - A person shall not advertise to sell, offer to sell, sell, bargain, exchange, or give away any solid fuel burning device in Washington unless it has been certified and labeled in accordance with procedures and criteria specified in ⁽²⁾40 CFR 60 Subpart AAA - Standards of Performance for Residential Wood Heaters⁽²⁾, complies with WAC 173-433-100, and meets the following particulate air contaminant emission standards:

(1) Two and one-half grams per hour for catalytic wood stoves; and

(2) Four and one-half grams per hour for all other solid fuel burning devices.

(B) Fireplaces. A person shall not advertise to sell, offer to sell, sell, bargain, exchange, or give away a factory built fireplace unless it meets the 1990 EPA standards for wood-stoves or equivalent standard that may be established by the state building code council by rule ~~((has been tested in accordance with procedures and criteria specified in WAC 51-50-31200))~~. Particulate emission factors for factory-built fireplaces shall not exceed 7.3 g/kg.

506.4 INSTALLATION OF SOLID FUEL HEATING DEVICES.

(A) No new solid fuel burning device shall be installed in new or existing buildings unless such device is either Oregon Department of Environmental Quality Phase II or ~~((US))~~ EPA certified to meet current Washington State standards or a pellet stove either certified or exempt from certification in accordance with ~~((CFR))~~ 40 CFR ~~((Part))~~ 60 Subpart AAA - Standards of Performance for Residential Wood Heaters. ~~((RCW 70.94.455))~~

(B) No used solid fuel burning device shall be installed in new or existing buildings unless such device has been certified and labeled in accordance with either Oregon Department of Environmental Quality Phase II or US EPA certification standard or is a pellet stove either certified or exempt from certification by the US EPA in accordance with ~~((CFR))~~ 40 CFR ~~((Part))~~ 60 Subpart AAA - Standards of Performance for Residential Wood Heaters. ~~((RCW 70.94.455))~~

(C) An adequate source of heat other than a solid fuel burning device is required in all new and substantially remodeled residential and commercial construction. The rule shall apply to

(1) Areas designated by a county to be an urban growth area under chapter ((RCW)) 36.70A RCW; and

(2) Areas designated by the EPA as being in non~~((~~)attainment for particulate matter. ~~((RCW 70.94.455 and WAC 51-40-0510))~~

(D) After January 1, 1997, no fireplace, except masonry fireplaces, shall be offered for sale unless such fireplace meets the 1990 EPA standards for wood stoves or equivalent standard established by the state building code council by rule in accordance with RCW 70.94.457 ((RCW)).

506.5 OPACITY STANDARDS.

(A) Opacity level. A person shall not cause or allow emission of a smoke plume from any solid fuel burning

device to exceed an average of 20 ~~((twenty))~~ percent opacity for six consecutive minutes in any one-hour period. This restriction does not apply during the starting of a new fire for a period not to exceed 20 ~~((twenty))~~ minutes in any four-hour period.

(B) Test methods and procedures. EPA reference method 9 - Visual Determination of Opacity of Emissions from Stationary Sources shall be used to determine compliance with this Section.

(C) Enforcement. Smoke visible from a chimney, flue or exhaust duct in excess of the opacity standard shall constitute prima facie evidence of unlawful operation of an applicable solid fuel burning device. ~~((This Regulation will be enforced on a complaint basis and through observations of inspectors certified to read opacity.))~~ This presumption may be refuted by demonstration that the smoke was not caused by an applicable solid fuel burning device.

506.6 PROHIBITED FUEL TYPES

(A) A person shall not burn any substance, other than properly seasoned fuel-wood, in a solid fuel burning device ~~((RCW 70.94.477))~~.

(B) A person shall not burn paper in a solid fuel burning device other than the amount of colorless paper necessary to start a fire.

506.7 LIMITATIONS ON BURNING WOOD FOR HEAT

(A) Any person in a residence or commercial establishment which has an adequate source of heat without burning wood shall:

(1) Not burn wood in any solid fuel burning device whenever the Ecology or NWCAA ~~((department))~~ has determined under RCW 70.94.715 that any air pollution episode exists in that area;

(2) Not burn wood in any solid fuel burning device except those which are either Oregon Department of Environmental Quality Phase II or US EPA certified or certified by Ecology under RCW 70.94.457(1) or a pellet stove either certified or issued an exemption by the US EPA in accordance with 40 CFR ((40)) Part 60 ~~((Subpart AAA - Standards of Performance for Residential Wood Heaters (RCW 70.94.455))~~), in the geographical area and for the period of time that a first stage of impaired air quality has been determined, by NWCAA or ~~((any authority))~~ Ecology, for that area. ~~((A first stage of impaired air quality is reached when:))~~

(a) A first stage of impaired air quality is reached when forecasted meteorological conditions are predicted to cause ~~((F))~~ fine particulate(s) levels to exceed ~~((are at an ambient level of thirty-five))~~ 35 micrograms per cubic meter, measured on a 24 ~~((twenty-four))~~ hour average, within 48 hours, except for areas of fine particulate nonattainment or areas at risk for fine particulate nonattainment and

(b) A first stage burn ban for impaired air quality may be called for a county containing fine particulate nonattainment areas or areas at risk for fine particulate nonattainment, and when feasible only for the necessary portions of the county, when forecasted meteorological conditions are predicted to cause fine particulate levels to reach or exceed 30 micrograms per cubic meter, measured on a 24-hour average, within 72 hours; and ~~((Forecasted meteorological conditions are not expected to allow levels of fine particulates to decline below thirty-five (35) micrograms per cubic meter for a~~

period of forty-eight hours or more from the time that the fine particulates are measured at the trigger level; and))

~~(3)(a) ((B))~~ Not burn wood in any solid fuel burning device in a geographical area and for the period of time that a second stage of impaired air quality has been determined by NWCAA or ~~((any authority))~~ Ecology, for that area. A second stage of impaired air quality is reached when:

~~(i) ((H))~~ A first stage of impaired air quality has been in force and ~~has~~ not been sufficient to reduce the increasing fine ~~((particle F))~~particulate~~((F))~~ pollution trend;

~~(ii) ((2))~~ Fine particulates are at an ambient level of ~~25~~ ~~((sixty))~~ micrograms ~~((60))~~ per cubic meter measured on a ~~24~~ ~~((twenty-four))~~ hour average; and

~~(iii) ((3))~~ Forecasted meteorological conditions are not expected to allow levels of fine particulates to decline below ~~25~~ ~~((sixty))~~ micrograms ~~((60))~~ per cubic meter for a period of ~~24~~ ~~((forty-eight))~~ hours or more from the time that the fine particulates are measured at the trigger level.

~~(b) A second stage burn ban may be called by Ecology or NWCAA without calling a first stage burn ban only when all of the following occur:~~

~~(i) Fine particulate levels have reached or exceeded 25 micrograms per cubic meter, measured on a 24-hour average;~~

~~(ii) Meteorological conditions have caused fine particulate levels to rise rapidly;~~

~~(iii) Meteorological conditions are predicted to cause fine particulate levels to exceed the 35 micrograms per cubic meter, measured on a 24-hour average, within 24 hours; and~~

~~(iv) Meteorological conditions are highly likely to prevent sufficient dispersion of fine particulate.~~

~~(c) In fine particulate nonattainment areas or areas at risk for fine particulate nonattainment, a second stage burn ban may be called for the county containing the nonattainment area or areas at risk for nonattainment, and when feasible only for the necessary portions of the county, without calling a first stage burn ban only when (3)(b)(i), (ii), and (iv) of this subsection have been met and meteorological conditions are predicted to cause fine particulate levels to reach or exceed 30 micrograms per cubic meter, measured on a 24-hour average, within 24 hours.~~

~~(B) ((C))~~ Upon declaration and for the duration of an air pollution episode or a first or second stage burn ban, new solid fuel shall be withheld from any solid fuel burning device that is restricted from operating under subsection (A) of this section. ~~((Any person responsible for a solid fuel burning device already in operation at the time curtailment is declared under a stage of impaired air quality or an episode shall extinguish that device by withholding new solid fuel for the duration of the episode.))~~

~~(C) ((D))~~ ~~((Compliance with the above solid fuel burning device curtailment rules may be enforced after a time period of 3 hours has elapsed from the time the curtailment is declared.))~~ Smoke visible from a chimney, flue or exhaust duct after three hours has elapsed from the time of declaration of an air pollution episode or a first or second stage burn ban ~~((the curtailment))~~ shall constitute prima facie evidence of unlawful operation of a solid fuel burning device if that solid fuel burning device is restricted from operating under subsection (A) of this section ~~((an applicable solid fuel burning device))~~. This presumption may be refuted by demonstration

that the smoke was not caused by a ~~((n applicable))~~ restricted solid fuel burning device.

506.8 GENERAL EMISSION STANDARDS.

(A) Emissions detrimental to persons or property. No person shall cause or permit the emission of any air contaminant from any solid fuel burning device, in sufficient amounts and of such characteristics and duration as is likely to be injurious or cause damage to human health, plant or animal life, or property; or which unreasonably interfere with enjoyment of life and property.

(B) Odors. Any person who shall cause or allow the generation of any odor from any solid fuel burning device which may interfere with any other property owner's use or enjoyment of his property must use recognized good practice and procedures to reduce these odors to a reasonable minimum.

506.9 EXEMPTIONS.

(A) The provisions of Section 506.7 shall not apply to any person who possesses a valid written exemption approved by the NWCAA. The NWCAA may allow written exemptions to any person who demonstrates any of the following to the satisfaction of the NWCAA:

(1) An economic need to burn solid fuel for residential space heating purposes by qualifying for energy assistance under the low income energy assistance program.

(2) That his/her heating system, other than a solid fuel heating device, is inoperable for reasons other than his/her own actions.

(a) That there is no adequate source of heat and the structure was constructed or substantially remodeled prior to July 1, 1992.

(b) That there is no adequate source of heat and the structure was constructed or substantially remodeled after July 1, 1992 and is outside an urban growth area, as defined in chapter ((RCW)) 36.70A RCW.

(B) Written exemptions shall be valid for a period determined by the NWCAA and shall not exceed one year from the date of approval.

PASSED: July 14, 2005 AMENDED: November 8, 2007,
October 8, 2015

WSR 15-21-005

PERMANENT RULES

GAMBLING COMMISSION

[Order 715—Filed October 8, 2015, 3:54 p.m., effective November 8, 2015]

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

Purpose: The commissioners adopted a petition for rule change from a licensed manufacturer. This rule change allows house-banked card rooms to connect progressive jackpots from multiple tables within their own card room. The jackpots can be from different card games from different manufacturers. The games must have the same probability of winning the jackpot prize and have the same winning hands. Currently, progressive jackpots can only be connected for the same card game.

Citation of Existing Rules Affected by this Order:
Amending WAC 230-15-685.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.0282.

Adopted under notice filed as WSR 15-17-105 on August 18, 2015.

Changes Other than Editing from Proposed to Adopted Version: At their October 2015 commission meeting, the commissioners voted to amend language to clarify that card games that are not from the same manufacturer may be connected to the progressive jackpots system, when the requirements in subsection (6) are met. When gambling equipment connects progressive jackpots between different manufacturers, the gambling equipment must be submitted for testing for interoperability in accordance with WAC 230-06-050.

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 1, Repealed 0.

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

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

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

Date Adopted: October 8, 2015.

Susan Newer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-13-060, filed 6/18/13, effective 7/19/13)

WAC 230-15-685 Restrictions on progressive jackpots. House-banked card game licensees operating progressive jackpots must follow these restrictions and procedures:

(1) Progressive jackpot funds must accrue according to the rules of the game; and

(2) At each gambling table, licensees must prominently post the amount of the progressive jackpot that players can win; and

(3) Licensees must record the beginning amount of each progressive jackpot offered, including explanations for any increases or decreases in the prize amount offered. Licensees must keep this documentation with the progressive jackpot records; and

(4) Licensees may establish a maximum limit on a progressive jackpot prize. If licensees establish a limit, they must make the amount equal to, or greater than, the amount of the jackpot when they imposed the limit. They must prominently post a notice of the limit at or near the game; and

(5) Licensees may connect progressive jackpots offered on the same card game on multiple tables within the same licensed location.

(6) Licensees may connect progressive jackpots on different card games on multiple tables within the same licensed location when the following requirements are met. Only one

progressive jackpot may be operated on a card game at a time and the card games must have:

(a) The same probability of winning the jackpot prize; and

(b) The same winning hand; and

(c) A progressive meter on each table that increases incrementally each time a wager is made.

(7) When gambling equipment will allow a progressive jackpot between different manufacturers, the gambling equipment must be submitted for testing for interoperability in accordance with WAC 230-06-050.

WSR 15-21-019

PERMANENT RULES

STATE BOARD OF EDUCATION

[Filed October 12, 2015, 2:55 p.m., effective November 12, 2015]

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

Purpose: The purpose of the proposed amendments was to change the timeline for designation of required action districts. For the past two years, the data for determining required action districts has not been available in January and the office of superintendent of public instruction (OSPI) has not made a recommendation of required action districts until March. For the past two years, the state board of education (SBE) has adopted emergency rules to accommodate a new timeline. The proposed amendment changed the timeline for designation of required action districts from January to "by the end of March."

Citation of Existing Rules Affected by this Order: Amending WAC 180-17-010.

Statutory Authority for Adoption: RCW 28A.657.120.

Adopted under notice filed as WSR 15-08-099 on April 1, 2015.

Changes Other than Editing from Proposed to Adopted Version: The proposed rule was amended to clarify that SBE will designate required action districts upon receipt of the recommendation from OSPI. The final rules also returned the designation of required action districts to January. The reason for this change is that public comment received expressed concern that designating districts later in the year would compress the time available for districts to develop their required action plans. SBE members also had this concern, and an amendment to the proposed rule was adopted by SBE returning the designation of required action districts to January.

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 1, Repealed 0.

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

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

Date Adopted: July 9, 2015.

Ben Rarick
Executive Director

AMENDATORY SECTION (Amending WSR 10-23-083, filed 11/16/10, effective 12/17/10)

WAC 180-17-010 Designation of required action districts. Upon receipt of the recommendation from the office of the superintendent of public instruction to designate school districts for required action, in January of each year(;) the state board of education shall designate ((as a required action district a school district recommended by the superintendent of public instruction for such designation)) such districts as required action districts.

**WSR 15-21-022
PERMANENT RULES**

DEPARTMENT OF AGRICULTURE

[Filed October 13, 2015, 8:05 a.m., effective December 1, 2015]

Effective Date of Rule: December 1, 2015.

Purpose: These rules establish the fees charged by the plant services program for activities authorized in chapters 15.13, 15.14, and 17.24 RCW. The nursery inspection program's revenue is almost solely derived from inspection, testing, and license fees. This increase in fees will enable the program to cover the costs associated with performing these activities. This increase in revenue is necessary for the financial stability of the program.

Citation of Existing Rules Affected by this Order: Amending WAC 16-401-027, 16-401-041, 16-470-912, 16-470-917, and 16-470-921.

Statutory Authority for Adoption: RCW 15.13.260, 15.13.280, 15.14.015, and 17.24.131.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 15-18-086 on August 31, 2015.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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 5, Repealed 0.

Date Adopted: October 13, 2015.

Derek I. Sandison
Director

AMENDATORY SECTION (Amending WSR 09-23-005, filed 11/5/09, effective 1/1/10)

WAC 16-401-027 Schedule of fees and charges—Applicable rates and charges. The following rates apply for requested inspection services:

(1) Fee or Charge:	
Hourly rate—business hours	\$ ((40.00)) <u>50.00</u>
Hourly rate—nonbusiness hours	\$ ((51.00)) <u>75.00</u>
Certificate issued at time of inspection	No charge
Certificate issued more than twenty-four hours after the inspection	\$ ((19.50)) <u>24.50</u>
Additional certificates	\$ ((6.50)) <u>8.25</u>
Fumigation lot or container fee	\$ ((16.00)) <u>25.00</u>
Certificate of plant health for noncommercial movement	\$ ((6.80)) <u>10.00</u>
Compliance agreement	\$ ((40.00)) <u>50.00</u>
Inspection tags or stickers (lots of 250)	\$ ((7.80)) <u>10.00</u> per lot

(2) Mileage at the established office of financial management rate (schedule A), per diem and other authorized travel expenses at actual cost, and travel time at the applicable hourly rate may be assessed for requested inspections that are not a part of a regular work schedule. Such charge may be prorated among applicants if more than one applicant is provided service during a workday or trip when mileage and/or per diem are applicable.

(3) Inspections for phytosanitary certification, including growing season field inspections, are provided at the applicable hourly rate provided in subsection (1) of this section except where an alternate certification inspection fee is provided in statute, in rule, or by a written agreement between the department and an industry entity, university, or public agency. When growing season field inspections for phytosanitary certification and regulatory inspections are performed simultaneously, the first two hours of inspection each calendar year for nurseries licensed under WAC 16-401-041 (1)(b) or (2)(a); and the first four hours of inspection per calendar year for nurseries licensed under WAC 16-401-041 (1)(c) or (2)(b), are without charge.

There is no additional charge for the first phytosanitary certificate issued at the time of the inspection.

(4) Inspection and certification of nonplant material or equipment for sanitation (freedom from soil or pests) by visual examination or through witnessing a prescribed treatment (steam cleaning, hydro-washing, etc.) is charged at the applicable hourly rate.

(5) Witnessing and certification of fumigation is charged at the applicable hourly rate, plus a per lot or container fee.

(6) The department may also charge fees and/or surcharges for transmittal to federal agencies.

(7) The department may issue a certificate of plant health for noncommercial movement of plant materials between states by unlicensed persons, up to a maximum of five plants, and provided that the plants are brought to a plant services office for inspection.

Note: When two or more types of inspection, provided in this section, are performed simultaneously, only one hourly rate applies. One certificate for one service is issued at no charge.

AMENDATORY SECTION (Amending WSR 09-23-005, filed 11/5/09, effective 1/1/10)

WAC 16-401-041 Nursery dealer license fees. Annual license fees as established below, must accompany the application for nursery dealer license:

(1) Retail nursery dealer license fee:

(a) Gross business sales of horticultural plants and turf less than two thousand five hundred dollars ~~\$(42.00)~~ 52.50

(b) Gross business sales of horticultural plants and turf between two thousand five hundred dollars and fifteen thousand dollars, the license fee is ~~\$(91.00)~~ 115.00

(c) Gross business sales of horticultural plants and turf of fifteen thousand dollars or more ~~\$(182.00)~~ 228.00

(2) Wholesale nursery dealer license fee:

(a) Gross business sales of horticultural plants and turf less than fifteen thousand dollars ~~\$(91.00)~~ 115.00

(b) Gross business sales of horticultural plants and turf of fifteen thousand dollars or more ~~\$(182.00)~~ 228.00

(3) As provided in RCW 15.13.285, a surcharge of twenty percent of the base rate, in addition to the fees established on all classes of licenses in subsections (1) and (2) of this section, is established.

(4) Permit fee for those types of sales and organizations exempted from licensing requirements by RCW 15.13.270 ~~\$(6.70)~~ 10.00

AMENDATORY SECTION (Amending WSR 12-22-028, filed 10/31/12, effective 12/1/12)

WAC 16-470-912 Schedule of fees and charges—Applicable fees and charges. (1) Hourly rate.

Hourly rate - Business hours	\$(50.00) <u>62.50</u>
Hourly rate - Nonbusiness hours	\$(65.00) <u>93.75</u>

(2) Laboratory diagnostic services, except as provided in subsection (3) or (4) of this section, are charged at the applicable hourly rate plus materials.

(3) Plant pathology laboratory diagnostic fees:

(a) Nematode assay (plant material) \$38.00

(b) Nematode assay (soil) \$60.00

(c) Assay for dwarf bunt (TCK), Karnal bunt, flag smut \$60.00

Note: Fee is for one sample for one specific organism, unless more than one organism can be detected in a single test without additional inputs.

(4) The department reserves the right to provide service by written agreement at a single, negotiated cost or at a negotiated rate for projects with at least one of the following characteristics:

(a) Projects greater than one hundred samples;

(b) Projects requiring materials not readily available; or

(c) Projects requiring special handling, multiple phase test procedures, or prolonged incubation periods.

The rate charged shall not be less than the cost to the department of performing the tests.

AMENDATORY SECTION (Amending WSR 12-22-028, filed 10/31/12, effective 12/1/12)

WAC 16-470-917 Schedule of fees and charges—Fees for post entry inspection services. (1) Post entry site inspection and/or permit review and approval . . . ~~\$(101.00)~~ 125.00

(2) Subsequent inspections of post entry plant materials are provided at the applicable hourly rate.

(3) Post entry inspection fees may be waived for state universities, United States Department of Agriculture researchers, and other public entities.

AMENDATORY SECTION (Amending WSR 12-22-028, filed 10/31/12, effective 12/1/12)

WAC 16-470-921 Schedule of fees and charges—Miscellaneous fees. (1) Mileage at the established office of financial management rate (schedule A), per diem and other authorized travel expenses at actual cost, and travel time at the applicable hourly rate may be assessed for requested inspections or post entry inspections that are not a part of a regular work schedule. Such charges may be prorated among applicants if more than one applicant is provided service during a workday or trip when per diem is applicable.

(2) Postage, special handling services and other miscellaneous costs exceeding five dollars will be charged back to the applicant at the actual cost.

(3) Certificates of inspection, phytosanitary certificates, and other official documents will be provided to the applicant subject to the charges and conditions established below:

Fee or Charge:	
Certificate issued at time of inspection	No charge
Certificate issued more than twenty-four hours after the inspection	\$(24.00) <u>30.00</u>
Additional certificates	\$(8.00) <u>10.00</u>
Fumigation lot or container fee	\$(20.00) <u>25.00</u>
Compliance agreement	\$(50.00) <u>62.50</u>

WSR 15-21-063
PERMANENT RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)

[Filed October 19, 2015, 12:12 p.m., effective November 19, 2015]

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

Purpose: The amendments replace outdated references to Title 388 WAC, MAA, etc., clarify language, add definitions for "billing instructions" and "provider guides," and remove terms that are not used in Title 182 WAC.

Citation of Existing Rules Affected by this Order: Amending WAC 182-500-0015, 182-500-0085, and 182-500-0105.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 15-18-072 on August 28, 2015.

Changes Other than Editing from Proposed to Adopted Version: In WAC 182-500-0085, the agency struck the following language because providers do not need prior authorization to write a prescription: "Prior authorization" is the requirement that a provider must request, on behalf of a client and when required by rule or agency billing instructions, the agency or the agency's designee's approval to provide a health care service ~~or write a prescription~~ before the client receives the health care service, ~~or~~ prescribed drug, device, or drug-related supply. The agency 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."

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

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

Date Adopted: October 19, 2015.

Wendy Barcus
Rules Coordinator

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

WAC 182-500-0015 Medical assistance definitions—
B. "Benefit package" means the set of health care service categories included in a client's ~~((eligibility))~~ health care program. See ~~((the table in WAC 388-501-0060))~~ WAC 182-501-0060.

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

"Billing instructions" means provider guides. See WAC 182-500-0085.

"Blind" is a category of medical program eligibility that requires:

(a) A central visual acuity of 20/200 or less in the better eye with the use of a correcting lens((-); or

(b) A field of vision limitation so the widest diameter of the visual field subtends an angle no greater than twenty degrees from central.

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

AMENDATORY SECTION (Amending WSR 14-06-045, filed 2/26/14, effective 3/29/14)

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, naturopathy, 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))~~ a health care professional authorized by law or rule to prescribe drugs ~~((for current clients of Washington's health care programs administered by the agency))~~ to Washington apple health (WAH) clients.

"Prior authorization" is the requirement that a provider must request, on behalf of a client and when required by rule or agency billing instructions, the ~~((agency's))~~ agency or the agency's designee's approval to ~~((render))~~ provide a health care service ~~((or write a prescription in advance of))~~ before the client ~~((receiving))~~ receives the health care service ~~((or))~~ prescribed drug, device, or drug-related supply. The ~~((agency's))~~ agency 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 device(s)" means a preventive, replacement, corrective, or supportive device~~((s))~~ prescribed by a physician or other licensed practitioner ~~((of the healing arts))~~, within the scope of his or her practice ~~((as defined by))~~ under 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 law((s and rules)), and has:

((1) Has) (a) A signed 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)) WAH clients; or

((2) Has) (b) 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)) WAH clients enrolled in the MCO plan.

"Provider guide" means an agency publication that describes a specific benefit covered under WAH, which includes client eligibility verification instructions, provider responsibilities, authorization requirements, coverage, billing, and how to complete and submit claims.

"Public institution" see "institution" in WAC 182-500-0050.

AMENDATORY SECTION (Amending WSR 14-06-068, filed 2/28/14, effective 3/31/14)

WAC 182-500-0105 Medical assistance definitions—
T. (~~"Tax filing terms"~~:

(1) **"Tax filer"** means a person who expects to file a tax return.

(2)) **"Tax dependent"** means a person for whom ((another person claims a deduction for a personal exemption under Section 151 of the Internal Revenue Code of 1986 for a taxable year)) a tax filer claims an exemption on his or her federal income tax return. A tax dependent may be either a ((qualified)) qualifying child or a ((qualified)) qualifying relative ((as defined below and under Section 152 of the Internal Revenue Code of 1986 for a taxable year.

(a) **"Qualified child"** means a child who meets the criteria to be claimed as a tax dependent based on one of the following relationships to the tax filer: Natural, adoptive, step, or foster child; natural, adoptive, step or half-sibling; or a descendant of any of the above; and meets the following criteria:

(i) The child is:

(A) Under the age of nineteen;

(B) Under the age of twenty-four and a full-time student;

or

(C) Any age and permanently or totally disabled.

(ii) The child lived in the tax filer's household for more than one-half of the year;

(iii) The child provided for less than one-half of his/her own support for the year; and

(iv) The child is not filing a joint tax return for the year unless the return is filed only as a claim for a refund of taxes.

(b) **"Qualified relative"** means a person who:

(i) Cannot be claimed as a qualifying child or the qualifying child of another tax filer;

(ii) Has lived in the tax filer's household for the full year or is related to the tax filer in one of the ways listed below and the relationship has not been ended by death or divorce:

(A) The tax filer's child, stepchild, foster child, or a descendant of any of them;

(B) A sibling, half-sibling or step-sibling;

(C) A parent, grandparent, or other direct ancestor, but not a foster parent;

(D) A niece, nephew, aunt, or uncle;

(E) In-law relationships (son, daughter, father, mother, brother or sister-in-law).

(iii) Has gross income below an annual threshold set by the Internal Revenue Service (IRS) (three thousand nine hundred dollars for tax year 2013 with some exceptions). See IRS publication 501 for more information; and

(iv) Relies on the tax filer to pay over one-half of their total support for the year.

(3) **"Nonfiler"** means a person who is not required to file a tax return and also includes those who are not required to file but choose to file for another purpose, such as to claim a reimbursement of taxes paid)) under 26 U.S.C. Sec. 152 for a taxable year.

"Tax filer" means a person who expects to file a federal income tax return.

"Third party" means an entity other than the medicaid agency or the agency's designee that ((is or)) may be liable to pay all or part of the cost of health care for a Washington apple health (WAH) client.

"Third-party liability (TPL)" means the legal responsibility of an identified third party or parties to pay all or part of the cost of health care for a ((Washington apple health ())) WAH((?)) client. ((A WAH client's obligation to help establish TPL is described in)) See client obligations in establishing TPL under WAC 182-503-0540.

"Title XIX" is the portion of the federal Social Security Act, 42 U.S.C. 1396 et seq., that authorizes funding to states for health care programs. Title XIX is also called medicaid.

"Title XXI" is the portion of the federal Social Security Act, 42 U.S.C. 1397aa et seq., that authorizes funding to states for the children's health insurance program (CHIP).

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

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

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

WSR 15-21-068

PERMANENT RULES

DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed October 20, 2015, 9:48 a.m., effective November 20, 2015]

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

Purpose: WAC 246-841-535, the definition of nationally certified medical assistant used to determine who may take the medical assistant to nursing assistant bridge program was

more restrictive in the nursing commission rule than the department of health's definition used to determine who may become a state credentialed medical assistant-certified. The commission amended its definition of medical assistant to better align with the department's definition.

Citation of Existing Rules Affected by this Order: Amending WAC 246-841-535.

Statutory Authority for Adoption: RCW 18.88A.087.

Adopted under notice filed as WSR 15-09-087 on April 17, 2015.

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

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

Date Adopted: September 11, 2015.

Paula R. Meyer MSN, RN, FRE
Executive Director

AMENDATORY SECTION (Amending WSR 11-16-042, filed 7/27/11, effective 8/27/11)

WAC 246-841-535 Alternative program—Definitions. The definitions in this section apply throughout WAC 246-841-530 through 246-841-585.

(1) **Home care aide-certified** means any person certified under chapter 18.88B RCW.

(2) **Medical assistant-certified** (~~means a person certified by a medical assistant program accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) or the American Association of Medical Assistants and the American Medical Association~~) under chapter 18.88A RCW, means a person who holds a current certification from one of the certifying organizations in WAC 246-827-0200(2).

(3) **Nursing assistant-certified** means any person certified under chapter 18.88A RCW.

WSR 15-21-089

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed October 21, 2015, 8:58 a.m., effective November 21, 2015]

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

Purpose: WAC 458-20-153 (Rule 153) Funeral (~~directors~~) establishments, explains the application of business and occupation (B&O), retail sales, and use taxes to the business activities of funeral establishments. Rule 153 has been

amended to include a discussion of the taxability of prearrangement funeral service contracts and when income from such contracts is taxable. The changes also include a discussion of accommodation expenditures, out-of-state interment, sales to the federal government, and provide a few examples.

WAC 458-20-154 (Rule 154) Cemeteries, crematories, columbaria, explains the application of B&O, retail sales, and use taxes to the business activities of cemeteries. Rule 153 has been amended to include a discussion of the taxability of prearrangement contracts (commonly referred to as "pre-need" or "prepaid" arrangements). The changes also include a discussion of sales of interment rights, sales to the federal government, and provide a few examples.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-153 Funeral establishments and 458-20-154 Cemeteries, crematories, columbaria.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 15-12-122 on June 3, 2015.

Changes Other than Editing from Proposed to Adopted Version: Describe any changes other than editing from proposed to adopted version:

- For Rule 153, changes were made in the discussion of when tax liability arises under a prearrangement contract. Taxes are due at the time of fulfillment of the contract.
- For Rule 154, the discussion of endowment care was deleted from the rule. In addition, changes were made in the discussion of when tax liability arises under a prearrangement contract.

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: October 21, 2015.

Kevin Dixon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 83-07-033, filed 3/15/83)

WAC 458-20-153 Funeral (~~directors~~) establishments. (~~Funeral directors commonly quote a lump sum price for a standard funeral service, which includes the furnishing of a casket, professional services, care of remains, funeral coach, floral car and the securing of permits.~~)

Business and Occupation Tax

Retailing. The gross amount subject to the retail sales tax as outlined below, is taxable under the retailing classification of the business and occupation tax except that there may be deducted, for purposes of the business tax only, amounts received as reimbursement for expenditures for goods or services supplied by others who are not persons employed by, affiliated, or associated with the funeral home, when such amounts were advanced by the funeral home as an accommodation to the person paying for a funeral; but this deduction is allowed only if such expenditures advanced are billed to the person paying for the funeral at the exact amount of the expenditure advanced and such amounts are separately itemized in the billing statement to such person.

~~**Service and other business activities.** That portion of the gross income derived from engaging in business as a funeral director which is not taxable under the retailing classification is taxable as service and other business activities.~~

Retail Sales Tax

Where the funeral director quotes a lump sum price for a standard funeral service, which includes both the sale of tangible personal property and a charge for the rendering of service, the retail sales tax is collected upon one-half of such lump sum price. Clothing, outside case (a concrete or metal box into which the casket is placed) and other tangible personal property furnished in addition to the casket must be billed separately and the retail sales tax collected thereon.

The retail sales tax is not applicable to sales made to funeral directors of tangible personal property which is resold separate and apart from the rendition of professional services, provided the vendor receives from the funeral director a resale certificate in the usual form. The property so purchased includes the casket, clothing, outside case and acknowledgment cards.

The retail sales tax is applicable to sales to funeral directors of tangible personal property which is consumed in the rendition of professional services. The property so purchased includes all preparation room supplies (embalming fluid and other chemicals, solvents, waxes, cosmetics, eye caps, gauze, cotton, etc.). The sales tax is also applicable to sales to such persons of tools and equipment.

Use Tax

The use tax applies upon the use within this state of all articles of tangible personal property used in the performance of professional services when such articles have been purchased or acquired under conditions whereby the Washington retail sales tax has not been paid.)) (1) **Introduction.** This rule explains:

(a) The application of business and occupation (B&O), retail sales, and use taxes to the business activities of funeral establishments; and

(b) The application of tax to income derived from preparation funeral service contracts.

For the purposes of this rule, the term "funeral establishment" means a person licensed under RCW 18.39.145. Persons operating cemeteries should refer to WAC 458-20-154 (Cemeteries, crematories, columbaria) for tax-reporting information.

The funeral and cemetery board (board) regulates funeral establishments. For funeral establishments, refer to chapter 18.39 RCW and chapters 308-47, 308-48, and 308-49 WAC for information on the laws and administrative rules governing their business activities.

(2) **General tax reporting responsibilities.** The gross proceeds attributable to funeral activities are taxable when income is accrued in the books and records or when services are performed or merchandise is delivered, whichever is earlier.

The gross proceeds for funeral services are subject to tax under the service and other activities classification of the B&O tax. The gross proceeds from the retail sales of tangible personal property such as urns, caskets, clothing, outside casket cases, floral arrangements, plants, and acknowledgment cards are subject to tax under the retailing classification of the B&O tax. Funeral establishments are also responsible for collecting and remitting to the department of revenue (department) retail sales tax on retail sales of tangible personal property unless specifically exempt by law.

Funeral establishments commonly quote a lump sum price for a standard funeral service, which includes the furnishing of funeral services and tangible personal property. Where the funeral establishment quotes a lump sum price for a standard funeral service, which includes both the sale of a casket and a charge for the rendering of service, the retail sales tax is collected upon one-half of such lump sum price. Clothing, outside case (a concrete or metal box into which the casket is placed) and other tangible personal property furnished in addition to the casket must be billed separately and the retail sales tax collected thereon.

(a) **Reimbursement for accommodation expenditures.** Amounts received by a funeral establishment as reimbursement for goods or services provided by persons not employed by, affiliated, or associated with the funeral establishment may be deducted from the measure of the B&O tax if these amounts have been reported as gross income on the funeral establishment's excise tax return. These amounts are deductible if advanced to accommodate the customer and separately itemized on the billing statement or invoice in the exact amount of the expenditure. See RCW 82.04.4296.

(b) **In-state services with out-of-state interment.** A funeral establishment may perform funeral services or other services such as preparing the remains of a deceased person and placing the remains in a casket within Washington, with the remains subsequently removed to another state for interment. In these cases, the B&O and retail sales taxes generally apply to the income received from the sale of funeral merchandise and services as explained in this subsection. The merchandise (e.g., casket or urn) is delivered to the buyer within Washington when the merchandise is used in performing these services, even if interment subsequently occurs outside the state.

Neither B&O nor retail sales taxes apply to the sale of tangible personal property, without intervening use, delivered by the seller to the buyer at an out-of-state location. Refer to WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property) for more information regarding the delivery requirements for out-of-state sales of tangible personal property.

(c) **Sales to the federal government.** Sales of tangible personal property directly to the federal government are exempt from the retail sales tax, though the seller remains subject to B&O tax unless a specific exemption applies. Sales of tangible personal property to other persons, whether paid with federal funds or through a reimbursement arrangement, are fully subject to the retail sales tax. For additional information about the taxability of sales to the federal government, refer to WAC 458-20-190 (Sales to and by the United States—Doing business on federal reservations—Sales to foreign governments).

(3) **Funeral establishments purchasing tangible personal property.** Generally, retail sales tax is due when purchasing items used or consumed by funeral establishments when providing professional services. These items generally include, but are not limited to, equipment, tools, furniture, and all preparation room supplies such as embalming fluid and other chemicals, solvents, waxes, cosmetics, eye caps, gauze, and cotton.

(a) **Items purchased for resale.** Tangible personal property purchased for resale without intervening use is not subject to retail sales tax. Property commonly purchased for resale by funeral establishments includes, but is not limited to, urns, caskets, clothing, outside casket cases, flowers, plants, and acknowledgment cards. A funeral establishment purchasing tangible personal property for resale must provide to the seller, a reseller permit to document the wholesale nature of the sale as provided in WAC 458-20-102 (Reseller permits).

(b) **Deferred sales and use tax.** If the seller does not collect retail sales tax on a retail sale, the buyer must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. For detailed information regarding use tax, refer to WAC 458-20-178 (Use tax).

(4) **Prearrangement contracts and trusts.** Funeral establishments often enter into prearrangement contracts requiring them to provide funeral services and merchandise at some future date. Unless otherwise exempt, the law requires funeral establishments to place a portion of the cash purchase price of the contract (at least ninety percent as of the effective date of this section), excluding retail sales tax, into one or more prearrangement funeral service trusts. Withdrawal of trust funds may only occur upon fulfillment or cancellation of the contract. See chapter 18.39 RCW.

(a) **When does tax liability arise?** Amounts placed in prearrangement funeral service trusts are subject to excise tax upon withdrawal from the trust accounts. In other words, the amounts are taxable upon fulfillment or cancellation of the contract. Refer to subsection (2) of this section (General tax reporting responsibilities) for the tax treatment of amounts related to the fulfillment of the contract.

(b) **Retail sales tax - Prearrangement funeral service trust accounts.** If retail sales tax paid by the buyer is placed into a prearrangement funeral service trust account, the tax is reported upon fulfillment of the contract and remitted to the department at that time.

If retail sales tax paid by the buyer is not placed into a prearrangement funeral service trust account, the tax must be

reported on the excise tax return for the current reporting period and remitted to the department.

Upon cancellation of a prearrangement contract, a refund of retail sales tax remitted by a funeral establishment to the department is subject to the time limitations on refunds in RCW 82.32.060. For example, the law prohibits the department from refunding retail sales tax to a funeral establishment for a prearrangement contract that is canceled five years after the retail sales tax associated with the contract is remitted to the department. See WAC 458-20-229 (Refunds).

(c) **Contract cancellation and trust administration fees.** Amounts retained by the funeral establishment when a prearrangement funeral service contract is canceled are subject to the service and other activities B&O tax, except that any amounts allocable to a retail sale of merchandise are subject to retailing B&O and retail sales taxes. Administration fees deducted from a prearrangement funeral service trust by the administrator are also subject to the service and other activities B&O tax.

(5) **Sourcing.** In general, the place of sale occurs where the body is placed in the casket. For other sourcing information, refer to WAC 458-20-145.

(6) **Examples.** The following examples identify a number of facts and state a conclusion regarding the taxability of funeral establishments. The tax results of other situations must be determined after a review of all of the facts and circumstances. Use these examples only as a general guide.

(a) John and Jane Doe contracted with ABC Funeral Home (ABC) for the funeral of a deceased relative. John and Jane also purchased a casket from ABC. Funeral services purchased from ABC included preparing the body of the deceased for viewing, arranging for the final disposition, providing facilities for the visitation and funeral service, and transporting the deceased and the mourners to the place of final disposition.

(i) ABC owes service and other activities B&O tax for the funeral services charge.

(ii) The charge for the casket is subject to retailing B&O and retail sales taxes.

(b) John and Jane Doe entered into a prearrangement funeral service contract with ABC for the purchase of funeral merchandise and services to be provided upon their deaths. John and Jane made a down payment when signing the contract and agreed to pay the balance in sixty monthly installments. The merchandise and services John and Jane purchased include a casket, preparing the body of the deceased for viewing, arranging for the final disposition, providing facilities for the visitation and funeral service, and transporting the deceased and the mourners to the place of final disposition. The contract itemizes retail sales tax and provides for a finance charge on the unpaid balance of the contract. ABC places all receipts under the contract, including finance charges, into a prearrangement funeral service trust account.

ABC must report:

(i) The charges for funeral services and the finance charges under the service and other activities B&O tax classification at the time they perform the services; and

(ii) The charge for the casket is subject to retailing B&O and retail sales tax at the time it is used.

AMENDATORY SECTION (Amending WSR 78-06-083, filed 6/1/78)

WAC 458-20-154 Cemeteries, crematories, columbaria.

~~((Business and Occupation Tax~~

~~**Retailing.** The gross proceeds derived from the sale of tangible personal property taxable under the retail sales tax are also taxable under the retailing classification.~~

~~**Service and other business activities.** Income derived from rendition of interment services is taxable under the service and other business activities classification. Sales or transfers of plots, crypts, and niches for interment of human remains, irrespective of whether the document of transfer is called a deed or certificate of ownership, are charges for the right of interment, an interest similar to a license to use real estate, and the entire gross income therefrom is taxable under the service and other activities classification without any deduction for amounts set aside to funds for perpetual care.~~

Retail Sales Tax

Cemeteries, crematories and columbaria are subject to the provisions of the retail sales tax with respect to retail sales of boxes, urns, markers, vases, plants, shrubs, flowers, and other tangible personal property.

Revised June 1, 1978.

Effective July 1, 1978:)) (1) **Introduction.** This rule explains:

(a) The application of business and occupation (B&O), retail sales, and use taxes to the business activities of cemeteries;

(b) The application of B&O and retail sales taxes to amounts derived by cemeteries from prearrangement contracts (commonly referred to as "preneed" or "prepaid" arrangements) for the sale of interment rights, merchandise, and services.

For purposes of this rule, the term "cemeteries" includes cemeteries, burial parks, crematories, columbaria, and mausoleums. Refer to WAC 458-20-153 (Funeral establishments) for funeral establishment tax-reporting information.

The funeral and cemetery board regulates private cemeteries. Refer to Title 68 RCW and Title 98 WAC for information on the laws and administrative rules governing cemeteries.

(2) General tax reporting responsibilities.

(a) **Sales of interment services and interment rights.** The gross proceeds attributable to cemetery activities are taxable when the amounts are shown as income in the books and records or when services are performed or merchandise is delivered, whichever is earlier.

Amounts derived from interment services such as document recording, opening and closing the interment space, and placing grave liners or vaults in the interment space are subject to the service and other activities B&O tax. Sales or transfers of plots, crypts, and niches for the interment of human remains, irrespective of how the document of transfer is described (e.g., deed, certificate of ownership, or certificate of interment rights), are charges for the right of interment, an interest similar to a license to use real estate. Thus, the gross

income from sales of interment rights is subject to B&O tax under the service and other activities classification.

(b) **Sales of merchandise, including installing, repairing, cleaning, altering, or improving property.** The gross proceeds from retail sales of tangible personal property such as monuments, markers, memorials, nameplates, outer burial containers (e.g., vaults or grave liners), boxes, urns, vases, benches, plants, shrubs, and flowers are subject to B&O tax under the retailing classification. Retailing B&O tax also applies to charges by cemeteries for installing, repairing, cleaning, altering, or improving tangible personal property of or for consumers. Cemeteries are also responsible for collecting and remitting to the department of revenue (the department) retail sales tax on retail sales of tangible personal property and charges for installing, repairing, cleaning, altering, or improving tangible personal property of or for consumers unless specifically exempt by law. Thus, charges for installing markers and monuments are subject to retailing B&O and retail sales taxes.

(c) **Sales to the federal government.** Sales of tangible personal property directly to the federal government are exempt from the retail sales tax, though the seller remains subject to B&O tax unless a specific exemption applies. Sales of tangible personal property to other persons, whether paid with federal funds or through a reimbursement arrangement, are fully subject to the retail sales tax. For additional information about the taxability of sales to the federal government, refer to WAC 458-20-190 (Sales to and by the United States—Doing business on federal reservations—Sales to foreign governments).

(3) **Cemeteries purchasing tangible personal property.** Generally, retail sales tax is due when purchasing tangible personal property such as tools and supplies used or consumed by cemeteries when providing interment services.

(a) **Items purchased for resale.** Tangible personal property purchased for resale without intervening use is not subject to retail sales tax. Property commonly purchased for resale by cemeteries includes, but is not limited to, monuments, markers, memorials, nameplates, liners, vaults, boxes, urns, vases, benches, plants, shrubs, and flowers. Cemeteries purchasing tangible personal property for resale must provide to the seller a reseller permit to document the wholesale nature of the sale as provided in WAC 458-20-102 (Reseller permits).

(b) **Deferred sales and use tax.** If the seller does not collect retail sales tax on a retail sale, the buyer must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department, unless specifically exempt by law. For detailed information about use tax, refer to WAC 458-20-178 (Use tax).

(4) **Prearrangement contracts.** Cemeteries often enter into prearrangement contracts with customers for the purchase of merchandise and services, unconstructed crypts or niches, or undeveloped graves to be furnished at a future date. Executed contracts are paid in either a lump sum or in installments. Unless otherwise exempt, the law requires cemeteries to place a percentage of all funds collected in payment of each prearrangement contract in a prearrangement trust account. As of the effective date of this section, the amount required in a prearrangement trust account is equal to the

greater of (for merchandise) fifty percent of the contract price or the wholesale cost of the item, (for services) fifty percent of the contract price, or the direct cost of providing the service. Withdrawal of trust funds may only occur upon fulfillment or cancellation of the contract. See chapter 68.46 RCW.

(a) **When does tax liability arise?** Amounts placed into prearrangement trust accounts are subject to excise tax upon withdrawal from the prearrangement trust accounts. In other words, the amounts are taxable upon fulfillment or cancellation of the contract. Refer to subsection (2) of this section (General tax reporting responsibilities) for the tax treatment of amounts related to the fulfillment of the prearrangement contract.

(b) **Retail sales tax - Prearrangement trust accounts.** If retail sales tax paid by the buyer is placed into a prearrangement trust account, the retail sales tax is reported and remitted to the department upon fulfillment of the prearrangement contract.

If retail sales tax paid by the buyer is not placed into a prearrangement trust account, the tax must be reported on the excise tax return for the current reporting period and remitted to the department.

Upon cancellation of a prearrangement contract, a refund of retail sales tax remitted by a cemetery to the department is subject to the time limitations on refunds provided by RCW 82.32.060. For example, the law prohibits the department from refunding retail sales tax to a cemetery for a prearrangement contract that is canceled five years after the retail sales tax associated with the contract is remitted to the department. See also WAC 458-20-229 (Refunds).

(c) **Contract cancellation and trust administration fees.** Amounts retained by a cemetery from a canceled prearrangement contract are subject to service and other activities B&O tax, except that any amount allocable to a retail sale of merchandise is subject to retailing B&O and retail sales taxes. Administration fees deducted from a prearrangement trust fund by the administrator are also subject to the B&O tax under the service and other activities classification.

(5) **Examples.** The following examples identify a number of facts and then state a general conclusion regarding the taxability of cemeteries. The tax results of other situations must be determined after a review of all of the facts and circumstances. Use these examples only as a general guide.

(a) John and Jane Doe contracted with ABC Cemetery Association (ABC) for the interment of a deceased relative. The interment rights, merchandise, and services provided by ABC include an interment plot, an outer burial container, burial of the decedent, a marker, and installation of the marker. In addition, ABC charges a document-recording fee.

(i) ABC is subject to service and other activities B&O tax on charges for the interment plot, burial of the decedent, and the document-recording fee.

(ii) The charges for the outer burial container, marker, and marker installation are subject to retailing B&O and retail sales taxes.

(b) John and Jane Doe entered into a prearrangement contract with ABC for the purchase of interment rights, merchandise, and services provided upon their deaths. John and Jane made a down payment when signing the contract and agreed to pay the balance in sixty monthly installments. The

interment rights, merchandise, and services purchased by John and Jane include interment plots, outer burial containers, burial of their remains, markers, and installation of the markers. The contract itemizes retail sales tax and provides for a finance charge on the unpaid balance.

ABC places all receipts under prearrangement contracts, including the finance charges, into a prearrangement trust account.

ABC must report:

(i) The amounts received for the interment plots under the service and other activities B&O tax classification at the time the income is recognized on the books and records or upon fulfillment of the contract, whichever is earlier:

(ii) The amounts received for the burial of remains, the document-recording fee, and the finance charges under the service and other activities B&O tax classification at the time they perform the services; and

(iii) Retailing B&O and retail sales taxes on the sale of the outer burial containers, markers, and marker installation in the reporting period during which they deliver the merchandise and perform the installation.

WSR 15-21-090

PERMANENT RULES

UTILITIES AND TRANSPORTATION COMMISSION

[Docket U-140621, General Order R-582—Filed October 21, 2015, 9:18 a.m., effective January 1, 2016]

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 15-22 issue of the Register.

WSR 15-21-092

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed October 21, 2015, 10:27 a.m., effective November 21, 2015]

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

Purpose: WAC 458-20-124 (Rule 124) Restaurants, cocktail bars, taverns and similar businesses, explains the business and occupation (B&O) tax, retail sales tax and use tax applications to sales by restaurants and similar businesses. Rule 124 has been revised to clarify that the exemption from sales, use and B&O taxes only apply to meals provided to restaurant employees for free and that the exemption does not apply to meals provided to other employees that work outside the restaurant.

WAC 458-20-168 (Rule 168) Hospitals, nursing homes, assisted living facilities, adult family homes and similar health care facilities, explains the application of B&O, retail sales, and use taxes to persons operating such businesses. Rule 168 has been revised to remove language explaining RCW 82.04.4485 that allowed hospitals to take a B&O tax credit for the cost of purchasing mechanical lifting devices and other equipment meant to minimize patient handling by

health care providers. This exemption expired December 30, 2010, and is now past statute.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-124 Restaurants, cocktail bars, taverns and similar businesses and 458-20-168 Hospitals, nursing homes, assisted living facilities, adult family homes and similar health care facilities.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Other Authority: Chapter 86, Laws of 2015 (SSB 5275).

Adopted under notice filed as WSR 15-17-051 on August 13, 2015.

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

Date Adopted: October 21, 2015.

Kevin Dixon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-01-050, filed 12/12/13, effective 1/12/14)

WAC 458-20-124 Restaurants, cocktail bars, taverns and similar businesses. (1) **Introduction.** This rule explains how Washington's business and occupation (B&O) tax and retail sales tax (~~(applications)~~) apply to sales by restaurants and similar businesses. It discusses (~~(the)~~) sales of meals, beverages, and foods at prices inclusive of the retail sales tax. This rule also explains how discounted and promotional meals are taxed. Caterers and persons who merely manage the operations of a restaurant or similar business should refer to WAC 458-20-119 to determine their tax liability.

(a) **Restaurants, cocktail bars, and taverns.** The term "restaurants, cocktail bars, taverns, and similar businesses" means every place where prepared foods and beverages are sold and served to individuals, generally for consumption on the premises where sold.

(b) **Examples.** This rule contains examples that identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(c) **What other rules might apply?** In addition to information available on the department's web site pertaining to prepared food and beverage sales, the following rules may contain (~~(additional)~~) other relevant information:

- WAC 458-20-107 Requirement to separately state sales tax—Advertised prices including sales tax.
- WAC 458-20-119 Sales by caterers and food service contractors.
- WAC 458-20-131 Gambling activities.
- WAC 458-20-183 Amusement, recreation, and physical fitness services.
- WAC 458-20-187 (~~(Coin-operated)~~) Tax responsibility of persons owning and/or operating vending machines, amusement devices, and service machines.
- WAC 458-20-189 Sales to and by the state of Washington, counties, cities, towns, school districts, and fire districts.
- WAC 458-20-190 Sales to and by the United States—Doing business on federal reservations—Sales to foreign governments.
- WAC 458-20-243 Litter tax.
- WAC 458-20-244 Food and food ingredients.

(2) **Retailing B&O and retail sales taxes.** Sales (~~(to consumers)~~) of meals and prepared foods to consumers by restaurants, cocktail bars, taverns, and similar businesses are subject to the retailing tax classification and generally subject to retail sales tax. (~~(A)~~) Retail sales tax exemptions (~~(is)~~) are available for the following sales of meals:

(a) Prepared meals sold under a state-administered nutrition program for the aged as provided for in the Older Americans Act (Public Law 95-478 Title III) and RCW 74.38.040 (6);

(b) Prepared meals sold to or for senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW;

(c) Prepared meals sold to the federal government. (See WAC 458-20-190.) However, meals sold to federal employees are taxable, even if the federal employee will be reimbursed for the cost of the meals by the federal government;

(d) Effective July 1, 2011, RCW 82.08.9995 (~~(exempts meals from retail sales tax when)~~) provides a retail sales tax exemption for meals provided without specific charge by a restaurant to its employees (~~(by a restaurant)~~). Such meals are also (~~(are)~~) exempt from B&O tax and use tax. (RCW 82.04.750 and 82.12.9995.) If any charge is made for meals to employees, retailing B&O tax and retail sales tax apply.

For the purposes of (d) of this subsection, the following definitions apply:

(i) "Meal" means one or more items of prepared food or beverages other than alcoholic beverages. For the purposes of (d) of this subsection, "alcoholic beverage" and "prepared food" have the same meanings as provided in RCW 82.08.-0293.

(ii) "Restaurant" means any establishment having special space and accommodation where food and beverages are regularly sold to the public for immediate, but not necessarily on-site, consumption, but excluding grocery stores, mini-markets, and convenience stores. Restaurant includes, but is not limited to, lunch counters, diners, coffee shops, espresso shops or bars, concession stands or counters, delicatessens, and cafeterias. It also includes space and accommodations where food and beverages are sold to the public for immediate consumption that are located within:

- Hotels, motels, lodges, boarding houses, bed and breakfast facilities;

- Hospitals, office buildings, movie theaters; and
- Schools, colleges, or universities, if a separate charge is made for such food or beverages.

Restaurants also include:

- Mobile sales units that sell food or beverages for immediate consumption within a place, the entrance to which is subject to an admission charge; and
- Public and private carriers, such as trains and vessels, that sell food or beverages for immediate consumption if a separate charge is made for such food or beverages.

A restaurant is open to the public for purposes of this subsection if members of the public can be served as guests. "Restaurant" does not include businesses making sales through vending machines or through mobile sales units such as catering trucks or sidewalk vendors of food or beverage items.

(3) **Wholesaling B&O tax.** Persons making sales of prepared meals to persons who will be reselling the meals are subject to the wholesaling B&O tax classification. Sellers must obtain ~~((resale certificates for sales made before January 1, 2010, or))~~ a copy of the purchaser's reseller permit ~~((s for sales made on or after January 1, 2010, from their customers))~~ to document the wholesale nature of any sale as provided in ~~((WAC 458-20-102A (Resale certificates) and))~~ WAC 458-20-102 ~~((Reseller permits))~~. ~~Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014).~~

(4) **Service B&O tax.** Compensation received from owners of vending machines for allowing the placement of those machines at the restaurant, cocktail bar, tavern, or similar business is subject to the service and other business activities tax. Persons operating games of chance should refer to WAC 458-20-131.

(5) **Exemptions.** Effective October 1, 2013, ~~((chapter 13 (ESSB 5882), Laws of 2013;))~~ RCW 82.08.210 provides retail sales tax and use tax exemptions for sales to restaurants of products that impart flavor to food during the cooking process; and

- Are completely or substantially consumed by combustion during the cooking process; or
- That support the food during the cooking process and are comprised entirely of wood.

The exemption includes products such as wood chips, charcoal, charcoal briquettes, grapevines, and cedar grilling planks. The exemptions do not apply to any type of gas fuel. For the purpose of these exemptions, "restaurant" has the same meaning as found in RCW 82.08.9995. These exemptions are scheduled to expire July 1, 2017.

(6) **Deferred sales or use tax.** If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred sales or use tax directly to the department.

(a) Retail sales tax or use tax applies to purchases of dishes, kitchen utensils, linens, and items ~~((which))~~ that do not become an ingredient of the meal ~~((, are subject to retail sales tax))~~.

(b) Retail sales tax or use tax applies to purchases of equipment, repairs, appliances, and construction.

(c) ~~((The))~~ Retail sales tax or use tax does not apply to purchases of food or beverage products ~~((which))~~ that are ingredients of the meals being sold.

(d) Retail sales tax or use tax does not apply to purchases of paper plates, paper cups, paper napkins, toothpicks, or any other articles ~~((which))~~ that are furnished to customers, the first actual use of which renders such articles unfit for further use, ~~((are not subject to retail sales tax))~~ when purchased by restaurants and similar businesses making actual sales of meals.

(7) **Combination business.** Persons operating a combination of two kinds of food sales, of which one is the sale of prepared food (i.e., an establishment, such as a deli, selling food products ready for consumption and in bulk quantities), should refer to WAC 458-20-244 for taxability information.

(8) **Discounted meals, promotional meals, and meals given away.** Persons who sell meals on a "two for one" or similar basis are not giving away a free meal, but rather are selling two meals at a discounted price. Both the retailing B&O and retail sales taxes ~~((should be))~~ are calculated on the reduced price actually received by the seller.

Persons who provide meals free of charge to persons other than their employees are consumers of those meals. Persons operating restaurants or similar businesses are not required to report use tax on food and food ingredients given away, even if the food or food ingredients are part of prepared meals. For example, a restaurant providing meals to the homeless or hot dogs free of charge to a little league team will not incur a retail sales or use tax liability with respect to these items given away. A sale has not occurred, and the food and food ingredients exemption applies. Should the restaurant provide the little league team with soft drinks free of charge, the restaurant will incur a deferred retail sales or use tax liability with respect to those soft drinks. Soft drinks are excluded from the exemption for food and food ingredients. (See WAC 458-20-244.)

(9) **Sales of meals, beverages and food at prices ~~((including))~~ that include retail sales tax.** Persons may advertise and/or sell meals, beverages, or any kind of food product at prices including sales tax. Any person electing to advertise and/or make sales in this manner must clearly indicate this pricing method on the menus and other price information.

(10) **Spirits, beer, and wine restaurant licensees.** Restaurants operating under the authority of a license from the liquor control board to sell spirits, beer, and wine by the glass for on-premises consumption generally have both dining and cocktail lounge areas. Customers purchasing beverages or food in lounge areas ~~((are generally))~~ may not be given sales invoices, sales slips, or dinner checks, nor are they generally provided with menus.

(a) Many spirits, beer, and wine restaurant licensees elect to sell beverages or food at prices inclusive of the sales tax in the cocktail lounge area. If this pricing method is used, notification that retail sales tax is included in the price of the beverages or foods must be posted in the lounge area in a manner and location so that customers can see the notice without entering employee work areas. ~~((It will be presumed))~~ The department presumes that no retail sales tax has been collected or is included in the gross receipts when a notice is not

posted and the customer does not receive a sales slip or sales invoice separately stating the retail sales tax.

(b) The election to include retail sales tax in the selling price in one area of a location does not preclude the restaurant operator from selling beverages or food at a price exclusive of sales tax in another. For example, a spirits, beer, and wine restaurant licensee may elect to include the retail sales tax in the price charged for beverages in the lounge area, while the price charged in the dining area is exclusive of the sales tax.

(c) Spirits, beer, and wine restaurant licensees are not required to post actual drink prices in the cocktail lounge areas. However, if actual prices are posted, the advertising requirements expressed in WAC 458-20-107 must be met.

(11) **Gratuities.** Tips or gratuities representing donations or gifts by customers under circumstances which are clearly voluntary are not part of the selling price and not subject to tax. However, mandatory additions to the price by the seller, whether labeled service charges, tips, gratuities or otherwise (~~must be included in~~) are part of the selling price and are subject to both the retailing B&O and retail sales taxes.

(12) **Examples.**

(a) XYZ Restaurant operates both a cocktail bar and a dining area. XYZ has elected to sell drinks and appetizers in the bar at prices including the retail sales tax while selling drinks and meals served in the dining area at prices exclusive of the sales tax. There is a sign posted in the bar area advising customers that all prices include retail sales tax. Customers in the dining area are given sales invoices (~~which~~) that separately state the retail sales tax. As an example, a typical well drink purchased in the bar for \$2.50 inclusive of the sales tax, is sold for \$2.50 plus sales tax in the dining area. The pricing requirements have been satisfied and the drink and food totals are correctly reflected on the customers' dinner checks. XYZ may factor the retail sales tax out of the cocktail bar gross receipts when determining its retailing and retail sales tax liability.

(b) RBS Restaurant operates both a cocktail bar and a dining area. RBS has elected to sell drinks at prices inclusive of retail sales tax for all areas where drinks are served. It has a sign posted to inform customers in the bar area of this fact and a statement is also on the dinner menu indicating that any charges for drinks includes retail sales tax. Dinner checks are given to customers served in the dining area (~~which~~) that state the price of the meal exclusive of sales tax, sales tax on the meal, and the drink price including retail sales tax. Because the business has met the sign posting requirement in the bar area and has indicated on the menu that sales tax is included in the price of the drinks, RBS may factor the sales tax out of the gross receipts received from its drink sales when determining its taxable retail sales.

(c) Z Tavern sells all foods and drinks at a price inclusive of the retail sales tax. However, there is no mention of this pricing structure on its menus or reader boards. The gross receipts from Z Tavern's food and drink sales are subject to the retailing and retail sales taxes. Z Tavern has failed to meet the conditions for selling foods and drinks at prices including tax. Z Tavern may not assume that the gross receipts include any sales tax and may not factor the retail sales tax out of the gross receipts.

AMENDATORY SECTION (Amending WSR 14-18-019, filed 8/25/14, effective 9/25/14)

WAC 458-20-168 Hospitals, nursing homes, assisted living facilities, adult family homes and similar health care facilities. (1) **Introduction. This rule explains the application of business and occupation (B&O), retail sales, and use taxes to persons operating:**

- Hospitals as defined in RCW 70.41.020;
 - Nursing homes as defined in RCW 18.51.010;
 - Assisted living facilities as defined in RCW 18.20.020;
 - Adult family homes as defined in RCW 70.128.010;
- and
- Similar health care facilities.

(a) **Examples.** This rule contains examples (~~which~~) that identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(b) **What other rules might apply?** The department of revenue (department) has adopted other rules that may apply to the provision of health care. Readers may want to refer to the rules in the following list for additional information:

- (i) WAC 458-20-102(~~;~~) Reseller permits(~~;~~).
- (ii) WAC 458-20-111(~~;~~) Advances and reimbursements(~~;~~).
- (iii) WAC 458-20-150(~~;~~) Optometrists, ophthalmologists, and opticians(~~;~~).
- (iv) WAC 458-20-151(~~;~~) Dentists and other health care providers, dental laboratories, and dental technicians(~~;~~).
- (v) WAC 458-20-169(~~;~~) Nonprofit organizations(~~;~~).
- (vi) WAC 458-20-178(~~;~~) Use tax(~~;~~) and the use of tangible personal property.
- (vii) WAC 458-20-18801(~~;~~) Medical substances, devices, and supplies for humans—Drugs prescribed for human use—Medically prescribed oxygen—Prosthetic devices—Mobility enhancing equipment—Durable medical equipment(~~;~~).
- (viii) WAC 458-20-233(~~;~~) Tax liability of medical and hospital service bureaus and associations and similar health care organizations.

(2) **Personal and professional services of hospitals.** For the purpose of this subsection, the following definitions apply:

- **"Hospital"** - The term hospital is as defined in RCW 70.41.020. It includes hospitals that come within the scope of chapter 71.12 RCW, but only if they are also licensed under chapter 70.41 RCW.

- **"Public hospital" or "nonprofit hospital"** - Public or nonprofit hospitals are hospitals operated by the state or any of its political subdivisions or operated as nonprofit corporations.

(a) **Hospital services to patients.** Gross income earned by hospitals for providing personal or professional services to patients is subject to B&O tax as shown on the table below. RCW 82.04.260.

Report Income From Providing Personal or Professional Services	Time Frame Prior to May 1, 2010	Time Frame May 1, 2010 and After
For profit hospitals	Service and other B&O tax classification	For profit hospitals B&O tax classification
Public and nonprofit hospitals	Public or nonprofit hospitals B&O tax classification	Public or nonprofit hospitals B&O tax classification

Gross income earned for providing nonmedical services, interest received on patient accounts receivable, and amounts earned for providing transcribing services to physicians are subject to service and other activities B&O tax.

(b) **Clinics and departments operated by hospitals.** Gross income earned by medical clinics and departments providing services to patients and operated by a hospital is subject to B&O tax as shown in the table in subsection (2)(a) of this rule, where the operation of a medical clinic or department is covered by the hospital's license. If the clinic or department is not covered by the hospital's license, the gross income earned by a medical clinic or department providing services to patients is subject to B&O tax under the service and other activities B&O tax classification.

(i) **Example 1.** Acme Hospital is a nonprofit hospital that has a medical clinic that is physically located within the hospital. The clinic is open only during regular business hours (8:00 a.m. to 5:00 p.m.) and provides no domiciliary care or overnight facilities to its patients. The medical clinic is covered under Acme Hospital's hospital license. Gross income earned by the medical clinic for providing patient care is subject to the Public and Nonprofit Hospital B&O Tax Classification because the clinic is covered under the hospital license.

(ii) **Example 2.** Mountain Hospital is a for profit hospital with a cancer treatment facility that is located one mile from the hospital campus. The cancer treatment facility provides the type of services normally provided by hospitals to cancer patients but only during regular business hours. The cancer treatment facility is covered under the hospital's license. Gross income earned by the cancer treatment facility is subject to B&O tax as shown in the table in subsection (2)(a) of this rule because the facility is covered under the hospital's license.

(c) **Educational programs and services.** Amounts earned by public or nonprofit hospitals for providing educational programs and services to the general public are subject to B&O tax under the public or nonprofit hospitals classification if the educational programs and services are an integral, interrelated, and essential part of the hospital. Otherwise, such amounts are subject to B&O tax under the service and other activities tax classification. Educational services are considered an integral, interrelated, and essential part of the hospital only if they are unique and incidental to the provision of hospitalization services. Only those educational programs and services offered by a hospital that would be very difficult or impossible to duplicate by a person other than a hospital because of the specialized body of knowledge, facilities, and equipment required are unique and incidental to the provision of hospitalization services. Amounts received from educational programs and services are subject to the service and other activities B&O tax when the educational programs

or services could be provided by any physician, clinic, or trained lay person.

(3) **Personal and professional services from other medical clinics, nursing homes, and similar health care facilities.** Gross income earned by medical clinics, nursing homes, and similar health care facilities for providing personal and professional services is subject to service and other activities B&O tax. Physicians performing these services are also subject to service and other activities B&O tax on gross income earned. Services provided are ones not integral, interrelated, and an essential part of a hospital operation.

(4) **Assisted living facilities and domiciliary care.** For the purpose of this rule, "assisted living facilities" and "domiciliary care" have the same meaning as found in RCW 18.20.020. A preferential B&O tax rate is provided by RCW 82.04.2908 to persons operating assisted living facilities licensed under chapter 18.20 RCW ((are entitled to a preferential B&O tax rate. See RCW 82.04.2908)). Persons operating licensed assisted living facilities should report their gross income derived from providing room and domiciliary care to residents under the licensed assisted living facilities B&O tax classification. Refer to subsection (9)(h) of this rule for B&O tax deductions and exemptions available to persons operating assisted living facilities.

(5) **Hospitals or other health care facilities operated by the state of Washington.** ~~((The))~~ Gross income earned by the state of Washington for operating a hospital or other health care facilities, whether or not owned by the state, is not subject to B&O tax.

(6) **Nonprofit corporations and associations performing research and development.** A separate B&O tax rate applies to nonprofit corporations and nonprofit associations for gross income earned in performing research and development within this state, including medical research. See RCW 82.04.260.

(7) **Sales of tangible personal property.** Retailing B&O tax applies to sales of tangible personal property sold and billed separately from the performance of personal or professional services by hospitals, nursing homes, assisted living facilities, adult family homes, and similar health care facilities. This includes charges for making copies of medical records. ~~((In addition,))~~ The seller must collect retail sales tax from the buyer and remit the tax to the department unless the sale is specifically exempt by law.

(a) **Tangible personal property used in providing medical services to patients.** Retailing B&O and retail sales taxes do not apply to charges to a patient for tangible personal property used in providing medical services to the patient, even if separately billed. Tangible personal property used in providing medical services is not considered to have been sold separately from the medical services simply because

those items are separately invoiced. These charges, even if separately itemized, are for providing medical services.

For example, when a hospital charges a patient for drugs physically administered by the hospital staff, the charges to the patient are subject to B&O tax under the appropriate tax classification as shown in the table in subsection (2)(a) of this rule based on the hospital making the charge. On the other hand, charges for drugs sold to persons or their caregivers, either for self-administration or administration by a caregiver other than the seller, are subject to retailing B&O tax and retail sales tax unless specifically exempt by law. Readers should refer to WAC 458-20-18801 for detailed information regarding retail sales tax exemptions that apply to sales of prescription drugs and other medical items.

(b) **Sales of meals.** Although the sale of meals is generally considered to be a retail sale, hospitals, nursing homes, assisted living facilities, and similar health care facilities that furnish meals to patients or residents as a part of the services provided to those patients or residents are not considered to be making retail sales of meals. Thus amounts earned by hospitals, nursing homes, assisted living facilities, and similar health care facilities for furnishing meals to patients or residents are subject to B&O tax as part of the services provided to those patients or residents. Such amounts are not subject to retail sales tax.

RCW 82.08.0293 and 82.12.0293 provide, respectively, retail sales tax and use tax exemptions for prepared meals sold to senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW ((are exempt from retail sales and use taxes. RCW 82.08.0293 and 82.12.0293)). The exemptions apply to sales of prepared meals to not-for-profit organizations organized under chapter 24.03 or 24.12 RCW, that provide the meals to senior citizens, disabled persons, or low-income persons as a part of the patient services they render.

Hospitals, nursing homes, assisted living facilities, and similar health care facilities may have restaurants, cafeterias, or other dining facilities where meals are sold to doctors, employees, and visitors. These sales of meals are subject to retailing B&O and retail sales taxes. For additional information regarding the sale of meals, including meals furnished to employees, refer to WAC 458-20-124.

(8) **Industry reporting.** This subsection discusses common reporting issues affecting persons operating medical or other health care facilities.

(a) **Adjustments to revenues.** Many hospitals ((will)) provide medical care without charge or where some portion of the charge will be canceled. In other cases, medical care is billed to patients at "standard" rates but is later adjusted to reduce the charges to the rates established by contract with medicare, medicaid, or private insurers. In these situations, the hospital must initially include the total charges as billed to the patient as gross income unless the hospital's records clearly indicate the amount of income to which it will be entitled under its contracts with insurance carriers. Where tax returns are initially filed based on gross charges, an adjustment may be taken on future tax returns after the hospital has adjusted its records to reflect the actual amounts collected. In no event may the hospital reduce the amount of its current gross income by amounts that were not previously reported

on its excise tax return. If the tax rate changes from the time the B&O tax was first paid on the gross charges and the time of the adjustment, the hospital must file amended tax returns to report the B&O tax on the transaction as finally completed at the rate in effect when the service was performed.

(b) **What are the tax consequences when a hospital contracts with an independent contractor to provide medical services at the hospital?** When a hospital contracts with an independent contractor (service provider) to provide medical services, such as managing and staffing the hospital's emergency department, the hospital may not deduct the amount paid to the service provider from its gross income. If, however, the patients are alone liable for paying the service provider, and the hospital has no personal liability, either primarily or secondarily, for paying the service provider, other than as agent for the patients, then the hospital may deduct from its gross income the amount it receives and pays to the service provider.

In addition, the service provider is subject to service and other activities B&O tax on the amount earned from the hospital for providing these services for the hospital. If the service provider subcontracts with a third party, such as a physician or nurse, to help provide medical services as an independent contractor, the service provider may not deduct from its gross income amounts paid to the subcontractor where the service provider is personally liable, either primarily or secondarily, for paying the subcontractor. If, however, the hospital is alone liable for paying the subcontractor, and the service provider has no personal liability, either primarily or secondarily, other than as agent for the hospital, then the service provider may deduct from its gross income the amount it receives from the hospital and pays to the subcontractor. For additional information regarding deductible advances and reimbursements, refer to WAC 458-20-111.

(c) ~~((Can))~~ **May nursing homes ((or)) and assisted living facilities claim a B&O tax exemption for the rental of real estate?** No. The purpose of nursing homes is to provide medical care to their residents. The purpose of assisted living facilities is to assume general responsibility for the safety and well-being of their residents and to provide other services to residents such as housekeeping, meals, laundry, and activities. Assisted living facilities may also provide residents with assistance with activities of daily living, health support services, and intermittent nursing services. Because the purpose of nursing homes and assisted living facilities is to provide services and not to lease or rent real property, no part of the gross income of nursing homes or assisted living facilities ~~((may be))~~ is exempted from B&O tax as the rental of real estate.

(9) **B&O tax deductions, credits, and exemptions.** This subsection provides information about B&O tax deductions, credits, and exemptions available to persons operating medical or other health care facilities.

Deductible amounts should be included in the gross income reported on the excise tax return and then identified on the appropriate deduction detail line of the excise tax return to determine the amount of taxable income.

(a) **Organ procurement organizations.** RCW 82.04.-326 provides a B&O tax exemption for amounts earned by a qualified organ procurement organization under 42 U.S.C.

Sec. 273(b) in effect as of January 1, 2001, to the extent that the amounts are exempt from federal income tax (~~(are exempt from B&O tax. RCW 82.04.326)~~).

(b) **Contributions, donations, and endowment funds.** (~~(A B&O tax deduction is provided by)~~) RCW 82.04.4282 provides a B&O tax deduction for amounts received as contributions, donations, and endowment funds, including grants, which are not in exchange for goods, services, or business benefits. For example, a B&O tax deduction is allowed for donations received by a public hospital, as long as the donors do not receive any goods, services, or any business benefits in return. On the other hand, a public hospital (~~(is not allowed to)~~) may not take a B&O tax deduction on amounts earned from a state university for work-study programs or training seminars, because the university receives business benefits in return, as students receive education and training while enrolled in the university's degree programs.

(c) **Adult family homes.** (~~(The)~~) RCW 82.04.327 provides a B&O tax exemption for gross income derived from personal and professional services of adult family homes licensed by the department of social and health services (DSHS), or which are specifically exempt from licensing under the rules of DSHS (~~(is exempt from B&O tax under RCW 82.04.327. The)~~). This exemption (~~(under RCW 82.04.327)~~) does not apply to persons who provide home care services to clients in the clients' own residences.

For the purpose of this rule, "adult family home" has the same meaning as in RCW 70.128.010.

(d) **Nonprofit kidney dialysis facilities, hospice agencies, and nonprofit nursing homes and homes for unwed mothers.** (~~(B&O tax does not apply to)~~) RCW 82.04.4289 provides a B&O tax exemption for amounts earned as compensation for services rendered to patients or from sales of drugs for human use pursuant to a prescription furnished as an integral part of services rendered to patients by kidney dialysis facilities operated as a nonprofit corporation, nonprofit hospice agencies licensed under chapter 70.127 RCW, nonprofit nursing homes and homes for unwed mothers operated as religious or charitable organizations. (~~(RCW 82.04.4289)~~) This exemption applies only if no part of the net earnings earned by such an institution inures, directly or indirectly, to any person other than the institution entitled to this exemption. This exemption is available to nonprofit hospitals for income from the operation of kidney dialysis facilities if the hospital accurately identifies and accounts for the income from this activity.

Examples of nonprofit nursing homes include nursing homes operated by church organizations or by nonprofit corporations designed to assist alcoholics in recovery and rehabilitation. Nursing homes and homes for unwed mothers operated by governmental entities, including public hospital districts, do not qualify for the B&O tax exemption provided in RCW 82.04.4289.

(e) **Government payments made to health or social welfare organizations.** (~~(A B&O tax deduction is provided by)~~) RCW 82.04.4297 provides a B&O tax deduction to health or social welfare organizations, as defined in RCW 82.04.431, for amounts earned directly from the United States, any instrumentality of the United States, the state of Washington, or any municipal corporation or political subdivi-

vision of the state of Washington as compensation for health or social welfare services.

Effective August 1, 2011, RCW 82.04.4275 provides a B&O tax deduction for amounts health or social welfare organizations receive as compensation for providing child welfare services under a government-funded program.

A deduction is not allowed, however, for amounts that are received under an employee benefit plan. For purposes of the deduction provided by RCW 82.04.4297, "employee benefit plan" includes any plan, trust, commingled employee benefit trust, or custodial arrangement that is subject to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., or that is described in sections 125, 401, 403, 408, 457, and 501 (c)(9) and (17) through (23) of the Internal Revenue Code of 1986, as amended, or a similar plan maintained by a state or local government, or a plan, trust, or custodial arrangement established to self-insure benefits required by federal, state, or local law.

(f) **Amounts earned under a health service program subsidized by federal or state government.** RCW 82.04.-4311 provides a B&O tax deduction to:

- A public hospital that is owned by a municipal corporation or political subdivision; or
- A nonprofit hospital; or
- A nonprofit community health center; or
- A network of nonprofit community health centers, that qualifies as a health and social welfare organization as defined in RCW 82.04.431, (~~(may deduct from the measure of B&O tax)~~) for amounts earned as compensation for health care services covered under the federal medicare program authorized under Title XVIII of the federal Social Security Act; medical assistance, children's health, or other program under chapter 74.09 RCW; or for the state of Washington basic health plan under chapter 70.47 RCW. (~~(RCW 82.04.4311)~~) This deduction applies to amounts received directly or through a third party from the qualified programs or plans. However, (~~(this deduction)~~) it does not apply to amounts received from patient copayments or patient deductibles. For purposes of the deduction provided by RCW 82.04.4311, "community health center" means a federally qualified health center as defined in 42 U.S.C. Sec. 1396d as existed on August 1, 2005.

Example 3. Acme Hospital is a nonprofit hospital that qualifies as a health and social welfare organization as defined in RCW 82.04.431. Acme receives \$1,000 for providing health care services to Jane, who qualifies for the federal medicare program authorized under Title XVIII of the federal Social Security Act. Jane is covered in a health care plan that is a combination of medicare, which is B&O tax deductible by Acme, and a medicare plus plan, which is paid for by Jane and is not B&O tax deductible by Acme. Jane pays \$20 to Acme as patient copayments. Medicare pays \$600 to Acme for the health care services, and the medicare plus plan pays \$380. Acme may (~~(only)~~) deduct only the \$600 received from medicare.

(g) **Blood and tissue banks.** Except as otherwise provided, RCW 82.04.324 provides a B&O tax exemption for amounts earned by a qualifying blood bank, a qualifying tissue bank, or a qualifying blood and tissue bank (~~(are exempt~~

from B&O tax)) to the extent ((the)) such amounts are exempt from federal income tax. ((RCW 82.04.324.))

Effective October 1, 2013, RCW 82.04.324 provides that persons claiming this exemption must report amounts exempt under this subsection to the department on their excise tax returns. Except for persons whose primary business purpose is the collection, preparation, and processing of blood, the exemption per person is limited to one hundred fifty thousand dollars in tax per calendar year. RCW 82.04.324(3) is scheduled to expire June 30, 2016.

For the purposes of this exemption, the following definitions apply:

(i) **Qualifying blood bank.** "Qualifying blood bank" means a blood bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, that is registered under 21 C.F.R., Part 607 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood.

Effective October 1, 2013, the definition of "qualifying blood bank" includes an exempt organization, as described above, that tests or processes blood, on behalf of itself or other qualifying blood bank or qualifying blood and tissue bank. This definition is scheduled to expire June 30, 2016. "Qualifying blood bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(ii) **Qualifying tissue bank.** "Qualifying tissue bank" means a tissue bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, is registered under 21 C.F.R., Part 1271 as existing on June 10, 2004, and whose primary business purpose is the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, heart valve tissue, or human eye tissue. "Qualifying tissue bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute.

(iii) **Qualifying blood and tissue bank.** "Qualifying blood and tissue bank" means a bank that qualifies as an exempt organization under 26 U.S.C. 501 (c)(3) as existing on June 10, 2004, is registered under 21 C.F.R., Parts 607 and 1271 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood, and the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, and heart valve tissue.

Effective October 1, 2013, the definition of "qualifying blood and tissue bank" includes an exempt organization, as described in (g)(iii) of this subsection, that tests or processes blood, on behalf of itself or other qualifying blood bank or qualifying blood and tissue bank. "Qualifying blood and tissue bank" does not include a comprehensive cancer center that is recognized as such by the National Cancer Institute. This definition is scheduled to expire June 30, 2016.

(h) **Assisted living facilities.** RCW 82.04.4337 provides a B&O tax deduction to licensed assisted living facility operators ((may take a B&O tax deduction)) for amounts earned as compensation for providing adult residential care, enhanced adult residential care, or assisted living services

under contract with the department of social and health services authorized by chapter 74.39A RCW to residents who are medicaid recipients. ((RCW 82.04.4337.)) For the purpose of this rule, "adult residential care," "enhanced adult residential care," and "assisted living services" have the same meaning as in RCW 74.39A.009.

In addition, RCW 82.04.4264 provides a B&O tax ((does not apply to the)) exemption for amounts earned by a nonprofit assisted living facility licensed under chapter 18.20 RCW for providing room and domiciliary care to residents of the assisted living facility. ((RCW 82.04.4264.)) For purposes of this rule, "nonprofit assisted living facility" means an assisted living facility that is operated as a religious or charitable organization, is exempt from federal income tax under 26 U.S.C. Sec. 501 (c)(3), is incorporated under chapter 24.03 RCW, is operated as part of a nonprofit hospital, or is operated as part of a public hospital district.

(i) **Comprehensive cancer centers.** RCW 82.04.4265 provides a B&O tax ((does not apply to the)) exemption for amounts earned by a comprehensive cancer center to the extent ((the)) such amounts are exempt from federal income tax. ((RCW 82.04.4265.)) For purposes of this rule, "comprehensive cancer center" means a cancer center that has written confirmation that it is recognized by the National Cancer Institute as a comprehensive cancer center and that qualifies as an exempt organization under 26 U.S.C. Sec. 501 (c)(3) as existing on July 1, 2006.

(j) **Prescription drugs administered by the medical service provider.** ((Effective October 1, 2007,)) RCW 82.04.620 allows a deduction from the measure of tax for reporting under the service and other activities classification of the B&O tax (RCW 82.04.290) for amounts earned by physicians or clinics for drugs for infusion or injection by licensed physicians or their agents for human use pursuant to a prescription. This deduction only applies to amounts that:

- (i) Are separately stated on invoices or other billing statements;
- (ii) Do not exceed the then current federal rate; and
- (iii) Are covered or required under a health care service program subsidized by the federal or state government.

For the purpose of this deduction only, amounts that "are covered or required under a health care service program subsidized by the federal or state government" include any required drug copayments made directly from the patient to the physician or clinic.

(A) "Federal rate" means the rate at or below which the federal government or its agents reimburse providers for prescription drugs administered to patients as provided for in the medicare, Part B, drugs average sales price information resource as published by the United States Department of Health and Human Services, or any index that succeeds it.

(B) The deduction is available on an "all or nothing" basis against the total amount earned for a specific drug charge. If the total amount earned by the physician or clinic for a specific drug exceeds the federal reimbursement rate, none of the total amount earned qualifies for the deduction (including any required copayment received directly from the patient). In other words, a physician or clinic may not simply take an "automatic" deduction equal to the federal reimbursement rate for each drug.

(C) For physicians or clinics reporting taxes on the accrual basis, the total amount charged for a drug must be included in the gross income at the time of billing if it is in excess of the federal rate. However, in some cases the gross income from charges may be adjusted, as indicated in subsection (8)(a) of this rule. If such an adjustment to gross income is appropriate, the exemption discussed in this subsection may also be taken at the time of billing if the adjustment leaves the physician or clinic contractually liable to receive a total amount (including any copayment received from the patient) that does not exceed the federal rate.

~~((k) **Hospital safe patient handling credit—Expired December 30, 2010.**~~

~~(i) RCW 82.04.4485 allowed a hospital to take a credit against the B&O tax for the cost of purchasing mechanical lifting devices and other equipment that are primarily used to minimize patient handling by health care providers. To qualify for the credit, the purchases must have been made as part of a safe patient handling program developed and implemented by the hospital in compliance with RCW 70.41.390. The credit was equal to one hundred percent of the cost of the mechanical lifting devices or other equipment. This credit does not apply to purchases made after December 30, 2010.~~

~~(ii) No application is necessary for the credit; however, a hospital taking a credit under this rule must maintain records, as required by the department, necessary to verify eligibility for the credit. The hospital is subject to all of the requirements of chapter 82.32 RCW. A credit earned during one calendar year may be carried over to be credited against taxes incurred in a subsequent calendar year. No refunds shall be granted for credits under this subsection.~~

~~(iii) The maximum credit that may be earned under this rule for each hospital is limited to one thousand dollars for each acute care available inpatient bed.)~~

(10) Sales, use, and other specified taxes deductions and exemptions. Unless otherwise exempt by law, hospitals, nursing homes, adult family homes, assisted living facilities, and similar health care providers are required to pay retail sales tax on purchases of equipment and supplies. The following deductions and exemptions are available to qualified persons.

(a) Temporary medical housing provided by a health or social welfare organization. ~~((Effective July 1, 2008,))~~ RCW 82.08.997 ~~((authorized))~~ provides an exemption from state and local sales taxes and lodging taxes for temporary medical housing provided by a health or social welfare organization. The term "health or social welfare organization" is defined in RCW 82.04.431. "Temporary medical housing" means transient lodging and related services provided to a patient or the patient's immediate family, legal guardian, or other persons necessary to the patient's mental or physical well-being.

(i) The exemption applies to the following taxes:

(A) Retail sales tax levied under RCW 82.08.020;

(B) Lodging taxes levied under chapter 67.28 RCW;

(C) Convention and trade center tax levied under chapter 36.100 RCW;

(D) Public facilities tax levied under RCW 36.100.040; and

(E) Tourism promotion areas tax levied under RCW 35.101.050.

(ii) The exemptions in this subsection apply to charges made for "temporary medical housing" only:

(A) While the patient is receiving medical treatment at a hospital required to be licensed under RCW 70.41.090 or at an outpatient clinic associated with such hospital, including any period of recuperation or observation immediately following such medical treatment; and

(B) By a person that does not furnish lodging or related services to the general public.

(b) **Purchases for resale.** Purchases of tangible personal property for resale without intervening use are not subject to retail sales tax. Persons purchasing tangible personal property for resale must furnish a copy of their reseller permit to the seller to document the wholesale nature of the sale. Reseller permits replaced resale certificates effective January 1, 2010. ~~((Even though resale certificates are no longer used, they must be kept on file by the seller for five years from the date of last use or December 31, 2014. For additional information on reseller permits see WAC 458-20-102.))~~

(c) **Sales of medical supplies, chemicals, or materials to a comprehensive cancer center.** RCW 82.08.808 and 82.12.808 provide, respectively, retail sales tax and use tax exemptions for sales of medical supplies, chemicals, or materials to a comprehensive cancer center ((are exempt from retail sales and use taxes. RCW 82.08.808 and 82.12.808)). These exemptions do not apply to sales of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

(i) **Medical supplies.** For purposes of this exemption, "medical supplies" means any item of tangible personal property, including any repair and replacement parts for such tangible personal property, used by a comprehensive cancer center for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. The term includes tangible personal property used to:

(A) Provide preparatory treatment of blood, bone, or tissue;

(B) Control, guide, measure, tune, verify, align, regulate, test, or physically support blood, bone, or tissue; and

(C) Protect the health and safety of employees or others present during research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(ii) **Chemicals.** For purposes of this exemption, "chemical" means any catalyst, solvent, water, acid, oil, or other additive that physically or chemically interacts with blood, bone, or tissue.

(iii) **Materials.** For purposes of this exemption, "materials" means any item of tangible personal property including, but not limited to, bags, packs, collecting sets, filtering materials, testing reagents, antisera, and refrigerants used or consumed in performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(iv) **Research.** For purposes of this exemption, "research" means basic and applied research that has as its objective the design, development, refinement, testing, mar-

keting, or commercialization of a product, service, or process.

(d) **Sales of medical supplies, chemicals, or materials to organ procurement organizations.** RCW 82.08.02807 and 82.12.02749 provides, respectively, retail sales tax and use tax exemptions for sales of medical supplies, chemicals, or materials to organ procurement organizations exempt under RCW 82.04.326 ((are exempt from retail sales and use taxes. RCW 82.08.02807 and 82.12.02749)). These exemptions do not apply to the sale of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

(11) **Buyer's responsibility to remit deferred sales or use tax.** If the seller does not collect retail sales tax on a retail sale, the buyer must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless the purchases are specifically exempt by law. For detailed information regarding the use tax, refer to WAC 458-20-178.

(a) **How do I report deferred sales or use tax.** Persons registered with the department and required to file tax returns should report deferred sales or use tax on their excise tax return. As the excise tax return does not have a separate line for reporting deferred sales tax, the buyer should report the tax liability on the use tax line. If a deferred sales tax or use tax liability is incurred by a person who is not required to be registered with the department, the person must report the tax on a "Consumer Use Tax Return" and remit the appropriate tax to the department.

(b) **Where can I obtain a Consumer Use Tax Return?** The Consumer Use Tax Return may be obtained from the department's web site at dor.wa.gov, or by calling the department's telephone information center at 1-800-647-7706.

WSR 15-21-094
PERMANENT RULES
OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2015-11—Filed October 21, 2015,
10:34 a.m., effective November 21, 2015]

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

Purpose: Repeal of certification requirement for multiple Washington state attendees at continuing education trainings.

Citation of Existing Rules Affected by this Order:
Amending WAC 284-17-281.

Statutory Authority for Adoption: RCW 48.02.060, 48.17.005, and 48.17.150(1).

Adopted under notice filed as WSR 15-17-045 on August 12, 2015.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: October 21, 2015.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 15-13-061, filed 6/10/15, effective 7/11/15)

WAC 284-17-281 Insurance continuing education course attendance requirements. (1) For classroom courses:

(a) Attendance is based on personally identifiable information including government-issued photo identification and signature, with student participation and live interaction with the instructor;

(b) ~~((At least two Washington insurance licensees and an instructor must be in attendance at the course presentation;~~

~~(e)))~~ The continuing education provider must use a monitor in addition to the instructor if the classroom exceeds twenty attendees;

~~((e)))~~ ~~(c)~~ The presentation is the amount of time devoted to the actual course instruction and does not include breaks, reviewing class rules, and introducing speakers;

~~((e)))~~ ~~(d)~~ To verify course completion, licensees must attend the entire presentation and sign the attendance register at the beginning and end of the presentation.

(2) For self-study courses:

(a) Course access is verified based on identity such as user name, password, and e-mail or signature;

(b) Licensees must review the entire course before viewing or completing the final exam;

(c) Licensees must successfully pass the final examination to verify course completion.

(3) For webinar courses:

(a) Attendance is monitored and validated based on personally identifiable information including username, password, and e-mail;

(b) Attendees must participate in interactive exercises;

(c) Credit for a webinar course is based on attendance and activity, not examination;

(d) The attendee and an instructor do not need to be in the same location;

(e) A monitor is required, in addition to the instructor, if the number of attendees exceeds five;

(f) The presentation is the amount of time devoted to the actual course instruction and does not include breaks, reviewing class rules, and introducing speakers.

WSR 15-21-095
PERMANENT RULES
OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2015-03—Filed October 21, 2015,
10:46 a.m., effective January 1, 2016]

Effective Date of Rule: January 1, 2016.

Purpose: RCW 48.43.007 requires health plan issuers in Washington to attest to the office of the insurance commissioner that their member transparency tools meet the requirements in the statute and that access to the tools is available on the issuers' home page within the health plan's secured member web site. This proposed rule directs health plan issuers to file with the office of insurance commissioner (OIC) one annual attestation for each market level of plans offered in Washington (e.g., individual, small group and large group). The proposed rule provides guidance as to how the attestation(s) should be provided to OIC.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.340, and 48.44.050.

Adopted under notice filed as WSR 15-17-046 on August 12, 2015.

A final cost-benefit analysis is available by contacting Jim Keogh, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7056, fax (360) 586-3109, e-mail rules coordinator@oic.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 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: October 21, 2015.

Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-43-927 Issuer filing of attestation form, transparency tools. Every issuer offering or renewing a health benefit plan on or after January 1, 2016, must attest to the insurance commissioner that the transparency tools available to their members meet the requirements of RCW 48.43.-007.

(1) Annually, each health plan issuer must file an attestation form with the insurance commissioner for each line of business written by the issuer. For purposes of this section, line of business is defined as individual, small group and large group health plans.

(2) The form must be signed by an officer of the issuer that is responsible for ensuring compliance with RCW 48.43.007.

(3) The form must be submitted to the insurance commissioner no later than February 1st of each calendar year. Instructions for filing of the form will be available on the insurance commissioner's web site no later than sixty days prior to the filing deadline.

WSR 15-21-097
PERMANENT RULES
LIQUOR AND CANNABIS
BOARD

[Filed October 21, 2015, 10:51 a.m., effective November 21, 2015]

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

Purpose: The board was asked by a stakeholder to open rule making to allow internet sales and delivery for beer and/or wine on-premises licensees who hold an off-premises endorsement. The rules provide the requirements for a licensee to engage in these activities.

Statutory Authority for Adoption: RCW 66.08.030.

Adopted under notice filed as WSR 15-18-036 on August 26, 2015.

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

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

Date Adopted: October 21, 2015.

Jane Rushford
Chairman

NEW SECTION

WAC 314-03-035 Consumer orders, internet sales, and delivery for on-premises beer and/or wine liquor licensees. An on-premises beer and/or wine licensee may accept orders for beer or wine from, and deliver beer or wine to, customers.

(1) **Resale.** Beer and wine shall not be for resale.

(2) **Stock location.** Beer and wine must come directly from a licensed on-premises retail location.

(3) **How to place an order.** Beer and wine may be ordered in person at a licensed location, by mail, telephone, internet, or by other similar methods.

(4) Sales and payment.

(a) Only a licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a licensee, except for transmittal of payment through a third-party service. A third-party service may not solicit customer business on behalf of a licensee.

(b) All orders and payments shall be fully processed before liquor transfers ownership or, in the case of delivery, leaves a licensed premises.

(c) Payment method. Payment methods include, but are not limited to: Cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account. An existing prepaid account may not have a negative balance.

(d) Internet. To sell beer and wine via the internet, a new license applicant must request internet-sales privileges in his or her application. An existing licensee must notify the board prior to beginning internet sales. A corporate entity representing multiple stores may notify the board in a single letter on behalf of affiliated licensees, as long as the liquor license numbers of all licensee locations utilizing internet sales privileges are clearly identified.

(5) **Delivery location.** Delivery shall be made only to a residence or business that has an address recognized by the United States Postal Service; however, the board may grant an exception to this rule at its discretion. A residence includes a hotel room, a motel room, or other similar lodging that temporarily serves as a residence.

(6) **Hours of delivery.** Beer and wine may be delivered each day of the week between the hours of 6:00 a.m. and 2:00 a.m. Delivery must be fully completed by 2:00 a.m.

(7) Age requirement.

(a) Per chapter 66.44 RCW, any person under twenty-one years of age is prohibited from purchasing, delivering, or accepting delivery of beer and wine.

(b) A delivery person must verify the age of the person accepting delivery before handing over beer and wine.

(c) If no person twenty-one years of age or older is present to accept a beer and wine order at the time of delivery, the beer and wine shall be returned.

(8) **Intoxication.** Delivery of beer and wine is prohibited to any person who shows signs of intoxication.

(9) Containers and packaging.

(a) Individual units of beer and wine must be factory sealed in bottles, cans or other like packaging. Delivery of growlers, jugs or other similar, nonfactory sealed containers is prohibited. Delivery of malt liquor in kegs or other containers capable of holding four gallons or more of liquid is allowed, provided that kegs or containers are factory sealed and that the keg sales requirements (see WAC 314-02-115) are met prior to delivery. For the purposes of this subsection, "factory sealed" means that a unit is in one hundred percent resalable condition, with all manufacturer's seals intact.

(b) The outermost surface of a beer and wine package, delivered by a third party, must have language stating that:

(i) The package contains liquor;

(ii) The recipient must be twenty-one years of age or older; and

(iii) Delivery to intoxicated persons is prohibited.

(10) Required information.

(a) Records and files shall be retained at a licensed premises. Each delivery sales record shall include the following:

(i) Name of the purchaser;

(ii) Name of the person who accepts delivery;

(iii) Street addresses of the purchaser and the delivery location; and

(iv) Times and dates of purchase and delivery.

(b) A private carrier must obtain the signature of the person who receives beer and wine upon delivery.

(c) A sales record does not have to include the name of the delivery person, but it is encouraged.

(11) **Web site requirements.** When selling over the internet, all web site pages associated with the sale of beer and wine must display a licensee's registered trade name.

(12) **Accountability.** A licensee shall be accountable for all deliveries of beer and wine made on its behalf.

(13) **Violations.** The board may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges, or any combination thereof, should a licensee violate any condition, requirement or restriction.