

WSR 13-08-084
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services)
[Filed April 3, 2013, 9:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-04-092.

Title of Rule and Other Identifying Information: The department intends to amend chapter 388-78A WAC to change the term "boarding home" to "assisted living facility" throughout the chapter in compliance with SHB 2056 passed in the 2011-2012 legislative session. The scope of this rule making is limited to the terminology change from "boarding home" to "assisted living facility."

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on June 4, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 4, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on June 4, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by May 21, 2013, TTY (360) 664-6178 or (360) 664-6094.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending these rules to comply with and be consistent with SHB 2056 to change the term "boarding home" to "assisted living facility."

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: Chapter 18.20 RCW.

Statute Being Implemented: Chapter 18.20 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Judy Johnson, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2591; Implementation and Enforcement: Lori Melchiori, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3), a small business economic impact statement is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or regulations.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b), a cost-benefit analysis is not required for rules adopting or incorporating,

by reference without material change, Washington state statutes [statutes] or regulations.

March 25, 2013
Katherine I. Vasquez
Rules Coordinator

Chapter 388-78A WAC

**~~((BOARDING HOME))~~ ASSISTED LIVING FACILITY
LICENSING RULES
(Formerly chapter 246-316 WAC)**

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2010 Purpose. This chapter is written to implement chapter 18.20 RCW, to promote the safety and well-being of ~~((boarding home))~~ assisted living facility residents, to specify standards for ~~((boarding home))~~ assisted living facility operators, and to further establish requirements for the operation of ~~((boarding homes))~~ assisted living facilities.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-2020 Definitions. "Abandonment" means action or inaction by a person with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a resident. In instances of abuse of a resident who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a resident, which have the following meanings:

(1) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing;

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints;

(3) **"Sexual abuse"** means any form of nonconsensual sexual contact, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual;

(4) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a resident causing the resident to act in a way that is inconsistent with relevant past behavior, or causing the resident to perform services for the benefit of another.

"Activities of daily living" means the following tasks related to basic personal care: Bathing; toileting; dressing; personal hygiene; mobility; transferring; and eating.

"Administrator" means ~~((a boarding home))~~ an assisted living facility administrator who must be in active administrative charge of the ~~((boarding home))~~ assisted living facility as required in this chapter. Unless exempt under RCW 18.88B.041, the administrator must complete long-term care training and home care aide certification.

"Adult day services" means care and services provided to a nonresident individual by the ~~((boarding home))~~ assisted living facility on the ~~((boarding home))~~ assisted living facility premises, for a period of time not to exceed ten continuous hours, and does not involve an overnight stay.

"Ambulatory" means capable of walking or traversing a normal path to safety without the physical assistance of another individual:

(1) **"Nonambulatory"** means unable to walk or traverse a normal path to safety without the physical assistance of another individual;

(2) **"Semiambulatory"** means physically and mentally capable of traversing a normal path to safety with the use of mobility aids, but unable to ascend or descend stairs without the physical assistance of another individual.

"Applicant" means the person, as defined in this section, that has submitted, or is in the process of submitting, an application for a ~~((boarding home))~~ assisted living facility license.

"Basic services" means housekeeping services, meals, nutritious snacks, laundry, and activities.

"Bathing fixture" means a bathtub, shower or sit-down shower.

"Bathroom" means a room containing at least one bathing fixture.

~~((Boarding home))~~ **"Assisted living facility"** means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing housing, basic services, and assuming general responsibility for the safety and well-being of the residents, and may also provide domiciliary care, consistent with this chapter to seven or more residents after July 1, 2000. However, ~~((a boarding home))~~ an assisted living facility that is licensed for three to six residents prior to or on July 1, 2000, may maintain its ~~((boarding home))~~ assisted living facility license as long as it is continually licensed as ~~((a boarding home))~~ an assisted living facility. ~~((Boarding home))~~ **"Assisted living facility"** does not include facilities certified as group training homes pursuant to RCW 71A.22.-040, nor any home, institution or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution or section thereof. Nor shall it include any independent senior housing, independent living units in continuing care retirement communities, or other similar living situations including those subsidized by the Department

of Housing and Urban Development. ~~((Boarding home))~~ **"Assisted living facility"** may also include persons associated with the ~~((boarding home))~~ assisted living facility to carry out its duties under this chapter.

"Building code" means the building codes and standards adopted by the Washington state building code council.

"Caregiver" means anyone providing direct personal care to another person including, but not limited to: Cuing, reminding or supervision of residents, on behalf of ~~((a boarding home))~~ an assisted living facility, except volunteers who are directly supervised.

"Construction review services" means the office of construction review services within the Washington state department of health.

"Continuing care contract" means, as stated in RCW 70.38.025, a contract providing a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

"Continuing care retirement community" means, as stated in RCW 70.38.025, an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service.

"Contractor" means an agency or person who contracts with a licensee to provide resident care, services or equipment.

"Crimes relating to financial exploitation" means the same as "crimes relating to financial exploitation" as defined in RCW 43.43.830 or 43.43.842.

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

"Dietitian" means an individual certified under chapter 18.138 RCW.

"Direct supervision" means oversight by a person on behalf of the ~~((boarding home))~~ assisted living facility who has met training requirements, demonstrated competency in core areas, or has been fully exempted from the training requirements, is on the premises, and is quickly and easily available to the caregiver.

"Document" means to record, with signature, title, date and time:

(1) Information about medication administration, medication assistance or disposal, a nursing care procedure, accident, occurrence or change in resident condition that may affect the care or needs of a resident; and

(2) Processes, events or activities that are required by law, rule or policy.

"Domiciliary care" means:

(1) Assistance with activities of daily living provided by the ~~((boarding home))~~ assisted living facility either directly or indirectly; or

(2) Health support services, if provided directly or indirectly by the ~~((boarding home))~~ assisted living facility; or

(3) Intermittent nursing services, if provided directly or indirectly by the ~~((boarding home))~~ assisted living facility.

"Enforcement remedy" means one or more of the department's responses to ~~((a boarding home's))~~ an assisted living facility's noncompliance with chapter 18.20 RCW and this chapter, as authorized by RCW 18.20.190.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.-020(6).

"Food service worker" means according to chapter 246-217 WAC an individual who works (or intends to work) with or without pay in a food service establishment and handles unwrapped or unpackaged food or who may contribute to the transmission of infectious diseases through the nature of his/her contact with food products and/or equipment and facilities. This does not include persons who simply assist residents with meals.

"General responsibility for the safety and well-being of the resident" means the provision of the following:

- (1) Prescribed general low sodium diets;
- (2) Prescribed general diabetic diets;
- (3) Prescribed mechanical soft foods;
- (4) Emergency assistance;
- (5) Monitoring of the resident;
- (6) Arranging health care appointments with outside health care providers and reminding residents of such appointments as necessary;
- (7) Coordinating health care services with outside health care providers consistent with WAC 388-78A-2350;
- (8) Assisting the resident to obtain and maintain glasses, hearing aids, dentures, canes, crutches, walkers, wheelchairs, and assistive communication devices;
- (9) Observation of the resident for changes in overall functioning;
- (10) Blood pressure checks as scheduled;
- (11) Responding appropriately when there are observable or reported changes in the resident's physical, mental, or emotional functioning; or
- (12) Medication assistance as permitted under RCW 69.41.085 and as described in RCW 69.41.010 and chapter 246-888 WAC.

"Harm" means a physical or mental or emotional injury or damage to a resident including those resulting from neglect or violations of a resident's rights.

"Health support services" means any of the following optional services:

- (1) Blood glucose testing;
- (2) Puree diets;
- (3) Calorie controlled diabetic diets;
- (4) Dementia care;
- (5) Mental health care; or
- (6) Developmental disabilities care.

"Independent living unit" means:

- (1) Independent senior housing;

(2) Independent living unit in a continuing care retirement community or other similar living environments;

(3) ~~((Boarding home))~~ Assisted living facility unit where domiciliary services are not provided; or

(4) ~~((Boarding home))~~ Assisted living facility unit where one or more items listed under "general responsibilities" are not provided.

"Independent senior housing" means an independent living unit occupied by an individual or individuals sixty or more years of age.

"Infectious" means capable of causing infection or disease by entrance of organisms into the body, which grow and multiply there, including, but not limited to, bacteria, viruses, protozoans, and fungi.

"Licensee" means the person, as defined in this chapter, to whom the department issues the ~~((boarding home))~~ assisted living facility license.

"Licensed resident bed capacity" means the resident occupancy level requested by the licensee and approved by the department. All residents receiving domiciliary care or the items or services listed under general responsibility for the safety and well-being of the resident as defined in this section count towards the licensed resident bed capacity. Adult day services clients do not count towards the licensed resident bed capacity.

"Long-term care worker," as defined in RCW 74.39A.009, has the same meaning as the term "caregiver."

"Majority owner" means any person that owns:

- (1) More than fifty percent interest; or
- (2) If no one person owns more than fifty percent interest, the largest interest portion; or
- (3) If more than one person owns equal largest interest portions, then all persons owning those equal largest interest portions.

"Manager" means the person defined in this chapter, providing management services on behalf of the licensee.

"Management agreement" means a written, executed agreement between the licensee and the manager regarding the provision of certain services on behalf of the licensee.

"Mandated reporter":

(1) Is an employee of the department, law enforcement officer, social worker, professional school personnel, individual provider, an employee of a facility, an operator of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW; and

(2) For the purpose of the definition of mandated reporter, "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW ~~((boarding homes))~~ assisted living facility, chapter 18.51 RCW (nursing homes), chapter 70.128 RCW (adult family homes), chapter 72.36 RCW (soldiers' homes), chapter 71A.20 RCW (residential habilitation centers), or any other facility licensed by the department.

"Maximum facility capacity" means the maximum number of individuals that the ~~((boarding home))~~ assisted living facility may serve at any one time, as determined by the department.

(1) The maximum facility capacity includes all residents and respite care residents and adult day services clients.

(2) The maximum facility capacity is equal to the lesser of:

(a) The sum of the number of approved bed spaces for all resident rooms (total number of approved bed spaces), except as specified in subsection (3); or

(b) Twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (1)(h); or

(c) The number of residents permitted by calculating the ratios of toilets, sinks, and bathing fixtures to residents consistent with WAC 388-78A-3030; or

(d) For ~~((boarding homes))~~ assisted living facilities licensed on or before December 31, 1988, the total day room area in square feet divided by ten square feet, consistent with WAC 388-78A-3050; or

(e) For ~~((boarding homes))~~ assisted living facilities licensed after December 31, 1988, the total day room area in square feet divided by twenty square feet, consistent with WAC 388-78A-3050.

(3) For the purposes of providing adult day services consistent with WAC 388-78A-2360, one additional adult day services client may be served, beyond the total number of approved bed spaces, for each additional sixty square feet of day room area greater than the area produced by multiplying the total number of approved bed spaces by twenty square feet, provided that:

(a) There is at least one toilet and one hand washing sink accessible to adult day services clients for every eight adult day services clients or fraction thereof;

(b) The total number of residents and adult day services clients does not exceed twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (1)(h); and

(c) The adult day services program area(s) and building do not exceed the occupancy load as determined by the local building official or state fire marshal.

"Medication administration" means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the resident by an individual legally authorized to do so.

"Medication assistance" means assistance with self-administration of medication rendered by a nonpractitioner to a resident of ~~((a boarding home))~~ an assisted living facility in accordance with chapter 246-888 WAC.

"Medication organizer" means a container with separate compartments for storing oral medications organized in daily doses.

"Medication service" means any service provided either directly or indirectly by ~~((a boarding home))~~ an assisted living facility related to medication administration, medication administration provided through nurse delegation, medication assistance, or resident self-administration of medication.

"Neglect" means:

(1) A pattern of conduct or inaction resulting in the failure to provide the goods and services that maintain physical or mental health of a resident, or that fails to avoid or prevent physical or mental harm or pain to a resident; or

(2) An act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a

clear and present danger to the resident's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

"Nonresident individual" means an individual who resides in independent senior housing, independent living units in continuing care retirement communities, or in other similar living environments or in an unlicensed room located within ~~((a boarding home))~~ an assisted living facility. A non-resident individual may not receive from the ~~((boarding home))~~ assisted living facility:

(1) Domiciliary care directly or indirectly; or

(2) The items or services listed in the definition of "general responsibility for the safety and well-being of the resident", except as allowed under WAC 388-78A-2032 or when the person is receiving adult day services.

"Nonpractitioner" means any individual who is not a practitioner as defined in WAC 388-78A-2020 and chapter 69.41 RCW.

"Nurse" means an individual currently licensed under chapter 18.79 RCW as either a:

(1) **"Licensed practical nurse"** (LPN); or

(2) **"Registered nurse"** (RN).

"Over-the-counter (OTC) medication" means any medication that may be legally purchased without a prescriptive order, including, but not limited to, aspirin, antacids, vitamins, minerals, or herbal preparations.

"Person" means any individual, firm, partnership, corporation, company, association, joint stock association or any other legal or commercial entity.

"Physician" means an individual licensed under chapter 18.57 or 18.71 RCW.

"Practitioner" includes a licensed physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant. Refer to chapter 69.41 RCW for a complete listing of practitioners.

"Prescribed medication" means any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Prescriber" means a health care practitioner authorized by Washington state law to prescribe drugs.

"Problem" means a violation of any WAC or RCW applicable to the operation of ~~((a boarding home))~~ an assisted living facility:

(1) **"Recurring problem"** means, for all purposes other than those described in RCW 18.20.400, that the department has cited the ~~((boarding home))~~ assisted living facility for a violation of WAC or RCW and the circumstances of (a) or (b) of this subsection are present:

(a) The department previously imposed an enforcement remedy for a violation of the same section of WAC or RCW for substantially the same problem following any type of inspection within the preceding thirty-six months; or

(b) The department previously cited a violation under the same section of WAC or RCW for substantially the same problem following any type of inspection on two occasions within the preceding thirty-six months.

(c) If the previous violation in (a) or (b) of this subsection was pursuant to WAC or RCW that has changed at the

time of the new violation, citation to the equivalent current WAC or RCW section is sufficient.

(d) When there is a change in licensees between the first and the second or third citations, the new licensee must accept, and the department will consider, the prior licensee's compliance and enforcement record as part of the new licensee's compliance record at that ~~((boarding home))~~ assisted living facility if any person affiliated with the new licensee was affiliated with the prior licensee at the same ~~((boarding home))~~ assisted living facility. A person is considered affiliated with the licensee if the person is an applicant for the ~~((boarding home))~~ assisted living facility license, or is listed on the license application as a partner, officer, director, or majority owner of the applicant.

(2) **"Serious problem"** means:

(a) There has been a violation of a WAC or RCW; and

(b) Significant harm has actually occurred to a resident;

or

(c) It is likely that significant harm or death will occur to a resident.

(3) **"Uncorrected problem"** means the department has cited a violation of WAC or RCW following any type of inspection and the violation remains uncorrected at the time the department makes a subsequent inspection for the specific purpose of verifying whether such violation has been corrected. When a change in licensees occurs, the new licensee is responsible for correcting any remaining violations that may exist, including complying with any plan of correction in effect immediately prior to the change in licensees.

"Prospective resident" means an individual who is seeking admission to a licensed ~~((boarding home))~~ assisted living facility and who has completed and signed an application for admission, or such application for admission has been completed and signed in their behalf by their legal representative if any, and if not, then the designated representative if any.

"Reasonable accommodation" and **"reasonably accommodate"** have the meaning given in federal and state antidiscrimination laws and regulations which include, but are not limited to, the following:

(1) Reasonable accommodation means that the ~~((boarding home))~~ assisted living facility must:

(a) Not impose admission criteria that excludes individuals unless the criteria is necessary for the provision of ~~((boarding home))~~ assisted living facility services;

(b) Make reasonable modification to its policies, practices or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the ~~((boarding home))~~ assisted living facility; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

"RCW" means Revised Code of Washington.

"Records" means:

(1) **"Active records"** means the current, relevant documentation regarding residents necessary to provide care and services to residents; or

(2) **"Inactive records"** means historical documentation regarding the provision of care and services to residents that is no longer relevant to the current delivery of services and has been thinned from the active record.

"Resident" means an individual who:

(1) Chooses to reside in ~~((a boarding home))~~ an assisted living facility, including an individual receiving respite care;

(2) Is not related by blood or marriage to the operator of the ~~((boarding home))~~ assisted living facility;

(3) Receives basic services; and

(4) Receives one or more of the services listed in the definition of "general responsibility for the safety and well-being of the resident," and may receive domiciliary care or respite care provided directly, or indirectly, by the ~~((boarding home))~~ assisted living facility. A nonresident individual may receive services that are permitted under WAC 388-78A-2032.

"Resident's representative" means:

(1) The legal representative who is the person or persons identified in RCW 7.70.065 and who may act on behalf of the resident pursuant to the scope of their legal authority. The legal representative shall not be affiliated with the licensee, ~~((boarding home))~~ assisted living facility, or management company, unless the affiliated person is a family member of the resident; or

(2) If there is no legal representative, a person designated voluntarily by a competent resident in writing, to act in the resident's behalf concerning the care and services provided by the ~~((boarding home))~~ assisted living facility and to receive information from the ~~((boarding home))~~ assisted living facility if there is no legal representative. The resident's representative may not be affiliated with the licensee, ~~((boarding home))~~ assisted living facility, or management company, unless the affiliated person is a family member of the resident. The resident's representative under this subsection shall not have authority to act on behalf of the resident once the resident is no longer competent. The resident's competence shall be determined using the criteria in RCW 11.88-010 (1)(e).

"Respite care" means short-term care for any period in excess of twenty-four continuous hours for a resident to temporarily relieve the family or other caregiver of providing that care.

"Restraint" means any method or device used to prevent or limit free body movement, including, but not limited to:

(1) Confinement, unless agreed to as provided in WAC 388-78A-2370;

(2) **"Chemical restraint"** which means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms; and

(3) **"Physical restraint"** which means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is

used for discipline or convenience, and not required to treat the resident's medical symptoms.

"Room" means a space set apart by floor to ceiling partitions on all sides with all openings provided with doors or windows.

(1) **"Sleeping room"** means a room where a resident is customarily expected to sleep and contains a resident's bed.

(2) **"Resident living room"** means the common space in a resident unit that is not a sleeping room, bathroom or closet.

"Significant change" means a change in the resident's physical, mental, or psychosocial status that causes either life-threatening conditions or clinical complications.

"Special needs" means a developmental disability, mental illness, or dementia.

"Staff person" means any (~~boarding home~~) assisted living facility employee or temporary employee or contractor, whether employed or retained by the licensee or any management company, or volunteer.

"State fire marshal" means the director of fire protection under the direction of the chief of the Washington state patrol.

"Toilet" means a disposal apparatus used for urination and defecation, fitted with a seat and flushing device.

"Volunteer" means an individual who interacts with residents without reimbursement.

"Vulnerable adult" includes a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(2) Found incapacitated under chapter 11.88 RCW; or

(3) Who has a developmental disability as defined under RCW 71A.10.020; or

(4) Admitted to any facility, including any (~~boarding home~~) assisted living facility; or

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(6) Receiving services from an individual provider.

(7) For the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

"WAC" means Washington Administrative Code.

"Wellness program" means an educational program provided by the (~~boarding home~~) assisted living facility. It is a proactive and preventative approach to assist residents and nonresident individuals in achieving optimal levels of health, social, and emotional functioning. A wellness program does not include medical care or interventions.

"Willful" means the deliberate, or nonaccidental, action or inaction by an alleged perpetrator that he/she knows or reasonably should have known could cause a negative outcome, including harm, injury, pain or anguish.

"WISHA" means the Washington Industrial Safety and Health Act, chapter 49.17 RCW administered by the Washington state department of labor and industries.

AMENDATORY SECTION (Amending WSR 12-08-004, filed 3/22/12, effective 4/22/12)

WAC 388-78A-2030 ((Boarding home) Assisted living facility license required. (1) (~~A boarding home~~) An assisted living facility license is required to operate or maintain (~~a boarding home~~) an assisted living facility as defined in chapter 18.20 RCW and this chapter.

(2) (~~A boarding home~~) An assisted living facility license is required when any person other than a family member provides housing, one or more basic services, and one or more of the following:

(a) Assumes general responsibility for the safety and well-being of the residents except as provided in WAC 388-78A-2032;

(b) Provides domiciliary care which includes:

(i) Providing assistance with activities of daily living, either directly or indirectly as defined in this chapter and described in WAC 388-78A-2190;

(ii) Providing health support services, either directly or indirectly as defined in this chapter and described in WAC 388-78A-2200; or

(iii) Providing intermittent nursing services, either directly or indirectly as described in WAC 388-78A-2310.

(3) (~~A boarding home~~) An assisted living facility license is required if the provision of items and services to a nonresident individual requires ongoing evaluation or assessment, ongoing care and service planning, ongoing intervention or ongoing monitoring of a nonresident individual's well-being as specified in this chapter.

(4) The (~~boarding home~~) assisted living facility may provide adult day services as defined in WAC 388-78A-2020 and as specified in WAC 388-78A-2360 to nonresident individuals, including independent living residents, on the (~~boarding home~~) assisted living facility premises.

AMENDATORY SECTION (Amending WSR 12-08-004, filed 3/22/12, effective 4/22/12)

WAC 388-78A-2032 ((Boarding home) Assisted living facility license not required. (1) (~~A boarding home~~) An assisted living facility license is not required for the housing, or services, customarily provided under landlord tenant agreements governed by the residential tenant act, chapter 59.18 RCW, or when housing nonresident individuals who chose to participate in the programs or services in subsection (2) of this section when offered by the (~~boarding home~~) assisted living facility licensee or the licensee's contractor.

(2) (~~A boarding home~~) An assisted living facility license is not required for one or more of the following items and services that may, upon request of the nonresident individual, be provided to a nonresident individual:

(a) Emergency assistance provided on an intermittent or nonroutine basis;

(b) Systems including technology-based monitoring devices employed by independent senior housing, or independent living units in continuing care retirement communities, to respond to the potential need for emergency services;

(c) Scheduled and nonscheduled blood pressure checks;

(d) Nursing assessment services to determine whether referral to an outside health care provider is recommended;

- (e) Making and reminding of health care appointments;
- (f) Preadmission assessment, for the purposes of transitioning to a licensed care setting;
- (g) Medication assistance which may include reminding or coaching the nonresident individual, opening the nonresident individual's medication container, using an enabler, and handing prefilled insulin syringes to the nonresident individual;
- (h) Prefilling insulin syringes which must be performed by a nurse licensed under chapter 18.79 RCW;
- (i) Assessment to determine cause of a fall;
- (j) Nutrition management and education services;
- (k) Dental services;
- (l) Wellness programs as defined in WAC 388-78A-2020; or
- (m) Services customarily provided under the landlord tenant agreements governed by the Residential Landlord-Tenant Act, chapter 59.18 RCW.

(3) This section does not prohibit ~~((a boarding home))~~ an assisted living facility from furnishing written information concerning available community resources to nonresident individuals or the individual's family members or legal representatives. However, the ~~((boarding home))~~ assisted living facility may not require the use of any particular service provider.

AMENDATORY SECTION (Amending WSR 12-08-004, filed 3/22/12, effective 4/22/12)

WAC 388-78A-2035 Disclosure statement to nonresident individuals. (1) ~~((A boarding home))~~ An assisted living facility must provide each nonresident individual a disclosure statement upon admission and at the time that additional services are requested by the nonresident individual.

(2) The disclosure statement must notify the nonresident individual that:

- (a) The resident rights of chapter 70.129 RCW do not apply to nonresident individuals;
- (b) Licensing requirements for ~~((boarding homes))~~ assisted living facilities under this chapter do not apply to nonresident units; and
- (c) The jurisdiction of the long-term care ombudsman does not apply to nonresident individuals and nonresident units.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2040 Other requirements. (1) The ~~((boarding home))~~ assisted living facility must comply with all other applicable federal, state, county and municipal statutes, rules, codes and ordinances, including without limitations those that prohibit discrimination.

(2) The ~~((boarding home))~~ assisted living facility must have its building approved by the Washington state fire marshal in order to be licensed.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2050 Resident characteristics. The ~~((boarding home))~~ assisted living facility may admit and retain an individual as a resident in ~~((a boarding home))~~ an assisted living facility only if:

(1) The ~~((boarding home))~~ assisted living facility can safely and appropriately serve the individual with appropriate available staff providing:

(a) The scope of care and services described in the ~~((boarding home's))~~ assisted living facility's disclosure information, except if the ~~((boarding home))~~ assisted living facility chooses to provide additional services consistent with RCW 18.20.300(4); and

(b) The reasonable accommodations required by state or federal law, including providing any specialized training to caregivers that may be required according to WAC 388-78A-2490 through 388-78A-2510;

(2) The individual does not require the frequent presence and frequent evaluation of a registered nurse, excluding those individuals who are receiving hospice care or individuals who have a short-term illness that is expected to be resolved within fourteen days as long as the ~~((boarding home))~~ assisted living facility has the capacity to meet the individual's identified needs; and

(3) The individual is ambulatory, unless the ~~((boarding home))~~ assisted living facility is approved by the Washington state director of fire protection to care for semiambulatory or nonambulatory residents.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2060 Preadmission assessment. The ~~((boarding home))~~ assisted living facility must conduct a preadmission assessment for each prospective resident that includes the following information, unless unavailable despite the best efforts of the ~~((boarding home))~~ assisted living facility:

- (1) Medical history;
- (2) Necessary and contraindicated medications;
- (3) A licensed medical or health professional's diagnosis, unless the prospective resident objects for religious reasons;
- (4) Significant known behaviors or symptoms that may cause concern or require special care;
- (5) Mental illness diagnosis, except where protected by confidentiality laws;
- (6) Level of personal care needs;
- (7) Activities and service preferences; and
- (8) Preferences regarding other issues important to the prospective resident, such as food and daily routine.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2070 Timing of preadmission assessment. (1) Unless there is an emergency, the ~~((boarding home))~~ assisted living facility must complete the preadmission assessment of the prospective resident before each pro-

spective resident moves into the ~~((boarding home))~~ assisted living facility.

(2) The ~~((boarding home))~~ assisted living facility must ensure the preadmission assessment is completed within five calendar days of the resident moving into the ~~((boarding home))~~ assisted living facility when the resident moves in under emergency conditions.

(3) For the purposes of this section, "emergency" means any circumstances when the prospective resident would otherwise need to remain in an unsafe setting or be without adequate and safe housing.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2080 Qualified assessor. The ~~((boarding home))~~ assisted living facility must ensure the person responsible for completing a preadmission assessment of a prospective resident:

(1) Has a master's degree in social services, human services, behavioral sciences or an allied field and two years social service experience working with adults who have functional or cognitive disabilities; or

(2) Has a bachelor's degree in social services, human services, behavioral sciences, or an allied field and three years social service experience working with adults who have functional or cognitive disabilities; or

(3) Has a valid Washington state license to practice nursing, in accordance with chapters 18.79 RCW and 246-840 WAC; or

(4) Is a physician with a valid state license to practice medicine; or

(5) Has three years of successful experience acquired prior to September 1, 2004, assessing prospective and current ~~((boarding home))~~ assisted living facility residents in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, ~~((boarding home))~~ assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2090 Full assessment topics. The ~~((boarding home))~~ assisted living facility must obtain sufficient information to be able to assess the capabilities, needs, and preferences for each resident, and must complete a full assessment addressing the following, within fourteen days of the resident's move-in date, unless extended by the department for good cause:

(1) Individual's recent medical history, including, but not limited to:

(a) A licensed medical or health professional's diagnosis, unless the resident objects for religious reasons;

(b) Chronic, current, and potential skin conditions; or

(c) Known allergies to foods or medications, or other considerations for providing care or services.

(2) Currently necessary and contraindicated medications and treatments for the individual, including:

(a) Any prescribed medications, and over-the-counter medications commonly taken by the individual, that the individual is able to independently self-administer, or safely and accurately direct others to administer to him/her;

(b) Any prescribed medications, and over-the-counter medications commonly taken by the individual, that the individual is able to self-administer when he/she has the assistance of a caregiver; and

(c) Any prescribed medications, and over-the-counter medications commonly taken by the individual, that the individual is not able to self-administer, and needs to have administered to him or her.

(3) The individual's nursing needs when the individual requires the services of a nurse on the ~~((boarding home))~~ assisted living facility premises.

(4) Individual's sensory abilities, including:

(a) Vision; and

(b) Hearing.

(5) Individual's communication abilities, including:

(a) Modes of expression;

(b) Ability to make self understood; and

(c) Ability to understand others.

(6) Significant known behaviors or symptoms of the individual causing concern or requiring special care, including:

(a) History of substance abuse;

(b) History of harming self, others, or property; or

(c) Other conditions that may require behavioral intervention strategies;

(d) Individual's ability to leave the ~~((boarding home))~~ assisted living facility unsupervised; and

(e) Other safety considerations that may pose a danger to the individual or others, such as use of medical devices or the individual's ability to smoke unsupervised, if smoking is permitted in the ~~((boarding home))~~ assisted living facility.

(7) Individual's special needs, by evaluating available information, or if available information does not indicate the presence of special needs, selecting and using an appropriate tool, to determine the presence of symptoms consistent with, and implications for care and services of:

(a) Mental illness, or needs for psychological or mental health services, except where protected by confidentiality laws;

(b) Developmental disability;

(c) Dementia. While screening a resident for dementia, the ~~((boarding home))~~ assisted living facility must:

(i) Base any determination that the resident has short-term memory loss upon objective evidence; and

(ii) Document the evidence in the resident's record.

(d) Other conditions affecting cognition, such as traumatic brain injury.

(8) Individual's level of personal care needs, including:

(a) Ability to perform activities of daily living;

(b) Medication management ability, including:

(i) The individual's ability to obtain and appropriately use over-the-counter medications; and

(ii) How the individual will obtain prescribed medications for use in the ~~((boarding home))~~ assisted living facility.

(9) Individual's activities, typical daily routines, habits and service preferences.

(10) Individual's personal identity and lifestyle, to the extent the individual is willing to share the information, and the manner in which they are expressed, including preferences regarding food, community contacts, hobbies, spiritual preferences, or other sources of pleasure and comfort.

(11) Who has decision-making authority for the individual, including:

(a) The presence of any advance directive, or other legal document that will establish a substitute decision maker in the future;

(b) The presence of any legal document that establishes a current substitute decision maker; and

(c) The scope of decision-making authority of any substitute decision maker.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2100 On-going assessments. The ~~((boarding home))~~ assisted living facility must:

(1) Complete a full assessment addressing the elements set forth in WAC 388-78A-2090 for each resident at least annually;

(2) Complete an assessment specifically focused on a resident's identified problems and related issues:

(a) Consistent with the resident's change of condition as specified in WAC 388-78A-2120;

(b) When the resident's negotiated service agreement no longer addresses the resident's current needs and preferences;

(c) When the resident has an injury requiring the intervention of a practitioner.

(3) Ensure the staff person performing the on-going assessments is qualified to perform them.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2110 Resident participation in assessments. The ~~((boarding home))~~ assisted living facility must directly involve each resident or prospective resident, to the extent possible, along with any appropriate resident representative to the extent he or she is willing and capable, in the pre-admission assessment and on-going assessment process.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2120 Monitoring residents' well-being. The ~~((boarding home))~~ assisted living facility must:

(1) Observe each resident consistent with his or her assessed needs and negotiated service agreement;

(2) Identify any changes in the resident's physical, emotional, and mental functioning that are a:

(a) Departure from the resident's customary range of functioning; or

(b) Recurring condition in a resident's physical, emotional, or mental functioning that has previously required intervention by others.

(3) Evaluate, in order to determine if there is a need for further action:

(a) The changes identified in the resident per subsection (2) of this section; and

(b) Each resident when an accident or incident that is likely to adversely affect the resident's well-being, is observed by or reported to staff persons.

(4) Take appropriate action in response to each resident's changing needs.

AMENDATORY SECTION (Amending WSR 12-01-003, filed 12/7/11, effective 1/7/12)

WAC 388-78A-2130 Service agreement planning. The ~~((boarding home))~~ assisted living facility must:

(1) Develop an initial resident service plan, based upon discussions with the resident and the resident's representative if the resident has one, and the preadmission assessment of a qualified assessor, upon admitting a resident into ~~((a boarding home))~~ an assisted living facility. The ~~((boarding home))~~ assisted living facility must ensure the initial resident service plan:

(a) Integrates the assessment information provided by the department's case manager for each resident whose care is partially or wholly funded by the department or the health care authority;

(b) Identifies the resident's immediate needs; and

(c) Provides direction to staff and caregivers relating to the resident's immediate needs, capabilities, and preferences.

(2) Complete the negotiated service agreement for each resident using the resident's preadmission assessment, initial resident service plan, and full assessment information, within thirty days of the resident moving in;

(3) Review and update each resident's negotiated service agreement consistent with WAC 388-78A-2120:

(a) Within a reasonable time consistent with the needs of the resident following any change in the resident's physical, mental, or emotional functioning; and

(b) Whenever the negotiated service agreement no longer adequately addresses the resident's current assessed needs and preferences.

(4) Review and update each resident's negotiated service agreement as necessary following an annual full assessment;

(5) Involve the following persons in the process of developing and updating a negotiated service agreement:

(a) The resident;

(b) The resident's representative to the extent he or she is willing and capable, if the resident has one;

(c) Other individuals the resident wants included;

(d) The department's case manager, if the resident is a recipient of medicaid assistance, or any private case manager, if available; and

(e) Staff designated by the ~~((boarding home))~~ assisted living facility.

(6) Ensure:

(a) Individuals participating in developing the resident's negotiated service agreement:

(i) Discuss the resident's assessed needs, capabilities, and preferences; and

(ii) Negotiate and agree upon the care and services to be provided to support the resident; and

(b) Staff persons document in the resident's record the agreed upon plan for services.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2140 Negotiated service agreement contents. The ((~~boarding home~~)) assisted living facility must develop, and document in the resident's record, the agreed upon plan to address and support each resident's assessed capabilities, needs and preferences, including the following:

(1) The care and services necessary to meet the resident's needs, including:

(a) The plan to monitor the resident and address interventions for current risks to the resident's health and safety that were identified in one or more of the following:

- (i) The resident's preadmission assessment;
- (ii) The resident's full assessments;
- (iii) On-going assessments of the resident;

(b) The plan to provide assistance with activities of daily living, if provided by the ((~~boarding home~~)) assisted living facility;

(c) The plan to provide necessary intermittent nursing services, if provided by the ((~~boarding home~~)) assisted living facility;

(d) The plan to provide necessary health support services, if provided by the ((~~boarding home~~)) assisted living facility;

(e) The resident's preferences for how services will be provided, supported and accommodated by the ((~~boarding home~~)) assisted living facility.

(2) Clearly defined respective roles and responsibilities of the resident, the ((~~boarding home~~)) assisted living facility staff, and resident's family or other significant persons in meeting the resident's needs and preferences. Except as specified in WAC 388-78A-2290 and 388-78A-2340(5), if a person other than a caregiver is to be responsible for providing care or services to the resident in the ((~~boarding home~~)) assisted living facility, the ((~~boarding home~~)) assisted living facility must specify in the negotiated service agreement an alternate plan for providing care or service to the resident in the event the necessary services are not provided. The ((~~boarding home~~)) assisted living facility may develop an alternate plan:

(a) Exclusively for the individual resident; or

(b) Based on standard policies and procedures in the ((~~boarding home~~)) assisted living facility provided that they are consistent with the reasonable accommodation requirements of state and federal law.

(3) The times services will be delivered, including frequency and approximate time of day, as appropriate;

(4) The resident's preferences for activities and how those preferences will be supported;

(5) Appropriate behavioral interventions, if needed;

(6) A communication plan, if special communication needs are present;

(7) The resident's ability to leave the ((~~boarding home~~)) assisted living facility premises unsupervised; and

(8) The ((~~boarding home~~)) assisted living facility must not require or ask the resident or the resident's representative

to sign any negotiated service or risk agreement, that purports to waive any rights of the resident or that purports to place responsibility or liability for losses of personal property or injury on the resident.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2150 Signing negotiated service agreement. The ((~~boarding home~~)) assisted living facility must ensure that the negotiated service agreement is agreed to and signed at least annually by:

(1) The resident, or the resident's representative if the resident has one and is unable to sign or chooses not to sign;

(2) A representative of the ((~~boarding home~~)) assisted living facility duly authorized by the ((~~boarding home~~)) assisted living facility to sign on its behalf; and

(3) Any public or private case manager for the resident, if available.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2160 Implementation of negotiated service agreement. The ((~~boarding home~~)) assisted living facility must provide the care and services as agreed upon in the negotiated service agreement to each resident unless a deviation from the negotiated service agreement is mutually agreed upon between the ((~~boarding home~~)) assisted living facility and the resident or the resident's representative at the time the care or services are scheduled.

~~((BOARDING HOME))~~ ASSISTED LIVING FACILITY SERVICES

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2170 Required ((~~boarding home~~)) assisted living facility services. (1) The ((~~boarding home~~)) assisted living facility must provide housing and assume general responsibility for the safety and well-being of each resident, as defined in this chapter, consistent with the resident's assessed needs and negotiated service agreement.

(2) The ((~~boarding homes~~)) assisted living facility must provide each resident with the following basic services, consistent with the resident's assessed needs and negotiated service agreement:

(a) **Activities** - Arranging for activities in accordance with WAC 388-78A-2180;

(b) **Housekeeping** - Providing a safe, clean and comfortable environment for each resident, including personal living quarters and all other resident accessible areas of the building;

(c) **Laundry** - Keeping the resident's clothing clean and in good repair, and laundering towels, washcloths, bed linens on a weekly basis or more often as necessary to maintain cleanliness;

(d) **Meals** - Providing meals in accordance with WAC 388-78A-2300; and

(e) **Nutritious snacks** - Providing nutritious snack items on a scheduled and nonscheduled basis, and providing nutritious snacks in accordance with WAC 388-78A-2300.

(3) The ~~((boarding home))~~ assisted living facility must:

(a) Provide care and services to each resident by staff persons who are able to communicate with the resident in a language the resident understands; or

(b) Make provisions for communications between staff persons and residents to ensure an accurate exchange of information.

(4) The ~~((boarding home))~~ assisted living facility must ensure each resident is able to obtain individually preferred personal care items when:

(a) The preferred personal care items are reasonably available; and

(b) The resident is willing and able to pay for obtaining the preferred items.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2180 Activities. The ~~((boarding home))~~ assisted living facility must:

(1) Provide space and staff support necessary for:

(a) Each resident to engage in independent or self-directed activities that are appropriate to the setting, consistent with the resident's assessed interests, functional abilities, preferences, and negotiated service agreement; and

(b) Group activities at least three times per week that may be planned and facilitated by caregivers consistent with the collective interests of a group of residents.

(2) Make available routine supplies and equipment necessary for activities described in subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2190 Activities of daily living. Assistance with activities of daily living is an optional service that the ~~((boarding home))~~ assisted living facility may provide.

(1) If ~~((a boarding home))~~ an assisted living facility chooses not to provide assistance with activities of daily living:

(a) The ~~((boarding home))~~ assisted living facility must admit or retain only those residents who are independent in activities of daily living; except that

(b) A resident, or the resident's representative, may independently arrange for outside services to assist with activities of daily living.

(2) When ~~((a boarding home))~~ an assisted living facility chooses to provide, either directly or indirectly, assistance with activities of daily living, the ~~((boarding home))~~ assisted living facility must provide that assistance consistent with the reasonable accommodation requirements in state and federal laws.

(3) When ~~((a boarding home))~~ an assisted living facility chooses to provide, either directly or indirectly, assistance with activities of daily living, the ~~((boarding home))~~ assisted living facility must provide to each resident, consistent with

the resident's assessed needs, minimal assistance with the following activities of daily living:

(a) **Bathing:** Minimal assistance with bathing means the ~~((boarding home))~~ assisted living facility must provide the resident with occasional:

(i) Reminding or cuing to wash and dry all areas of the body as needed;

(ii) Stand-by assistance getting into and out of the tub or shower; and

(iii) Physical assistance limited to steadying the resident during the activity.

(b) **Dressing:** Minimal assistance with dressing means the ~~((boarding home))~~ assisted living facility must provide the resident with occasional:

(i) Reminding or cuing to put on, take off, or lay out clothing, including prostheses when the assistance of a licensed nurse is not required;

(ii) Stand-by assistance during the activity; and

(iii) Physical assistance limited to steadying the resident during the activity.

(c) **Eating:** Minimal assistance with eating means the ~~((boarding home))~~ assisted living facility must provide the resident with occasional:

(i) Reminding or cuing to eat and drink; and

(ii) Physical assistance limited to cutting food up, preparing food and beverages, and bringing food and fluids to the resident.

(d) **Personal hygiene:** Minimal assistance with personal hygiene means the ~~((boarding home))~~ assisted living facility must provide the resident with occasional:

(i) Reminding and cuing to comb hair, perform oral care and brush teeth, shave, apply makeup, and wash and dry face, hands and other areas of the body;

(ii) Stand-by assistance during the activity; and

(iii) Physical assistance limited to steadying the resident during the activity.

(e) **Transferring:** Minimal assistance in transferring means the ~~((boarding home))~~ assisted living facility must provide the resident with occasional:

(i) Reminders or cuing to move between surfaces, for example to and from the bed, chair and standing;

(ii) Stand-by assistance during the activity; and

(iii) Physical assistance limited to steadying the resident during self-transfers.

(f) **Toileting:** Minimal assistance in toileting means the ~~((boarding home))~~ assisted living facility must provide the resident with occasional:

(i) Reminders and cuing to toilet, including resident self-care of ostomy or catheter, to wipe and cleanse, and to change and adjust clothing, protective garments and pads;

(ii) Stand-by assistance during the activity; and

(iii) Physical assistance limited to steadying the resident during the activity.

(g) **Mobility:** Minimal assistance in mobility means the ~~((boarding home))~~ assisted living facility must provide the resident with occasional:

(i) Reminding or cuing to move between locations on the ~~((boarding home))~~ assisted living facility premises;

(ii) Stand-by assistance during the activity; and

(iii) Physical assistance limited to steadying the resident during the activity.

(4) The ~~((boarding home))~~ assisted living facility may choose to provide more than minimal assistance with activities of daily living consistent with state and federal law.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2200 Health support services. Health support services are an optional service that the ~~((boarding home))~~ assisted living facility may provide. The ~~((boarding home))~~ assisted living facility may choose to provide any of the following health support services; however, ~~((a boarding home))~~ an assisted living facility may or may not need to provide additional health support services to comply with the reasonable accommodation requirements in federal and state law. The ~~((boarding home))~~ assisted living facility may provide:

- (1) Blood glucose testing;
- (2) Puree diets;
- (3) Calorie controlled diabetic diets;
- (4) Dementia care;
- (5) Mental health care; and
- (6) Developmental disabilities care.

AMENDATORY SECTION (Amending WSR 09-01-079, filed 12/15/08, effective 1/15/09)

WAC 388-78A-2202 Respite—General. ~~((A boarding home))~~ An assisted living facility:

- (1) May provide short term respite care;
- (2) Must limit the length of stay for an individual on respite to thirty calendar days or less; and
- (3) Must not use respite as a placement pending the resident's admission to the ~~((boarding home))~~ assisted living facility.

AMENDATORY SECTION (Amending WSR 09-01-079, filed 12/15/08, effective 1/15/09)

WAC 388-78A-2204 Respite—Information. When ~~((a boarding home))~~ an assisting living facility provides respite care, before or at the time of admission, the ~~((boarding home))~~ assisted living facility must obtain sufficient information about the individual to meet the individual's anticipated needs. That information must include at a minimum:

- (1) The resident's legal name;
- (2) The name, phone number and address of the resident's representative, if applicable;
- (3) The name and address of the adult family home, ~~((boarding home))~~ assisted living facility, or other location where the resident normally lives, with the name of a contact person and the contact person's phone number;
- (4) The name, address, and telephone number of the resident's attending physician, and alternate physician if any;
- (5) Medical and social history, which may be obtained from a respite care assessment and respite service plan performed by a case manager designated by an area agency on aging under contract with the department, and mental and physical assessment data; and

(6) Physician's orders for diet, medication, and routine care consistent with the resident's status on admission.

AMENDATORY SECTION (Amending WSR 09-01-079, filed 12/15/08, effective 1/15/09)

WAC 388-78A-2206 Respite—Assessment. The ~~((boarding home))~~ assisted living facility must ensure that any individual on respite has assessments performed, where needed, and if the assessment of the individual shows symptoms of:

- (1) Tuberculosis, follow required tuberculosis testing requirements; and
- (2) Other infectious conditions or diseases, follow the appropriate infection control processes.

AMENDATORY SECTION (Amending WSR 09-01-079, filed 12/15/08, effective 1/15/09)

WAC 388-78A-2208 Respite—Negotiated service agreement. With the participation of the individual, and where appropriate their representative, the ~~((boarding home))~~ assisted living facility must develop a negotiated service agreement, to maintain or improve the individual's health and functional status during their stay in the ~~((boarding home))~~ assisted living facility.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2210 Medication services. (1) ~~((A boarding home))~~ An assisted living facility providing medication service, either directly or indirectly, must:

- (a) Meet the requirements of chapter 69.41 RCW Legend drugs—Prescription drugs, and other applicable statutes and administrative rules; and
- (b) Develop and implement systems that support and promote safe medication service for each resident.

(2) The ~~((boarding home))~~ assisted living facility must ensure the following residents receive their medications as prescribed, except as provided for in WAC 388-78A-2230 and 388-78A-2250:

- (a) Each resident who requires medication assistance and his or her negotiated service agreement indicates the ~~((boarding home))~~ assisted living facility will provide medication assistance; and
- (b) If the ~~((boarding home))~~ assisted living facility provides medication administration services, each resident who requires medication administration and his or her negotiated service agreement indicates the ~~((boarding home))~~ assisted living facility will provide medication administration.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2220 Prescribed medication authorizations. (1) Before the ~~((boarding home))~~ assisted living facility may provide medication assistance or medication administration to a resident for prescribed medications, the ~~((boarding home))~~ assisted living facility must have one of the following:

- (a) A prescription label completed by a licensed pharmacy;
 - (b) A written order from the prescriber;
 - (c) A facsimile or other electronic transmission of the order from the prescriber; or
 - (d) Written documentation by a nurse of a telephone order from the prescriber.
- (2) The documentation required above in subsection (1) of this section must include the following information:
- (a) The name of the resident;
 - (b) The name of the medication;
 - (c) The dosage and dosage frequency of the medication; and
 - (d) The name of the prescriber.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2230 Medication refusal. (1) When a resident who is receiving medication assistance or medication administration services from the ~~((boarding home))~~ assisted living facility chooses to not take his or her medications, the ~~((boarding home))~~ assisted living facility must:

- (a) Respect the resident's right to choose not to take medication;
- (b) Document the time, date and medication the resident did not take;
- (c) Notify the physician of the refusal and follow any instructions provided, unless there is a staff person available who, acting within his or her scope of practice, is able to evaluate the significance of the resident not getting his or her medication, and such staff person:
 - (i) Conducts an evaluation; and
 - (ii) Takes the appropriate action, including notifying the prescriber or primary care practitioner when there is a consistent pattern of the resident choosing to not take his or her medications.

(2) The ~~((boarding home))~~ assisted living facility must comply with subsection (1) of this section, unless the prescriber or primary care practitioner has provided the ~~((boarding home))~~ assisted living facility with:

- (a) Specific directions for addressing the refusal of the identified medication;
- (b) The ~~((boarding home))~~ assisted living facility documents such directions; and
- (c) The ~~((boarding home))~~ assisted living facility is able to fully comply with such directions.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2240 Nonavailability of medications. When the ~~((boarding home))~~ assisted living facility has assumed responsibility for obtaining a resident's prescribed medications, the ~~((boarding home))~~ assisted living facility must obtain them in a correct and timely manner.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2250 Alteration of medications. The ~~((boarding home))~~ assisted living facility must generally provide medications in the form they are prescribed when administering medications or providing medication assistance to a resident. The ~~((boarding home))~~ assisted living facility may provide medications in an altered form consistent with the following:

- (1) Alteration includes, but is not limited to, crushing tablets, cutting tablets in half, opening capsules, mixing powdered medications with foods or liquids, or mixing tablets or capsules with foods or liquids.
- (2) Residents must be aware that the medication is being altered or added to their food.
- (3) A pharmacist or other practitioner practicing within their scope of practice must determine that it is safe to alter a medication.
- (4) If the medication is altered, documentation of the appropriateness of the alteration must be on the prescription container, or in the resident's record.
- (5) Alteration of medications for self-administration with assistance is provided in accordance with chapter 246-888 WAC.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2260 Storing, securing, and accounting for medications. (1) The ~~((boarding home))~~ assisted living facility must secure medications for residents who are not capable of safely storing their own medications.

- (2) The ~~((boarding home))~~ assisted living facility must ensure all medications under the ~~((boarding home's))~~ assisted living facility's control are properly stored:
 - (a) In containers with pharmacist-prepared label or original manufacturer's label;
 - (b) Together for each resident and physically separated from other residents' medications;
 - (c) Separate from food or toxic chemicals;
 - (d) In a locked compartment that is accessible only to designated responsible staff persons; and
 - (e) In environments recommended on the medication label.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2270 Resident controlled medications. (1) The ~~((boarding home))~~ assisted living facility must ensure all medications are stored in a manner that prevents each resident from gaining access to another resident's medications.

- (2) The ~~((boarding home))~~ assisted living facility must allow a resident to control and secure the medications that he or she self-administers or self-administers with assistance if the ~~((boarding home))~~ assisted living facility assesses the resident to be capable of safely and appropriately storing his or her own medications and the resident desires to do so.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2280 Medication organizers. (1) The ~~((boarding home))~~ assisted living facility must ensure no staff person other than a nurse or licensed pharmacist fills medication organizers for residents.

(2) The ~~((boarding home))~~ assisted living facility must ensure that any nurse who fills a medication organizer for a resident labels the medication organizer with:

- (a) The name of the resident;
- (b) The name of the medications in the organizer; and
- (c) The frequency of the dosage.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2290 Family assistance with medications and treatments. (1) ~~((A boarding home))~~ An assisted living facility may permit a resident's family member to administer medications or treatments or to provide medication or treatment assistance, including obtaining medications or treatment supplies, to the resident.

(2) The ~~((boarding home))~~ assisted living facility must disclose to the department, residents, the residents' legal representatives, if any, and if not the residents' representative if any, and to interested consumers upon request, information describing whether the ~~((boarding home))~~ assisted living facility permits such family administration or assistance and, if so, the extent of any limitations or conditions.

(3) If the ~~((boarding home))~~ assisted living facility allows family assistance with or administration of medications and treatments, and the resident and a family member(s) agree a family member will provide medication or treatment assistance, or medication or treatment administration to the resident, the ~~((boarding home))~~ assisted living facility must request that the family member submit to the ~~((boarding home))~~ assisted living facility a written plan for such assistance or administration that includes at a minimum:

(a) By name, the family member who will provide the medication or treatment assistance or administration;

(b) A description of the medication or treatment assistance or administration that the family member will provide, to be referred to as the primary plan;

(c) An alternate plan if the family member is unable to fulfill his or her duties as specified in the primary plan;

(d) An emergency contact person and telephone number if the ~~((boarding home))~~ assisted living facility observes changes in the resident's overall functioning or condition that may relate to the medication or treatment plan; and

(e) Other information determined necessary by the ~~((boarding home))~~ assisted living facility.

(4) The plan for family assistance with medications or treatments must be signed and dated by:

- (a) The resident, if able;
- (b) The resident's representative, if any;
- (c) The resident's family member responsible for implementing the plan; and
- (d) A representative of the ~~((boarding home))~~ assisted living facility authorized by the ~~((boarding home))~~ assisted living facility to sign on its behalf.

(5) The ~~((boarding home))~~ assisted living facility may, through policy or procedure, require the resident's family member to immediately notify the ~~((boarding home))~~ assisted living facility of any changes in the medication or treatment plans for family assistance or administration.

(6) The ~~((boarding home))~~ assisted living facility must require that whenever a resident's family provides medication assistance or medication administration services, the resident's significant medications remain on the ~~((boarding home))~~ assisted living facility premises whenever the resident is on the ~~((boarding home))~~ assisted living facility premises.

(7) The ~~((boarding home's))~~ assisted living facility's duty of care shall be limited to: Observation of the resident for changes in overall functioning consistent with RCW 18.20.280; notification to the person or persons identified in RCW 70.129.030 when there are observed changes in the resident's overall functioning or condition, or when the ~~((boarding home))~~ assisted living facility is aware that both the primary and alternate plan are not implemented; and appropriately responding to obtain needed assistance when there are observable or reported changes in the resident's physical or mental functioning.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2300 Food and nutrition services. (1) The ~~((boarding home))~~ assisted living facility must:

- (a) Provide a minimum of three meals a day:
 - (i) At regular intervals;
 - (ii) With no more than fourteen hours between the evening meal and breakfast, unless the ~~((boarding home))~~ assisted living facility provides a nutritious snack after the evening meal and before breakfast.
- (b) Provide sufficient time and staff support for residents to consume meals;
- (c) Ensure all menus:
 - (i) Are written at least one week in advance and delivered to residents' rooms or posted where residents can see them, except as specified in (f) of this subsection;
 - (ii) Indicate the date, day of week, month and year;
 - (iii) Include all food and snacks served that contribute to nutritional requirements;
 - (iv) Are kept at least six months;
 - (v) Provide a variety of foods; and
 - (vi) Are not repeated for at least three weeks, except that breakfast menus in ~~((boarding homes))~~ assisted living facilities that provide a variety of daily choices of hot and cold foods are not required to have a minimum three-week cycle.
- (d) Prepare food on-site, or provide food through a contract with a food service establishment located in the vicinity that meets the requirements of chapter 246-215 WAC Food service;
- (e) Serve nourishing, palatable and attractively served meals adjusted for:
 - (i) Age, gender and activities, unless medically contraindicated; and
 - (ii) Individual preferences to the extent reasonably possible.

(f) Substitute foods of equal nutrient value, when changes in the current day's menu are necessary, and record changes on the original menu;

(g) Make available and give residents alternate choices in entrees for midday and evening meals that are of comparable quality and nutritional value. The ~~((boarding home))~~ assisted living facility is not required to post alternate choices in entrees on the menu one week in advance, but must record on the menus the alternate choices in entrees that are served;

(h) Develop, make known to residents, and implement a process for residents to express their views and comment on the food services; and

(i) Maintain a dining area or areas approved by the department with a seating capacity for fifty percent or more of the residents per meal setting, or ten square feet times the licensed resident bed capacity, whichever is greater.

(2) The ~~((boarding home))~~ assisted living facility must plan in writing, prepare on-site or provide through a contract with a food service establishment located in the vicinity that meets the requirements of chapter 246-215 WAC, and serve to each resident as ordered:

(a) Prescribed general low sodium, general diabetic, and mechanical soft food diets according to a diet manual. The ~~((boarding home))~~ assisted living facility must ensure the diet manual is:

(i) Available to and used by staff persons responsible for food preparation;

(ii) Approved by a dietitian; and

(iii) Reviewed and updated as necessary or at least every five years.

(b) Prescribed nutrient concentrates and supplements when prescribed in writing by a health care practitioner.

(3) The ~~((boarding home))~~ assisted living facility may provide to a resident at his or her request and as agreed upon in the resident's negotiated service agreement, nonprescribed:

(a) Modified or therapeutic diets;

(b) Nutritional concentrates or supplements.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2305 Food sanitation. The ~~((boarding home))~~ assisted living facility must:

(1) Manage food, and maintain any on-site food service facilities in compliance with chapter 246-215 WAC, Food service;

(2) Ensure employees working as food service workers obtain a food worker card according to chapter 246-217 WAC; and

(3) Ensure a resident obtains a food worker card according to chapter 246-217 WAC whenever:

(a) The resident is routinely or regularly involved in the preparation of food to be served to other residents;

(b) The resident is paid for helping to prepare food; or

(c) The resident is preparing food to be served to other residents as part of an employment-training program.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2310 Intermittent nursing services.

(1) Intermittent nursing services are an optional service that the ~~((boarding home))~~ assisted living facility may provide.

(2) The ~~((boarding home))~~ assisted living facility may choose to provide any of the following intermittent nursing services through appropriately licensed and credentialed staff; however, the facility may or may not need to provide additional intermittent nursing services to comply with the reasonable accommodation requirements in federal or state law:

(a) Medication administration;

(b) Administration of health treatments;

(c) Diabetic management;

(d) Nonroutine ostomy care;

(e) Tube feeding; and

(f) Nurse delegation consistent with chapter 18.79 RCW.

(3) The ~~((boarding home))~~ assisted living facility must clarify on the disclosure form any limitations, additional services, or conditions that may apply under this section.

(4) In providing intermittent nursing services, the ~~((boarding home))~~ assisted living facility must observe the resident for changes in overall functioning and respond appropriately when there are observable or reported changes in the resident's physical, mental or emotional functioning.

(5) The ~~((boarding home))~~ assisted living facility may provide intermittent nursing services to the extent permitted by RCW 18.20.160.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2320 Intermittent nursing services systems. (1) When ~~((a boarding home))~~ an assisted living facility provides intermittent nursing services to any resident, either directly or indirectly, the ~~((boarding home))~~ assisted living facility must:

(a) Develop and implement systems that support and promote the safe practice of nursing for each resident; and

(b) Ensure the requirements of chapters 18.79 RCW and 246-840 WAC are met.

(2) The ~~((boarding home))~~ assisted living facility providing nursing services, either directly or indirectly, must ensure that the nursing services systems include:

(a) Nursing services supervision;

(b) Nurse delegation, if provided;

(c) Initial and on-going assessments of the nursing needs of each resident;

(d) Development of, and necessary amendments to, the nursing component of the negotiated service agreement for each resident;

(e) Implementation of the nursing component of each resident's negotiated service agreement; and

(f) Availability of the supervisor, in person, by pager, or by telephone, to respond to residents' needs on the ~~((boarding home))~~ assisted living facility premises as necessary.

(3) The ~~((boarding home))~~ assisted living facility must ensure that all nursing services, including nursing supervision, assessments, and delegation, are provided in accordance

with applicable statutes and rules, including, but not limited to:

- (a) Chapter 18.79 RCW, Nursing care;
- (b) Chapter 18.88A RCW, Nursing assistants;
- (c) Chapter 246-840 WAC, Practical and registered nursing;
- (d) Chapter 246-841 WAC, Nursing assistants; and
- (e) Chapter 246-888 WAC, Medication assistance.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2330 Tube feeding. (1) Tube feeding services are an optional service that ~~((a boarding home))~~ an assisted living facility may provide.

(2) The ~~((boarding home))~~ assisted living facility must provide intermittent nursing services to develop and implement the nursing component of the negotiated service agreement, administer feedings and necessary medications, and provide routine care of the tube insertion site whenever any resident requiring tube feeding is not able to:

- (a) Independently and safely manage:
 - (i) Maintenance of the tube insertion site;
 - (ii) Necessary medication administration through the tube; and
 - (iii) Feeding administration through the tube.
- (b) Arrange for an outside resource to provide:
 - (i) Maintenance of the tube insertion site;
 - (ii) Necessary medication administration through the tube; and
 - (iii) Feeding administration through the tube.

(3) The ~~((boarding home))~~ assisted living facility is not required to provide nursing services to a resident simply because the resident requires tube feeding if the resident can either independently manage or arrange for an outside resource to perform the tasks specified in subsection (2)(a) and (b) of this section.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2340 Resident-arranged services. (1) The ~~((boarding home))~~ assisted living facility must allow a resident to arrange to receive on-site care and services from:

- (a) A practitioner, licensed under Title 18 RCW regulating health care professions; and
- (b) A home health, hospice, or home care agency licensed under chapter 70.127 RCW.

(2) The ~~((boarding home))~~ assisted living facility may permit the resident or the resident's legal representative, if any, to independently arrange for other persons to provide on-site care and services to the resident.

(3) The ~~((boarding home))~~ assisted living facility is not required to supervise the activities of a person providing care or services to a resident when the resident or resident's representative has independently arranged for or contracted with the person.

(4) The ~~((boarding home))~~ assisted living facility may establish policies and procedures that describe reasonable limitations, conditions, or requirements that must be met prior to an outside service provider being allowed on-site.

(5) When the resident or the resident's representative, if any, independently arranges for outside services under subsection (1) of this section, the ~~((boarding home's))~~ assisted living facility's duty of care, and any negligence that may be attributed thereto, shall be limited to: The responsibilities described under subsection (3) of this section; observation of the resident for changes in overall functioning, consistent with RCW 18.20.280; notification to the person or persons identified in RCW 70.129.030 when there are observed changes in the resident's overall functioning or condition; and appropriately responding to obtain needed assistance when there are observable or reported changes in the resident's physical or mental functioning.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2350 Coordination of health care services. (1) The ~~((boarding home))~~ assisted living facility must coordinate services with external health care providers to meet the residents' needs, consistent with the resident's negotiated service agreement.

(2) The ~~((boarding home))~~ assisted living facility must develop, implement and inform residents of the ~~((boarding home's))~~ assisted living facility's policies regarding how the ~~((boarding home))~~ assisted living facility interacts with external health care providers, including:

(a) The conditions under which health care information regarding a resident will be shared with external health care providers, consistent with chapter 70.02 RCW; and

(b) How residents' rights to privacy will be protected, including provisions for residents to authorize the release of health care information.

(3) The ~~((boarding home))~~ assisted living facility may disclose health care information about a resident to external health care providers without the resident's authorization if the conditions in RCW 70.02.050 are met.

(4) If the conditions in RCW 70.02.050 are not met, the ~~((boarding home))~~ assisted living facility must request, but may not require, a resident to authorize the ~~((boarding home))~~ assisted living facility and the external health care provider to share the resident's health care information when:

(a) The ~~((boarding home))~~ assisted living facility becomes aware that a resident is receiving health care services from a source other than the ~~((boarding home))~~ assisted living facility; and

(b) The resident has not previously authorized the ~~((boarding home))~~ assisted living facility to release health care information to an external health care provider.

(5) When a resident authorizes the release of health care information or resident authorization is not required under RCW 70.02.050, the ~~((boarding home))~~ assisted living facility must contact the external health care provider and coordinate services.

(6) When authorizations to release health care information are not obtained, or when an external health care provider is unresponsive to the ~~((boarding home's))~~ assisted living facility's efforts to coordinate services, the ~~((boarding home))~~ assisted living facility must:

(a) Document the (~~(boarding home's)~~) assisted living facility's actions to coordinate services;

(b) Provide notice to the resident of the risks of not allowing the (~~(boarding home)~~) assisted living facility to coordinate care with the external provider; and

(c) Address known associated risks in the resident's negotiated service agreement.

(7) When coordinating care or services, the (~~(boarding home)~~) assisted living facility must:

(a) Integrate relevant information from the external provider into the resident's preadmission assessment and reassessment, and when appropriate, negotiated service agreement; and

(b) Respond appropriately when there are observable or reported changes in the resident's physical, mental, or emotional functioning.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2360 Adult day services. (1) The (~~(boarding home)~~) assisted living facility may, but is not required to, provide an adult day services program for non-residents.

(2) If adult day services are provided, the (~~(boarding home)~~) assisted living facility must:

(a) Ensure each adult day services client receives appropriate supervision and agreed upon care and services during the time spent in the day services program;

(b) Ensure the care and services provided to adult day services clients do not compromise the care and services provided to (~~(boarding home)~~) assisted living facility residents;

(c) Ensure the total number of residents plus adult day services clients does not exceed the (~~(boarding home's)~~) assisted living facility's maximum facility capacity;

(d) Only accept adult day services clients who are appropriate for (~~(boarding home)~~) assisted living facility care and services, consistent with WAC 388-78A-2050;

(e) Provide sufficient furniture for the comfort of day services clients, in addition to furniture provided for residents;

(f) Notify appropriate individuals specified in the client's record and consistent with WAC 388-78A-2640 when there is a significant change in the condition of an adult day services client;

(g) Investigate and document incidents and accidents involving adult day services clients consistent with WAC 388-78A-2700;

(h) Maintain a separate register of adult day services clients; and

(i) Maintain a record for each adult day services client.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2370 Dementia care. (1) The (~~(boarding home)~~) assisted living facility must, to the fullest extent reasonably possible, obtain for each resident who has symptoms consistent with dementia as assessed per WAC 388-78A-2090(7):

(a) Information regarding the resident's significant life experiences, including:

(i) Family members or other significant relationships;

(ii) Education and training;

(iii) Employment and career experiences;

(iv) Religious or spiritual preferences;

(v) Familiar roles or sources of pride and pleasure.

(b) Information regarding the resident's ability or inability to:

(i) Articulate his or her personal needs; and

(ii) Initiate activity.

(c) Information regarding any patterns of resident behavior that express the resident's needs or concerns that the resident is not able to verbalize. Examples of such behaviors include, but are not limited to:

(i) Agitation;

(ii) Wandering;

(iii) Resistance to care;

(iv) Social isolation; and

(v) Aggression.

(2) The (~~(boarding home)~~) assisted living facility, in consultation with the resident's family or others familiar with the resident, must evaluate the significance and implications of the information obtained per subsection (1) of this section and integrate appropriate aspects into an individualized negotiated service agreement for the resident.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2380 Restricted egress. (~~(A boarding home)~~) An assisted living facility must ensure all of the following conditions are present before moving residents into units or buildings with exits that may restrict a resident's egress:

(1) Each resident, or a person authorized under RCW 7.70.065 to provide consent on behalf of the resident, consents to living in such unit or building.

(2) Each resident assessed as being cognitively and physically able to safely leave the (~~(boarding home)~~) assisted living facility is able to do so independently without restriction.

(3) Each resident, assessed as being cognitively able to safely leave the (~~(boarding home)~~) assisted living facility and who has physical challenges that make exiting difficult, is able to leave the (~~(boarding home)~~) assisted living facility when the resident desires and in a manner consistent with the resident's negotiated service agreement.

(4) Each resident who is assessed as being unsafe to leave the (~~(boarding home)~~) assisted living facility unescorted is able to leave the (~~(boarding home)~~) assisted living facility consistent with his or her negotiated service agreement.

(5) Areas from which egress is restricted are equipped throughout with an approved automatic fire detection system and automatic fire sprinkler system electrically interconnected with a fire alarm system that transmits an alarm off site to a twenty-four hour monitoring station.

(6) Installation of special egress control devices in all proposed construction issued a project number by construction review services on or after September 1, 2004 for con-

struction related to this section, must conform to standards adopted by the state building code council.

(7) Installation of special egress control devices in all construction issued a project number by construction review services before September 1, 2004 for construction related to this section, must conform to the following:

(a) The egress control device must automatically deactivate upon activation of either the sprinkler system or the smoke detection system.

(b) The egress control device must automatically deactivate upon loss of electrical power to any one of the following:

- (i) The egress control device itself;
- (ii) The smoke detection system; or
- (iii) The means of egress illumination.

(c) The egress control device must be capable of being deactivated by a signal from a switch located in an approved location.

(d) An irreversible process which will deactivate the egress control device must be initiated whenever a manual force of not more than fifteen pounds is applied for two seconds to the panic bar or other door-latching hardware. The egress control device must deactivate within an approved time period not to exceed a total of fifteen seconds. The time delay must not be field adjustable.

(e) Actuation of the panic bar or other door-latching hardware must activate an audible signal at the door.

(f) The unlatching must not require more than one operation.

(g) A sign must be provided on the door located above and within twelve inches of the panic bar or other door-latching hardware reading:

"Keep pushing. The door will open in fifteen seconds. Alarm will sound."

The sign lettering must be at least one inch in height and must have a stroke of not less than one-eighth inch.

(h) Regardless of the means of deactivation, relocking of the egress control device must be by manual means only at the door.

(8) The ~~((boarding home))~~ assisted living facility must have a system in place to inform and permit visitors, staff persons and appropriate residents how they can exit without sounding the alarm.

(9) Units or buildings from which egress is restricted are equipped with a secured outdoor space for walking which:

- (a) Is accessible to residents without staff assistance;
- (b) Is surrounded by walls or fences at least seventy-two inches high;
- (c) Has areas protected from direct sunshine and rain throughout the day;
- (d) Has walking surfaces that are firm, stable, slip-resistant and free from abrupt changes and are suitable for individuals using wheelchairs and walkers; and
- (e) Has suitable outdoor furniture.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2390 Resident records. The ~~((boarding home))~~ assisted living facility must maintain adequate

records concerning residents to enable the ~~((boarding home))~~ assisted living facility:

- (1) To effectively provide the care and services agreed upon with the resident; and
- (2) To respond appropriately in emergency situations.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2400 Protection of resident records. The ~~((boarding home))~~ assisted living facility must:

- (1) Maintain a systematic and secure method of identifying and filing resident records for easy access;
- (2) Maintain resident records and preserve their confidentiality in accordance with applicable state and federal statutes and rules, including chapters 70.02 and 70.129 RCW;
- (3) Allow authorized representatives of the department and other authorized regulatory agencies access to resident records;
- (4) Provide any resident or other individual or organization access to resident records upon written consent of the resident or the resident's representative, unless state or federal law provide for broader access;
- (5) Allow authorized agents, such as a management company, to use resident records solely for the purpose of providing care and services to residents and ensure that agents do not disclose such records except in a manner consistent with law; and
- (6) Maintain ownership and control of resident records, except that resident records may be transferred to a subsequent person licensed by the department to operate the ~~((boarding home))~~ assisted living facility.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2410 Content of resident records. The ~~((boarding home))~~ assisted living facility must organize and maintain resident records in a format that the ~~((boarding home))~~ assisted living facility determines to be useful and functional to enable the effective provision of care and services to each resident. Active resident records must include the following:

- (1) Resident identifying information, including resident's:
 - (a) Name;
 - (b) Birth date;
 - (c) Move-in date; and
 - (d) Sleeping room identification.
- (2) Current name, address, and telephone number of:
 - (a) Resident's primary health care provider;
 - (b) Resident's representative, if the resident has one;
 - (c) Individual(s) to contact in case of emergency, illness or death; and
 - (d) Family members or others, if any, the resident requests to be involved in the development or delivery of services for the resident.
- (3) Resident's written acknowledgment of receipt of:
 - (a) Required disclosure information prior to moving into the ~~((boarding home))~~ assisted living facility; and

(b) Information required by long-term care resident rights per RCW 70.129.030.

(4) The resident's assessment and reassessment information.

(5) Clinical information such as admission weight, height, blood pressure, temperature, blood sugar and other laboratory tests required by the negotiated service agreement.

(6) The resident's negotiated service agreement consistent with WAC 388-78A-2140.

(7) Any orders for medications, treatments, and modified or therapeutic diets, including any directions for addressing a resident's refusal of medications, treatments, and prescribed diets.

(8) Medical and nursing services provided by the ~~((boarding home))~~ assisted living facility for a resident, including:

(a) A record of providing medication assistance and medication administration, which contains:

(i) The medication name, dose, and route of administration;

(ii) The time and date of any medication assistance or administration;

(iii) The signature or initials of the person providing any medication assistance or administration; and

(iv) Documentation of a resident choosing to not take his or her medications.

(b) A record of any nursing treatments, including the signature or initials of the person providing them.

(9) Documentation consistent with WAC 388-78A-2120 Monitoring resident well-being.

(10) Staff interventions or responses to subsection (9) of this section, including any modifications made to the resident's negotiated service agreement.

(11) Notices of and reasons for relocation as specified in RCW 70.129.110.

(12) The individuals who were notified of a significant change in the resident's condition and the time and date of the notification.

(13) When available, a copy of any legal documents in which:

(a) The resident has appointed another individual to make his or her health care, financial, or other decisions;

(b) The resident has created an advance directive or other legal document that establishes a surrogate decision maker in the future and/or provides directions to health care providers; and

(c) A court has established guardianship on behalf of the resident.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2420 Record retention. (1) The ~~((boarding home))~~ assisted living facility must maintain on the ~~((boarding home))~~ assisted living facility premises in a resident's active record(s) all relevant information and documentation necessary for meeting a resident's current assessed needs.

(2) The ~~((boarding home))~~ assisted living facility may remove outdated information from the resident's active

records that is no longer significant or relevant to the resident's current assessed service and care needs, and maintain it in an inactive record that must remain on the ~~((boarding home))~~ assisted living facility premises as long as the resident remains in the ~~((boarding home))~~ assisted living facility.

(3) The ~~((boarding home))~~ assisted living facility must maintain all documentation filed in a closed resident record, on the ~~((boarding home))~~ assisted living facility premises for six months after the date the resident leaves the ~~((boarding home))~~ assisted living facility and on the ~~((boarding home))~~ assisted living facility premises or another location for five years after the date the resident leaves the ~~((boarding home))~~ assisted living facility.

(4) All active, inactive, and closed resident records must be available for review by department staff and other authorized persons.

(5) If ~~((a boarding home))~~ an assisted living facility ceases to operate as a licensed ~~((boarding home))~~ assisted living facility, the most recent licensee must make arrangements to ensure that the former residents' records are retained according to the times specified in this section and are available for review by department staff and other authorized individuals.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2430 Resident review of records. (1) The ~~((boarding home))~~ assisted living facility must assemble all records pertaining to a resident and make them available to a resident within twenty-four hours of the resident's or the resident's representative's request to review the resident's records per RCW 70.129.030.

(2) The ~~((boarding home))~~ assisted living facility must provide to the resident or the resident's representative, photocopies of the records or any portions of the records pertaining to the resident, within two working days of the resident's or resident's representative's request for the records.

(a) For the purposes of this section, "working days" means Monday through Friday, except for legal holidays.

(b) The ~~((boarding home))~~ assisted living facility may charge the resident or the resident's representative a fee not to exceed twenty-five cents per page for the cost of photocopying the resident's record.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2440 Resident register. (1) The ~~((boarding home))~~ assisted living facility must maintain in the ~~((boarding home))~~ assisted living facility a single current register of all ~~((boarding home))~~ assisted living facility residents, their roommates and identification of the rooms in which such persons reside or sleep.

(2) The ~~((boarding home))~~ assisted living facility must maintain a readily available permanent, current book, computer file, or register with entries in ink or typewritten, of all individuals who resided in the ~~((boarding home))~~ assisted living facility within the past five years, including:

(a) Move-in date;

(b) Full name;

- (c) Date of birth;
- (d) Date of moving out;
- (e) Reason for moving out; and
- (f) Location and address to which the resident was discharged.

(3) The ~~((boarding home))~~ assisted living facility must make this register immediately available to:

- (a) Authorized department staff;
- (b) Representatives of the long-term care ombudsman's office; and
- (c) Representatives of the Washington state fire marshal when conducting fire safety inspections.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2450 Staff. (1) Each ~~((boarding home))~~ assisted living facility must provide sufficient, trained staff persons to:

(a) Furnish the services and care needed by each resident consistent with his or her negotiated service agreement;

(b) Maintain the ~~((boarding home))~~ assisted living facility free of safety hazards; and

(c) Implement fire and disaster plans.

(2) The ~~((boarding home))~~ assisted living facility must:

(a) Develop and maintain written job descriptions for the administrator and each staff position and provide each staff person with a copy of his or her job description before or upon the start of employment;

(b) Verify staff persons' work references prior to hiring;

(c) Verify prior to hiring that staff persons have the required licenses, certification, registrations, or other credentials for the position, and that such licenses, certifications, registrations, and credentials are current and in good standing;

(d) Document and retain for twelve weeks, weekly staffing schedules, as planned and worked;

(e) Ensure all resident care and services are provided only by staff persons who have the training, credentials, experience and other qualifications necessary to provide the care and services;

(f) Ensure at least one caregiver, who is eighteen years of age or older and has current cardiopulmonary resuscitation and first-aid cards, is present and available to assist residents at all times:

(i) When one or more residents are present on the ~~((boarding home))~~ assisted living facility premises; and

(ii) During ~~((boarding home))~~ assisted living facility activities off of the ~~((boarding home))~~ assisted living facility premises.

(g) Ensure caregiver provides on-site supervision of any resident voluntarily providing services for the ~~((boarding home))~~ assisted living facility;

(h) Provide staff orientation and appropriate training for expected duties, including:

(i) Organization of ~~((boarding home))~~ the assisted living facility;

(ii) Physical ~~((boarding home))~~ assisted living facility layout;

(iii) Specific duties and responsibilities;

(iv) How to report resident abuse and neglect consistent with chapter 74.34 RCW and ~~((boarding home))~~ assisted living facility policies and procedures;

(v) Policies, procedures, and equipment necessary to perform duties;

(vi) Needs and service preferences identified in the negotiated service agreements of residents with whom the staff persons will be working; and

(vii) Resident rights, including without limitation, those specified in chapter 70.129 RCW.

(i) Develop and implement a process to ensure caregivers:

(i) Acquire the necessary information from the preadmission assessment, on-going assessment and negotiated service agreement relevant to providing services to each resident with whom the caregiver works;

(ii) Are informed of changes in the negotiated service agreement of each resident with whom the caregiver works; and

(iii) Are given an opportunity to provide information to responsible staff regarding the resident when assessments and negotiated service agreements are updated for each resident with whom the caregiver works.

(j) Ensure all caregivers have access to resident records relevant to effectively providing care and services to the resident.

(3) The ~~((boarding home))~~ assisted living facility must:

(a) Protect all residents by ensuring any staff person suspected or accused of abuse, neglect, financial exploitation, or abandonment does not have access to any resident until the ~~((boarding home))~~ assisted living facility investigates and takes action to ensure resident safety;

(b) Not interfere with the investigation of a complaint, coerce a resident or staff person regarding cooperating with a complaint investigation, or conceal or destroy evidence of alleged improprieties occurring within the ~~((boarding home))~~ assisted living facility;

(c) Prohibit staff persons from being directly employed by a resident or a resident's family during the hours the staff person is working for the ~~((boarding home))~~ assisted living facility;

(d) Maintain the following documentation on the ~~((boarding home))~~ assisted living facility premises, during employment, and at least two years following termination of employment:

(i) Staff orientation and training or certification pertinent to duties, including, but not limited to:

(A) Training required by chapter 388-112 WAC;

(B) Home care aide certification as required by this chapter and chapter 246-980 WAC;

(C) Cardiopulmonary resuscitation;

(D) First aid; and

(E) HIV/AIDS training.

(ii) Disclosure statements and background checks as required in WAC 388-78A-2461 through 388-78A-2471; and

(iii) Documentation of contacting work references and professional licensing and certification boards as required by subsection (2) of this section.

(4) The ~~((boarding home))~~ assisted living facility is not required to keep on the ~~((boarding home))~~ assisted living

facility premises, staff records that are unrelated to staff performance of duties. Such records include, but are not limited to, pay records, and health and insurance benefits for staff.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2460 Quality assurance committee.

(1) To ensure the proper delivery of services and the maintenance and improvement in quality of care through self-review, any (~~(boarding home)~~) assisted living facility licensed under this chapter may maintain a quality assurance committee that, at a minimum, includes:

(a) A licensed registered nurse under chapter 18.79 RCW;

(b) The administrator; and

(c) Three other members from the staff of the (~~(boarding home)~~) assisted living facility.

(2) When established, the quality assurance committee shall meet at least quarterly to identify issues that may adversely affect quality of care and services to residents and to develop and implement plans of action to correct identified quality concerns or deficiencies in the quality of care provided to residents.

(3) To promote quality of care through self-review without the fear of reprisal, and to enhance the objectivity of the review process, the department shall not require, and the long-term care ombudsman program shall not request, disclosure of any quality assurance committee records or reports, unless the disclosure is related to the committee's compliance with this section, if:

(a) The records or reports are not maintained pursuant to statutory or regulatory mandate; and

(b) The records or reports are created for and collected and maintained by the committee.

(4) If the (~~(boarding home)~~) assisted living facility refuses to release records or reports that would otherwise be protected under this section, the department may then request only that information that is necessary to determine whether the (~~(boarding home)~~) assisted living facility has a quality assurance committee and to determine that it is operating in compliance with this section. However, if the (~~(boarding home)~~) assisted living facility offers the department documents generated by, or for, the quality assurance committee as evidence of compliance with (~~(boarding home)~~) assisted living facility requirements, the documents are not protected as quality assurance committee documents when in the possession of the department.

(5) Good faith attempts by the committee to identify and correct quality deficiencies shall not be used as a basis for sanctions.

(6) Any records that are created for and collected and maintained by the quality assurance committee shall not be discoverable or admitted into evidence in a civil action brought against (~~(a boarding home)~~) an assisted living facility.

(7) Notwithstanding any records created for the quality assurance committee, the facility shall fully set forth in the resident's records, available to the resident, the department, and others as permitted by law, the facts concerning any inci-

dent of injury or loss to the resident, the steps taken by the facility to address the resident's needs, and the resident outcome.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-2461 Background checks—General.

(1) Background checks conducted by the department and required in this chapter include:

(a) Washington state name and date of birth background checks; and

(b) After January 7, 2012, a national fingerprint background check in accordance with RCW 74.39A.056.

(2) Nothing in this chapter should be interpreted as requiring the employment of a person against the better judgment of the (~~(boarding home)~~) assisted living facility.

(3) In addition to chapter 18.20 RCW, these rules are authorized by RCW 43.20A.710, RCW 43.43.830 through 43.43.842 and RCW 74.39A.051.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-2462 Background checks—Who is required to have. (1) Applicants for (~~(a boarding home)~~) an assisted living facility license, as defined in WAC 388-78A-2740, must have the following background checks before licensure:

(a) A Washington state name and date of birth background check; and

(b) A national fingerprint background check.

(2) The (~~(boarding home)~~) assisted living facility must ensure that the administrator and all caregivers employed directly or by contract after January 7, 2012 have the following background checks:

(a) A Washington state name and date of birth background check; and

(b) A national fingerprint background check.

(3) The (~~(boarding home)~~) assisted living facility must ensure that the following individuals have a Washington state name and date of birth background check:

(a) Volunteers who are not residents, and students who may have unsupervised access to residents;

(b) Staff persons who are not caregivers or administrators;

(c) Managers who do not provide direct care to residents; and

(d) Contractors other than the administrator and caregivers who may have unsupervised access to residents.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-2464 Background checks—Process—Background authorization form. Before the (~~(boarding home)~~) assisted living facility employs, directly or by contract, an administrator, staff person or caregiver, or accepts any volunteer, or student, the home must:

(1) Require the person to complete a DSHS background authorization form; and

(2) Send the completed form to the department's background check central unit, including any additional documentation and information requested by the department.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-24641 Background checks—Washington state name and date of birth background check. If the results of the Washington state name and date of birth background check indicate the person is disqualified by having a conviction listed in WAC 388-78A-2470 subsections (1) through (6), or by having a finding listed in WAC 388-78A-2470 subsections (7) through (9), then the ((~~boarding home~~)) assisted living facility must:

- (1) Not employ, directly or by contract, a caregiver, administrator, or staff person; and
- (2) Not allow a volunteer or student to have unsupervised access to residents.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-24642 Background checks—National fingerprint background check. (1) Administrators and all caregivers who are hired after January 7, 2012 and are not disqualified by the Washington state name and date of birth background check, must complete a national fingerprint background check and follow department procedures.

(2) After receiving the results of the national fingerprint background check the ((~~boarding home~~)) assisted living facility must not employ, directly or by contract, an administrator or caregiver who has been convicted of a crime or has a finding that is disqualifying under WAC 388-78A-2470.

(3) The ((~~boarding home~~)) assisted living facility may accept a copy of the national fingerprint background check results letter and any additional information from the department's background check central unit from an individual who previously completed a national fingerprint check through the department's background check central unit, provided the national fingerprint background check was completed after January 7, 2012.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-2465 Background check—Results—Inform. (1) After receiving the results of the Washington state name and date of birth background check, the ((~~boarding home~~)) assisted living facility must:

- (a) Inform the person of the results of the background check;
- (b) Inform the person that they may request a copy of the results of the background check. If requested, a copy of the background check results must be provided within ten days of the request; and
- (c) Notify the department and other appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.

(2) After receiving the result letter for the national fingerprint background check, the ((~~boarding home~~)) assisted living facility must inform the person:

- (a) Of the national fingerprint background check result letter;
- (b) That they may request a copy of the national fingerprint check result letter; and
- (c) That any additional information requested can only be obtained from the department's background check central unit.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-2466 Background checks—Washington state name and date of birth background check—Valid for two years—National fingerprint background check—Valid indefinitely. (1) A Washington state name and date of birth background check is valid for two years from the initial date it is conducted. The ((~~boarding home~~)) assisted living facility must ensure:

(a) A new DSHS background authorization form is submitted to the department's background check central unit every two years for all administrators, caregivers, staff persons, volunteers and students; and

(b) There is a valid Washington state name and date of birth background check for all administrators, caregivers, staff persons, volunteers and students.

(2) A national fingerprint background check is valid for an indefinite period of time. The ((~~boarding home~~)) assisted living facility must ensure there is a valid national fingerprint background check completed for all administrators and caregivers hired after January 7, 2012. To be considered valid, the national fingerprint background check must be initiated and completed through the department's background check central unit after January 7, 2012.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2467 Background check—Sharing by health care facilities. In accordance with RCW 43.43.832 a health care facility may share Washington state background check results with other health care facilities under certain circumstances. Results of the national fingerprint checks may not be shared. For the purposes of this section health care facility means a nursing home licensed under chapter 18.51 RCW, ((~~a boarding home~~)) an assisted living facility license under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW.

(1) The health care facility may, upon request from another health care facility, share completed Washington state background check results only if:

(a) The health care facility sharing the background check information is reasonably known to be the person's most recent employer;

(b) No more than twelve months has elapsed between the date the individual was last employed at a licensed health care facility and the date of the individual's current employment application;

(c) The background check is no more than two years old; and

(d) The ~~((boarding home))~~ assisted living facility has no reason to believe the individual has or may have a disqualifying conviction or finding as described in WAC 388-78A-2470.

(2) The ~~((boarding home))~~ assisted living facility may also establish, maintain and follow a written agreement with home health, hospice, or home care agencies licensed under chapter 70.127 RCW or nursing pools registered under chapter 18.52C RCW in order to ensure that the agency or pool staff meet the requirements of WAC 388-78A-2470.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-2468 Background checks—Employment—Conditional hire—Pending results of Washington state name and date of birth background check. The ~~((boarding home))~~ assisted living facility may conditionally hire an administrator, caregiver, or staff person directly or by contract, pending the result of the Washington state name and date of birth background check, provided that the ~~((boarding home))~~ assisted living facility:

(1) Submits the background authorization form for the person to the department no later than one business day after he or she starts working;

(2) Requires the person to sign a disclosure statement indicating if they have been convicted of a crime or have a finding that is disqualifying under WAC 388-78A-2470;

(3) Has received three positive references for the person;

(4) Does not allow the person to have unsupervised access to any resident;

(5) Ensures direct supervision of the administrator, all caregivers, and staff persons; and

(6) Ensures that the person is competent, and receives the necessary training to perform assigned tasks and meets the training requirements under chapter 388-112 WAC.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-24681 Background checks—Employment—Provisional hire—Pending results of national fingerprint background check. The ~~((boarding home))~~ assisted living facility may provisionally employ a caregiver and an administrator hired after January 7, 2012 for one hundred and twenty-days and allow the caregiver or administrator to have unsupervised access to residents when:

(1) The caregiver or administrator is not disqualified based on the results of the Washington state name and date of birth background check; and

(2) The results of the national fingerprint background check are pending.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-2469 Background check—Disclosure statement. (1) The ~~((boarding home))~~ assisted living facility must require each administrator, caregiver, staff person, vol-

unteer and student, prior to starting his or her duties, to make disclosures of any crimes or findings consistent with RCW 43.43.834(2). The disclosures must be in writing and signed by the person under penalty of perjury.

(2) The department may require the ~~((boarding home))~~ assisted living facility or any administrator, caregiver, staff person, volunteer or student to complete additional disclosure statements or background authorization forms if the department has reason to believe that offenses specified in WAC 388-78A-2470 have occurred since completion of the previous disclosure statement or background check.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-2470 Background check—Employment-disqualifying information. The ~~((boarding home))~~ assisted living facility must not employ or allow an administrator, caregiver, or staff person, to have unsupervised access to residents, as defined in RCW 43.43.830, if the person has been:

(1) Convicted of a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years have passed since the last conviction;

(2) Convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in the third degree, and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years has passed since conviction;

(3) Convicted of the manufacture, delivery, or possession with intent to manufacture or deliver drugs under one of the following laws:

(a) Violation of the Imitation Controlled Substances Act (VICSA);

(b) Violation of the Uniform Controlled Substances Act (VUCSA);

(c) Violation of the Uniform Legend Drug Act (VULDA); or

(d) Violation of the Uniform Precursor Drug Act (VUPDA);

(4) Convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;

(5) Convicted of criminal mistreatment;

(6) Convicted of a crime in any federal or state court, and the department determines that the crime is equivalent to a crime described in this section;

(7) Found to have abused, neglected, financially exploited or abandoned a minor or vulnerable adult by a court of law or a disciplining authority, including the department of health;

(8) Found to have abused or neglected a child and that finding is:

(a) Listed on the department's background check central unit report; or

(b) Disclosed by the individual, except for finding made before December, 1998.

(9) Found to have abused, neglected, financially exploited or abandoned a vulnerable adult and that finding is:

(a) Listed on any registry, including the department's registry;

(b) Listed on the department's background check central unit report; or

(c) Disclosed by the individual, except for adult protective services findings made before October, 2003.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-2470 Background checks—Employment—Nondisqualifying information. (1) If the background check results show that an employee or prospective employee has a conviction or finding that is not disqualifying under WAC 388-78A-2470, then the ~~((boarding home))~~ assisted living facility must determine whether the person has the character, competence and suitability to work with vulnerable adults in long-term care.

(2) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the ~~((boarding home))~~ assisted living facility.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2471 Background check—Confidentiality—Use restricted—Retention. The ~~((boarding home))~~ assisted living facility must ensure that all disclosure statements, background authorization forms, background check results and related information are:

(1) Maintained on-site in a confidential and secure manner;

(2) Used for employment purposes only;

(3) Not disclosed to anyone except to the individual, authorized state and federal employees, the Washington state patrol auditor, persons or health care facilities authorized by chapter 43.43 RCW; and

(4) Retained and available for department review during the individual's employment or association with a facility and for at least two years after termination of the employment or association.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-2474 Training and home care aide certification requirements. (1) The ~~((boarding home))~~ assisted living facility must ensure staff persons hired before January 7, 2012 meet training requirements in effect on the date hired, including requirements in chapter 388-112 WAC.

(2) The ~~((boarding home))~~ assisted living facility must ensure all ~~((boarding home))~~ assisted living facility administrators, or their designees, and caregivers hired on or after January 7, 2012 meet the long-term care worker training requirements of chapter 388-112 WAC, including but not limited to:

(a) Orientation and safety;

(b) Basic;

(c) Specialty for dementia, mental illness and/or developmental disabilities when serving residents with any of those primary special needs;

(d) Cardiopulmonary resuscitation and first aid; and

(e) Continuing education.

(3) The ~~((boarding home))~~ assisted living facility must ensure that all staff receive appropriate training and orientation to perform their specific job duties and responsibilities.

(4) The ~~((boarding home))~~ assisted living facility must ensure all persons listed in subsection (2) of this section, obtain the home-care aide certification.

(5) Under RCW 18.88B.041 and chapter 246-980 WAC, certain individuals including registered nurses, licensed practical nurses, certified nursing assistants, or persons who are in an approved certified nursing assistant program are exempt from long-term care worker training requirements. Continuing education requirements still apply as outlined in chapter 388-112 WAC.

(6) For the purpose of this section, the term "caregiver" has the same meaning as the term "long-term care worker" as defined in RCW 74.39A.009.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2480 Tuberculosis—Testing—Required. (1) The ~~((boarding home))~~ assisted living facility must develop and implement a system to ensure each staff person is screened for tuberculosis within three days of employment.

(2) For purposes of WAC 388-78A-2481 through 388-78A-2489, "staff person" means any ~~((boarding home))~~ assisted living facility employee or temporary employee of the ~~((boarding home))~~ assisted living facility, excluding volunteers and contractors.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2481 Tuberculosis—Testing method—Required. The ~~((boarding home))~~ assisted living facility must ensure that all tuberculosis testing is done through either:

(1) Intradermal (Mantoux) administration with test results read:

(a) Within forty-eight to seventy-two hours of the test; and

(b) By a trained professional; or

(2) A blood test for tuberculosis called interferon-gamma release assay (IGRA).

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2482 Tuberculosis—No testing. The ~~((boarding home))~~ assisted living facility is not required to have a staff person tested for tuberculosis if the staff person has:

(1) A documented history of a previous positive skin test, with ten or more millimeters induration;

(2) A documented history of a previous positive blood test; or

(3) Documented evidence of:

(a) Adequate therapy for active disease; or

(b) Completion of treatment for latent tuberculosis infection preventive therapy.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2483 Tuberculosis—One test. The ~~((boarding home))~~ assisted living facility is only required to have a staff person take one test if the staff person has any of the following:

- (1) A documented history of a negative result from a previous two step skin test done no more than one to three weeks apart; or
- (2) A documented negative result from one skin or blood test in the previous twelve months.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2484 Tuberculosis—Two step skin testing. Unless the staff person meets the requirement for having no skin testing or only one test, the ~~((boarding home))~~ assisted living facility choosing to do skin testing, must ensure that each staff person has the following two-step skin testing:

- (1) An initial skin test within three days of employment; and
- (2) A second test done one to three weeks after the first test.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2485 Tuberculosis—Positive test result. When there is a positive result to tuberculosis skin or blood testing the ~~((boarding home))~~ assisted living facility must:

- (1) Ensure that the staff person has a chest X-ray within seven days;
- (2) Ensure each resident or staff person with a positive test result is evaluated for signs and symptoms of tuberculosis; and
- (3) Follow the recommendation of the resident or staff person's health care provider.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2486 Tuberculosis—Negative test result. The ~~((boarding home))~~ assisted living facility may be required by the public health provider or licensing authority to ensure that staff persons with negative test results have follow-up testing in certain circumstances, such as:

- (1) After exposure to active tuberculosis;
- (2) When tuberculosis symptoms are present; or
- (3) For periodic testing as determined by the public health provider.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2487 Tuberculosis—Declining a skin test. The ~~((boarding home))~~ assisted living facility must ensure that a staff person take the blood test for tuberculosis if they decline the skin test.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2488 Tuberculosis—Reporting—Required. The ~~((boarding home))~~ assisted living facility must:

- (1) Report any staff person or resident with tuberculosis symptoms or a positive chest X ray to the appropriate health care provider, or public health provider;
- (2) Follow the infection control and safety measures ordered by the staff person's health care provider including a public health provider;
- (3) Institute appropriate infection control measures;
- (4) Apply living or work restrictions where residents or staff persons are, or may be, infectious and pose a risk to other residents and staff persons; and
- (5) Ensure that staff person's caring for a resident with suspected tuberculosis comply with the WISHA standard for respiratory protection found in chapter 296-842 WAC.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2489 Tuberculosis—Test records. The ~~((boarding home))~~ assisted living facility must:

- (1) Keep the records of tuberculin test results, reports of X-ray findings, and any physician or public health provider orders in the ~~((boarding home))~~ assisted living facility;
- (2) Make the records readily available to the appropriate health provider and licensing agency,
- (3) Retain the records for at least two years after the date the staff person either quits or is terminated; and
- (4) Provide the staff person a copy of his/her test results.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2490 Specialized training for developmental disabilities. The ~~((boarding home))~~ assisted living facility must ensure completion of specialized training, consistent with chapter 388-112 WAC, to serve residents with developmental disabilities, whenever at least one of the residents in the ~~((boarding home))~~ assisted living facility has a developmental disability as defined in WAC 388-823-0040, that is the resident's primary special need.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2500 Specialized training for mental illness. The ~~((boarding home))~~ assisted living facility must ensure completion of specialized training, consistent with chapter 388-112 WAC, to serve residents with mental illness,

whenever at least one of the residents in the (~~(boarding home)~~) assisted living facility has a mental illness that is the resident's primary special need and is a person who has been diagnosed with or treated for an Axis I or Axis II diagnosis, as described in the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision*, and:

- (1) Who has received the diagnosis or treatment within the previous two years; and
- (2) Whose diagnosis was made by, or treatment provided by, one of the following:
 - (a) A licensed physician;
 - (b) A mental health professional;
 - (c) A psychiatric advanced registered nurse practitioner;
 or
 - (d) A licensed psychologist.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2510 Specialized training for dementia. The (~~(boarding home)~~) assisted living facility must ensure completion of specialized training, consistent with chapter 388-112 WAC, to serve residents with dementia, whenever at least one of the residents in the (~~(boarding home)~~) assisted living facility has a dementia that is the resident's primary special need and has symptoms consistent with dementia as assessed per WAC 388-78A-2090(7).

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2520 Administrator qualifications—General. (1) The licensee must appoint an administrator who is:

- (a) At least twenty-one years old;
 - (b) Not a resident of the (~~(boarding home)~~) assisted living facility; and
 - (c) Qualified to perform the administrator's duties specified in WAC 388-78A-2560.
- (2) The licensee must only appoint as (~~(a boarding home)~~) an assisted living facility administrator an individual who meets the requirements of at least one of the following sections in WAC 388-78A-2522 through 388-78A-2527.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2522 Administrator qualifications—Prior to 2004. The individual was actively employed as (~~(a boarding home)~~) an assisted living facility administrator and met existing qualifications on September 1, 2004.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2524 Administrator qualifications—Certification of training, and three years experience. Prior to assuming duties as a boarding home administrator, the individual has met the following qualifications:

(1) Obtained certification of completing a recognized administrator training as referenced in WAC 388-78A-2521; and

(2) Has three years paid experience:

(a) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, (~~(boarding home)~~) assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(b) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, (~~(boarding home)~~) assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2525 Administrator qualifications—Associate degree, certification of training, and two years experience. The individual holds an associate degree in a related field of study such as health, social work, or business administration and meets the qualifications listed in either subsection (1), (2) or (3) of this section:

(1) Obtains certification of completing a recognized administrator training course as referenced in WAC 388-78A-2521 within six months of beginning duties as the administrator; or

(2) Has two years paid experience:

(a) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, (~~(boarding home)~~) assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(b) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, (~~(boarding home)~~) assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; or

(3) Has completed a qualifying administrator training program supervised by a qualified administrator according to WAC 388-78A-2530.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2526 Administrator qualifications—Bachelor's degree, certification of training, and one year experience. The individual holds a bachelor's degree in a related field of study such as health, social work, or business administration and meets the qualifications listed in either subsection (1), (2) or (3) of this section.

(1) Obtains certification of completing a recognized administrator training course and referenced in WAC 388-

78A-2521 within six months of beginning duties as the administrator; or

(2) Has one year paid experience:

(a) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, ~~((boarding home))~~ assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(b) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, ~~((boarding home))~~ assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; or

(3) Has completed a qualifying administrator training program supervised by a qualified administrator according to WAC 388-78A-2530.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2527 Administrator qualifications—Five years experience. Before assuming duties as an administrator, the individual has five years of paid experience:

(1) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, ~~((boarding home))~~ assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(2) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, ~~((boarding home))~~ assisted living facility, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2530 Qualifying administrator training program. Before the licensee appoints an individual who must have completed a qualifying administrator training program in order to qualify as ~~((a boarding home))~~ an assisted living facility administrator, the licensee must verify the individual has completed the training and obtain documentation from the individual that the training program met the following requirements:

(1) The department was notified of the beginning date of the administrator training program;

(2) The administrator training program was at least six months in duration following notification of the department;

(3) Only training, supervision, and experience occurring following notification of the department were credited to the qualifying training;

(4) The supervising administrator met the qualifications to be an administrator specified in WAC 388-78A-2520;

(5) The trainee was a full-time employee of ~~((a boarding home))~~ an assisted living facility and spent at least forty percent of his/her time for six months of the training program performing administrative duties customarily assigned to ~~((boarding home))~~ assisted living facility administrators or included in the job description of the administrator for the ~~((boarding home))~~ assisted living facility in which the training occurred;

(6) The supervising administrator was present on-site at the ~~((boarding home))~~ assisted living facility during the time the trainee performed administrator duties;

(7) The supervising administrator spent a minimum of one hundred direct contact hours with the trainee during the six months supervising and consulting with the trainee;

(8) Both the trainee and supervising administrator signed documentation of the trainee's qualifying experience and the supervising administrator's performance of required oversight duties; and

(9) The individual completing the qualifying administrator training program maintains the documentation of completing the program.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2540 Administrator requirements. The licensee must ensure the ~~((boarding home))~~ assisted living facility administrator:

(1) Meets the training requirements under chapter 388-112 WAC; and

(2) Knows and understands how to apply Washington state statutes and administrative rules related to the operation of ~~((a boarding home))~~ an assisted living facility; and

(3) Meets the administrator qualification requirements referenced in WAC 388-78A-2520 through 388-78A-2527.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-2550 Administrator training documentation. The ~~((boarding home))~~ assisted living facility must maintain for department review, documentation of the administrator completing:

(1) Training required by chapter 388-112 WAC;

(2) Department training in an overview of Washington state statutes and administrative rules related to the operation of ~~((a boarding home))~~ an assisted living facility;

(3) As applicable, certification from a department-recognized national accreditation health or personal care organization; and

(4) As applicable, the qualifying administrator-training program.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2560 Administrator responsibilities. The licensee must ensure the administrator:

(1) Directs and supervises the overall twenty-four-hour-per-day operation of the ~~((boarding home))~~ assisted living facility;

- (2) Ensures residents receive adequate care and services that meet the standards of this chapter;
- (3) Is readily accessible to meet with residents;
- (4) Complies with the ~~((boarding home's))~~ assisted living facility's policies;
- (5) When the administrator is not available on the premises, either:
- Is available by telephone or electronic pager; or
 - Designates a person approved by the licensee to act in place of the administrator. The designee must be:
 - Qualified by experience to assume designated duties; and
 - Authorized to make necessary decisions and direct operations of the ~~((boarding home))~~ assisted living facility during the administrator's absence.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2570 Notification of change in administrator. The licensee must notify the department in writing within ten calendar days of the effective date of a change in the ~~((boarding home))~~ assisted living facility administrator. The notice must include the full name of the new administrator and the effective date of the change.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2580 Use of home health/home care. If ~~((a boarding home))~~ an assisted living facility licensee also has a home health or home care license, the licensee may not provide care or services to nonresident individuals living in independent living units on the ~~((boarding home))~~ assisted living facility premises under the home health or home care license if:

- The licensee assumes general responsibility for the safety and well-being of the individual;
- The individual requiring such services is not able to receive them in his or her own home and is required to move to another room as a condition for receiving such services;
- The individual receiving such services is required to receive them from the licensee as a condition for residing in the building, and is not free to receive such services from any appropriately licensed provider of his or her choice; or
- The licensee provides other care or services to the individual that falls under the jurisdiction of ~~((boarding home))~~ assisted living facility licensing and this chapter.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2592 Management agreements—Licensee. (1) The licensee is responsible for:

- The daily operations and provisions of services in the ~~((boarding home))~~ assisted living facility (see 388-78A-2730 (1)(a));
- Ensuring the ~~((boarding home))~~ assisted living facility is operated in a manner consistent with all laws and rules applicable to ~~((boarding homes))~~ assisted living facilities (see 388-78A-2730 (1)(b));

- Ensuring the manager acts in conformance with a department approved management agreement; and
- Ensuring the manager does not represent itself as, or give the appearance that it is the licensee.

(2) The licensee must not give the manager responsibilities that are so extensive that the licensee is relieved of daily responsibility for the daily operations and provision of services in the ~~((boarding home))~~ assisted living facility. If the licensee does so, then the department must determine that a change of ownership has occurred.

(3) The licensee and manager must act in accordance with the terms of the department-approved management agreements. If the department determines they are not, then the department may take licensing action.

(4) The licensee may enter into a management agreement only if the management agreement creates a principal/agent relationship between the licensee and manager.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2593 Management agreements—Terms of agreement. Management agreements, at a minimum must:

- Describe the responsibilities of the licensee and manager, including items, services, and activities to be provided;
- Require the licensee's governing body, board of directors, or similar authority to appoint the facility administrator;
- Provide for the maintenance and retention of all records in accordance with this chapter and other applicable laws;
- Allow unlimited access by the department to documentation and records according to applicable laws or regulations;
- Require the manager to immediately send copies of inspections and notices of noncompliance to the licensee;
- State that the licensee is responsible for reviewing, acknowledging and signing all ~~((boarding home))~~ assisted living facility initial and renewal license applications;
- State that the manager and licensee will review the management agreement annually and notify the department of any change according to applicable regulations;
- Acknowledge that the licensee is the party responsible for complying with all laws and rules applicable to ~~((boarding homes))~~ assisted living facilities;
- Require the licensee to maintain ultimate responsibility over personnel issues relating to the operation of the ~~((boarding home))~~ assisted living facility and care of the residents, including but not limited to, staffing plans, orientation and training;
- State the manager will not represent itself, or give the appearance it is the licensee; and
- State that a duly authorized manager may execute resident leases or agreements on behalf of the licensee, but all such resident leases or agreements must be between the licensee and the resident.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2594 Management agreements—Department review. Upon receipt of a proposed management agreement, the department may require:

- (1) The proposed or current licensee or manager to provide additional information or clarification;
- (2) Any changes necessary to:
 - (a) Bring the management agreement into compliance with this chapter; and
 - (b) Ensure that the licensee has not been relieved of the responsibility for the daily operations of the facility.
- (3) The licensee to participate in monthly meetings and quarterly on-site visits to the ((boarding home)) assisted living facility.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2595 Management agreements—Resident funds. (1) If the management agreement delegates day-to-day management of resident funds to the manager, the licensee:

- (a) Retains all fiduciary and custodial responsibility for funds that have been deposited with the ((boarding home)) assisted living facility by the resident;
 - (b) Is directly accountable to the residents for such funds; and
 - (c) Must ensure any party responsible for holding or managing residents' personal funds is bonded or obtains insurance in sufficient amounts to specifically cover losses of resident funds; and provides proof of bond or insurance.
- (2) If responsibilities for the day-to-day management of the resident funds are delegated to the manager, the manager must:
- (a) Provide the licensee with a monthly accounting of the resident funds; and
 - (b) Meet all legal requirements related to holding, and accounting for, resident funds.

AMENDATORY SECTION (Amending WSR 09-01-079, filed 12/15/08, effective 1/15/09)

WAC 388-78A-2600 Policies and procedures. (1) The ((boarding home)) assisted living facility must develop and implement policies and procedures in support of services that are provided and are necessary to:

- (a) Maintain or enhance the quality of life for residents including resident decision-making rights;
- (b) Provide the necessary care and services for residents, including those with special needs;
- (c) Safely operate the ((boarding home)) assisted living facility; and
- (d) Operate in compliance with state and federal law, including, but not limited to, chapters 7.70, 11.88, 11.92, 11.94, 69.41, 70.122, 70.129, and 74.34 RCW, and any rules promulgated under these statutes.

(2) The ((boarding home)) assisted living facility must develop, implement and train staff persons on policies and procedures to address what staff persons must do:

- (a) Related to suspected abandonment, abuse, neglect, exploitation, or financial exploitation of any resident;
 - (b) When there is reason to believe a resident is not capable of making necessary decisions and no substitute decision maker is available;
 - (c) When a substitute decision maker is no longer appropriate;
 - (d) When a resident stops breathing or a resident's heart appears to stop beating, including, but not limited to, any action staff persons must take related to advance directives and emergency care;
 - (e) When a resident does not have a personal physician or health care provider;
 - (f) In response to medical emergencies;
 - (g) When there are urgent situations in the ((boarding home)) assisted living facility requiring additional staff support;
 - (h) In the event of an internal or external disaster, consistent with WAC 388-78A-2700;
 - (i) To supervise and monitor residents, including accounting for residents who leave the premises;
 - (j) To appropriately respond to aggressive or assaultive residents, including, but not limited to:
 - (i) Actions to take if a resident becomes violent;
 - (ii) Actions to take to protect other residents; and
 - (iii) When and how to seek outside intervention.
 - (k) To prevent and limit the spread of infections consistent with WAC 388-78A-2610;
 - (l) To manage residents' medications, consistent with WAC 388-78A-2210 through 388-78A-2290; sending medications with a resident when the resident leaves the premises;
 - (m) When services related to medications and treatments are provided under the delegation of a registered nurse consistent with chapter 246-840 WAC;
 - (n) Related to food services consistent with chapter 246-215 WAC and WAC 388-78A-2300;
 - (o) Regarding the safe operation of any ((boarding home)) assisted living facility vehicles used to transport residents, and the qualifications of the drivers;
 - (p) To coordinate services and share resident information with outside resources, consistent with WAC 388-78A-2350;
 - (q) Regarding the management of pets in the ((boarding home)) assisted living facility, if permitted, consistent with WAC 388-78A-2620;
 - (r) When receiving and responding to resident grievances consistent with RCW 70.129.060; and
 - (s) Related to providing respite care services consistent with RCW 18.20.350, if respite care is offered.
- (3) The ((boarding home)) assisted living facility must make the policies and procedures specified in subsection (2) of this section available to staff persons at all times and must inform residents and residents' representatives of their availability and make them available upon request.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2610 Infection control. (1) The ((boarding home)) assisted living facility must institute

appropriate infection control practices in the ((boarding home)) assisted living facility to prevent and limit the spread of infections.

(2) The ((boarding home)) assisted living facility must:

(a) Develop and implement a system to identify and manage infections;

(b) Restrict a staff person's contact with residents when the staff person has a known communicable disease in the infectious stage that is likely to be spread in the ((boarding home)) assisted living facility setting or by casual contact;

(c) Provide staff persons with the necessary supplies, equipment and protective clothing for preventing and controlling the spread of infections;

(d) Provide all resident care and services according to current acceptable standards for infection control;

(e) Perform all housekeeping, cleaning, laundry, and management of infectious waste according to current acceptable standards for infection control;

(f) Report communicable diseases in accordance with the requirements in chapter 246-100 WAC.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2620 Pets. If ((a boarding home)) an assisted living facility allows pets to live on the premises, the ((boarding home)) assisted living facility must:

(1) Develop, implement and disclose to potential and current residents, policies regarding:

(a) The types of pets that are permitted in the ((boarding home)) assisted living facility; and

(b) The conditions under which pets may be in the ((boarding home)) assisted living facility.

(2) Ensure animals living on the ((boarding home)) assisted living facility premises:

(a) Have regular examinations and immunizations, appropriate for the species, by a veterinarian licensed in Washington state;

(b) Are certified by a veterinarian to be free of diseases transmittable to humans;

(c) Are restricted from central food preparation areas.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2630 Reporting abuse and neglect. (1) The ((boarding home)) assisted living facility must ensure that each staff person:

(a) Makes a report to the department's Aging and Disability Services Administration Complaint Resolution Unit hotline consistent with chapter 74.34 RCW in all cases where the staff person has reasonable cause to believe that abandonment, abuse, financial exploitation, or neglect of a vulnerable adult has occurred; and

(b) Makes an immediate report to the appropriate law enforcement agency and the department consistent with chapter 74.34 RCW of all incidents of suspected sexual abuse or physical abuse of a resident.

(2) The ((boarding home)) assisted living facility must prominently post so it is readily visible to staff, residents and

visitors, the department's toll-free telephone number for reporting resident abuse and neglect.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2640 Reporting significant change in a resident's condition. (1) The ((boarding home)) assisted living facility must consult with the resident's representative, the resident's physician, and other individual(s) designated by the resident as soon as possible whenever:

(a) There is a significant change in the resident's condition;

(b) The resident is relocated to a hospital or other health care facility; or

(c) The resident dies.

(2) The ((boarding home)) assisted living facility must notify any agency responsible for paying for the resident's care and services as soon as possible whenever:

(a) The resident is relocated to a hospital or other health care facility; or

(b) The resident dies.

(3) Whenever the conditions in subsection (1) or (2) of this section occur, the ((boarding home)) assisted living facility must document in the resident's records:

(a) The date and time each individual was contacted; and

(b) The individual's relationship to the resident.

(4) In case of a resident's death, the ((boarding home)) assisted living facility must notify the coroner if required by RCW 68.50.010.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2650 Reporting fires and incidents. The ((boarding home)) assisted living facility must immediately report to the department's aging and disability services administration:

(1) Any accidental or unintended fire, or any deliberately set but improper fire, such as arson, in the ((boarding home)) assisted living facility;

(2) Any unusual incident that required implementation of the ((boarding home's)) assisted living facility's disaster plan, including any evacuation of all or part of the residents to another area of the ((boarding home)) assisted living facility or to another address; and

(3) Circumstances which threaten the ((boarding home's)) assisted living facility's ability to ensure continuation of services to residents.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2660 Resident rights. The ((boarding home)) assisted living facility must:

(1) Comply with chapter 70.129 RCW, Long-term care resident rights;

(2) Ensure all staff persons provide care and services to each resident consistent with chapter 70.129 RCW;

(3) Not use restraints on any resident;

(4) Promote and protect the residents' exercise of all rights granted under chapter 70.129 RCW;

(5) Provide care and services to each resident in compliance with applicable state statutes related to substitute health care decision making, including chapters 7.70, 70.122, 11.88, 11.92, and 11.94 RCW;

(6) Reasonably accommodate residents consistent with applicable state and/or federal law; and

(7) Not allow any staff person to abuse or neglect any resident.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2665 Resident rights—Notice—Policy on accepting medicaid as a payment source. The ~~((boarding home))~~ assisted living facility must fully disclose the facility's policy on accepting medicaid payments. The policy must:

(1) Clearly state the circumstances under which the ~~((boarding home))~~ assisted living facility provides care for medicaid eligible residents and for residents who become eligible for medicaid after admission;

(2) Be provided both orally and in writing in a language that the resident understands;

(3) Be provided to prospective residents, before they are admitted to the home;

(4) Be provided to any current residents who were admitted before this requirement took effect or who did not receive copies prior to admission;

(5) Be written on a page that is separate from other documents and be written in a type font that is at least fourteen point; and

(6) Be signed and dated by the resident and be kept in the resident record after signature.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2670 Services by resident for ~~((boarding home))~~ assisted living facility. If a resident performs services for the ~~((boarding home))~~ assisted living facility, the ~~((boarding home))~~ assisted living facility must ensure:

(1) The resident freely volunteers to perform the services without coercion or pressure from staff persons;

(2) The resident performing services does not supervise, or is not placed in charge of, other residents; and

(3) If the resident regularly performs voluntary services for the benefit of the ~~((boarding home))~~ assisted living facility, the volunteer activity is addressed in the resident's negotiated service agreement.

AMENDATORY SECTION (Amending WSR 09-01-052, filed 12/10/08, effective 1/10/09)

WAC 388-78A-2680 Electronic monitoring equipment—Audio monitoring and video monitoring. (1) Except as provided in this section or in WAC 388-78A-2690, the ~~((boarding home))~~ assisted living facility must not use the following in the facility or on the premises:

(a) Audio monitoring equipment; or

(b) Video monitoring equipment if it includes an audio component.

(2) The ~~((boarding home))~~ assisted living facility may video monitor and video record activities in the facility or on the premises, without an audio component, only in the following areas:

(a) Entrances and exits as long as the cameras are:

(i) Focused only on the entrance or exit doorways; and

(ii) Not focused on areas where residents gather.

(b) Areas used exclusively by staff persons such as, medication preparation and storage areas or food preparation areas, if residents do not go into these areas;

(c) Outdoor areas not commonly used by residents, such as, but not limited to, delivery areas; and

(d) Designated smoking areas, subject to the following conditions:

(i) Residents have been assessed as needing supervision for smoking;

(ii) A staff person watches the video monitor at any time the area is used by such residents;

(iii) The video camera is clearly visible;

(iv) The video monitor is not viewable by general public; and

(v) The facility notifies all residents in writing of the use of video monitoring equipment.

AMENDATORY SECTION (Amending WSR 09-01-052, filed 12/10/08, effective 1/10/09)

WAC 388-78A-2690 Electronic monitoring equipment—Resident requested use. (1) The ~~((boarding home))~~ assisted living facility must not use audio or video monitoring equipment to monitor any resident unless:

(a) The resident has requested the monitoring; and

(b) The monitoring is only used in the sleeping room of the resident who requested the monitoring.

(2) If the resident requests audio or video monitoring, before any electronic monitoring occurs, the ~~((boarding home))~~ assisted living facility must ensure:

(a) That the electronic monitoring does not violate chapter 9.73 RCW;

(b) The resident has identified a threat to the resident's health, safety or personal property;

(c) The resident's roommate has provided written consent to electronic monitoring, if the resident has a roommate; and

(d) The resident and the ~~((boarding home))~~ assisted living facility have agreed upon a specific duration for the electronic monitoring and the agreement is documented in writing.

(3) The ~~((boarding home))~~ assisted living facility must:

(a) Reevaluate the need for the electronic monitoring with the resident at least quarterly; and

(b) Have each reevaluation in writing, signed and dated by the resident.

(4) The ~~((boarding home))~~ assisted living facility must immediately stop electronic monitoring if the:

(a) Resident no longer wants electronic monitoring;

(b) Roommate objects or withdraws the consent to the electronic monitoring; or

(c) The resident becomes unable to give consent.

(5) For the purpose of consenting to video electronic monitoring without an audio component, the term "resident" includes the resident's surrogate decision maker.

(6) For the purposes of consenting to any audio electronic monitoring, the term "resident" includes:

(a) The individual residing in the ~~((boarding home))~~ assisted living facility; or

(b) The resident's court-appointed guardian or attorney-in-fact who has obtained a court order specifically authorizing the court-appointed guardian or attorney-in-fact to consent to electronic monitoring of the resident.

(7) If a resident's decision maker consents to audio electronic monitoring as specified in (6) above, the ~~((boarding home))~~ assisted living facility must maintain a copy of the court order authorizing such consent in the resident's record.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2700 Safety measures and disaster preparedness. (1) The ~~((boarding home))~~ assisted living facility must take necessary action to promote the safety of each resident whenever the resident is on the ~~((boarding home))~~ assisted living facility premises or under the supervision of staff persons, consistent with the resident's negotiated service agreement.

(2) The ~~((boarding home))~~ assisted living facility must:

(a) Maintain the premises free of hazards;

(b) Maintain any vehicles used for transporting residents in a safe condition;

(c) Investigate and document investigative actions and findings for any alleged or suspected neglect or abuse or exploitation, accident or incident jeopardizing or affecting a resident's health or life. The ~~((boarding home))~~ assisted living facility must:

(i) Determine the circumstances of the event;

(ii) When necessary, institute and document appropriate measures to prevent similar future situations if the alleged incident is substantiated; and

(iii) Protect other residents during the course of the investigation.

(d) Provide appropriate hardware on doors of storage rooms, closets and other rooms to prevent residents from being accidentally locked in;

(e) Provide, and tell staff persons of, a means of emergency access to resident-occupied bedrooms, toilet rooms, bathing rooms, and other rooms;

(f) Provide emergency lighting or flashlights in all areas of the ~~((boarding home))~~ assisted living facility. For all ~~((boarding homes))~~ assisted living facilities first issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the ~~((boarding home))~~ assisted living facility must provide emergency lighting in all areas of the ~~((boarding home))~~ assisted living facility:

(g) Make sure first-aid supplies are:

(i) Readily available and not locked;

(ii) Clearly marked;

(iii) Able to be moved to the location where needed; and

(iv) Stored in containers that protect them from damage, deterioration, or contamination.

(h) Make sure first-aid supplies are appropriate for:

(i) The size of the ~~((boarding home))~~ assisted living facility;

(ii) The services provided;

(iii) The residents served; and

(iv) The response time of emergency medical services.

(i) Develop and maintain a current disaster plan describing measures to take in the event of internal or external disasters, including, but not limited to:

(i) On-duty staff persons' responsibilities;

(ii) Provisions for summoning emergency assistance;

(iii) Plans for evacuating residents from area or building;

(iv) Alternative resident accommodations;

(v) Provisions for essential resident needs, supplies and equipment including water, food, and medications; and

(vi) Emergency communication plan.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2710 Disclosure of services. (1) The ~~((boarding home))~~ assisted living facility must disclose to residents, the resident's representative, if any, and interested consumers upon request, the scope of care and services it offers, on the department's approved disclosure forms. The disclosure form shall not be construed as an implied or express contract between the ~~((boarding home))~~ assisted living facility and the resident, but is intended to assist consumers in selecting ~~((boarding home))~~ assisted living facility services.

(2) The ~~((boarding home))~~ assisted living facility must provide the services disclosed.

(3) The ~~((boarding home))~~ assisted living facility must provide a minimum of thirty days written notice to the residents and the residents' representatives, if any:

(a) Before the effective date of any decrease in the scope of care or services provided by the ~~((boarding home))~~ assisted living facility, due to circumstances beyond the ~~((boarding home's))~~ assisted living facility's control; and

(b) Before the effective date of any voluntary decrease in the scope of care or services provided by the ~~((boarding home))~~ assisted living facility, and any such decrease in the scope of services provided will not result in the discharge of one or more residents.

(4) The ~~((boarding home))~~ assisted living facility must provide a minimum of ninety days written notice to the residents and the residents' representative, if any, before the effective date of any voluntary decrease in the scope of care or services provided by the ~~((boarding home))~~ assisted living facility, and any such decrease in the scope of services provided will result in the discharge of one or more residents.

(5) If the ~~((boarding home))~~ assisted living facility increases the scope of services that it chooses to provide, the ~~((boarding home))~~ assisted living facility must promptly provide written notice to the residents and residents' representative, if any, and must indicate the date on which the increase in the scope of care or services is effective.

(6) When the care needs of a resident exceed the disclosed scope of care or services that ~~((a boarding home))~~ an assisted living facility provides, the ~~((boarding home))~~ assisted living facility may exceed the care or services disclosed consistent with RCW 70.129.030(3) and 70.129.110(3)(a).

(7) Even though the ~~((boarding home))~~ assisted living facility may disclose that it can provide certain care or services to residents or prospective residents or residents' representative, if any, the ~~((boarding home))~~ assisted living facility may deny admission to a prospective resident when the ~~((boarding home))~~ assisted living facility determines that the needs of the prospective resident cannot be met, as long as the ~~((boarding home))~~ assisted living facility operates in compliance with state and federal law, including reasonable accommodation requirements and RCW 70.129.030(3).

(8) The ~~((boarding home))~~ assisted living facility must notify prospective residents of their rights regarding health care decision making consistent with applicable state and federal laws and rules, before or at the time the individual moves into the ~~((boarding home))~~ assisted living facility.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2720 Timing of disclosure. (1) The ~~((boarding home))~~ assisted living facility must provide the disclosure form completed by the ~~((boarding home))~~ assisted living facility:

(a) In response to a request by a prospective resident or his or her representative, if any, for written information about the ~~((boarding home's))~~ assisted living facility's services and capabilities; or

(b) At the time the ~~((boarding home))~~ assisted living facility provides an application for residency, an admission agreement or contract, if not previously received by the prospective resident or his or her representative, if any.

(2) The ~~((boarding home))~~ assisted living facility is not required to provide the disclosure of care and services contained on the department's approved disclosure forms:

(a) In advertisements;

(b) In general marketing information to the public; or

(c) To persons seeking general information regarding residential care resources in the community.

AMENDATORY SECTION (Amending WSR 09-01-079, filed 12/15/08, effective 1/15/09)

WAC 388-78A-2730 Licensee's responsibilities. (1) The ~~((boarding home))~~ assisted living facility licensee is responsible for:

(a) The operation of the ~~((boarding home))~~ assisted living facility:

(b) Complying at all times with the requirements of this chapter, chapter 18.20 RCW, and other applicable laws and rules; and

(c) The care and services provided to the ~~((boarding home))~~ assisted living facility residents.

(2) The licensee must:

(a) Maintain the occupancy level at or below the licensed resident bed capacity of the ~~((boarding home))~~ assisted living facility;

(b) Maintain and post in a size and format that is easily read, in a conspicuous place on the ~~((boarding home))~~ assisted living facility premises:

(i) A current ~~((boarding home))~~ assisted living facility license, including any related conditions on the license;

(ii) The name, address and telephone number of:

(A) The department;

(B) Appropriate resident advocacy groups; and

(C) The state and local long-term care ombudsman with a brief description of ombudsman services.

(iii) A copy of the report, including the cover letter, and plan of correction of the most recent full inspection conducted by the department.

(c) Ensure any party responsible for holding or managing residents' personal funds is bonded or obtains insurance in sufficient amounts to specifically cover losses of resident funds; and provides proof of bond or insurance to the department.

(3) The licensee must not delegate to any person responsibilities that are so extensive that the licensee is relieved of responsibility for the daily operations and provisions of services in the ~~((boarding home))~~ assisted living facility.

(4) The licensee must act in accord with any department-approved management agreement, if the licensee has entered into a management agreement.

(5) The licensee must appoint the ~~((boarding home))~~ assisted living facility administrator consistent with WAC 388-78A-2520.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2732 Liability insurance required—Ongoing. The ~~((boarding home))~~ assisted living facility must:

(1) Obtain liability insurance upon licensure and maintain the insurance as required in WAC 388-78A-2733 and 388-78A-2734; and

(2) Have evidence of liability insurance coverage available if requested by the department.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2733 Liability insurance required—Commercial general liability insurance or business liability insurance coverage. The ~~((boarding home))~~ assisted living facility must have commercial general liability insurance or business liability insurance that includes:

(1) Coverage for the acts and omissions of any employee and volunteer;

(2) Coverage for bodily injury, property damage, and contractual liability;

(3) Coverage for premises, operations, independent contractor, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract; and

- (4) Minimum limits of:
 - (a) Each occurrence at one million dollars; and
 - (b) General aggregate at two million dollars.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2734 Liability insurance required—Professional liability insurance coverage. The ~~((boarding home))~~ assisted living facility must have professional liability insurance or error and omissions insurance if the ~~((boarding home))~~ assisted living facility licensee has a professional license, or employs professionally licensed staff. The insurance must include:

- (1) Coverage for losses caused by errors and omissions of the ~~((boarding home))~~ assisted living facility, its employees, and volunteers; and
- (2) Minimum limits of:
 - (a) Each occurrence at one million dollars; and
 - (b) Aggregate at two million dollars.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2740 Licensee qualifications. The department must consider separately and jointly as applicants each person named in the application for ~~((a boarding home))~~ an assisted living facility license.

- (1) If the department finds any person unqualified as specified in WAC 388-78A-3190, the department must deny, terminate, or not renew the license.
- (2) If the department finds any person unqualified as specified in WAC 388-78A-3170, the department may deny, terminate, or not renew the license.

AMENDATORY SECTION (Amending WSR 12-21-070, filed 10/18/12, effective 11/18/12)

WAC 388-78A-2750 Application process. To apply for ~~((a boarding home))~~ an assisted living facility license, a person must:

- (1) Submit to the department a complete license application on forms designated by the department at least ninety days prior to the proposed effective date of the license;
- (2) Submit all relevant attachments specified in the application;
- (3) Submit department background authorization forms;
- (4) Sign the application;
- (5) Submit the license fee as specified in WAC 388-78A-3230;
- (6) Submit verification that construction plans have been approved by construction review services;
- (7) Submit a revised application before the license is issued if any information has changed since the initial license application was submitted;
- (8) Submit a revised application containing current information about the proposed licensee or any other persons named in the application, if a license application is pending for more than one year; and

(9) If the licensee's agent prepares an application on the licensee's behalf, the licensee must review, sign and attest to the accuracy of the information contained in the application.

(10) A license must be issued only to the person who applied for the license.

(11) A license may not exceed twelve months in duration and expires on a date set by the department.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2760 Necessary information. In making a determination whether to issue ~~((a boarding home))~~ an assisted living facility license, in addition to the information for each person named in the application, the department may review other documents and information the department deems relevant, including inspection and complaint investigation findings for each facility with which the applicant or any partner, officer, director, managerial employee, or owner of five percent or more of the applicant has been affiliated.

AMENDATORY SECTION (Amending WSR 09-06-063, filed 3/2/09, effective 4/2/09)

WAC 388-78A-2770 Change in licensee/change of ownership—When change in licensee is required. The licensee of ~~((a boarding home))~~ an assisted living facility must change whenever the following events occur, including, but not limited to:

- (1) The licensee's form of legal organization is changed (e.g., a sole proprietor forms a partnership or corporation);
- (2) The licensee transfers ownership of the ~~((boarding home))~~ assisted living facility business enterprise to another party regardless of whether ownership of some or all of the real property and/or personal property assets of the ~~((boarding home))~~ assisted living facility is also transferred;
- (3) The licensee dissolves, or consolidates or merges with another legal organization and the licensee's legal organization does not survive;
- (4) If, during any continuous twenty-four-month period, fifty percent or more of the "licensed entity" is transferred, whether by a single transaction or multiple transactions, to:
 - (a) A different person (e.g., new or former shareholders or partners); or
 - (b) A person that had less than a five percent ownership interest in the ~~((boarding home))~~ assisted living facility at the time of the first transaction.
- (5) Any other event or combination of events that results in a substitution, elimination, or withdrawal of the licensee's control of the ~~((boarding home))~~ assisted living facility. As used in this section, "control" means the possession, directly or indirectly, of the power to direct the management, operation and/or policies of the licensee or ~~((boarding home))~~ assisted living facility, whether through ownership, voting control, by agreement, by contract or otherwise.

AMENDATORY SECTION (Amending WSR 09-06-063, filed 3/2/09, effective 4/2/09)

WAC 388-78A-2773 Change in licensee/change of ownership—When change in licensee not required. The

licensee is not required to change when only the following, without more, occur:

(1) The licensee contracts with a party to manage the (~~(boarding home)~~) assisted living facility enterprise for the licensee pursuant to an agreement as specified in WAC 388-78A-2590; or

(2) The real property or personal property assets of the (~~(boarding home)~~) assisted living facility are sold or leased, or a lease of the real property or personal property assets is terminated, as long as there is not a substitution or substitution of control of the licensee or (~~(boarding home)~~) assisted living facility.

AMENDATORY SECTION (Amending WSR 09-06-063, filed 3/2/09, effective 4/2/09)

WAC 388-78A-2775 Change in licensee/change of ownership—Application. (1) The prospective licensee must complete, sign and submit to the department a change of ownership application prior to the proposed date of change in licensee.

(2) The annual (~~(boarding home)~~) assisted living facility license fee, if a license fee is due, must accompany the change in ownership application.

(3) The prospective licensee must submit the following information that must be submitted along with the change of ownership application:

(a) Evidence of control of the real estate on which the (~~(boarding home)~~) assisted living facility is located, such as a purchase and sales agreement, lease contract, or other appropriate document; and

(b) Any other information requested by the department.

(4) The prospective licensee must submit the completed application to the department within the applicable timeframes of WAC 388-78A-2785 or 388-78A-2787.

AMENDATORY SECTION (Amending WSR 12-01-003, filed 12/7/11, effective 1/7/12)

WAC 388-78A-2780 Change in licensee/change of ownership—Notice to department and residents. (1) In order to change the licensee of (~~(a boarding home)~~) an assisted living facility, the current licensee must notify the following in writing of the proposed change in licensee:

(a) The department; and

(b) All residents, or resident representatives (if any).

(2) The licensee must include the following information in the written notice:

(a) Name of the present licensee and prospective licensee;

(b) Name and address of the (~~(boarding home)~~) assisted living facility for which the licensee is being changed;

(c) Date of proposed change; and

(d) If the (~~(boarding home)~~) assisted living facility contracts with the department, health care authority or other public agencies that may make payments for residential care on behalf of residents, the anticipated effect, such as discharge from the (~~(boarding home)~~) assisted living facility, the change of licensee will have on residents whose care and services are supported through these contracts.

AMENDATORY SECTION (Amending WSR 09-06-063, filed 3/2/09, effective 4/2/09)

WAC 388-78A-2783 Change in licensee/change of ownership—Relinquishment of license. (1) On the effective date of the change in licensee, the current (~~(boarding home)~~) assisted living facility licensee is required to relinquish their (~~(boarding home)~~) assisted living facility license.

(2) To relinquish a license, the licensee must mail the department the (~~(boarding home)~~) assisted living facility license along with a letter, addressed to the department, stating licensee's intent to relinquish the (~~(boarding home)~~) assisted living facility license to the department.

AMENDATORY SECTION (Amending WSR 09-06-063, filed 3/2/09, effective 4/2/09)

WAC 388-78A-2785 Change in licensee/change of ownership—Ninety days notice. The current (~~(boarding home)~~) assisted living facility licensee must provide written notice to the department and residents, or resident representatives (if any), ninety calendar days prior to the date of the change of licensee, if the proposed change of (~~(boarding home)~~) assisted living facility licensee is anticipated to result in the discharge or transfer of any resident.

AMENDATORY SECTION (Amending WSR 09-06-063, filed 3/2/09, effective 4/2/09)

WAC 388-78A-2787 Change in licensee/change of ownership—Sixty days notice. The current (~~(boarding home)~~) assisted living facility licensee must provide written notice to the department and residents, or resident representatives (if any), at least sixty calendar days prior to the date of the change of licensee, if the proposed change of (~~(boarding home)~~) assisted living facility licensee is not anticipated to result in the discharge or transfer of any resident.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2790 Annual renewal. To renew (~~(a boarding home)~~) an assisted living facility license, the (~~(boarding home)~~) assisted living facility must:

(1) Submit a completed license renewal application on forms designated by the department, at least thirty days prior to the license expiration date;

(2) Sign the application;

(3) Submit the annual license fee as specified in WAC 388-78A-3230; and

(4) If the licensee's agent prepares a renewal application on the licensee's behalf, the licensee must review, sign and attest to the accuracy of the information contained on the renewal application.

AMENDATORY SECTION (Amending WSR 12-01-003, filed 12/7/11, effective 1/7/12)

WAC 388-78A-2800 Changes in licensed bed capacity. To change the licensed bed capacity in (~~(a boarding~~

home)) an assisted living facility, the ((~~boarding home~~)) assisted living facility must:

- (1) Submit a completed request for approval to the department at least one day before the intended change;
- (2) Submit the prorated fee for additional beds if applicable; and
- (3) Post an amended license obtained from the department, indicating the new bed capacity.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2810 Criteria for increasing licensed bed capacity. Before the licensed bed capacity in ((~~a boarding home~~)) an assisted living facility may be increased, the ((~~boarding home~~)) assisted living facility must:

- (1) Obtain construction review services' review and approval of the additional rooms or beds, and related auxiliary spaces, if not previously reviewed and approved; and
- (2) Ensure the increased licensed bed capacity does not exceed the maximum facility capacity as determined by the department.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2820 Building requirements and exemptions. (1) To get a building approved for licensing, a person must:

- (a) Design plans according to the building code, local codes and ordinances, and this chapter;
- (b) Submit construction documents, including any change orders and addenda to:
 - (i) Construction review services per WAC 388-78A-2850 and include:
 - (A) A minimum of two sets of final construction drawings complying with the requirements of this chapter, stamped by a Washington state licensed architect or engineer; and
 - (B) A functional program description; and
 - (ii) Local county or municipal building departments per local codes to obtain necessary building permits.
- (c) Conform to the approved construction documents during construction in accordance with chapter 18.20 RCW;
- (d) Obtain written approval from construction review services prior to deviating from approved construction documents;
- (e) Provide construction review services with a:
 - (i) Written notice of completion date;
 - (ii) Copy of reduced floor plan(s); and
 - (iii) Copy of certificate of occupancy issued by the local building department; and
- (f) Obtain authorization from the department prior to providing ((~~boarding home~~)) assisted living facility services in the new construction area.

(2) The department may exempt the ((~~boarding home~~)) assisted living facility from meeting a specific requirement related to the physical environment if the department determines the exemption will not:

- (a) Jeopardize the health or safety of residents;
- (b) Adversely affect the residents' quality of life; or

(c) Change the fundamental nature of the ((~~boarding home~~)) assisted living facility operation into something other than ((~~a boarding home~~)) an assisted living facility.

(3) ((~~A boarding home~~)) An assisted living facility wishing to request an exemption must submit a written request to the department, including:

- (a) A description of the requested exemption; and
 - (b) The specific WAC requirement for which the exemption is sought.
- (4) The ((~~boarding home~~)) assisted living facility may not appeal the department's denial of a request for an exemption.

(5) The ((~~boarding home~~)) assisted living facility must retain a copy of each approved exemption in the ((~~boarding home~~)) assisted living facility.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2830 Conversion of licensed nursing homes. (1) If a person intends to convert a licensed nursing home building into a licensed ((~~boarding home~~)) assisted living facility, the building must meet all ((~~boarding home~~)) assisted living facility licensing requirements specified in this chapter and chapter 18.20 RCW unless the licensee has a contract with the department to provide enhanced adult residential care services in the ((~~boarding home~~)) assisted living facility per RCW 18.20.220.

(2) If the licensee provides contracted enhanced adult residential care services in the building converted from a licensed nursing home into a licensed ((~~boarding home~~)) assisted living facility, the ((~~boarding home~~)) assisted living facility licensing requirements for the physical structure are considered to be met if the most recent nursing home inspection report for the nursing home building demonstrates compliance, and compliance is maintained, with safety standards and fire regulations:

- (a) As required by RCW 18.51.140; and
- (b) Specified in the applicable building code, as required by RCW 18.51.145, including any waivers that may have been granted, except that the licensee must ensure the building meets the licensed ((~~boarding home~~)) assisted living facility standards, or their functional equivalency, for:
 - (i) Resident to bathing fixture ratio required per WAC 388-78A-3030;
 - (ii) Resident to toilet ratio required per WAC 388-78A-3030;
 - (iii) Corridor call system required per WAC 388-78A-2930;
 - (iv) Resident room door closures; and
 - (v) Resident room windows required per WAC 388-78A-3010.

(3) If the licensee does not continue to provide contracted enhanced adult residential care services in the ((~~boarding home~~)) assisted living facility converted from a licensed nursing home, the licensee must meet all ((~~boarding home~~)) assisted living facility licensing requirements specified in this chapter and chapter 18.20 RCW.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2840 Licenses for multiple buildings.

(1) The licensee may have multiple buildings operating under a single ~~((boarding home))~~ assisted living facility license if:

(a) All of the buildings are located on the same property with the same legal description; or

(b) All of the buildings are located on contiguous properties undivided by:

(i) Public streets, not including alleyways used primarily for delivery services or parking; or

(ii) Other land that is not owned and maintained by the owners of the property on which the ~~((boarding home))~~ assisted living facility is located.

(2) The licensee must have separate ~~((boarding homes))~~ assisted living facility licenses for buildings that are not located on the same or contiguous properties.

(3) Buildings that construction review services reviewed only as an addition to, or a remodel of, an existing ~~((boarding home))~~ assisted living facility must not have separate ~~((boarding home))~~ assisted living facility licenses.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2850 Required reviews of building plans.

(1) A person or ~~((boarding home))~~ assisted living facility must notify construction review services of all planned construction regarding ~~((boarding homes))~~ an assisted living facility prior to beginning work on any of the following:

(a) A new building or portion thereof to be used as ~~((a boarding home))~~ an assisted living facility;

(b) An addition of, or modification or alteration to an existing ~~((boarding home))~~ assisted living facility, including, but not limited to, the ~~((boarding home's))~~ assisted living facility's:

- (i) Physical structure;
- (ii) Electrical fixtures or systems;
- (iii) Mechanical equipment or systems;
- (iv) Fire alarm fixtures or systems;
- (v) Fire sprinkler fixtures or systems;
- (vi) Carpeting;
- (vii) Wall coverings 1/28 inch thick or thicker; or
- (viii) Kitchen or laundry equipment.

(c) A change in the department-approved use of an existing ~~((boarding home))~~ assisted living facility or portion of ~~((a boarding home))~~ an assisted living facility; and

(d) An existing building or portion thereof to be converted for use as ~~((a boarding home))~~ an assisted living facility.

(2) A person or ~~((boarding home))~~ assisted living facility does not need to notify construction review services of the following:

(a) Repair or maintenance of equipment, furnishings or fixtures;

(b) Replacement of equipment, furnishings or fixtures with equivalent equipment, furnishings or fixtures;

(c) Repair or replacement of damaged construction if the repair or replacement is performed according to construction

documents approved by construction review services within eight years preceding the current repair or replacement;

(d) Painting; or

(e) Cosmetic changes that do not affect resident activities, services, or care and are performed in accordance with the current edition of the building code.

(3) The ~~((boarding home))~~ assisted living facility must submit plans to construction review services as directed by construction review services and consistent with WAC 388-78A-2820 for approval prior to beginning any construction. The plans must provide an analysis of likely adverse impacts on current ~~((boarding home))~~ assisted living facility residents and plans to eliminate or mitigate such adverse impacts.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2860 Relocation of residents during construction. (1) Prior to moving residents out of the ~~((boarding home))~~ assisted living facility during construction, the ~~((boarding home))~~ assisted living facility must:

(a) Notify the residents and the residents' representatives at least thirty days prior to the anticipated move date, of the required move and their options consistent with chapter 70.129 RCW;

(b) Notify the department at least thirty days prior to the anticipated move date, of the ~~((boarding home's))~~ assisted living facility's plans for relocating residents, including:

(i) The location to which the residents will be relocated;

(ii) The ~~((boarding home's))~~ assisted living facility's plans for providing care and services during the relocation;

(iii) The ~~((boarding home's))~~ assisted living facility's plans for returning residents to the building; and

(iv) The projected time frame for completing the construction.

(c) Obtain the department's approval for the relocation plans prior to relocating residents.

(2) If the ~~((boarding home))~~ assisted living facility moves out all of the residents from the ~~((boarding home))~~ assisted living facility without first obtaining the department's approval of the relocation plans, the ~~((boarding home))~~ assisted living facility is closed for business and the department may revoke the licensee's ~~((boarding home))~~ assisted living facility license.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2870 Vacant buildings. Whenever ~~((a boarding home))~~ an assisted living facility moves out all residents and ceases operation for reasons other than construction, as specified in WAC 388-78A-2860, the licensee must relinquish the ~~((boarding home))~~ assisted living facility license or the department may revoke the ~~((boarding home))~~ assisted living facility license.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2880 Changing use of rooms. Prior to using a room for a purpose other than what was approved by

construction review services, the ~~((boarding home))~~ assisted living facility must:

- (1) Notify construction review services:
 - (a) In writing;
 - (b) Thirty days or more before the intended change in use;
 - (c) Describe the current and proposed use of the room; and
 - (d) Provide all additional documentation as requested by construction review services.
- (2) Obtain the written approval of construction review services for the new use of the room.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2890 Time frame for approval. (1) A person or the licensee must:

(a) Obtain approval by construction review services, of final construction documents prior to starting any construction, except for fire alarm plans, fire sprinkler plans, and landscaping plans.

(b) Obtain approval by construction review services, of landscaping, fire alarm and fire sprinkler plans prior to their installation.

(2) The department will not issue ~~((a boarding home))~~ an assisted living facility license unless:

- (a) Construction review services:
 - (i) Notifies the department that construction has been completed; and
 - (ii) Provides the department:
 - (A) A copy of the certificate of occupancy granted by the local building official;
 - (B) A copy of the functional program; and
 - (C) A reduced copy of the approved floor plan indicating room numbers or names and the approved use; and
- (b) The state fire marshal has inspected and approved the ~~((boarding home))~~ assisted living facility for fire protection.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2900 Retention of approved construction documents. The ~~((boarding home))~~ assisted living facility must retain on the ~~((boarding home))~~ assisted living facility premises:

- (1) Specification data on materials used in construction, for the life of the product;
- (2) Stamped "approved" set of construction documents.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2910 Applicable building codes. (1) Newly licensed ~~((boarding homes))~~ assisted living facilities and new construction in existing ~~((boarding homes))~~ assisted living facilities must meet the requirements of all the current state and local building and zoning codes and applicable sections of this chapter.

(2) Existing licensed ~~((boarding homes))~~ assisted living facilities must continue to meet the building codes in force at

the time of their plan approval by construction review services, except that the ~~((boarding home))~~ assisted living facility may be required to meet current building code requirements if the construction poses a risk to the health and safety of residents.

(3) The ~~((boarding home))~~ assisted living facility must ensure that construction is completed in compliance with the final construction review services approved documents. Compliance with these standards and regulations does not relieve the ~~((boarding home))~~ assisted living facility of the need to comply with applicable state and local building and zoning codes.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2920 Area for nursing supplies and equipment. (1) If the ~~((boarding home))~~ assisted living facility provides intermittent nursing services, the ~~((boarding home))~~ assisted living facility must provide on the ~~((boarding home))~~ assisted living facility premises for the safe and sanitary:

(a) Storage and handling of clean and sterile nursing equipment and supplies; and

(b) Cleaning and disinfecting of soiled nursing equipment.

(2) For all ~~((boarding homes))~~ assisted living facilities first issued a project number by construction review services on or after September 1, 2004 for construction related to this section, in which intermittent nursing services are provided, or upon initiating intermittent nursing services within an existing ~~((boarding home))~~ assisted living facility, the ~~((boarding home))~~ assisted living facility must provide the following two separate rooms in each ~~((boarding home))~~ assisted living facility building, accessible only by staff persons:

(a) A "clean" utility room for the purposes of storing and preparing clean and sterile nursing supplies, equipped with:

(i) A work counter or table;

(ii) A handwashing sink, with soap and paper towels or other approved hand-drying device; and

(iii) Locked medication storage, if medications are stored in this area, that is separate from all other stored items consistent with WAC 388-78A-2260.

(b) A "soiled" utility room for the purposes of storing soiled linen, cleaning and disinfecting soiled nursing care equipment, and disposing of refuse and infectious waste, equipped with:

(i) A work counter or table;

(ii) A two-compartment sink for handwashing and equipment cleaning and sanitizing;

(iii) A clinical service sink or equivalent for rinsing and disposing of waste material;

(iv) Soap and paper towels or other approved hand-drying device; and

(v) Locked storage for cleaning supplies, if stored in the area.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2930 Communication system. (1) The ~~((boarding home))~~ assisted living facility must:

(a) Provide residents and staff persons with the means to summon on-duty staff assistance:

- (i) From resident units;
- (ii) From common areas accessible to residents;
- (iii) From corridors accessible to residents; and

(iv) For ~~((boarding homes))~~ assisted living facilities issued a project number by construction review services on or after September 1, 2004 for construction related to this section, all bathrooms, all toilet rooms, resident living rooms and sleeping rooms.

(b) Provide residents, families, and other visitors with a means to contact a staff person inside the building from outside the building after hours.

(2) The ~~((boarding home))~~ assisted living facility must provide one or more nonpay telephones:

(a) In each building located for ready access by staff persons; and

(b) On the premises with reasonable access and privacy by residents.

(3) In ~~((boarding homes))~~ assisted living facilities issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the ~~((boarding home))~~ assisted living facility must equip each resident room with two telephone lines.

(4) If ~~((a boarding home))~~ an assisted living facility that is issued a project number by construction services on or after September 1, 2004 chooses to install an intercom system, the intercom system must be equipped with a mechanism that allows a resident to control:

(a) Whether or not announcements are broadcast into the resident's room; and

(b) Whether or not voices or conversations within the resident's room can be monitored or listened to by persons outside the resident's room.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2940 Two-way intercom systems. The ~~((boarding home))~~ assisted living facility may use a two-way intercom system between staff persons and residents in other rooms only when:

- (1) A resident initiates the contact; or
- (2) Staff persons announce to the resident that the intercom has been activated at the time it is activated, and:

(a) The resident and any others in the room agree to continue the contact;

(b) The ~~((boarding home))~~ assisted living facility deactivates the intercom when the conversation is complete; and

(c) The ~~((boarding home))~~ assisted living facility ensures each resident is aware the intercom is operating at all times the intercom is in use in the resident's room.

AMENDATORY SECTION (Amending WSR 09-01-052, filed 12/10/08, effective 1/10/09)

WAC 388-78A-2950 Water supply. The ~~((boarding home))~~ assisted living facility must:

(1) Provide water meeting the provisions of chapter 246-290 WAC, Group A public water supplies or chapter 246-291 WAC, Group B public water systems;

(2) Maintain the ~~((boarding home))~~ assisted living facility water systems free of cross-connections as specified in the edition of *Cross-Connection Control Manual*, published by the Pacific Northwest Section of the American Water Works Association, in effect on the date a construction review fee is paid to the department of health, construction review services;

(3) Provide hot and cold water under adequate pressure readily available throughout the ~~((boarding home))~~ assisted living facility;

(4) Provide all sinks in resident rooms, toilet rooms and bathrooms, and bathing fixtures used by residents with hot water between 105°F and 120°F at all times; and

(5) Label or color code nonpotable water supplies "unsafe for domestic use."

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2960 Sewage and liquid waste disposal. The ~~((boarding home))~~ assisted living facility must:

(1) Ensure that all sewage and waste water drain into a municipal sewage disposal system according to chapter 246-271 WAC, if available; or

(2) Provide on-site sewage disposal systems designed, constructed, and maintained as required by chapters 246-272 and 173-240 WAC, and local ordinances.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2970 Garbage and refuse disposal. The ~~((boarding home))~~ assisted living facility must:

(1) Provide an adequate number of garbage containers to store refuse generated by the ~~((boarding home))~~ assisted living facility:

(a) Located in a storage area convenient for resident and staff use;

(b) Constructed of nonabsorbent material;

(c) Cleaned and maintained to prevent:

(i) Entrance of insects, rodents, birds, or other pests;

(ii) Odors; and

(iii) Other nuisances.

(2) Assure garbage and waste containers are emptied frequently to prevent hazards and nuisances; and

(3) Provide for safe and sanitary collection and disposal of:

(a) Garbage and refuse;

(b) Infectious waste; and

(c) Waste grease from the kitchen.

AMENDATORY SECTION (Amending WSR 09-01-052, filed 12/10/08, effective 1/10/09)

WAC 388-78A-2980 Lighting. (1) The ((~~boarding home~~)) assisted living facility must maintain electric light fixtures and lighting necessary for the comfort and safety of residents and for the activities of residents and staff.

(2) The ((~~boarding home~~)) assisted living facility must provide enough lighting in each resident's room to meet the resident's needs, preferences and choices.

(3) New ((~~boarding home~~)) assisted living facility construction must, at a minimum, meet the Illuminating Engineering Society of North America (IESNA) recommendations for lighting in common areas as established in the IESNA lighting handbook. The applicable handbook is the edition in effect on the date a construction review fee is paid to the department of health, construction review services, for new ((~~boarding home~~)) assisted living facility construction.

(4) Existing ((~~boarding home~~)) assisted living facility construction must maintain, at a minimum, the Illuminating Engineering Society of North America (IESNA) recommendations for lighting in common areas as established in the IESNA lighting handbook. The applicable handbook is the edition in effect on the date a construction review fee was paid to the department of health, construction review services, for the ((~~boarding home~~)) assisted living facility or that portion of the ((~~boarding home~~)) assisted living facility that underwent construction review.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2990 Heating-cooling—Temperature. The ((~~boarding home~~)) assisted living facility must:

(1) Equip each resident-occupied building with an approved heating system capable of maintaining a minimum temperature of 70°F per the building code. The ((~~boarding home~~)) assisted living facility must:

(a) Maintain the ((~~boarding home~~)) assisted living facility at a minimum temperature of 60°F during sleeping hours; and

(b) Maintain the ((~~boarding home~~)) assisted living facility at a minimum of 68°F during waking hours, except in rooms:

(i) Designated for activities requiring physical exertion; or

(ii) Where residents can individually control the temperature in their own living units, independent from other areas.

(2) Equip each resident-occupied building with a mechanical air cooling system or equivalent capable of maintaining a temperature of 75°F in communities where the design dry bulb temperature exceeds 85°F for one hundred seventy-five hours per year or two percent of the time, as specified in the latest edition of "*Recommended Outdoor Design Temperatures—Washington State*," published by the Puget Sound chapter of the American Society of Heating, Refrigeration, and Air-Conditioning Engineers;

(3) Equip each ((~~boarding home~~)) assisted living facility issued a project number by construction review services on or after September 1, 2004 for construction related to this sec-

tion, with a backup source of heat in enough common areas to keep all residents adequately warm during interruptions of normal heating operations;

(4) Prohibit the use of portable space heaters unless approved in writing by the Washington state director of fire protection; and

(5) Equip each resident sleeping room and resident living room in ((~~boarding homes~~)) assisted living facilities issued a project number by construction review services on or after September 1, 2004 for construction related to this section, with individual temperature controls located between thirty and forty-eight inches above the floor capable of maintaining room temperature plus or minus 3°F from setting, within a range of minimum 60°F to maximum 85°F.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3000 Ventilation. The ((~~boarding home~~)) assisted living facility must:

(1) Ventilate rooms to:

(a) Prevent excessive odors or moisture; and

(b) Remove smoke.

(2) Designate and ventilate smoking areas, if smoking is permitted in the ((~~boarding home~~)) assisted living facility, to prevent air contamination throughout the ((~~boarding home~~)) assisted living facility;

(3) Provide intact sixteen mesh screens on operable windows and openings used for ventilation; and

(4) Prohibit screens that may restrict or hinder escape or rescue through emergency exit openings.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-3010 Resident room—Room furnishings-storage. (1) The ((~~boarding home~~)) assisted living facility must ensure each resident has a sleeping room that has:

(a) Eighty or more square feet of usable floor space in a one-person sleeping room;

(b) Seventy or more square feet of usable floor space per individual in a sleeping room occupied by two or more individuals, except:

(i) When a resident sleeping room is located within a private apartment; and

(ii) The private apartment includes a resident sleeping room, a resident living room, and a private bathroom; and

(iii) The total square footage in the private apartment equals or exceeds two hundred twenty square feet excluding the bathroom; and

(iv) There are no more than two residents living in the apartment; and

(v) Both residents mutually agree to share the resident sleeping room; and

(vi) All other requirements of this section are met, then the two residents may share a sleeping room with less than one hundred forty square feet.

(c) A maximum sleeping room occupancy of:

(i) Four individuals if the ~~((boarding home))~~ assisted living facility was licensed before July 1, 1989, and licensed continuously thereafter; and

(ii) Two individuals if the ~~((boarding home))~~ assisted living facility, after June 30, 1989:

(A) Applied for initial licensure; or

(B) Applied to increase the number of resident sleeping rooms; or

(C) Applied to change the use of rooms into sleeping rooms.

(d) Unrestricted direct access to a hallway, living room, outside, or other common-use area;

(e) One or more outside windows with:

(i) Window sills at or above grade, with grade extending horizontally ten or more feet from the building; and

(ii) Adjustable curtains, shades, blinds, or equivalent for visual privacy.

(f) One or more duplex electrical outlets per bed if the ~~((boarding home))~~ assisted living facility was initially licensed after July 1, 1983;

(g) A light control switch located by the entrance for a light fixture in the room;

(h) An individual towel and washcloth rack or equivalent, except when there is a private bathroom attached to the resident sleeping or living room, the individual towel and washcloth rack may be located in the attached private bathroom;

(i) In all ~~((boarding homes))~~ assisted living facilities issued a project number by construction review services on or after September 1, 2004 for construction related to this section, and when requested by a resident in ~~((a boarding home))~~ an assisted living facility licensed on or before September 1, 2004, provide a lockable drawer, cupboard or other secure space measuring at least one-half cubic foot with a minimum dimension of four inches;

(j) Separate storage facilities for each resident in or immediately adjacent to the resident's sleeping room to adequately store a reasonable quantity of clothing and personal possessions;

(k) A configuration to permit all beds in the resident sleeping room to be spaced at least three feet from other beds unless otherwise requested by all affected residents.

(2) The ~~((boarding home))~~ assisted living facility must ensure each resident sleeping room contains:

(a) A comfortable bed for each resident, except when two residents mutually agree to share a bed. The bed must be thirty-six or more inches wide for a single resident and fifty-four or more inches wide for two residents, appropriate for size, age and physical condition of the resident and room dimensions, including, but not limited to:

(i) Standard household bed;

(ii) Studio couch;

(iii) Hide-a-bed;

(iv) Day bed; or

(v) Water bed, if structurally and electrically safe.

(b) A mattress for each bed which:

(i) Fits the bed frame;

(ii) Is in good condition; and

(iii) Is at least four inches thick unless otherwise requested or necessary for resident health or safety.

(c) One or more comfortable pillows for each resident;

(d) Bedding for each bed, in good repair; and

(e) Lighting at the resident's bedside when requested by the resident.

(3) The ~~((boarding home))~~ assisted living facility must not allow a resident sleeping room to be used as a passageway or corridor.

(4) The ~~((boarding home))~~ assisted living facility may use or allow use of carpets and other floor coverings only when the carpet is:

(a) Securely fastened to the floor or provided with non-skid backing; and

(b) Kept clean and free of hazards, such as curling edges or tattered sections.

(5) The ~~((boarding home))~~ assisted living facility must ensure each resident has either a sleeping room or resident living room that contains a sturdy, comfortable chair appropriate for the age and physical condition of the resident. This requirement does not mean ~~((a boarding home))~~ an assisted living facility is responsible for supplying specially designed orthotic or therapeutic chairs, including those with mechanical lifts or adjustments.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-3030 Toilet rooms and bathrooms. (1)

The ~~((boarding home))~~ assisted living facility must provide private or common-use toilet rooms and bathrooms to meet the needs of each resident.

(2) The ~~((boarding home))~~ assisted living facility must provide each toilet room and bathroom with:

(a) Water resistant, smooth, low gloss, nonslip and easily cleanable materials;

(b) Washable walls to the height of splash or spray;

(c) Grab bars installed and located to minimize accidental falls including one or more grab bars at each:

(i) Bathing fixture; and

(ii) Toilet.

(d) Plumbing fixtures designed for easy use and cleaning and kept in good repair; and

(e) Adequate ventilation to the outside of the ~~((boarding home))~~ assisted living facility. For ~~((boarding homes))~~ assisted living facilities issued a project number by construction review services on or after September 1, 2004, for construction related to this section, must provide mechanical ventilation to the outside.

(3) The ~~((boarding home))~~ assisted living facility must provide each toilet room with a:

(a) Toilet with a clean, nonabsorbent seat free of cracks;

(b) Handwashing sink in or adjacent to the toilet room.

For ~~((boarding homes))~~ assisted living facilities issued a project number by construction review services on or after September 1, 2004, for construction related to this section, the handwashing sink must be in the toilet room or in an adjacent private area that is not part of a common use area of the ~~((boarding home))~~ assisted living facility; and

(c) Suitable mirror with adequate lighting for general illumination.

(4) For ~~((boarding homes))~~ assisted living facilities approved for construction or initially licensed after August 1, 1994, the ~~((boarding home))~~ assisted living facility must provide a toilet and handwashing sink in, or adjoining, each bathroom.

(5) When providing common-use toilet rooms and bathrooms, the ~~((boarding home))~~ assisted living facility must provide toilets and handwashing sinks for residents in the ratios of one toilet and one handwashing sink for every eight residents. For example: One toilet and one handwashing sink for one to eight residents, two for nine to sixteen residents, three for seventeen to twenty-four residents, and so on, who do not have access to a private toilet room. When two or more toilets are contained in a single bathroom, they are counted as one toilet.

(6) When providing common-use toilet rooms and bathrooms, the ~~((boarding home))~~ assisted living facility must provide bathing fixtures for residents in the ratio of one bathing fixture for every twelve residents. For example: One bathing fixture for one to twelve residents, two for twelve to twenty-four residents, three for twenty-five to thirty-six residents, and so on, who do not have access to a private toilet room.

(7) When providing common-use toilet rooms and bathrooms, the ~~((boarding home))~~ assisted living facility must:

(a) Designate toilet rooms containing more than one toilet for use by men or women;

(b) Designate bathrooms containing more than one bathing fixture for use by men or women;

(c) Equip each toilet room and bathroom designed for use by, or used by, more than one person at a time, in a manner to ensure visual privacy for each person using the room. The ~~((boarding home))~~ assisted living facility is not required to provide additional privacy features in private bathrooms with a single toilet and a single bathing fixture located within a private apartment;

(d) Provide a handwashing sink with soap and single use or disposable towels, blower or equivalent hand-drying device in each toilet room, except that single-use or disposable towels or blowers are not required in toilet rooms or bathrooms that are located within a private apartment;

(e) Provide reasonable access to bathrooms and toilet rooms for each resident by:

(i) Locating a toilet room on the same floor or level as the sleeping room of the resident served;

(ii) Locating a bathroom on the same floor or level, or adjacent floor or level, as the sleeping room of the resident served;

(iii) Providing access without passage through any kitchen, pantry, food preparation, food storage, or dishwashing area, or from one bedroom through another bedroom; and

(f) Provide and ensure toilet paper is available at each common-use toilet.

(8) In ~~((boarding homes))~~ assisted living facilities issued a project number by construction review services on or after September 1, 2004, for construction related to this section, the ~~((boarding home))~~ assisted living facility must ensure twenty-five percent of all the bathing fixtures in the ~~((board-~~

~~ing home))~~ assisted living facility are roll-in type showers that have:

(a) One-half inch or less threshold that may be a collapsible rubber water barrier;

(b) A minimum size of thirty-six inches by forty-eight inches; and

(c) Single lever faucets located within thirty-six inches of the seat so the faucets are within reach of persons seated in the shower.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-3040 Laundry. (1) The ~~((boarding home))~~ assisted living facility must provide laundry and linen services on the premises, or by commercial laundry.

(2) The ~~((boarding home))~~ assisted living facility must handle, clean, and store linen according to acceptable methods of infection control. The ~~((boarding home))~~ assisted living facility must:

(a) Provide separate areas for handling clean laundry and soiled laundry;

(b) Ensure clean laundry is not processed in, and does not pass through, areas where soiled laundry is handled;

(c) Ensure areas where clean laundry is stored are not exposed to contamination from other sources; and

(d) Ensure all staff persons wear gloves and ~~((uses))~~ use other appropriate infection control practices when handling soiled laundry.

(3) The ~~((boarding home))~~ assisted living facility must use washing machines that have a continuous supply of hot water with a temperature of 140°F measured at the washing machine intake, or that automatically dispense a chemical sanitizer as specified by the manufacturer, whenever the ~~((boarding home))~~ assisted living facility washes:

(a) ~~((Boarding home))~~ Assisted living facility laundry;

(b) ~~((Boarding home))~~ Assisted living facility laundry combined with residents' laundry into a single load; or

(c) More than one resident's laundry combined into a single load.

(4) The ~~((boarding home))~~ assisted living facility or a resident washing an individual resident's personal laundry, separate from other laundry, may wash the laundry at temperatures below 140°F and without the use of a chemical sanitizer.

(5) The ~~((boarding home))~~ assisted living facility must ventilate laundry rooms and areas to the outside of the ~~((boarding home))~~ assisted living facility, including areas or rooms where soiled laundry is held for processing by off site commercial laundry services.

(6) The ~~((boarding home))~~ assisted living facility must locate laundry equipment in rooms other than those used for open food storage, food preparation or food service.

(7) For all ~~((boarding homes))~~ assisted living facilities issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the ~~((boarding home))~~ assisted living facility must provide a laundry area where residents' may do their personal laundry that is:

- (a) Equipped with:
 - (i) A utility sink;
 - (ii) A table or counter for folding clean laundry;
 - (iii) At least one washing machine and one clothes dryer;
- and
- (iv) Mechanical ventilation to the outside of the ~~((boarding home))~~ assisted living facility.
- (b) Is arranged to reduce the chances of soiled laundry contaminating clean laundry.
- (8) The ~~((boarding home))~~ assisted living facility may combine areas for soiled laundry with other areas when consistent with WAC 388-78A-3110.
- (9) The ~~((boarding home))~~ assisted living facility may combine areas for handling and storing clean laundry with other areas when consistent with WAC 388-78A-3120.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3050 Day rooms. (1) The ~~((boarding home))~~ assisted living facility must provide one or more day room areas in which residents may participate in social and recreational activities. Day room areas include, but are not limited to:

- (a) Solariums;
- (b) Enclosed sun porches;
- (c) Recreation rooms;
- (d) Dining rooms; and
- (e) Living rooms.
- (2) The ~~((boarding home))~~ assisted living facility must provide a total minimum floor space for day room areas of:
 - (a) One hundred fifty square feet, or ten square feet per resident, whichever is larger, in ~~((boarding homes))~~ assisted living facilities licensed on or before December 31, 1988; or
 - (b) One hundred fifty square feet, or twenty square feet per resident, whichever is larger, in ~~((boarding homes))~~ assisted living facilities licensed after December 31, 1988.
- (3) The ~~((boarding home))~~ assisted living facility must provide day room areas with comfortable furniture and furnishings that meet the residents' needs.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3060 Storage space. The ~~((boarding home))~~ assisted living facility must:

- (1) Provide adequate storage space for supplies, equipment and linens;
- (2) Provide separate, locked storage for disinfectants and poisonous compounds; and
- (3) Maintain storage space to prevent fire or safety hazards.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3070 Stairs—Ramps. The ~~((boarding home))~~ assisted living facility must maintain nonskid surfaces on all stairways and ramps used by residents.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3080 Guardrails—Handrails. (1) The ~~((boarding home))~~ assisted living facility must install and maintain sturdy handrails according to building code requirements, located:

- (a) In halls and corridors, if necessary for resident safety;
- (b) On each side of interior and exterior stairways with more than one step riser, unless the department approves in writing having a handrail on one side only; and
- (c) On each side of interior and exterior ramps with slopes greater than one to twenty.
- (2) The ~~((boarding home))~~ assisted living facility must install guardrails if the department determines guardrails are necessary for resident safety.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-3090 Maintenance and housekeeping. (1) The ~~((boarding home))~~ assisted living facility must:

- (a) Provide a safe, sanitary and well-maintained environment for residents;
- (b) Keep exterior grounds, ~~((boarding home))~~ assisted living facility structure, and component parts safe, sanitary and in good repair;
- (c) Keep facilities, equipment and furnishings clean and in good repair;
- (d) Ensure each resident or staff person maintains the resident's quarters in a safe and sanitary condition; and
- (e) Equip a housekeeping supply area on the premises with:
 - (i) A utility sink or equivalent means of obtaining and disposing of mop water, separate from food preparation and service areas;
 - (ii) Storage for wet mops, ventilated to the outside of the ~~((boarding home))~~ assisted living facility; and
 - (iii) Locked storage for cleaning supplies.
- (2) For ~~((boarding homes))~~ assisted living facilities issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the ~~((boarding home))~~ assisted living facility must provide housekeeping supply room(s):
 - (a) Located on each floor of the ~~((boarding home))~~ assisted living facility, except only one housekeeping supply room is required for ~~((boarding homes))~~ assisted living facilities licensed for sixteen or fewer beds when there is a means other than using a stairway, for transporting mop buckets between floors;
 - (b) In proximity to laundry and kitchen areas; and
 - (c) Equipped with:
 - (i) A utility sink or equivalent means of obtaining and disposing of mop water, away from food preparation and service areas;
 - (ii) Storage for wet mops;
 - (iii) Locked storage for cleaning supplies; and
 - (iv) Mechanical ventilation to the outside of the ~~((boarding home))~~ assisted living facility.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3100 Safe storage of supplies and equipment. The ((~~boarding home~~)) assisted living facility must secure potentially hazardous supplies and equipment commensurate with the assessed needs of residents and their functional and cognitive abilities. In determining what supplies and equipment may be accessible to residents, the ((~~boarding home~~)) assisted living facility must consider at a minimum:

- (1) The residents' characteristics and needs;
- (2) The degree of hazardousness or toxicity posed by the supplies or equipment;
- (3) Whether or not the supplies and equipment are commonly found in a private home, such as hand soap or laundry detergent; and
- (4) How residents with special needs are individually protected without unnecessary restrictions on the general population.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3110 Areas for cleaning and storing soiled equipment, supplies and laundry. (1) The ((~~boarding home~~)) assisted living facility may combine areas used for storing, handling and cleaning soiled laundry and linens, areas used for cleaning and disinfecting soiled nursing care equipment, areas for disposing of refuse and infectious waste, and/or areas for storing housekeeping and cleaning supplies, into a single area on the premises only when the ((~~boarding home~~)) assisted living facility equips the area with:

- (a) A two-compartment sink for handwashing and sanitizing;
- (b) A clinical service sink or equivalent for rinsing and disposing of waste material;
- (c) A work counter or table;
- (d) Mechanical ventilation to the outside of the ((~~boarding home~~)) assisted living facility; and
- (e) Locked storage for cleaning supplies, if stored in the area.

(2) The ((~~boarding home~~)) assisted living facility must ensure that any work or function performed in or around a combined utility area as described in subsection (1) of this section is performed without significant risk of contamination to:

- (a) Storing or handling clean or sterile nursing supplies or equipment;
- (b) Storing or handling clean laundry;
- (c) Providing resident care;
- (d) Food storage, preparation, or service; or
- (e) Other operations, services or functions in the ((~~boarding home~~)) assisted living facility sensitive to infection control practices.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3120 Areas for handling and storing clean supplies and equipment. The ((~~boarding home~~))

assisted living facility may combine areas used for handling and storing clean laundry, and areas used for storing, preparing and handling clean and sterile nursing supplies, equipment and medications, into a single area on the premises only when the ((~~boarding home~~)) assisted living facility:

- (1) Equips the area with:
 - (a) A handwashing sink; and
 - (b) A work counter or table.
- (2) Ensures that any work or function performed in the area is performed without significant risk of contamination from other sources; and
- (3) Stores medications separate from all other stored items consistent with WAC 388-78A-2260.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3130 Plant restrictions. The ((~~boarding home~~)) assisted living facility must not use poisonous or toxic plants in areas of the ((~~boarding home~~)) assisted living facility premises accessible to residents who, based on their diagnosed condition or cognitive disabilities, may ingest or have harmful contact with such plants.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3140 Responsibilities during inspections. The ((~~boarding home~~)) assisted living facility must:

- (1) Cooperate with the department during any on-site inspection or complaint investigation;
- (2) Provide requested records to the representatives of the department; and
- (3) Ensure the ((~~boarding home~~)) assisted living facility administrator or the administrator's designee is available during any inspection or complaint investigation to respond to questions or issues identified by department staff.

AMENDATORY SECTION (Amending WSR 09-01-079, filed 12/15/08, effective 5/1/09)

WAC 388-78A-3152 Plan of correction—Required.

(1) The ((~~boarding home~~)) assisted living facility must comply with all applicable licensing laws and regulations at all times.

(2) When the department finds the ((~~boarding home~~)) assisted living facility out of compliance with any licensing law or regulation the department will send the home an inspection report with an attestation of correction statement for each cited deficiency.

(3) The ((~~boarding home~~)) assisted living facility must complete an attestation of correction for any inspection report as the department requires.

(4) For purposes of this section an "attestation of correction statement" means a statement developed by the department and signed and dated by the home, that the home:

- (a) Has or will correct each cited deficiency; and
 - (b) Will maintain correction of each cited deficiency.
- (5) The home must be able to show to the department, upon request, that, for each deficiency cited, the home has:
- (a) A plan of correction and maintaining correction;

- (b) Corrected or is correcting each deficiency; and
- (c) Maintained or is maintaining compliance.
- (6) On each attestation of correction statement, the home must:
 - (a) Give a date, approved by the department, showing when the cited deficiency has been or will be corrected; and
 - (b) By signature and date showing that the home has or will correct, and maintain correction, of each deficiency.
- (7) The home must return the inspection report, with completed attestation of correction statements, to the department within ten calendar days of receiving the report.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3160 Authorized enforcement remedies. (1) Whenever the circumstances in WAC 388-78A-3170(1) are present, the department may impose any enforcement remedies authorized by RCW 18.20.050(4), 18.20.185(7) and 18.20.190 on ~~((a boarding home))~~ an assisted living facility, including:

- (a) Denying ~~((a boarding home))~~ an assisted living facility license;
- (b) Suspending ~~((a boarding home))~~ an assisted living facility license;
- (c) Revoking ~~((a boarding home))~~ an assisted living facility license;
- (d) Refusing to renew ~~((a boarding home))~~ an assisted living facility license;
- (e) Suspending admissions to ~~((a boarding home))~~ an assisted living facility;
- (f) Suspending admissions to ~~((a boarding home))~~ an assisted living facility of a specific category or categories of residents as related to cited problems;
- (g) Imposing conditions on the ~~((boarding home))~~ assisted living facility license; and/or
- (h) Imposing civil penalties of not more than one hundred dollars per day per violation.

(2) Notwithstanding subsection (1) of this section, the department may impose a civil penalty on ~~((a boarding home))~~ an assisted living facility of up to three thousand dollars per day per violation for interference, coercion, discrimination and/or reprisal by ~~((a boarding home))~~ an assisted living facility as set forth in RCW 18.20.185(7).

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3170 Circumstances resulting in enforcement remedies. (1) The department is authorized to impose enforcement remedies described in WAC 388-78A-3160 if any person described in subsection (2) of this section is found by the department to have:

- (a) A history of significant noncompliance with federal or state laws or regulations in providing care or services to frail elders, vulnerable adults or children, whether as a licensee, contractor, managerial employee or otherwise. Evidence of significant noncompliance may include, without limitation:
 - (i) Citations for violation of laws or regulations imposed by regulating entities;

- (ii) Sanctions for violation of laws or regulations imposed by regulating entities;

- (iii) Involuntary termination, cancellation, suspension, or nonrenewal of a medicaid contract or medicare provider agreement, or any other agreement with a public agency for the care or treatment of children, frail elders or vulnerable adults;

- (iv) Been denied a license relating to the care of frail elders, vulnerable adults or children; or

- (v) Relinquished or failed to renew a license relating to care of frail elders, vulnerable adults or children following written notification of the licensing agency's initiation of denial, suspension, cancellation or revocation of a license.

- (b) Failed to provide appropriate care to frail elders, vulnerable adults or children under a contract, or having such contract terminated or not renewed by the contracting agency due to such failure;

- (c) Been convicted of a felony, or a crime against a person, if the conviction reasonably relates to the competency of the person to operate ~~((a boarding home))~~ an assisted living facility;

- (d) Failed or refused to comply with the requirements of chapter 18.20 RCW, applicable provisions of chapter 70.129 RCW or this chapter;

- (e) Retaliated against a staff person, resident or other individual for:

- (i) Reporting suspected abuse or other alleged improprieties;

- (ii) Providing information to the department during the course of the department conducting an inspection of the ~~((boarding home))~~ assisted living facility; or

- (iii) Providing information to the department during the course of the department conducting a complaint investigation in the ~~((boarding home))~~ assisted living facility.

- (f) Operated a facility for the care of children or adults without a current, valid license or under a defunct or revoked license;

- (g) Been convicted of a crime committed on ~~((a boarding home))~~ an assisted living facility premises; knowingly permitted, aided or abetted an illegal act on ~~((a boarding home))~~ an assisted living facility premises; or engaged in the illegal use of drugs or the excessive use of alcohol;

- (h) Abused, neglected or exploited a vulnerable adult or knowingly failed to report alleged abuse, neglect or exploitation of a vulnerable adult as required by chapter 74.34 RCW;

- (i) Failed to exercise fiscal accountability and responsibility involving a resident, the department, public agencies, or the business community; or to have insufficient financial resources or unencumbered income to sustain the operation of the ~~((boarding home))~~ assisted living facility;

- (j) Knowingly or with reason to know, made false statements of material fact in the application for the license or the renewal of the license or any data attached thereto, or in any matter under investigation by the department;

- (k) Willfully prevented or interfered with or attempted to impede in any way any inspection or investigation by the department, or the work of any authorized representative of the department or the lawful enforcement of any provision of this chapter;

(l) Refused to allow department representatives or agents to examine any part of the licensed premises including the books, records and files required under this chapter;

(m) Moved all residents out of the ~~((boarding home))~~ assisted living facility without the department's approval and to be no longer operating as ~~((a boarding home))~~ an assisted living facility; or

(n) Demonstrated any other factors that give evidence the applicant lacks the appropriate character, suitability and competence to provide care or services to vulnerable adults.

(2) This section applies to any ~~((boarding home))~~ assisted living facility:

- (a) Applicant;
- (b) Partner, officer or director;
- (c) Manager or managerial employee; or
- (d) Majority owner of the applicant or licensee;
- (i) Who is involved in the management or operation of the ~~((boarding home))~~ assisted living facility;
- (ii) Who may have direct access to ~~((boarding home))~~ assisted living facility residents;
- (iii) Who controls or supervises the provision of care or services to ~~((boarding home))~~ assisted living facility residents; or
- (iv) Who exercises control over daily operations of the ~~((boarding home))~~ assisted living facility.

(3) For other circumstances resulting in discretionary enforcement remedies, see WAC 388-78A-3200.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3180 Required enforcement remedies. The department must impose an appropriate remedy consistent with RCW 18.20.125 and as otherwise authorized by RCW 18.20.185 or 18.20.190 whenever the department finds ~~((a boarding home))~~ an assisted living facility has:

- (1) A serious problem, a recurring problem, or an uncorrected problem;
- (2) Created a hazard that causes or is likely to cause death or serious harm to one or more residents;
- (3) Discriminated or retaliated in any manner against a resident, employee, or any other person because that person or any other person made a complaint or provided information to the department, the attorney general, a law enforcement agency, or the long-term care ombudsman; or
- (4) Willfully interfered with the performance of official duties by a long-term care ombudsman.

AMENDATORY SECTION (Amending WSR 10-16-085, filed 7/30/10, effective 1/1/11)

WAC 388-78A-3190 Denial, suspension, revocation, or nonrenewal of license statutorily required. (1) The department must deny, suspend, revoke, or refuse to renew ~~((a boarding home))~~ an assisted living facility license if any person described in subsection (2) of this section who may have unsupervised access to residents has a conviction or finding described in WAC 388-78A-2470.

(2) This section applies to any ~~((boarding home))~~ assisted living facility:

- (a) Applicant;

- (b) Partner, officer or director;
- (c) Manager or managerial employee; or
- (d) Owner of five percent or more of the applicant;
- (i) Who is involved in the operation of the ~~((boarding home))~~ assisted living facility; or
- (ii) Who controls or supervises the provision of care or services to the ~~((boarding home))~~ assisted living facility residents; or
- (iii) Who exercises control over daily operations.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3200 Progression of enforcement remedies. (1) When the department cites ~~((a boarding home))~~ an assisted living facility for an initial problem that does not represent a recurring problem, serious problem or uncorrected problem, and that results in minimal or moderate harm that is limited in scope, the department may:

- (a) Require a plan of correction from the ~~((boarding home))~~ assisted living facility;
- (b) Impose conditions on the ~~((boarding home))~~ assisted living facility license; and/or
- (c) Impose a civil penalty.

(2) The department may take any of the actions specified in subsection (1) of this section and/or impose a stop-placement or limited stop-placement on ~~((a boarding home))~~ an assisted living facility when:

(a) There is a reasonable probability, at the time the stop-placement or limited stop-placement is imposed, at least a moderate degree of harm will occur or recur as a result of a single problem or by a combination of problems; and

(b) The threatening problem is more than an isolated event or occurrence.

(3) The department may take any of the actions specified in subsections (1) and (2) of this section and/or summarily suspend ~~((a boarding home's))~~ an assisted living facility's license when:

(a) There is an imminent threat that a serious degree of harm may occur to residents as a result of a single problem or a combination of problems; and

(b) The threatening problem is more than an isolated event or occurrence.

(4) The department may take any of the actions specified in subsections (1), (2) and (3) of this section and/or revoke ~~((a boarding home's))~~ an assisted living facility's license when:

(a) The department has cause to summarily suspend the ~~((boarding home's))~~ assisted living facility's license;

(b) There is a current problem with the ~~((boarding home))~~ assisted living facility and the ~~((boarding home))~~ assisted living facility has a history of having enforcement remedies imposed by the department;

(c) There is a current problem with the ~~((boarding home))~~ assisted living facility and the ~~((boarding home))~~ assisted living facility has a history of noncompliance representing problems that were at least moderate in nature and moderate in scope;

(d) The ~~((boarding home))~~ assisted living facility has moved all residents out of the ~~((boarding home))~~ assisted living facility without the department's approval and is no lon-

ger operating as ~~((a boarding home))~~ an assisted living facility; or

(e) There is a serious current problem, which may not warrant a summary suspension, with the ~~((boarding home))~~ assisted living facility that does not have a history of non-compliance. Examples of the types of serious current problems that may warrant license revocation include, but are not limited to:

(i) The licensee has been found or convicted by a court of competent jurisdiction to have engaged in fraudulent activity; or

(ii) The licensee is experiencing significant financial problems resulting in poor care or jeopardizing the care and services that can be provided to residents, and possible business failure; or

(f) The ~~((boarding home))~~ assisted living facility fails to cooperate with the department during any inspection or complaint investigation.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3210 Informal dispute resolution.

The ~~((boarding home))~~ assisted living facility has a right to an informal dispute resolution meeting according to department procedure and consistent with RCW 18.20.195. The ~~((boarding home))~~ assisted living facility must make a request for an informal dispute resolution meeting in writing within ten days of the receipt of the written notice of deficiency.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-3220 Appeal rights. (1) An applicant or ~~((boarding home))~~ assisted living facility:

(a) May contest an enforcement remedy imposed by the department pursuant to RCW 18.20.190 according to the provisions of chapter 34.05 RCW and chapters 10-08 and 388-02 WAC;

(b) Must file any request for an adjudicative proceeding with the office of administrative hearings at the mailing address specified in the notice of imposition of an enforcement remedy within twenty-eight days of receiving the notice.

(2) Orders of the department imposing licensing suspension, stop-placement, or conditions for continuation of a license are effective immediately upon notice and shall continue pending any hearing.

AMENDATORY SECTION (Amending WSR 12-01-003, filed 12/7/11, effective 1/7/12)

WAC 388-78A-3230 Fees. The ~~((boarding home))~~ assisted living facility must:

(1) Submit an annual per bed license fee based on the licensed bed capacity and as established in the state's biennial omnibus appropriation act and any amendment or addition made to that act;

(2) Submit an additional late fee in the amount of ten dollars per day from the license renewal date until the date of mailing the fee, as evidenced by the postmark; and

(3) Submit to construction review services a fee for the review of the construction documents per the review fee schedule that is based on the project cost.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-3390 Resident protection program—Individual defined. As used in WAC 388-78A-3400 through 388-78A-3480, the term "individual" means anyone used by the ~~((boarding home))~~ assisted living facility to provide services to residents who is alleged to have abandoned, abused, neglected, or financially exploited a resident. "Individual" includes, but is not limited to employees, contractors, and volunteers.

AMENDATORY SECTION (Amending WSR 08-05-099, filed 2/15/08, effective 3/17/08)

WAC 388-78A-3400 Investigation of reports. (1) The department may investigate allegations of abandonment, abuse, neglect, exploitation, and financial exploitation of a resident.

(2) A department investigation may include an investigation of allegations about one or more of the following:

(a) A licensee;

(b) ~~((Boarding home))~~ Assisted living facility administrator;

(c) Employee of the ~~((boarding home))~~ assisted living facility;

(d) Entity representative;

(e) Anyone affiliated with the ~~((boarding home))~~ assisted living facility; and

(f) Caregiver.

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-3470 Resident protection program—Reporting final findings. The department will report a final finding of abandonment, abuse, neglect, exploitation and financial exploitation within ten working days to the following:

(1) The individual against whom the final finding was made;

(2) The ~~((boarding home))~~ assisted living facility licensee or entity representative that was associated with the individual during the time of the incident;

(3) The employer or program that is currently associated with the individual against whom the final finding was made, if known;

(4) The appropriate licensing, certification or registration authority;

(5) Any federal or state registry or list of individuals found to have abandoned, abused, neglected, exploited, or financially exploited a vulnerable adult; and

(6) The findings may be disclosed to the public upon request subject to applicable public disclosure laws.

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

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-4010 Notice—Proof of service. The department may establish proof of service by any of the following:

- (1) A declaration of personal service;
- (2) An affidavit or certificate of mailing to the ((boarding home)) assisted living facility or to the individual to whom notice is directed;
- (3) A signed receipt from the person who accepted the certified mail, the commercial delivery service, or the legal messenger service package; or
- (4) Proof of fax transmission.

WSR 13-10-001

**WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF LICENSING**

(Board of Registration for Professional Engineers and Land Surveyors)

[Filed April 17, 2013, 2:16 p.m.]

The department of licensing, board of registration for professional engineers and land surveyors requests withdrawal of the proposed rule making filed as WSR 13-04-078, chapter 196-26A WAC. The CR-102 was filed on February 5, 2013, and appearing in issue 13-04 of the state register. This document serves as the official notification of our rule withdrawal.

Damon Monroe
Rules Coordinator

WSR 13-10-011

**PROPOSED RULES
HORSE RACING COMMISSION**

[Filed April 19, 2013, 2:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-06-030.

Title of Rule and Other Identifying Information: WAC 260-28-095 Retirement of a horse and 260-40-145 Prohibited entry of certain horses.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on June 14, 2013, at 9:30 a.m.

Date of Intended Adoption: June 14, 2013.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail doug.moore@whrc.state.wa.us, fax (360) 459-6461, by June 11, 2013.

Assistance for Persons with Disabilities: Contact Patty Sorby by June 11, 2013, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To repeal the section dealing with retired horse[s].

Reasons Supporting Proposal: The Jockey Club has recently adopted new rules regarding reissuing registration papers for thoroughbred[s] that are sold for nonracing purposes which better address the issue from jurisdiction to jurisdiction.

Statutory Authority for Adoption: RCW 67.16.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

April 19, 2013

Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 12-17-061, filed 8/10/12, effective 9/10/12)

WAC 260-40-145 Prohibiting entry of certain horses.

(1) No horse will be allowed to enter or start if it has been fraudulently entered or raced in any jurisdiction under a different name, with an altered registration certificate or altered lip tattoo or other identification method approved by the appropriate breed registry and the commission.

(2) No horse may be allowed to enter or start if its owner, lessor(s), or trainers have not been licensed as required by the commission.

~~((3) No horse may be allowed to enter or start if the horse has been declared "retired" as provided in WAC 260-28-095.))~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 260-28-095 Retirement of a horse.

WSR 13-10-055

**PROPOSED RULES
STATE BOARD OF HEALTH**

[Filed April 29, 2013, 10:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-05-001.

Title of Rule and Other Identifying Information: Chapter 246-110 WAC, Contagious disease—School districts and day care centers.

Hearing Location(s): Campbell's Resort, 104 West Woodin Avenue, Chelan, WA 98816, on June 13, 2013, at 1:30 p.m.

Date of Intended Adoption: June 13, 2013.

Submit Written Comments to: Tara Wolff, 101 Israel Road S.E., P.O. Box 47990, Tumwater, WA 98504-7990, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4088, by June 4, 2013.

Assistance for Persons with Disabilities: Contact Desiree Robinson by June 6, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board is proposing an update to chapter 246-110 WAC to improve clarity and assure the list of contagious diseases that may affect children in schools and/or childcare centers are consistent with best public health practice and the notifiable conditions listed in chapter 246-101 WAC. This proposal removes two common conditions (Pediculosis or body lice, and Conjunctivitis or pink eye) and adds two new contagious diseases (Shiga toxin-producing *Escherichia coli* and Cryptosporidiosis). In addition to assuring consistency with chapter 246-101 WAC, and reflecting current best public health practice, the proposed changes will assure that local health officers will have up to date rules that will help prevent transmission of communicable disease to children, students, and staff in childcare and school settings.

Reasons Supporting Proposal: These rules have not been reviewed or updated since 1992. The proposed rule has been rewritten to improve clarity and to assure consistency with other state rules and best public health practices, so that schools, childcare centers and local health jurisdictions can easily identify the types of contagious diseases that they need to work together to control and prevent.

Statutory Authority for Adoption: RCW 43.20.050, 28A.210.010.

Statute Being Implemented: RCW 43.20.050.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state board of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Tara Wolff, 101 Israel Road S.E., Tumwater, WA 98501, (360) 236-4101.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule satisfies the conditions of adopting or incorporating by reference without material change rules of Washington state agencies as described in RCW 34.05.328 (5)(b)(iii). Therefore, a small business [economic] impact statement is not required under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. This rule satisfies the conditions of adopting or incorporating by reference without material change rules of Washington state agencies as described in RCW 34.05.328 (5)(b)(iii), thereby exempting it from the requirement of a cost-benefit analysis.

April 29, 2013
Michelle A. Davis
Executive Director

Chapter 246-110 WAC

CONTAGIOUS DISEASE—SCHOOL DISTRICTS AND (~~DAY CARE~~) CHILDCARE CENTERS

AMENDATORY SECTION (Amending Order 225B, filed 12/23/91, effective 1/23/92)

WAC 246-110-001 Purpose. ~~((The following regulations are adopted by the board of health for the purpose of governing the presence on or about any school or day care center premises of susceptible persons who have, or have been exposed to, a communicable disease.))~~ The rules in this chapter identify certain contagious diseases that may affect children, or others who are susceptible, in schools, and childcare centers. When an outbreak or potential outbreak of a contagious disease is identified in a school or childcare center, the rules in this chapter identify what schools, childcare centers and local health officers may do to control or prevent a potential outbreak of the contagious disease. These ~~((regulations))~~ rules are in addition to other requirements imposed by chapter 246-100 WAC, Communicable and certain other diseases and chapter 246-101 WAC, Notifiable conditions.

~~((In furtherance of the purpose and intent of the law and these regulations, it is recommended that parents of students whose medical supervision seems inadequate should be encouraged to obtain the services of a physician for the child. When the economic situation warrants, the parents should be guided to the appropriate source of community-sponsored medical care.))~~ These ~~((regulations are not intended to imply that any diagnosis or treatment will be performed by))~~ rules do not require school or ((day care)) childcare center personnel to diagnose or treat children.

AMENDATORY SECTION (Amending Order 124B, filed 12/27/90, effective 1/31/91)

WAC 246-110-010 Definitions. ~~((As used in this portion of these regulations, these terms shall mean:~~

(1) ~~"Contact" means a person exposed to an infected person, animal, or contaminated environment which might provide an opportunity to acquire the infection.~~

(2) ~~"Exposure" means such association with a person or animal in the infectious stage of a disease, or with a contaminated environment, as to provide the opportunity to acquire the infection.~~

(3) ~~"Susceptible" means a person who does not possess sufficient resistance, whether natural or induced, to a pathogenic agent or disease to prevent contracting that disease when exposed thereto.~~

(4) ~~"Communicable disease (contagious disease)" means an illness caused by an infectious agent which can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission via an intermediate host or vector, food, water, or air. Communicable (contagious) diseases include, but are not limited to:~~

- ~~(a) Chickenpox~~
- ~~(b) Conjunctivitis (bacterial)~~
- ~~(c) Diphtheria~~
- ~~(d) Giardiasis~~
- ~~(e) Hepatitis A~~

(f) ~~Invasive Haemophilus influenza disease (excluding otitis media)~~

(g) Measles

(h) Meningitis (bacterial)

(i) Mumps

(j) Pediculosis

(k) Pertussis

(l) Rubella

(m) Salmonellosis

(n) Shigellosis

(o) Tuberculosis

(5) ~~"School" means each building, facility, and location at or within which any or all portions of a preschool, kindergarten and grades one through twelve program of education and related activities are conducted for two or more children by or in behalf of any public school district and by or in behalf of any private school or private institution subject to approval by the state board of education.~~

(6) ~~"Day care center" means an agency which regularly provides care for a group of children for periods of less than twenty-four hours and is licensed pursuant to chapter 74.15 RCW.~~

(7) ~~"Outbreak" means the occurrence of cases of a disease or condition in any area over a given period of time in excess of the expected number of cases.)~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Childcare center" means any facility or center licensed by the department of early learning as described in chapter 43.215 RCW that regularly provides care for a group of children for periods of less than twenty-four hours per day.

(2) "Contact" means a person exposed to a contagious person or animal, or a contaminated source which might provide an opportunity to acquire the infection.

(3) "Contagious disease" means an illness caused by an infectious agent of public health concern which can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission through an intermediate host or vector, food, water, or air. Contagious diseases include, but are not limited to:

(a) Bacterial Meningitis

(i) Haemophilus influenzae invasive disease (excluding Otitis media)

(ii) Meningococcal

(b) Diarrheal diseases due to or suspected to be caused by an infectious agent

(i) Cryptosporidiosis

(ii) Giardiasis

(iii) Hepatitis A

(iv) Salmonellosis

(v) Shiga toxin-producing Escherichia coli (STEC)

(c) Diseases spread through the air - Tuberculosis

(d) Vaccine preventable diseases

(i) Chickenpox (Varicella)

(ii) Diphtheria

(iii) German measles (Rubella)

(iv) Measles (Rubeola)

(v) Mumps

(vi) Whooping cough (Pertussis)

(4) "Contaminated" means containing or having contact with infectious agents that pose an immediate threat to present or future public health.

(5) "Exposed" means such association with a person or animal in the infectious stage of a disease, or with a contaminated source, which provides the opportunity to acquire the infection.

(6) "Infectious agent" means an organism that is capable of producing infection or infectious disease.

(7) "Outbreak" means the occurrence of cases of a disease or condition in any area over a given period of time in excess of the expected number of cases as determined by the local health officer.

(8) "School" means each building, facility, and location at or within which any or all portions of a preschool, kindergarten, and grades one through twelve program of education and related activities are conducted for two or more students or children by or on behalf of any public school district and by or on behalf of any private school or private institution subject to approval by the state board of education.

(9) "Susceptible" means a person who has no immunity to an infectious agent.

AMENDATORY SECTION (Amending Order 225B, filed 12/23/91, effective 1/23/92)

WAC 246-110-020 Control of ~~(communicable-)~~ contagious~~(h))~~ disease. (1) ~~When ((there is an outbreak of a contagious disease)) a school or childcare center becomes aware of the presence of a contagious disease at the facility, as defined in WAC 246-110-010, ((such that)) the officials at the school or childcare center shall notify the appropriate local health officer for guidance.~~

(2) ~~When there is an outbreak of a contagious disease, as defined in WAC 246-110-010, and there is the potential for a case or cases within a school or ((day care)) childcare center, the local health officer, if appropriate, after consultation with the secretary of health or designee shall take all medically appropriate actions deemed to be necessary to control or eliminate the spread of the disease((s)) within their local health jurisdiction including, but not limited to:~~

(a) ~~Closing part or all of the affected school(s) or ((day care)) childcare center(s)((-or part(s) thereof));~~

(b) ~~Closing other schools or ((day care)) childcare centers ((in the local health officer's jurisdiction));~~

(c) ~~(((Causing the cessation of selected)) Canceling activities or functions at schools or ((day care)) childcare centers ((activities or functions));~~

(d) ~~Excluding from schools or ((day care)) childcare centers ((in the local health officer's jurisdiction)) any students, staff, and volunteers who are ((infected with, or deemed to be susceptible to;)) infectious, exposed, or susceptible to the disease.~~

~~(((2))) (3) Prior to taking action the health officer shall:~~

(a) ~~Consult with and discuss the ramifications of action with the superintendent of the school district, or the chief administrator of the ((day care)) childcare center or their designees on the proposed action; and~~

(b) ~~Provide ((the board of directors and)) the superintendent of the school district or the chief administrator of the~~

~~((day care))~~ childcare center or their designees a written decision, in the form and substance of an order, directing them to take action(;

~~(3) Where these actions have been taken, the local health officer shall, in addition:~~

~~(a) Set the terms and conditions permitting).~~ The order must set the terms and conditions permitting:

- (i) Schools or ((day care)) childcare centers to reopen;
- (ii) Activities and functions to resume; and
- (iii) Excluded students, staff and volunteers to be readmitted(; ~~and).~~

~~((b))~~ (c) Pursue, in consultation with the secretary of health or designee, and school ((and/or day care)) or child-care officials, the investigation of the source of disease, or ((order)) those actions necessary to ((the ultimate)) ultimately control ((of)) the disease.

WSR 13-10-057

PROPOSED RULES

DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed April 29, 2013, 3:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-20-019.

Title of Rule and Other Identifying Information: WAC 246-841-586 through 246-841-595, medication assistant endorsement, the proposed rules establish requirements for an optional medication assistant endorsement for nursing assistants-certified working in nursing homes.

Hearing Location(s): Department of Health, 243 Israel Road S.E., Town Center 3, Room 224, Tumwater, WA 98501, on June 11, 2013, at 1:00 p.m.

Date of Intended Adoption: June 11, 2013.

Submit Written Comments to: Mary Dale, P.O. Box 47864, Olympia, WA 98504-7864, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4738, by June 4, 2013.

Assistance for Persons with Disabilities: Contact Louise Lloyd by June 4, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESHB 2473 passed in 2012, creating a new medication assistant endorsement option for nursing assistants-certified working in nursing homes. The legislation requires the nursing care quality assurance commission (NCQAC) to: Establish requirements for the endorsement, including minimum work experience, education, training, examination, and continuing competency; define tasks that can be performed and primary responsibilities of the nursing assistant with an endorsement; and set requirements for the educational programs so that the nursing assistants-certified receive adequate training for these responsibilities.

Reasons Supporting Proposal: ESHB 2473 allows an expanded role for the nursing assistant-certified who meets specific requirements. This endorsement will allow the nursing assistant-certified to perform specific tasks in nursing home settings. The proposed rule sets the requirements for

the endorsement, outlines tasks that may be performed with an endorsement, and sets requirements for the educational programs in order to implement issuing of endorsements. The requirement must be in rule to be enforced.

Statutory Authority for Adoption: ESHB 2473 (chapter 208, Laws of 2012); RCW 18.88A.060.

Statute Being Implemented: ESHB 2473 (chapter 208, Laws of 2012).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: NCQAC, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Paula Meyer, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4713.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry. A copy of the statement may be obtained by contacting Mary Dale, P.O. Box 47864, Olympia, WA 98504-7864, phone (360) 236-4744, fax (360) 236-4738, e-mail mary.dale@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05-328. A preliminary cost-benefit analysis may be obtained by contacting Mary Dale, P.O. Box 47864, Olympia, WA 98504-7864, phone (360) 236-4744, fax (360) 236-4738, e-mail mary.dale@doh.wa.gov. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05-328 (5)(b)(v) exempts rules the content of which is explicitly and specifically dictated by statute.

April 29, 2013

Paula R. Meyer, MSN, RN
Executive Director

MEDICATION ASSISTANT ENDORSEMENT

NEW SECTION

WAC 246-841-586 Applicability. WAC 246-841-587 through 246-841-595 apply to the endorsement of a nursing assistant-certified as a medication assistant. A nursing assistant-certified with a medication assistant endorsement administers medications and nursing commission-approved treatments to residents in nursing homes, under the direct supervision of a designated registered nurse.

Nothing in these rules requires a nursing home to employ a nursing assistant-certified with a medication assistant endorsement. A medication assistant's employer may limit or restrict the range of functions permitted in these rules but may not expand those functions.

WAC 246-841-587 through 246-841-595 also apply to the approval of education and training programs and competency evaluations for medication assistants.

A medication assistant is responsible and accountable for his or her specific functions.

NEW SECTION

WAC 246-841-587 Definitions. The definitions in this section apply to WAC 246-841-586 through 246-841-595 unless the context clearly requires otherwise.

(1) "Competency evaluation" means the measurement of an individual's knowledge and skills related to the safe, competent performance as a medication assistant.

(2) "Direct supervision" means that the licensed registered nurse who directs medication administration and nursing commission-approved treatments to a medication assistant is on the premises, is immediately accessible in person and has assessed the residents prior to performance of these duties.

(3) "Medication assistant" means a nursing assistant-certified with a medication assistant endorsement issued under chapter 18.88A RCW.

(4) "Nursing home" means a nursing home licensed under chapter 18.51 RCW.

NEW SECTION

WAC 246-841-588 Application requirements. (1) **Initial applicant requirements:** Applicants for an initial medication assistant endorsement must meet the following requirements:

(a) Be certified as a nursing assistant-certified, with a certification in good standing, under chapter 18.88A RCW;

(b) Successfully complete a nursing commission-approved medication assistant education and training program, as described in WAC 246-841-590 (6) and (7) within the immediate year prior to the date of application;

(c) Complete at least one thousand hours of work experience in a nursing home as a nursing assistant-certified within the immediate year prior to the date of application; and

(d) After completing the requirements in (a) through (c) of this subsection, pass the nursing commission-approved medication assistant competency evaluation. Each applicant must successfully complete a written competency evaluation. The competency evaluation must measure an individual's knowledge and skills related to the safe, competent performance as a medication assistant. The evaluation assesses the competency specification required in the core curriculum as listed in WAC 246-841-590(6).

(2) **Application requirements:**

(a) To obtain an initial medication assistant endorsement credential, the nursing assistant-certified must submit to the department:

(i) An application on forms approved by the secretary.

(ii) The applicable fees under WAC 246-841-990.

(iii) Proof of completion of a nursing commission approved medication assistant:

(A) Education and training program under WAC 246-841-590 (6) and (7); and

(B) Competency evaluation under subsection (1) of this section; and

(iv) Employer documentation of work experience as required in subsection (1)(c) of this section.

(b) An applicant who is currently credentialed as a medication assistant in another state or jurisdiction may qualify for a medication assistant endorsement credential under this chapter. An applicant must submit to the department:

(i) An application on forms approved by the secretary;

(ii) Written verification directly from the state or jurisdiction in which the applicant is credentialed, attesting that

the applicant holds a credential substantially equivalent to the medication assistant endorsement credential in Washington in good standing, and is not subject to charges or disciplinary action;

(iii) Verification of completion of the required education that is substantially equivalent to the education requirements as described in WAC 246-841-590 (6) and (7) within the immediate year prior to the date of application;

(iv) Employer documentation of work experience as required in subsection (1)(c) of this section; and

(v) The applicable fees under WAC 246-841-990.

(3) **Renewal requirements:** To renew a medication assistant endorsement credential, the medication assistant must have a current nursing assistant-certified credential in good standing, and meet the requirements of WAC 246-12-030.

(4) **Continuing competency requirements:** A medication assistant shall meet the following requirements on an annual basis to coincide with renewal of their nursing assistant-certified credentials:

(a) Employer documentation of successful completion of two hundred fifty hours of employment as a medication assistant in a nursing home setting under the direct supervision of a registered nurse;

(b) Documentation of eight hours of continuing education specific to medications, medication administration, and performance of selected patient treatments. Continuing education hours must be obtained through a nursing commission-approved medication education and training program as described in WAC 246-841-590 (6) and (7), continuing education programs approved by a professional association, or staff development programs offered in a nursing home. The education hours must directly relate to the medication assistant's role of medication administration and the performance of selected patient treatments.

NEW SECTION

WAC 246-841-589 Medication administration and performing prescriber ordered treatments. (1) A medication assistant working in a nursing home shall only accept direction to perform medication administration and prescriber ordered treatments from a designated registered nurse within the medication assistant's scope of practice, education, and demonstrated competency.

(2) It is the responsibility of the designated registered nurse to assess the individual needs of each resident and determine that the direction of medication administration or selected treatment tasks poses minimal risks to each resident. The designated registered nurse determines the frequency of resident assessments and decides the number and types of medications to be administered.

(3) The medication assistant under the direct supervision of a registered nurse in a nursing home, may:

(a) Administer over-the-counter medications;

(b) Administer legend drugs, with the exception of chemotherapeutic agents and experimental drugs;

(c) Administer schedule IV and V medications orally, topically, and through inhalation;

(d) Perform simple prescriber-ordered treatments which include blood glucose monitoring, noncomplex clean dressing changes, pulse oximetry readings, and oxygen administration. "Prescriber ordered treatment" means an order for drugs or treatments issued by a practitioner authorized by law or rule in the state of Washington to prescribe drugs or treatments in the course of his or her professional practice for a legitimate medical purpose.

(4) The medication assistant shall document accurately the administration of medication and performance of resident treatments that he or she undertakes into the resident's medical records on facility-approved forms.

(5) Performance of the tasks identified in subsection (1) of this section will be the sole work assignment to the medication assistant.

(6) A medication assistant may not perform the following tasks:

- (a) Assessment of resident need for, or response to medication;
- (b) Acceptance of telephone or verbal orders from prescribers;
- (c) Conversion or calculation of drug dosages;
- (d) Injection of any medications;
- (e) Administration of chemotherapeutic agents and experimental drugs;
- (f) Performance of any sterile task or treatment;
- (g) Medication administration through a tube;
- (h) Administration or participation in the handling, including counting or disposal, of any schedule I, II, or III controlled substances;
- (i) Participation in any handling, including counting or disposal, of schedule IV and V controlled substances other than when administering these substances as authorized by subsection (3)(c) of this section;
- (j) Performance of any task requiring nursing judgment, such as administration of **as necessary or as needed (prn)** medications.

NEW SECTION

WAC 246-841-590 Requirements for approval of education and training programs. (1) A medication assistant endorsement education and training program must:

- (a)(i) Be a nursing commission-approved nursing assistant certified training program in good standing; or
- (ii) Be a nursing commission-approved nursing educational program in good standing; and
- (b) Have a program director and instructional staff who each hold current, active, Washington state licenses in good standing as a registered nurse. The commission may deny or withdraw approval of a program director or instructor if there is or has been any action taken against that person's health care license, or any license that restricts his or her permission to work with vulnerable adults.

(2) To apply, the program must submit a completed application packet and application forms provided by the department of health to the nursing commission. The packet must include:

- (a) Program objectives;

(b) Curriculum outline and content as detailed in subsection (6) of this section;

(c) Written contractual agreements related to the provision of the training. For any program that uses another facility for the clinical practicum, this includes an affiliation agreement between the training program and the facility. "Clinical practicum" means clinical experience under the supervision of a qualified registered nurse instructor. The affiliation agreement must describe how the program will provide clinical experience in the facility. The agreement must specify the rights and responsibilities of students, the residents, the clinical facility, and the school;

(d) Sample lesson plan for one unit;

(e) Skills checklists for student lab performance and clinical performance during the practicum with dates of skills testing and signature of the instructor;

(f) Description of classroom, lab, and clinical practicum facilities;

(g) Declaration of compliance with administrative guidelines signed by the program director;

(h) Verification that the program director has completed a course on adult instruction or has one year of experience in the past three years teaching adults. Acceptable experience does not include staff development or patient teaching. A program director working exclusively in post secondary educational setting is exempt from this requirement; and

(i) Verification that the medication assistant training program or school is approved to operate in the state of Washington by the state board for community and technical colleges; the superintendent of public instruction; or the workforce training and education coordinating board.

(3) Failure to submit a completed application packet within ninety days will result in closure of the application.

(4) If a program application is pending for more than ninety days, the proposed program must submit a revised program application.

(5) The program director, or designee shall:

(a) Agree to allow and cooperate with on-site surveys and investigations of the training programs, as requested by the nursing commission;

(b) Comply with any changes in training standards and guidelines in order to maintain approved status;

(c) Notify the nursing commission and any other approving agency of any changes in overall curriculum plan or major curriculum content changes prior to implementation such as changes in program hours, clinical practice facilities, program name or ownership, legal status, and credit status impacting the program's ability to sustain itself financially;

(d) Notify the nursing commission and any other approving agency of changes in program director or instructors; and

(e) Maintain an average annual student pass rate of eighty percent for first-time test takers of the medication assistant competency evaluation.

(6) Core curriculum competency requirements.

(a) The program curriculum must include training on the specific tasks that a medication assistant may perform as well as training on identifying tasks that may not be performed by a medication assistant as listed in WAC 246-841-589.

(b) The program curriculum must include the complete medication assistant-certified model curriculum adopted by

the National Council of State Boards of Nursing. The education and training program may add to the required curriculum as stated in these rules but may not delete any content from the required curriculum.

(c) The curriculum must include a minimum of sixty hours of didactic training which must include work in a skills lab or simulation facility.

(7) Practicum. The curriculum will include a minimum of forty hours of supervised and progressive clinical practicum in the administration of medications to residents in a nursing home. At no time will the ratio of students to instructor be allowed to exceed ten students to one instructor during clinical practicum.

(8) The program director must attest to the student's successful completion of the course on forms or electronic methods established by the commission.

NEW SECTION

WAC 246-841-591 Commission review and investigation. (1) The nursing commission may conduct a review or investigation of the training program, or site visit of the training facility to evaluate:

- (a) Complaints relating to violations of the rules;
 - (b) Failure to notify the nursing commission of any changes in the overall curriculum plan or major content changes prior to implementation;
 - (c) Failure to notify the nursing commission of changes in program director or instructors;
 - (d) Providing false or misleading information to students or the public concerning the medication assistant education and training program;
 - (e) Failure to secure or retain a qualified program director resulting in substandard supervision and teaching of students;
 - (f) Failure to maintain an average annual passing rate of eighty percent of first time test takers for two consecutive years. The nursing commission will require the program to assess the problem and submit a plan of correction.
- (2) If a medication assistant education and training program fails to maintain an annual average passing rate of eighty percent of first time test takers for three out of four consecutive years, the nursing commission may withdraw program approval.

NEW SECTION

WAC 246-841-592 Commission action for violations. (1) When the nursing commission determines that a medication assistant education and training program fails to meet the requirements in WAC 246-841-590 through 246-841-595, the nursing commission may issue a statement of deficiencies or notice of intent to withdraw approval from an existing program.

(2) **Statement of deficiencies.** The program must within ten calendar days of notification of the cited deficiencies prepare, sign, date, and provide to the commission a detailed written plan of correction. Such plan of correction will provide notification to the commission of the date by which the program will complete the correction of cited deficiencies.

The commission will review the program's plan of correction to determine if it is acceptable. A plan of correction must:

- (a) Address how corrective action will be accomplished;
- (b) Address what measures will be put into place or systematic changes made to assure that the deficient practice will not recur;
- (c) Indicate how the program plans to monitor its performance to assure that solutions are sustained;
- (d) Give the name and title of the person who is responsible for assuring the implementation of the plan of correction;
- (e) Give the day by which the correction will be made.

(3) **Notice of intent to withdraw approval.** The commission may issue a notice of intent to withdraw approval from ongoing programs if it determines that a medication assistant endorsement program fails to substantially meet the standards contained in the law and this chapter.

When the commission withdraws approval, and the program does not appeal the withdrawal under WAC 246-841-594, the program shall submit an action plan to the commission providing for enrolled students to complete the program.

NEW SECTION

WAC 246-841-593 Reinstatement of approval. The nursing commission may consider reinstatement of a medication assistant education and training program upon submission of satisfactory evidence that the program meets the requirements as contained in these rules.

A program that is automatically terminated for failure to renew may be immediately reinstated upon meeting all conditions for a new application approval.

NEW SECTION

WAC 246-841-594 Appeal rights. A medication assistant education and training program that has been denied approval or was issued a notice of intent to withdraw approval has the right to a hearing to appeal the nursing commission's decision according to the provisions of chapters 18.88A and 34.05 RCW, the Administrative Procedure Act, Parts IV and V.

NEW SECTION

WAC 246-841-595 Medication assistant endorsement program renewal. (1) Programs must submit a renewal application on the forms provided by the commission and be approved by the commission every two years. The renewal application is due ninety days before the two-year anniversary of the date approval was originally granted.

(2) Commission approval is automatically terminated if the program does not renew.

(3) The commission may deny renewal approval or grant renewal with provisional status if the program fails to substantially meet the standards contained in the law and this chapter or has pending a statement of deficiencies, plan of correction, intent to withdraw approval, or withdrawal of approval.

(4) If a program application renewal is not completed within ninety days of its receipt, the commission may close the application renewal.

WSR 13-10-058

PROPOSED RULES

DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed April 29, 2013, 3:34 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 246-840-910 through 246-840-970, nurse delegation, this rule adds home care aides to the list of providers eligible for delegation and changes the term "licensed boarding homes" to "assisted living facilities." The rule reorders the definitions into alpha order.

Hearing Location(s): Department of Health, 310 Israel Road S.E., Point Plaza East, Room 153, Tumwater, WA 98501, on June 11, 2013, at 4:00 p.m.

Date of Intended Adoption: June 11, 2013.

Submit Written Comments to: Mary Dale, P.O. Box 47864, Olympia, WA 98504-7864, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4738, by June 4, 2013.

Assistance for Persons with Disabilities: Contact Louise Lloyd by June 4, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ESHB 2314 passed in 2012 allows home care aides to accept delegation of nursing care tasks from a registered nurse. The rule change will expand the list of providers that registered nurses may delegate to in certain settings. SHB 2056 passed in 2012 changes the term licensed "boarding home" to "assisted living facility." The proposed rule removes the term licensed "boarding home" from the rules and adds "assisted living facility" to be consistent with the law.

Reasons Supporting Proposal: Legislation was passed as ESHB 2314 (chapter 164, Laws of 2012). This legislation will increase the availability of trained health care providers in long term care by adding home care aides to the list of providers that registered nurses may delegate to in certain settings. SHB 2056 (chapter 10, Laws of 2012) removes the term licensed "boarding home" and replaces it with "assisted living facility." Rules need to be updated to be consistent with changes in both laws.

Statutory Authority for Adoption: RCW 18.79.110, 18.79.260.

Statute Being Implemented: ESHB 2314 (2012) and SHB 2056 (2012).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Nursing care quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Paula Meyer, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4713.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(e), a small business economic impact statement is not required for a proposed rule where the content of the rule is explicitly and specifically dictated by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(v) exempts rules the content of which is explicitly and specifically dictated by statute.

April 29, 2013

Paula R. Meyer, MSN, RN
Executive Director

AMENDATORY SECTION (Amending WSR 09-06-006, filed 2/18/09, effective 3/21/09)

WAC 246-840-910 Purpose. This rule defines a consistent standard of nursing care with the delegation of nursing tasks to nursing assistants or home care aides. The registered nurse delegator makes independent professional decisions of the delegation of a nursing task. A licensed registered nurse may delegate specific nursing care tasks to nursing assistants or home care aides meeting certain requirements and providing care to individuals in a community-based care setting defined by RCW 18.79.260 (3)(e)(i) and to individuals in an in-home care setting defined by RCW 18.79.260 (3)(e)(ii). Before delegating a task, the registered nurse delegator determines that specific criteria are met and the patient is in a stable and predictable condition. Registered nurses delegating tasks are accountable to the Washington state nursing care quality assurance commission. The registered nurse delegator, home care aide and nursing assistant are each accountable for their own individual actions in the delegation process. No person may coerce a registered nurse into compromising patient safety by requiring the registered nurse to delegate. Registered nurse delegators shall not delegate the following care tasks:

- (1) Administration of medications by injection (by intramuscular, intradermal, subcutaneous, intraosseous, intravenous, or otherwise) with the exception of insulin injections.
- (2) Sterile procedures.
- (3) Central line maintenance.
- (4) Acts that require nursing judgment.

AMENDATORY SECTION (Amending WSR 09-06-006, filed 2/18/09, effective 3/21/09)

WAC 246-840-920 Definitions. ((For the purposes of this chapter:)) The following definitions ((in this section)) apply to WAC 246-840-910 through 246-840-970.

(1) "Authorized representative" means a person allowed to provide written consent for health care on behalf of a patient who is not competent to consent. Such person shall be a member of one of the classes of persons as directed in RCW 7.70.065.

(2) "Coercion" means to force or compel another, by authority, to do something that he/she would not otherwise choose to do.

(3) "Complex task" means that a nursing task may become more complicated because of:

- (a) The patient's condition;
- (b) The setting;
- (c) The nursing care task(s) and involved risks; and
- (d) The skill level required to perform the task.

The registered nurse delegator identifies and facilitates additional training of the nursing assistant or home care aide prior to delegation in these situations. The registered nurse delegator decides if the task is not delegable. In no case, may administration of medications by injection with the exception of insulin injections, sterile procedures and central line maintenance be delegated.

(4) ("Medication assistance" as defined in chapter 246-888 WAC does not require delegation by a licensed nurse.

(5) "Nursing assistant" means a nursing assistant registered under chapter 18.88A RCW or a nursing assistant certified under chapter 18.88A RCW, providing support and care to individuals served by certified community residential programs for the developmentally disabled, to individuals residing in licensed adult family homes, to in-home care and to individuals residing in licensed boarding homes.

(6) "Outcome" means the end result or consequence of an action after following a plan of care.

(7) "Patient" means the individual receiving nursing care tasks. In the community residential settings, the patient may be a client, consumer, or resident.

(8) "Personal care services" as defined in WAC 388-106-0010 do not require delegation by a licensed nurse.

(9) "Procedure" means a series of steps with a desired result; a particular course of action or way of doing something.

(10) "Registered nurse delegation" means the registered nurse transfers the performance of selected nursing tasks to competent nursing assistants in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the patient.

(11) "Supervision" means the guidance and evaluation by a registered nurse delegator for the accomplishment of a nursing task or activity, including the initial direction of the task or activity; periodic inspection at least every ninety days of the actual act of accomplishing the task or activity; and the authority to require corrective action.

(12) "Immediate supervision" means the registered nurse delegator is on the premises, within audible and visual range of the patient and the patient assessment by the registered nurse delegator occurs prior to the delegation of duties to any care giver.

(13) "Direct supervision" means the registered nurse delegator on the premises, quickly and easily available and the patient assessment by the registered nurse delegator occurs prior to the delegation of the duties to any care giver.

(14) "Indirect supervision" means the registered nurse delegator is not on the premises. The registered nurse delegator previously provided written instructions for the care and treatment of the patient. The registered nurse delegator documents in the patient record the instruction to the nursing assistant, observation of the delegated task, and confirmation of the nursing assistant understanding the directions.

(15) "Stable and predictable condition" means the registered nurse delegator determines the patient's clinical and behavioral status is nonfluctuating and consistent. Stable and predictable may include a terminally ill patient whose deteriorating condition is expected. Stable and predictable may include a patient with sliding scale insulin orders. The registered nurse delegator determines the patient does not require frequent nursing presence and evaluation.)) "Direct supervision" means the registered nurse delegator on the premises, quickly and easily available and the patient assessment by the registered nurse delegator occurs prior to the delegation of the duties to any care giver.

(5) "Home care aide" means a person certified under chapter 18.88B RCW.

(6) "Immediate supervision" means the registered nurse delegator is on the premises, within audible and visual range of the patient and the patient assessment by the registered nurse delegator occurs prior to the delegation of duties to any care giver.

(7) "Indirect supervision" means the registered nurse delegator is not on the premises. The registered nurse delegator previously provided written instructions for the care and treatment of the patient. The registered nurse delegator documents in the patient record the instruction to the nursing assistant or home care aide, observation of the delegated task, and confirmation of the nursing assistant's or home care aide's understanding the directions.

(8) "Medication assistance" as defined in chapter 246-888 WAC does not require delegation by a licensed nurse.

(9) "Nursing assistant" means a nursing assistant-registered under chapter 18.88A RCW or a nursing assistant-certified under chapter 18.88A RCW, providing support and care to individuals served by certified community residential programs for the developmentally disabled, to individuals residing in licensed adult family homes, to in-home care and to individuals residing in assisted living facilities.

(10) "Outcome" means the end result or consequence of an action after following a plan of care.

(11) "Patient" means the individual receiving nursing care tasks. In the community residential settings, the patient may be a client, consumer, or resident.

(12) "Personal care services" as defined in WAC 388-106-0010 do not require delegation by a licensed nurse.

(13) "Procedure" means a series of steps with a desired result; a particular course of action or way of doing something.

(14) "Registered nurse delegation" means the registered nurse transfers the performance of selected nursing tasks to competent nursing assistants or home care aides in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the patient.

(15) "Stable and predictable condition" means the registered nurse delegator determines the patient's clinical and behavioral status is nonfluctuating and consistent. Stable and predictable may include a terminally ill patient whose deteriorating condition is expected. Stable and predictable may include a patient with sliding scale insulin orders. The registered nurse delegator determines the patient does not require frequent nursing presence and evaluation.

(16) "Supervision" means the guidance and evaluation by a registered nurse delegator for the accomplishment of a nursing task or activity, including the initial direction of the task or activity; periodic inspection at least every ninety days of the actual act of accomplishing the task or activity; and the authority to require corrective action.

AMENDATORY SECTION (Amending WSR 09-06-006, filed 2/18/09, effective 3/21/09)

WAC 246-840-930 Criteria for delegation. (1) Before delegating a nursing task, the registered nurse delegator decides the task is appropriate to delegate based on the elements of the nursing process: ASSESS, PLAN, IMPLEMENT, EVALUATE.

ASSESS

(2) The setting allows delegation because it is a community-based care setting as defined by RCW 18.79.260 (3)(e)(i) or an in-home care setting as defined by RCW 18.79.260 (3)(e)(ii).

(3) Assess the patient's nursing care needs and determine the patient's condition is stable and predictable. A patient may be stable and predictable with an order for sliding scale insulin or terminal condition.

(4) Determine the task to be delegated is within the delegating nurse's area of responsibility.

(5) Determine the task to be delegated can be properly and safely performed by the nursing assistant or home care aide. The registered nurse delegator assesses the potential risk of harm for the individual patient.

(6) Analyze the complexity of the nursing task and determine the required training or additional training needed by the nursing assistant or home care aide to competently accomplish the task. The registered nurse delegator identifies and facilitates any additional training of the nursing assistant or home care aide needed prior to delegation. The registered nurse delegator ensures the task to be delegated can be properly and safely performed by the nursing assistant or home care aide.

(7) Assess the level of interaction required. Consider language or cultural diversity affecting communication or the ability to accomplish the task and to facilitate the interaction.

(8) Verify that the nursing assistant or home care aide:

(a) Is currently registered or certified as a nursing assistant or home care aide in Washington state without restriction;

(b) ~~((As required in WAC 246-841-405 (2)(a), nursing assistants registered have))~~ Has completed both the basic caregiver training and core delegation training before performing any delegated task;

(c) Has a certificate of completion issued by the department of social and health services indicating completion of the required core nurse delegation training;

(d) Has a certificate of completion issued by the department of social and health services indicating completion of diabetes training when providing insulin injections to a diabetic client; and

(e) Is willing and able to perform the task in the absence of direct or immediate nurse supervision and accept responsibility for their actions.

(9) Assess the ability of the nursing assistant or home care aide to competently perform the delegated nursing task in the absence of direct or immediate nurse supervision.

(10) If the registered nurse delegator determines delegation is appropriate, the nurse:

(a) Discusses the delegation process with the patient or authorized representative, including the level of training of the nursing assistant or home care aide delivering care.

(b) Obtains written consent. The patient, or authorized representative, must give written consent to the delegation process under chapter 7.70 RCW. Documented verbal consent of patient or authorized representative may be acceptable if written consent is obtained within thirty days; electronic consent is an acceptable format. Written consent is only necessary at the initial use of the nurse delegation process for each patient and is not necessary for task additions or changes or if a different nurse ~~((or))~~, nursing assistant, or home care aide will be participating in the process.

PLAN

(11) Document in the patient's record the rationale for delegating or not delegating nursing tasks.

(12) Provide specific, written delegation instructions to the nursing assistant or home care aide with a copy maintained in the patient's record that includes:

(a) The rationale for delegating the nursing task;

(b) The delegated nursing task is specific to one patient and is not transferable to another patient;

(c) The delegated nursing task is specific to one nursing assistant or one home care aide and is not transferable to another nursing assistant or home care aide;

(d) The nature of the condition requiring treatment and purpose of the delegated nursing task;

(e) A clear description of the procedure or steps to follow to perform the task;

(f) The predictable outcomes of the nursing task and how to effectively deal with them;

(g) The risks of the treatment;

(h) The interactions of prescribed medications;

(i) How to observe and report side effects, complications, or unexpected outcomes and appropriate actions to deal with them, including specific parameters for notifying the registered nurse delegator, health care provider, or emergency services;

(j) The action to take in situations where medications and/or treatments and/or procedures are altered by health care provider orders, including:

(i) How to notify the registered nurse delegator of the change;

(ii) The process the registered nurse delegator uses to obtain verification from the health care provider of the change in the medical order; and

(iii) The process to notify the nursing assistant or home care aide of whether administration of the medication or performance of the procedure and/or treatment is delegated or not;

(k) How to document the task in the patient's record;

(l) Document teaching done and a return demonstration, or other method for verification of competency; and

(m) Supervision shall occur at least every ninety days. With delegation of insulin injections, the supervision occurs at least weekly for the first four weeks, and may be more frequent.

(13) The administration of medications may be delegated at the discretion of the registered nurse delegator, including insulin injections. Any other injection (intramuscular, intradermal, subcutaneous, intraosseous, intravenous, or otherwise) is prohibited. The registered nurse delegator provides to the nursing assistant or home care aide written directions specific to an individual patient.

IMPLEMENT

(14) Delegation requires the registered nurse delegator teach the nursing assistant or home care aide how to perform the task, including return demonstration or other method of verification of competency as determined by the registered nurse delegator.

(15) The registered nurse delegator is accountable and responsible for the delegated nursing task. The registered nurse delegator monitors the performance of the task(s) to assure compliance with established standards of practice, policies and procedures and appropriate documentation of the task(s).

EVALUATE

(16) The registered nurse delegator evaluates the patient's responses to the delegated nursing care and to any modification of the nursing components of the patient's plan of care.

(17) The registered nurse delegator supervises and evaluates the performance of the nursing assistant or home care aide, including direct observation or other method of verification of competency of the nursing assistant or home care aide. The registered nurse delegator reevaluates the patient's condition, the care provided to the patient, the capability of the nursing assistant or home care aide, the outcome of the task, and any problems.

(18) The registered nurse delegator ensures safe and effective services are provided. Reevaluation and documentation occurs at least every ninety days. Frequency of supervision is at the discretion of the registered nurse delegator and may be more often based upon nursing assessment.

(19) The registered nurse must supervise and evaluate the performance of the nursing assistant or home care aide with delegated insulin injection authority at least weekly for the first four weeks. After the first four weeks the supervision shall occur at least every ninety days.

AMENDATORY SECTION (Amending WSR 09-06-006, filed 2/18/09, effective 3/21/09)

WAC 246-840-940 Washington state nursing care quality assurance commission community-based and in-home care setting delegation decision tree.

(1)	Does the patient reside in one of the following settings? A community-based care setting as defined by RCW 18.79.260 (3)(e)(i) or an in-home care setting as defined by RCW 18.79.260 (3)(e)(ii).	No ⇒	Do not delegate
Yes ↓			
(2)	Has the patient or authorized representative given consent to the delegation?	No ⇒	Obtain the written, informed consent
Yes ↓			
(3)	Is RN assessment of patient's nursing care needs completed?	No ⇒	Do assessment, then proceed with a consideration of delegation
Yes ↓			
(4)	Does the patient have a stable and predictable condition?	No ⇒	Do not delegate
Yes ↓			
(5)	Is the task within the registered nurse's scope of practice?	No ⇒	Do not delegate
Yes ↓			
(6)	Is the nursing assistant <u>or home care aide</u> , registered or certified and properly trained in the nurse delegation for nursing assistants <u>or home care aides</u> ? Is the nursing assistant <u>or home care aide</u> trained in diabetes care and insulin injections when delegating insulin?	No ⇒	Do not delegate
Yes ↓			
(7)	Does the delegation exclude the administration of medications by injection other than insulin, sterile procedures or central line maintenance?	No ⇒	Do not delegate
Yes ↓			
(8)	Can the task be performed without requiring judgment based on nursing knowledge?	No ⇒	Do not delegate
Yes ↓			
(9)	Are the results of the task reasonably predictable?	No ⇒	Do not delegate
Yes ↓			
(10)	Can the task be safely performed according to exact, unchanging directions?	No ⇒	Do not delegate
Yes ↓			
(11)	Can the task be performed without a need for complex observations or critical decisions?	No ⇒	Do not delegate
Yes ↓			

(12)	Can the task be performed without repeated nursing assessments?	No ⇒	Do not delegate
Yes ↓			
(13)	Can the task be performed properly?	No ⇒	Do not delegate
Yes ↓			
(14)	Is appropriate supervision available? With insulin injections, the supervision occurs at least weekly for the first four weeks.	No ⇒	Do not delegate
Yes ↓			
(15)	There are no specific laws or rules prohibiting the delegation?	No ⇒	Do not delegate
Yes ↓			
(16)	Task is delegable		

AMENDATORY SECTION (Amending WSR 09-06-006, filed 2/18/09, effective 3/21/09)

WAC 246-840-950 How to make changes to the delegated tasks. (1) **Medication.** The registered nurse delegator discusses with the nursing assistant or home care aide the process for continuing, rescinding, or adding medications to the delegation list when the changes occur:

(a) The registered nurse delegator verifies the change in medication or a new medication order with the health care provider;

(b) If the medication dosage or type of medication changes or for the same problem (i.e., one medication is deleted and another is substituted) and the patient remains in a stable and predictable condition, delegation continues at the registered nurse delegator's discretion; and

(c) If a new medication is added, the registered nurse delegator reviews the criteria and process for delegation prior to delegating the administration of the new medication to the nursing assistant or home care aide. The registered nurse delegator maintains the authority to decide if the new medication can be delegated immediately, if a site visit is warranted prior to delegation, or if delegation is no longer appropriate. If delegation is rescinded, the registered nurse delegator initiates and participates in developing an alternative plan to meet the needs of the patient.

(2) Treatments and/or procedures.

(a) The registered nurse delegator verifies the change in the medical order with the health care provider.

(b) The registered nurse delegator decides if the new treatment or procedure can be delegated immediately, if a site visit is warranted prior to delegation, or if delegation is no longer appropriate. If rescinding delegation, the registered nurse delegator initiates and participates in developing an alternative plan to meet the needs of the patient.

Transferring delegation to another registered nurse.

(3) The registered nurse delegator may transfer the delegation process to another registered nurse. The registered nurse assuming responsibility assesses the patient, the skills of the nursing assistant or home care aide, and the plan of care. The registered nurse is accountable and responsible for

the delegated task. The registered nurse delegator must document the following in the patient's record:

(a) The reason and justification for another registered nurse assuming responsibility for the delegation;

(b) The registered nurse assuming responsibility must agree, in writing, to perform the supervision; and

(c) The nursing assistant or home care aide and patient have been informed of this change.

AMENDATORY SECTION (Amending WSR 09-06-006, filed 2/18/09, effective 3/21/09)

WAC 246-840-960 Rescinding delegation. (1) The registered nurse delegator may rescind delegation of the nursing task based on the following circumstances which may include, but are not limited to:

(a) The registered nurse delegator believes patient safety is being compromised;

(b) The patient's condition is no longer stable and predictable;

(c) When the frequency of staff turnover makes delegation impractical to continue in the setting;

(d) A change in the nursing assistant's or home care aide's willingness or competency to do the task;

(e) When the task is not being performed correctly;

(f) When the patient or authorized representative requests rescinding the delegation;

(g) When the facility's license lapsed; or

(h) When caregivers are not currently registered, certified, or have restrictions to practice.

(2) In the event delegation is rescinded, the registered nurse delegator initiates and participates in developing an alternative plan to provide continuity of the task or assumes responsibility for performing the task.

(3) The registered nurse delegator documents the reason for rescinding delegation of the task and the plan for continuing the task.

AMENDATORY SECTION (Amending WSR 09-06-006, filed 2/18/09, effective 3/21/09)

WAC 246-840-970 Accountability, liability, and coercion. (1) The registered nurse delegator and nursing assistant or home care aide are accountable for their own individual actions in the delegation process. While the delegated task becomes the responsibility of the nursing assistant or home care aide, the registered nurse delegator retains overall accountability for the nursing care of the patient.

(2) Under RCW 18.79.260 (3)(d)(iv), delegating nurses acting within their delegation authority shall be immune from liability for any action performed in the course of their delegation duties.

(3) Under RCW 18.88A.230(1), nursing assistants and under RCW 18.88B.070(3), home care aides following written delegation instructions from registered nurse delegators for delegated tasks shall be immune from liability.

(4) Complaints regarding delegation of nursing tasks may be reported to the aging and adult services administration of the department of social and health services or via a toll-free telephone number.

(5) All complaints related to registered nurse delegators shall be referred to the nursing care quality assurance commission.

(6) All complaints related to nursing assistants or home care aides performing delegated tasks shall be referred to the secretary of health.

(7) Under RCW 18.79.260 (3)(c), no person may coerce the registered nurse delegator into compromising patient safety by requiring the nurse to delegate if the registered nurse delegator determines it is inappropriate to do so. Registered nurse delegators shall not be subject to any employer reprisal or disciplinary action by the Washington nursing care quality assurance commission for refusing to delegate tasks or refusing to provide the required training for delegation if the nurse determines delegation may compromise patient safety.

(8) Under RCW 18.88A.230(2), nursing assistants and under RCW 18.88B.070(4), home care aides shall not be subject to any employer reprisal or disciplinary action by the secretary for refusing to accept delegation of a nursing task based on patient safety issues.

WSR 13-10-059

PROPOSED RULES

DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed April 29, 2013, 3:36 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 246-840-010 Definitions and 246-840-840 Nursing technician, this proposed rule adds clinics to the types of facilities where a nursing technician may work, and clarifies that nursing technicians may be enrolled in an approved school of nursing "in the United States or its territories."

Hearing Location(s): Department of Health, 243 Israel Road S.E., Town Center 3, Room 224, Tumwater, WA 98501, on June 11, 2013, at 3:15 p.m.

Date of Intended Adoption: June 11, 2013.

Submit Written Comments to: Mary Dale, P.O. Box 47864, Olympia, WA 98504-7864, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4738, by June 4, 2013.

Assistance for Persons with Disabilities: Contact Louise Lloyd by June 4, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state legislature enacted ESSB 6237 in 2012, amending RCW 18.79.340 and adding "clinics" to the list of facilities where a nursing technician may be employed. Rules need to be amended to reflect the change in the law. The definition of nurse technician in WAC 246-840-010 needs to be amended to include "clinics" to the defined list of facilities where a nursing technician may be employed. WAC 246-840-840 needs to be amended to include "clinic" in the list of locations where the nursing technician may work. WAC 246-840-010(18) needs to be amended to clarify that nursing techni-

cians may be enrolled in an approved school of nursing "in the United States or its territories." This change does not alter the intent of the rule.

Reasons Supporting Proposal: ESSB 6237, chapter 153, Laws of 2012, includes "clinics" in the list of types of facilities that a nurse technician may work in. Updating the rules will make them consistent with the change in law. Other amendments are necessary to provide clarification.

Statutory Authority for Adoption: RCW 18.79.110.

Statute Being Implemented: ESSB 6237, chapter 153, Laws of 2012.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Nursing care quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Paula Meyer, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4713.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(e), a small business economic impact statement is not required for a proposed rule where the content of the rule is explicitly and specifically dictated by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(v) exempts rules the content of which is explicitly and specifically dictated by statute.

April 29, 2013

Paula R. Meyer, MSN, RN
Executive Director

AMENDATORY SECTION (Amending WSR 10-24-047, filed 11/24/10, effective 1/1/11)

WAC 246-840-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "advanced registered nurse practitioner (ARNP)" is a registered nurse who has had formal graduate education and has achieved national specialty certification for the nurse practitioner, nurse anesthetist, or nurse midwife role. A nurse with this preparation may qualify as an ARNP as described in WAC 246-840-300.

(2) "Advanced nursing practice" is the delivery of nursing care by registered nurses who have acquired experience and formal education that prepares them for independent practice.

(3) "Client advocate" means a licensed registered nurse or practical nurse who actively supports client's rights and choices, including the client's right to receive safe, high quality care, and who facilitates the client's ability to exercise those rights and/or choices by providing the client with adequate information about their care and options.

(4) "Commission" means the Washington state nursing care quality assurance commission.

(5) "Competency" means demonstrated knowledge, skill and ability in the practice of nursing.

(6) "Conditional approval" of a school of nursing is the approval given a school of nursing that has not met the

requirements of the law and the rules and regulations of the commission; conditions are specified that must be met within a designated time to rectify the deficiency.

(7) "Delegation" means the licensed practical nurse or registered nurse transfers the performance of selected nursing tasks to competent individuals in selected situations. The licensed practical nurse or registered nurse delegating the task retains the responsibility and accountability for the nursing care of the client. The licensed practical nurse or registered nurse delegating the task supervises the performance of the unlicensed person. Delegation in community and in-home care settings is defined by WAC 246-840-910 through 246-840-970.

(a) Nursing acts delegated by the licensed practical nurse or registered nurse shall:

(i) Be within the area of responsibility of the licensed practical nurse or registered nurse delegating the act;

(ii) Be such that, in the opinion of the licensed practical nurse or registered nurse, it can be properly and safely performed by the unlicensed person without jeopardizing the patient welfare;

(iii) Be acts that a reasonable and prudent licensed practical nurse or registered nurse would find are within the scope of sound nursing judgment.

(b) Nursing acts delegated by the licensed practical nurse or registered nurse shall not require the unlicensed person to exercise nursing judgment nor perform acts which must only be performed by a licensed practical nurse or registered nurse, except in an emergency situation (RCW 18.79.240 (1)(b) and (2)(b)).

(c) When delegating a nursing act to an unlicensed person it is the licensed practical nurse or the registered nurse who shall:

(i) Make an assessment of the patient's nursing care need before delegating the task;

(ii) Instruct the unlicensed person in the delegated task or verify competency to perform or be assured that the person is competent to perform the nursing task as a result of the systems in place by the health care agency;

(iii) Recognize that some nursing interventions require nursing knowledge, judgment, and skill and therefore may not lawfully be delegated to unlicensed persons.

(8) "Faculty" means persons who are responsible for the educational nursing program and who hold faculty appointment in the school.

(9) "Full approval" of a school of nursing is the approval signifying that a nursing program meets the requirements of the law and the rules and regulations of the commission.

(10) "Good cause" as used in WAC 246-840-860 for extension of a nurse technician registration means that the nurse technician has had undue hardship such as difficulty scheduling the examination through no fault of their own, receipt of the examination results after thirty days after the nurse technician's date of graduation, or an unexpected family crisis which caused him or her to delay sitting for the examination. Failure of the examination is not "good cause."

(11) "Good standing" as applied to a nursing technician, means the nursing technician is enrolled in a registered nursing program approved by the commission and is successfully meeting all program requirements.

(12) "Immediately available" as applied to nursing technicians, means that a registered nurse who has agreed to act as supervisor is on the premises and is within audible range and available for immediate response as needed. This may include the use of two-way communication devices which allow conversation between the nursing technician and a registered nurse who has agreed to act as supervisor.

(a) In a hospital setting, a registered nurse who has agreed to act as supervisor is on the same patient care unit as the nursing technician and the patient has been assessed by the registered nurse prior to the delegation of duties to the nursing technician.

(b) In a nursing home or clinic setting, a registered nurse who has agreed to act as supervisor is in the same building and on the same floor as the nursing technician and the patient has been assessed by the registered nurse prior to the delegation of duties to the nursing technician.

(13) "Initial approval" of nursing programs is the approval given a new nursing program based on its proposal prior to the graduation of its first class.

(14) "Limited educational authorization" is an authorization to perform clinical training through a commission approved refresher course. This authorization does not permit practice for employment. A limited educational authorization may be issued to:

(a) A person whose Washington state license has been expired or inactive for three years or more and who applies for reinstatement and enrolls in a refresher course; or

(b) An applicant endorsing from another state or territory if the applicant's license from that jurisdiction is on inactive or expired status. The applicant must be enrolled in a refresher course.

(15) "Minimum standards of competency" means the knowledge, skills and abilities that are expected of the beginning practitioner.

(16) "Nontraditional program of nursing" means a school that has a curriculum which does not include a faculty supervised teaching/learning component in clinical settings.

(17) "Nurse administrator" is an individual who meets the qualifications contained in WAC 246-840-555 and who has been designated as the person primarily responsible for the direction of the program in nursing. Titles for this position may include, among others, dean, director, coordinator or chairperson.

(18) "Nursing technician" means a nursing student preparing for registered nurse licensure who is employed in a hospital licensed under chapter 70.41 RCW or a nursing home licensed under chapter 18.51 RCW, or clinic, and who:

(a) Is currently enrolled in good standing and attending a nursing program approved by the commission and has not graduated; or

(b) Is a graduate of a nursing program approved by the commission who graduated:

(i) Within the past thirty days; or

(ii) Within the past sixty days and has received a determination that there is good cause to continue the registration period((-)); or

(c) Is enrolled in an approved school of nursing in the United States or its territories. Approved schools for nursing technicians include the list of registered nursing programs

(schools) approved by state boards of nursing in the United states or its territories as preparation for the NCLEX registered nurse examination, and listed in the NCLEX bulletin as meeting minimum standards. Approved schools do not include nontraditional schools as defined in subsection (16) of this section.

(19) "Philosophy" means the beliefs and principles upon which the curriculum is based.

(20) "Program" means a division or department within a state supported educational institution, or other institution of higher learning charged with the responsibility of preparing persons to qualify for the licensing examination.

(21) "Registered nurse" as used in these rules shall mean a nurse as defined by RCW 18.79.030(1).

(22) "Supervision" of licensed or unlicensed nursing personnel means the provision of guidance and evaluation for the accomplishment of a nursing task or activity with the initial direction of the task or activity; periodic inspection of the actual act of accomplishing the task or activity; and the authority to require corrective action.

(a) "Direct supervision" means the licensed registered nurse who provides guidance to nursing personnel and evaluation of nursing tasks is on the premises, is quickly and easily available, and has assessed the patient prior to the delegation of the duties.

(b) "Immediate supervision" means the licensed registered nurse who provides guidance to nursing personnel and evaluation of nursing tasks is on the premises, is within audible and visual range of the patient, and has assessed the patient prior to the delegation of duties.

(c) "Indirect supervision" means the licensed registered nurse who provides guidance to nursing personnel and evaluation of nursing tasks is not on the premises but has given either written or oral instructions for the care and treatment of the patient and the patient has been assessed by the registered nurse prior to the delegation of duties.

(23) "Traditional program of nursing" means a program that has a curriculum which includes a faculty supervised teaching/learning component in clinical settings.

AMENDATORY SECTION (Amending WSR 04-13-053, filed 6/11/04, effective 6/11/04)

WAC 246-840-840 Nursing technician. The purpose of the nursing technician credential is to provide additional work related opportunities for students enrolled in an ADN or BSN program, within the limits of their education, to gain valuable judgment and knowledge through expanded work opportunities.

(1) The nursing technician is as defined in WAC 246-840-010(~~(19)~~) (18).

(2) The nursing technician shall have knowledge and understanding of the laws and rules regulating the nursing technician and shall function within the legal scope of their authorization under chapter 18.79 RCW and shall be responsible and accountable for the specific nursing functions which they can safely perform as verified by their nursing program.

(3) The nursing technician shall work directly for the hospital, clinic or nursing home and may not be employed in these facilities through a temporary agency.

WSR 13-10-060

PROPOSED RULES

HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed April 29, 2013, 4:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-06-061.

Title of Rule and Other Identifying Information: WAC 182-531-1600 Bariatric surgery.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Conference Room, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at <http://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf> or directions can be obtained by calling (360) 725-1000), on June 4, 2013, at 10:00 a.m.

Date of Intended Adoption: Not sooner than June 5, 2013.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on June 4, 2013.

Assistance for Persons with Disabilities: Contact Kelly Richters by May 28, 2013, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revision to this rule is necessary to add coverage for clients eighteen through twenty years of age for laparoscopic adjustable gastric banding (LAGB) when the criteria in WAC 182-531-1600 is met.

Reasons Supporting Proposal: This policy change is based on the Health Technology Assessment Clinical Committee's Findings and Coverage Decision completed in 2007 (Pediatric Bariatric Surgery).

Statutory Authority for Adoption: RCW 41.05.021, WAC 182-501-0055.

Statute Being Implemented: RCW 41.05.021.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, Legal and Administrative Services, RPS, (360) 725-1306; Implementation and Enforcement: Jean Gowen, Health Services, Health Care Benefits, (360) 725-2005.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes they do not impose more than minor costs for affected small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules

unless requested by the joint administrative rules [review] committee or applied voluntarily.

April 29, 2013
Kevin M. Sullivan
Rules Coordinator

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

WAC 182-531-1600 Bariatric surgery. (1) The ~~((department))~~ agency covers medically necessary bariatric surgery for eligible clients.

(2) Bariatric surgery must be performed in a hospital with a bariatric surgery program, and the hospital must be:

(a) Located in the state of Washington or approved border cities (see WAC ~~((388-501-0175))~~ 182-501-0175); and

(b) Meet the requirements of WAC ~~((388-550-2301))~~ 182-550-2301.

(3) If bariatric surgery is requested or prescribed under the EPSDT program, the ~~((department))~~ agency evaluates it as a covered service under EPSDT's standard of coverage that requires the service to be:

- (a) Medically necessary;
- (b) Safe and effective; and
- (c) Not experimental.

(4) The ~~((department))~~ agency authorizes payment for bariatric surgery and bariatric surgery-related services in three stages:

- (a) Stage one~~((—))~~ - Initial assessment of client;
- (b) Stage two~~((—))~~ - Evaluations for bariatric surgery and successful completion of a weight loss regimen; and
- (c) Stage three~~((—))~~ - Bariatric surgery.

Stage one~~((—))~~ - Initial assessment

(5) Any ~~((department-enrolled))~~ agency-enrolled provider who is licensed to practice medicine in the state of Washington may examine a client requesting bariatric surgery to ascertain if the client meets the criteria listed in subsection (6) of this section.

(6) The client meets the preliminary conditions of stage one when:

- (a) The client is ~~((between))~~ ;
(i) Twenty-one ~~((and))~~ through fifty-nine years of age; or
(ii) Eighteen through twenty years old for laparoscopic adjustable gastric banding (LAGB) only;
- (b) The client has a body mass index (BMI) of thirty-five or greater;

(c) The client is not pregnant. (Pregnancy within the first two years following bariatric surgery is not recommended. When applicable, a family planning consultation is highly recommended prior to bariatric surgery);

- (d) The client is diagnosed with one of the following:
 - (i) Diabetes mellitus;
 - (ii) Degenerative joint disease of a major weight bearing joint(s) (the client must be a candidate for joint replacement surgery if weight loss is achieved); or

(iii) Other rare comorbid conditions (such as pseudo tumor cerebri) in which there is medical evidence that bariatric surgery is medically necessary and that the benefits of bariatric surgery outweigh the risk of surgical mortality; and

(e) The client has an absence of other medical conditions such as multiple sclerosis (MS) that would increase the client's risk of surgical mortality or morbidity from bariatric surgery.

(7) If a client meets the criteria in subsection (6) of this section, the provider must request prior authorization from the ~~((department))~~ agency before referring the client to stage two of the bariatric surgery authorization process. The provider must attach a medical report to the request for prior authorization with supporting documentation that the client meets the stage one criteria in subsections (5) and (6) of this section.

(8) The ~~((department))~~ agency evaluates requests for covered services that are subject to limitations or other restrictions and approves such services beyond those limitations or restrictions when medically necessary, under the provisions of WAC ~~((388-501-0165))~~ 182-501-0165 and ~~((388-501-0169))~~ 182-501-0169.

Stage two~~((—))~~ - Evaluations for bariatric surgery and successful completion of a weight loss regimen

(9) After receiving prior authorization from the ~~((department))~~ agency to begin stage two of the bariatric surgery authorization process, the client must:

(a) Undergo a comprehensive psychosocial evaluation performed by a psychiatrist, licensed psychiatric ARNP, or licensed independent social worker with a minimum of two years postmasters' experience in a mental health setting. Upon completion, the results of the evaluation must be forwarded to the ~~((department))~~ agency. The comprehensive psychosocial evaluation must include:

(i) An assessment of the client's mental status or illness to:

(A) Evaluate the client for the presence of substance abuse problems or psychiatric illness which would preclude the client from participating in presurgical dietary requirements or postsurgical lifestyle changes; and

(B) If applicable, document that the client has been successfully treated for psychiatric illness and has been stabilized for at least six months and/or has been rehabilitated and is free from any drug and/or alcohol abuse and has been drug and/or alcohol free for a period of at least one year.

(ii) An assessment and certification of the client's ability to comply with the postoperative requirements such as life-long required dietary changes and regular follow-up.

(b) Undergo an internal medicine evaluation performed by an internist to assess the client's preoperative condition and mortality risk. Upon completion, the internist must forward the results of the evaluation to the ~~((department))~~ agency.

(c) Undergo a surgical evaluation by the surgeon who will perform the bariatric surgery (see subsection (13) of this section for surgeon requirements). Upon completion, the surgeon must forward the results of the surgical evaluation to the ~~((department))~~ agency and to the licensed medical provider who is supervising the client's weight loss regimen (refer to WAC ~~((388-531-1600))~~ 182-531-1600 (9)(d)(ii)).

(d) Under the supervision of a licensed medical provider, the client must participate in a weight loss regimen prior to surgery. The client must, within one hundred and eighty days from the date of the ~~((department's))~~ agency's stage one

authorization, lose at least five percent of his or her initial body weight. If the client does not meet this weight loss requirement within one hundred and eighty days from the date of the ((department's)) agency's initial authorization, the ((department)) agency will cancel the authorization. The client or the client's provider must reapply for prior authorization from the ((department)) agency to restart stage two. For the purpose of this section, "initial body weight" means the client's weight at the first evaluation appointment.

(i) The purpose of the weight loss regimen is to help the client achieve the required five percent loss of initial body weight prior to surgery and to demonstrate the client's ability to adhere to the radical and lifelong behavior changes and strict diet that are required after bariatric surgery.

(ii) The weight loss regimen must:

(A) Be supervised by a licensed medical provider who has a core provider agreement with the ((department)) agency;

(B) Include monthly visits to the medical provider;

(C) Include counseling twice a month by a registered dietician referred to by the treating provider or surgeon; and

(D) Be at least six months in duration.

(iii) Documentation of the following requirements must be retained in the client's medical file. Copies of the documentation must be forwarded to the ((department)) agency upon completion of stage two. The ((department)) agency will evaluate the documentation and authorize the client for bariatric surgery if the stage two requirements were successfully completed.

(A) The provider must document the client's compliance in keeping scheduled appointments and the client's progress toward weight loss by serial weight recordings. The client((s)) must lose at least five percent ((loss)) of his or her initial body weight and must maintain the five percent weight loss until surgery;

(B) For diabetic clients, the provider must document the efforts in diabetic control or stabilization;

(C) The registered dietician must document the client's compliance (or noncompliance) in keeping scheduled appointments, and the client's weight loss progress;

(D) The client must keep a journal of active participation in the medically structured weight loss regimen including the activities under (d)(iii)(A), (d)(iii)(B) if appropriate, and (d)(iii)(C) of this subsection.

(10) If the client fails to complete all of the requirements of subsection (9) of this section, the ((department)) agency will not authorize stage three((—))- Bariatric surgery.

(11) If the client is unable to meet all of the stage two criteria, the client or the client's provider must reapply for prior authorization from the ((department)) agency to reenter stage two.

Stage three((—))- Bariatric surgery

(12) The ((department)) agency may withdraw authorization of payment for bariatric surgery at any time up to the actual surgery if the ((department)) agency determines that the client is not complying with the requirements of this section.

(13) A surgeon who performs bariatric surgery for medical assistance clients must:

(a) Have a signed core provider agreement with the ((department)) agency;

(b) Have a valid medical license in the state of Washington; and

(c) Be affiliated with a bariatric surgery program that meets the requirements of WAC ((388-550-2304)) 182-550-2301.

(14) For hospital requirements for stage three((—))- Bariatric surgery, see WAC ((388-530-2304)) 182-550-2301.

WSR 13-10-065

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed April 30, 2013, 10:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-06-053.

Title of Rule and Other Identifying Information: WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Hearing Location(s): Capital Plaza Building, Fourth Floor Large Conference Room, 1025 Union Avenue S.E., Olympia, WA, on June 11, 2013, at 10:00 a.m. Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Date of Intended Adoption: June 28, 2013.

Submit Written Comments to: Mark E. Bohe, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, by June 11, 2012 [2013], at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499, or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 84.33.091 requires the department to revise the stumpage value tables every six months. The department establishes stumpage value tables to apprise timber harvesters of the timber values used to calculate the timber excise tax. The values in the proposed rule will apply to the second half of 2013.

Reasons Supporting Proposal: RCW 84.33.091 requires that the stumpage values provided in WAC 458-40-660 be updated as of January 1 and July 1 of each year.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 84.33.096.

Statute Being Implemented: RCW 84.33.091.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1574; Implementation and Enforcement: Stuart Thronson, 1025 Union Avenue S.E., Suite #300, Olympia, WA, (360) 534-1300.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business economic impact statement is required.

A cost-benefit analysis is required under RCW 34.05-.328. A preliminary cost-benefit analysis may be obtained by contacting Mark E. Bohe, Interpretations and Technical Advice Division, P.O. Box 47453, Olympia, WA 98504-7453, phone (360) 534-1574, e-mail markbohe@dor.wa.gov. The proposed rule is a significant legislative rule as defined by RCW 34.05.328.

April 30, 2013
 Alan R. Lynn
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-02-034, filed 12/21/12, effective 1/1/13)

WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) **Introduction.** This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ((January)) July 1 through ((June 30)) December 31, 2013:

**Washington State Department of Revenue
 STUMPAGE VALUE TABLE**

((January)) July 1 through ((June 30)) December 31, 2013

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Starting July 1, 2012, there are no separate Quality Codes per Species Code.

((Species Name	Species-Code	SVA (Stumpage-Value Area)	Haul Zone				
			1	2	3	4	5
Douglas-fir ⁽²⁾	DF	1	\$344	\$337	\$330	\$323	\$316
		2	389	382	375	368	361
		3	321	314	307	300	293
		4	389	382	375	368	361
		5	380	373	366	359	352
		6	210	203	196	189	182
Western-Hemlock and Other Conifer ⁽³⁾	WH	1	290	283	276	269	262
		2	324	317	310	303	296
		3	249	242	235	228	221
		4	303	296	289	282	275
		5	343	336	329	322	315
Western Red-cedar ⁽⁴⁾	RC	1-5	756	749	742	735	728
		6	509	502	495	488	481
		1-6	180	173	166	159	152
Ponderosa-Pine ⁽⁵⁾	PP	1-6	180	173	166	159	152
Red-Alder	RA	1-5	509	502	495	488	481
Black-Cottonwood	BC	1-5	105	98	91	84	77

((Species Name	Species-Code	SVA (Stumpage-Value Area)	Haul Zone				
			1	2	3	4	5
Other Hard-wood	OH	1-5	221	214	207	200	193
		6	59	52	45	38	31
Douglas-fir Poles & Piles	DFL	1-5	797	790	783	776	769
Western Red-cedar Poles	RCL	1-5	1358	1351	1344	1337	1330
		6	757	750	743	736	729
Chipwood ⁽⁶⁾	CHW	1-5	19	18	17	16	15
		6	7	6	5	4	3
Small Logs ⁽⁶⁾	SML	6	24	23	22	21	20
RC Shake & Shingle Blocks ⁽⁷⁾	RCS	1-5	164	157	150	143	136
Posts ⁽⁸⁾	LPP	1-5	0.35	0.35	0.35	0.35	0.35
DF Christmas Trees ⁽⁹⁾	DFX	1-5	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	TFX	1-5	0.50	0.50	0.50	0.50	0.50

Species Name	Species-Code	SVA (Stumpage-Value Area)	Haul Zone				
			1	2	3	4	5
Douglas-fir ⁽²⁾	DF	1	\$392	\$385	\$378	\$371	\$364
		2	388	381	374	367	360
		3	308	301	294	287	280
		4	442	435	428	421	414
		5	424	417	410	403	396
		6	224	217	210	203	196
Western Hemlock and Other Conifer ⁽³⁾	WH	1	361	354	347	340	333
		2	353	346	339	332	325
		3	260	253	246	239	232
		4	340	333	326	319	312
		5	352	345	338	331	324
		6	211	204	197	190	183
Western Red-cedar ⁽⁴⁾	RC	1-5	808	801	794	787	780
		6	483	476	469	462	455
Ponderosa Pine ⁽⁵⁾	PP	1-6	190	183	176	169	162
Red Alder	RA	1-5	479	472	465	458	451
Black Cottonwood	BC	1-5	90	83	76	69	62
Other Hard-wood	OH	1-5	229	222	215	208	201
		6	23	16	9	2	1
Douglas-fir Poles & Piles	DFL	1-5	789	782	775	768	761
Western Red-cedar Poles	RCL	1-5	1379	1372	1365	1358	1351
		6	854	847	840	833	826
Chipwood ⁽⁶⁾	CHW	1-5	10	9	8	7	6
		6	1	1	1	1	1
Small Logs ⁽⁶⁾	SML	6	27	26	25	24	23
RC Shake & Shingle Blocks ⁽⁷⁾	RCS	1-5	164	157	150	143	136
Posts ⁽⁸⁾	LPP	1-5	0.35	0.35	0.35	0.35	0.35
DF Christmas Trees ⁽⁹⁾	DFX	1-5	0.25	0.25	0.25	0.25	0.25

Species Name	Species Code	SVA (Stumpage Value Area)	Haul Zone				
			1	2	3	4	5
Other Christmas Trees ⁽²⁾	TFX	1-5	0.50	0.50	0.50	0.50	0.50

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes all Hemlock, Spruce and true Fir species, Lodgepole Pine, or any other conifer not listed on this page.
- (4) Includes Alaska-Cedar.
- (5) Includes Western White Pine.
- (6) Stumpage value per ton.
- (7) Stumpage value per cord.
- (8) Includes Lodgepole posts and other posts, Stumpage Value per 8 lineal feet or portion thereof.
- (9) Stumpage Value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.) over 2 acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber** - Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber** - Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act

(Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from ((January)) July 1 through ((June 30)) December 31, 2013:

**TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, and 5
((January)) July 1 through ((June 30)) December 31, 2013**

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	-\$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	-\$35.00
II. Logging conditions		
Class 1	Ground based logging a majority of the unit using tracked or wheeled vehicles or draft animals.	\$0.00
Class 2	Cable logging a majority of the unit using an overhead system of winch driven cables.	-\$50.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00
IV. Thinning		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-\$100.00

**TABLE 10—Harvest Adjustment Table
Stumpage Value Area 6
((January)) July 1 through ((June 30)) December 31, 2013**

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 8 thousand board feet per acre and less.	-\$8.00
II. Logging conditions		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-\$50.00

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$75.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
Note:	A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.	
III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00

TABLE 11—Domestic Market Adjustment

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
	SVAs 1 through 5 only:	\$((+1.00)) <u>9.00</u>
Note:	This adjustment only applies to published MBF sawlog values.	

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

(5) **Forest-derived biomass**, has a \$0/ton stumpage value.

WSR 13-10-067

PROPOSED RULES

UNIVERSITY OF WASHINGTON

[Filed April 30, 2013, 11:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-06-045.

Title of Rule and Other Identifying Information: WAC 478-136-041 Alcoholic beverage policy.

Hearing Location(s): Room 142, Gerberding Hall, University of Washington, Seattle Campus, on June 7, 2013, at 12:00 noon.

Date of Intended Adoption: July 11, 2013.

Submit Written Comments to: Rebecca Goodwin Dardorff, University of Washington, Rules Coordination Office, Box 351210, Seattle, WA 98195-1210, e-mail rules@uw.edu, fax (206) 685-3825, by June 7, 2013.

Assistance for Persons with Disabilities: Contact disability services office by May 28, 2013, TTY (206) 543-6452 or (206) 543-6450.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently, the University of Washington's alcoholic beverage policy does not provide for licensing under a sports entertainment facility license. The proposed WAC rule amendment will make it clear that alcohol sales, service, and consumption in Husky Stadium will be governed by and must be in compliance with such a license issued by the Washington state liquor control board. The operating plan required to obtain the annual sports entertainment facility license will limit alcohol sale, service, and consumption to suite and club areas, approximately five percent of the available seating in the renovated Husky Stadium.

Statutory Authority for Adoption: RCW 28B.20.130.

Statute Being Implemented: RCW 28B.20.130.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: University of Washington, governmental.

Name of Agency Personnel Responsible for Drafting: Stephanie Rempe, Senior Associate Athletic Director, 230 Graves Building, UW, Seattle, WA, (206) 685-2634; Implementation and Enforcement: Scott Woodward, UW Director of Athletics, 235 Graves Building, UW, Seattle, WA, (206) 543-2212.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impose a disproportionate impact on small businesses or affect a school district under Title 28A RCW.

A cost-benefit analysis is not required under RCW 34.05.328. The University of Washington does not consider this to be a significant legislative rule.

April 30, 2013
Rebecca Goodwin Deardorff
Director of Rules Coordination

AMENDATORY SECTION (Amending WSR 10-13-098, filed 6/17/10, effective 7/18/10)

WAC 478-136-041 Alcoholic beverage policy. Alcoholic beverages may be possessed, sold, served, and consumed at university facilities only if the procedures set forth in this section are followed.

(1) The appropriate permits/licenses for possession, sale, service, and consumption of alcohol must be obtained from the Washington state liquor control board.

(2) Permits/licenses must be displayed during the event and all other guidelines and restrictions established by the Washington state liquor control board must be followed.

(3) Alcoholic beverages may be possessed, sold, served, and consumed at the University of Washington club, as so designated by the university board of regents to the Washington state liquor control board, pursuant to a spirits, beer, and wine private club license issued by the Washington state liquor control board.

(4) Alcoholic beverages may be possessed, sold, served, and consumed at university facilities leased to a commercial tenant under a lease that includes authorization for the tenant to apply and hold a license issued by the Washington state liquor control board.

(5) Except as provided in subsections (3) and (4) of this section, alcoholic beverages may be possessed, sold, served, and consumed at university facilities only under permits/licenses issued by the Washington state liquor control board and only as follows:

(a) Events at which alcohol is to be sold must be approved by the appropriate committee chair for the committee on the use of university facilities and an application to the chair must be accompanied by a request for written authorization under subsection (6) of this section or proof that the seller holds an appropriate license; and

(b) Events at athletic venues at which alcohol is to be possessed, sold, served, or consumed must:

(i) Not be within the spectator viewing areas and must have restricted attendance; or

(ii) Operate under a sport entertainment facility license issued by the Washington state liquor control board; and

(c) A university unit, or an individual or organization applying for a permit/license must have obtained approval under subsection (6) of this section; and

(d) Sale, service, and consumption of alcohol is to be confined to specified room(s) or area(s) identified on the license or permit. Unopened containers may not be sold or served. No alcohol is permitted to be taken off-premises.

(6) Written authorization to apply for a special occasion license to sell alcoholic beverages or a banquet permit to serve and consume alcoholic beverages at university facilities must be obtained from the appropriate committee chair for the committee on the use of university facilities prior to

applying for a special occasion license or banquet permit from the Washington state liquor control board. Authorization should be requested sufficiently in advance of the program to allow timely consideration. (Note: Some license applications must be filed with the Washington state liquor control board at least thirty days or more before the event.) Written authorization to apply for such a permit/license shall accompany the application filed with the Washington state liquor control board.

(7) Consumption, possession, dispensation, or sale of alcohol is prohibited except for persons of legal age.

WSR 13-10-074

PROPOSED RULES

**DEPARTMENT OF
FISH AND WILDLIFE**

[Filed April 30, 2013, 2:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-05-046 on February 13, 2013.

Title of Rule and Other Identifying Information: WAC 220-95-100 Sea urchin license reduction program and 220-95-110 Sea cucumber license reduction program.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on June 7-8, 2013, at 8:30 a.m.

Date of Intended Adoption: June 7-8, 2013.

Submit Written Comments to: Richard Childers, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Rich.childers@dfw.wa.gov, fax (360) 902-2943, by May 26, 2013.

Assistance for Persons with Disabilities: Contact Tami Lininger by May 26, 2013, (360) 902-2207 or TTY 1-800-833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to change the date on which the agency will begin accepting sales offers for commercial sea urchin and commercial sea cucumber licenses. The agency will purchase these licenses as part of for the ongoing license reduction programs for these fisheries. The proposal also seeks to change the date of funds availability when the agency purchases licenses. Finally, the proposal delegates authority to the director or his designee for setting the maximum purchase price of licenses. The anticipated effect of the proposal is that these buy-back programs will be optimized to promote program participation and efficient fund use.

Reasons Supporting Proposal: The proposed amendments to these rules will promote sales of licenses back to the agency to meet license reduction program goals. The proposal is supported by current license holders within these fisheries to optimize the programs.

Statutory Authority for Adoption: RCW 77.04.020, 77.12.047, 77.70.150, and 77.70.190.

Statute Being Implemented: RCW 77.04.020, 77.12.-047, 77.70.150, and 77.70.190.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington department of fish and wildlife (WDFW), governmental.

Name of Agency Personnel Responsible for Drafting: Richard Childers, 1000 Point Whitney Road, Brinnon, WA 98320, (360) 301-2626; Implementation: James Scott, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

1. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule:

This proposal contains no requirements for small businesses. This is a license buy-back program that allows owners of commercial sea-urchin and sea-cucumber permits to make offers to sell their licenses back to WDFW.

2. Kinds of Professional Services That a Small Business Is Likely to Need in Order to Comply with Such Requirements: None - these rule changes propose to amend the dates for an existing license buy-back program.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: No costs are associated with compliance of this proposal.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? No.

5. Cost of Compliance for the Ten Percent of Businesses That Are the Largest Businesses Required to Comply with the Proposed Rules, Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;
2. Cost per hour of labor; or
3. Cost per one hundred dollars of sales.

There are no anticipated costs of compliance.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So: There are no anticipated costs of compliance.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The agency has facilitated significant discussion with current license holders in the commercial sea cucumber and sea urchin fisheries regarding the proposal. The industry consensus for both fisheries is that the proposal will optimize the license buy-back program and promote the achievement of program goals.

8. A List of Industries That Will Be Required to Comply with the Rule: The industry that is required to comply with these rules is composed of all current commercial sea urchin and sea cucumber license holders who seek to sell their license in ongoing license reduction programs.

A copy of the statement may be obtained by contacting Richard Childers, 1000 Point Whitney Road, Brinnon, WA 98320, phone (360) 301-2626, fax (360) 902-2943, e-mail rich.childers@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

April 30, 2013

Lori Preuss
Rules Coordinator

AMENDATORY SECTION (Amending Order 12-140, filed 7/10/12, effective 8/10/12)

WAC 220-95-100 Sea urchin license reduction program. In order to provide for economic stability in the commercial sea urchin fishery, and in accordance with RCW 77.70.150, the department establishes the sea urchin license reduction program (program).

(1) Eligibility: All persons who currently hold a sea urchin commercial fishery license are eligible to offer their license(s) for purchase by the department.

(2) Offer process: The department will accept sales offers beginning ~~((August))~~ December 1st of each year and will purchase licenses based on the funds that are available on ~~((September 30th))~~ January 31st of ~~((that same))~~ the following year.

(3) Selection process: The department will rank sales offers from the lowest offer to the highest. It will purchase the lowest-cost licenses first, then the next lowest, and continue until there are insufficient funds to complete a purchase on an offer. If two or more licenses are offered at the same price, selection will be by random draw. To purchase licenses, the department will use the funds made available under RCW 77.70.150, with a maximum purchase price ~~((of twenty thousand dollars per license))~~ set by the director or his or her designee. The director or his or her designee must seek the advice of commercial sea urchin fishery license holders prior to setting or revising the maximum purchase price. Once the director or his or her designee establishes or revises the maximum bid price, he or she will convey the price via emergency rule by November 1st of each year.

(4) License reduction process: When the department purchases a license, it will issue a warrant (a check from the department) in the amount of the offer to the license holder. On the date that the department mails the warrant to the license holder's mailing address on file with the department, it will void the license. When the license holder receives the warrant, he or she must return his or her commercial sea urchin license cards to the department.

(5) No prohibition on reentry: License holders who sell a license under the program may reenter the sea urchin commercial fishery if they purchase a license.

(6) Program termination: This program terminates when the number of sea urchin commercial fishery licensees is reduced to twenty.

AMENDATORY SECTION (Amending Order 12-140, filed 7/10/12, effective 8/10/12)

WAC 220-95-110 Sea cucumber license reduction program. In order to provide for economic stability in the commercial sea cucumber fishery, and in accordance with RCW 77.70.190, the department establishes the sea cucumber license reduction program (program).

(1) Eligibility: All persons who currently hold a sea cucumber commercial fishery license are eligible to offer their license(s) for purchase by the department.

(2) Offer process: The department will accept sales offers beginning ~~((August))~~ December 1st of each year and will purchase licenses based on the funds that are available on ~~((September 30th))~~ January 31st of ~~((that same))~~ the following year.

(3) Selection process: The department will rank sales offers from the lowest offer to the highest. It will purchase the lowest-cost licenses first, then the next lowest, and continue until there are insufficient funds to complete a purchase on an offer. If two or more licenses are offered at the same price, selection will be by random draw. To purchase licenses, the department will use the funds made available under RCW 77.70.190, with a maximum purchase price ~~((of sixty thousand dollars per license))~~ set by the director or his or her designee. The director or his or her designee must seek the advice of commercial sea cucumber fishery license holders prior to setting or revising the maximum purchase price. Once the director or his or her designee establishes or revises the maximum bid price, he or she will convey the price via emergency rule by November 1st of each year.

(4) License reduction process: When the department purchases a license, it will issue a warrant (a check from the department) in the amount of the offer to the license holder. On the date that the department mails the warrant to the license holder's mailing address on file with the department, it will void the license. When the license holder receives the warrant, he or she must return his or her commercial sea cucumber license cards to the department.

(5) No prohibition on reentry: License holders who sell a license under the program may reenter the sea cucumber commercial fishery if they purchase a license.

(6) Program termination: This program terminates when the number of sea cucumber commercial fishery licensees is reduced to twenty.

WSR 13-10-077

PROPOSED RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Filed May 1, 2013, 9:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-17-083 on August 14, 2012.

Title of Rule and Other Identifying Information: WAC 232-12-275 Wildlife rehabilitation permits, this rule outlines the requirements and restrictions for conducting wildlife rehabilitation in Washington state.

Hearing Location(s): Natural Resources Building, First Floor, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on June 7-8, 2013, at 8:30 a.m.

Date of Intended Adoption: On or after August 2, 2013.

Submit Written Comments to: Patricia A. Thompson, Wildlife Diversity Program, 16018 Mill Creek Boulevard,

Mill Creek, WA 90812, e-mail patricia.thompson@dfw.wa.gov, (425) 338-1066, by May 24, 2013.

Assistance for Persons with Disabilities: Contact Tami Lininger by May 29, 2013, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule making updates and makes structural improvements to WAC 232-12-275. Specifically, the project splits the rule into smaller sections and better organizes the subject matter currently contained in WAC 232-12-275. The proposed changes also make some clarifications and amendments to include more detail and guidance for people practicing wildlife rehabilitation.

Reasons Supporting Proposal: Changes to WAC 232-12-275 are needed because the rule contains a large amount of information, which is difficult to navigate and requires better organization. Additionally, the rule needs clarification of expectations and requirements to promote better, more uniform practices and smoother relations with wildlife rehabilitators. The changes will promote increased user-group compliance because wildlife rehabilitators will better understand wildlife rehabilitation requirements.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.047, 77.12.467, and 77.12.469.

Statute Being Implemented: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.047, 77.12.467, and 77.12.469.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Joanna Eide, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2403; Implementation: Nate Pamplin, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2693; Enforcement: Chief Bruce Bjork, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule making will not affect small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not involve hydraulics.

May 1, 2013

Joanna M. Eide

Administrative Regulations Analyst

AMENDATORY SECTION (Amending WSR 09-01-123, filed 12/19/08, effective 1/19/09)

WAC 232-12-275 Definitions—Oiled-wildlife and wildlife rehabilitation permits. ~~((+))~~ For the purposes of ~~((this rule))~~ WAC 232-12-841 through 232-12-871, the following definitions apply:

~~((+))~~ (1) "Bird" means any wild animal of the class Aves.

~~((+))~~ (2) "Dedicated workspace" means the minimum amount of floor space necessary to maintain access to oiled bird rehabilitation pens.

~~((+))~~ (3) "Director" means the director of the department of fish and wildlife or his or her designee.

(4) "Drying resources" mean the floor space and pen requirements associated with the removal of water from the skin and feathers of a bird.

~~((+))~~ (5) "Hacking" means the release, sometimes temporary, of a raptor to the wild so that it may survive on its own.

(6) "Imping" means a method of ~~((repairing))~~ replacing a broken feather(s) with an undamaged feather by cutting the shaft of the broken feather on the bird, trimming the replacement feather to the correct length, and gluing the shaft of the replacement feather to the shaft of the broken feather.

(7) "Imprinting" means when a very young animal fixes its attention on and follows the first object or creature it sees, hears, or touches, and becomes socially, and later sexually, bonded to that object or creature, identifying itself as whatever it imprints upon.

~~((+))~~ (8) "Indoor area" means the space within an oiled bird rehabilitation facility in which the air temperature and exchange of air can be controlled and maintained. Indoor areas can include oiled bird rehabilitation pools, morgues, freezers, isolation/intensive care units, medical laboratories, laundry and storage facilities, and electrical and mechanical equipment. These areas may consist of space for ~~((+))~~ conducting intake, prewash holding, ~~((wash/rinse))~~ washing and rinsing, drying, ~~((oiled bird rehabilitation pools, morgue/))~~ necropsy, and preparing bird food ~~((preparation, storage, freezers, isolation/intensive care unit, medical laboratory, laundry, electrical, and mechanical areas))~~.

~~((+))~~ (9) "Intake space" means the minimum amount of floor space necessary to admit live or dead birds into an oiled bird rehabilitation facility.

~~((+))~~ (10) "Mesh size" means the measured distance between one vertical side of a mesh unit and ~~((centers of the two opposing vertices in))~~ opposite vertical side of the same mesh ~~((of a piece of))~~ unit when the netting ~~((when))~~ is pulled taut.

~~((+))~~ (11) "Oil" means oil of any kind and any form, such as petroleum and nonpetroleum oils including, but not limited to, crude oil and refined petroleum products, animal fats and vegetable oil, other oils of animal or vegetable origin, and other nonpetroleum oils.

~~((+))~~ (12) "Oiled bird" means a bird that has come in contact with oil.

~~((+))~~ (13) "Oiled bird rehabilitation pen" means an enclosure used to hold birds during oiled bird rehabilitation.

~~((+))~~ (14) "Oiled bird rehabilitation pool" means a container filled with ~~((unheated))~~ fresh water used during the rehabilitation of oiled birds.

~~((+))~~ (15) "Oiled bird rehabilitation" is a specialized form of wildlife rehabilitation and means the process of caring for oiled birds during intake, prewash holding, washing and rinsing, and drying ~~((while))~~, to allow the birds to return to their natural habitat. This form of rehabilitation includes keeping the birds in pools ~~((by))~~ and providing semi-static and static areas ~~((and by maintaining))~~ with steady air temperatures and air exchanges while the birds are in ~~((an oiled bird))~~ the rehabilitation facility.

~~((+))~~ (16) "Oiled bird rehabilitation facility" is a type or portion of a wildlife rehabilitation facility and means the

~~((contiguous))~~ indoor and outdoor areas used for the rehabilitation of oiled birds.

~~((+))~~ (17) "Outdoor area" means an area within an oiled bird rehabilitation facility that does not fit the definition of an indoor area.

~~((+))~~ (18) "Orphan-imprinting" means to use wildlife for the purpose of feeding, socializing, and teaching appropriate wild behavior to young wildlife.

~~((+))~~ (19) "Permit" means a wildlife rehabilitation permit without any additional endorsements.

(20) "Prewash holding resources" mean the floor space and oiled bird rehabilitation pen ~~((requirements within))~~ capabilities of an oiled bird rehabilitation facility ~~((necessary))~~ to hold birds after intake and prior to washing.

~~((+))~~ (21) "Primary permittee" means the person listed on the wildlife rehabilitation permit who originally applied for and received the permit and is licensed to practice wildlife rehabilitation.

(22) "Principal veterinarian" means a licensed veterinarian who ~~((provides))~~ agrees, in writing ~~((their willingness))~~, to assist ~~((the))~~, direct, and supervise a wildlife rehabilitator in conducting wildlife rehabilitation services and activities.

~~((+))~~ (23) "Public display" means to place or locate wildlife so that they may be viewed by the public.

~~((+))~~ (24) "Semi-static areas" mean dedicated indoor spaces within an oiled bird rehabilitation facility where the required size of the space will vary relative to the number of birds to be rehabilitated. These include areas for preparing bird food ~~((preparation, morgue/necropsy, storage))~~, conducting necropsies, and storing and ~~((freezers))~~ freezing items.

~~((+))~~ (25) "Static areas" mean dedicated indoor spaces within an oiled bird rehabilitation facility where the required size of the space does not vary, regardless of the number of birds to be rehabilitated. These areas include ~~((areas for the))~~ isolation/intensive care units, medical ~~((laboratory))~~ laboratories, laundry facilities, and electrical ~~((and))~~ and mechanical ~~((spaces))~~ equipment.

~~((+))~~ (26) "Subpermittee" means persons listed on the primary permittee's (also "wildlife rehabilitator") wildlife rehabilitation permit who care for wildlife away from the rehabilitation facility with the permission and under the direction of the primary licensed wildlife rehabilitation permittee ("primary permittee"). The primary permittee is responsible for monitoring and approving the subpermittee's conduct and practices.

(27) "Veterinarian" means a licensed veterinarian.

(28) "Wash/rinse resources" mean the water, cleaning agent, and space requirements necessary to remove oil from the skin and feathers of a bird.

~~((+))~~ (29) "Wildlife rehabilitation" means the care and treatment of injured, diseased, oiled, or abandoned wildlife, including, but not limited to, ~~((capture))~~ capturing, transporting, ~~((veterinary treatment))~~ treating, feeding, housing, ~~((exercise therapy))~~ conditioning, and ~~((any other treatment or))~~ training ~~((necessary for release))~~ animals so they can be released back to the wild.

~~((+))~~ (30) "Wildlife rehabilitation facility," or "facility," means the authorized site(s), as shown on the wildlife

rehabilitation permit, where ((the)) treatment and rehabilitation of wildlife takes place.

~~((x))~~ (31) "Wildlife rehabilitation permit" means a permit issued by the director that authorizes a person to practice wildlife rehabilitation.

(32) "Wildlife rehabilitator" means a person who conducts wildlife rehabilitation ~~((or someone who conducts wildlife rehabilitation under the supervision of a valid wildlife rehabilitation permit holder.~~

~~(y) "Wildlife rehabilitation permit" means a permit issued by the director, or director's designee, that authorizes a person, or someone under the supervision of a valid wildlife rehabilitation permit holder, to conduct wildlife rehabilitation.~~

(2) It shall be unlawful for any person to possess wildlife for the purpose of rehabilitation unless:

(a) They have a valid wildlife rehabilitation permit; or

(b) They are working under the supervision of a person who has a valid wildlife rehabilitation permit.

(3) A wildlife rehabilitation permit may be issued to a person to conduct or oversee wildlife rehabilitation and is valid so long as the information in the permit remains current, the permit holder continues to meet the conditions and requirements of the permit, and provisions of this rule are followed. Any change to the information on the permit must be reported in writing within ten working days or the permit may be invalidated.

(4) The director, or director's designee, may issue and condition a wildlife rehabilitation permit if the applicant complies with the following:

(a) The applicant is either a licensed veterinarian or can demonstrate six months of experience in wildlife rehabilitation, which must include three months during the spring or summer and has a principal veterinarian as a sponsor. The director, or director's designee, may consider education in wildlife rehabilitation as a substitute for experience.

(b) The applicant must successfully complete a wildlife rehabilitator's examination(s) as prescribed by the director, or director's designee.

(c) The wildlife rehabilitation facility is inspected by the department and meets the wildlife rehabilitation care and facility standards for wildlife in the *Washington State Wildlife Rehabilitation Facility and Care Standards* pamphlet. In order for the wildlife rehabilitation permit to allow for the rehabilitation of oiled birds, the facility also needs to meet the requirements in subsection (24) of this section. When facility requirements in subsection (24) of this section conflict with requirements in the *Wildlife Rehabilitation Facility and Care Standards* pamphlet, subsection (24) of this section shall take precedence.

(5) The wildlife rehabilitation permit holder must maintain and upon request make available to the department, a wildlife rehabilitation daily ledger. The ledger must include the date the wildlife is received, the species and nature of the illness, the location where the wildlife was found, the date and disposition of the wildlife, the release location, and if any, tags and/or band numbers. It is unlawful for a wildlife rehabilitation permit holder to fail to enter required information in the wildlife rehabilitation ledger within twenty-four

hours of the day wildlife is received and on the day of all subsequent activities as required in the ledger.

(6) The wildlife rehabilitation permit holder must submit to the department no later than January 31 of each year an annual report providing information as required by the director, or director's designee, and a copy of the daily ledger. Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(7) All permits and records held pursuant to statutes and rules dealing with wildlife rehabilitation will be kept on file at the wildlife rehabilitation facility. The records will be retained for a period of five years.

~~(8) A copy of the valid wildlife rehabilitation permit must be in possession of any person possessing or transporting wildlife for the wildlife rehabilitation facility.~~

(9) The wildlife rehabilitation permit holder will notify the department within twenty-four hours of receiving a state or federal endangered or threatened species or an oiled bird; within seventy-two hours of receiving a state sensitive species or marked, tagged, or banded wildlife; and prior to release of threatened or endangered species or oiled birds. The release notification information relative to oiled birds shall include the number of birds being released, the species of birds being released, the proposed location of the release, and the proposed date/time of release.

(10) The wildlife rehabilitation permit holder will notify the department within twenty-four hours after the death of an oiled bird or a state or federal endangered or threatened species; or as soon as an endangered or threatened species is determined to be nonreleasable to the wild. Oiled birds or endangered or threatened species will not be disposed of or euthanized without prior department approval.

(11) Rehabilitated wildlife may be banded or otherwise identified by the department.

(12) The wildlife rehabilitation permit holder will notify the department, within five working days from the date of death, of any wildlife known to have died of the following diseases: Avian cholera, avian pox, duck viral enteritis, environmental contaminants, ornithosis, Newcastle's disease, rabies, canine distemper or tuberculosis (in species other than birds).

(13) Rehabilitated wildlife will be released as soon as possible into its proper habitat in the same area as recovered, except as provided by written authorization from the director or director's designee. Rehabilitated oiled birds shall only be released in the same area as recovered when the threat of becoming reoiled no longer exists. If the area that they were recovered in is not clean enough to allow for their release at that location, department approval is required prior to releasing rehabilitated oiled birds in another location.

(14) It is unlawful to hold wildlife for longer than one hundred eighty days, except as provided by written authorization from the director, or director's designee.

(15) Dead wildlife, excluding oiled birds, will be disposed of through deposit at an approved Washington state university or college, a permitted research project or through burial, incineration, or a licensed rendering facility. The wildlife rehabilitation permit holder shall notify the department when in possession of dead oiled birds. Dead oiled birds shall not be disposed of without prior department approval.

(16) It is unlawful to publicly display wildlife while it is undergoing rehabilitation.

(17) It is unlawful to retain wildlife for the purpose of orphan imprinting or to retain feathers of protected or endangered wildlife for the purpose of "imping," except as provided by written authorization from the director, or director's designee.

(18) It is unlawful for wildlife being held for rehabilitation to be used for propagation.

(19) Wildlife being held for the purposes of rehabilitation must be kept separate from wildlife held under other licenses and domestic animals, except as provided by written authorization from the director, or director's designee.

(20) The wildlife rehabilitation permit holder may receive from the department and possess at the wildlife rehabilitation facility, dead wildlife for the purpose of feeding wildlife being rehabilitated.

(21) Fish and wildlife enforcement officers may inspect at reasonable times and in a reasonable manner the wildlife, permits, records, and wildlife rehabilitation facility of any wildlife rehabilitator.

(22) Any wildlife rehabilitation permit holder who fails to comply with any condition within the holder's permit or any provision of this rule is in violation of the permit and the permit may be revoked. Any wildlife rehabilitation permit holder found in violation of the permit conditions, with the exception of oiled-bird facility requirements, may provide to the department a plan for corrective action, within ten days, to return to compliance. Any wildlife rehabilitation permit holder with an acceptable plan for corrective action to violations other than oiled bird facility requirements will be given a minimum of thirty days to correct a permit violation prior to revocation. Wildlife rehabilitation permit holders found in violation of oiled bird rehabilitation facility requirements shall correct these violations within twenty-four hours to avoid revocation of their authorization to rehabilitate oiled birds.

(23) All wildlife held by a wildlife rehabilitation permit holder remains the property of the state, is subject to control by the state and will not be offered for sale or sold.

(24) Oiled bird rehabilitation facility requirements. The facility requirements listed in this subsection address oiled bird health and safety. The department of labor and industries and other government agencies may have additional requirements relating to human health and safety.

(a) Air temperature and air exchange requirements: This section refers to the air temperature and air exchange requirements within indoor areas.

(i) Air temperature: All indoor areas shall have the means to control air temperature and shall be adjustable and maintainable at any given air temperature between 65°F–85°F. When the number of birds in an oiled bird rehabilitation facility at a given time exceeds fifty, the following shall also apply:

(A) Intake and prewash holding areas shall be air temperature controlled independently of other oiled bird rehabilitation facility areas but may be controlled together;

(B) Wash/rinse and drying areas shall be air temperature controlled independently of other oiled bird rehabilitation facility areas but may be controlled together; and

(C) The isolation/intensive care unit shall be air temperature controlled independently of other oiled bird rehabilitation facility areas.

(ii) Air exchange: All indoor areas shall have the means to exchange the air volume a minimum of ten times per hour with fresh air from outside.

The fresh air exchange rate for any given indoor area may be reduced by the use of an air recirculation system that employs a high efficiency particulate air (HEPA) filter and an activated carbon filter. The volume of air filtered by the recirculation system may replace an equal volume of air in the fresh air exchange requirement. No more than ninety percent of the fresh air exchange requirement shall be met by recirculation. The filters in the recirculation system shall be maintained in accordance with the manufacturer's recommendations. When the number of birds in an oiled bird rehabilitation facility at a given time exceeds fifty, the following shall also apply:

(A) Intake and prewash holding areas may be combined on the same air exchange system. Air exchange systems in the intake and prewash holding areas shall be independent of other oiled bird rehabilitation facility air exchange systems; and

(B) Wash/rinse and drying areas may be combined on the same air exchange system. Air exchange systems in the wash/rinse and drying areas shall be independent of other oiled bird rehabilitation facility air exchange systems; and

(C) The isolation/intensive care unit air exchange system shall be independent of other oiled bird rehabilitation facility areas; and

(D) The morgue/necropsy air exchange system shall be independent of other oiled bird rehabilitation facility areas.

(b) Intake space requirement: Intake shall occur in an indoor area. Forty square feet of contiguous floor space shall be provided for each group of sixty live or dead oiled birds, or portion of each group of sixty, that have been collected and are awaiting intake. The floor of the intake space shall be impermeable. Water shall not be allowed to accumulate on the floor.

(c) Prewash holding resource requirements: Prewash holding shall occur in an indoor area. Oiled bird rehabilitation pen space and the associated dedicated workspace shall be provided in the prewash holding area.

(i) Oiled bird rehabilitation pen requirements: Prewash oiled bird rehabilitation holding pens shall be no smaller than two feet in length by two feet in width, and a minimum of two feet high. Prewash oiled bird rehabilitation holding pens shall be constructed with knotless nylon net bottoms with a stretched mesh size of one half inch and shall provide 1.6 square feet of pen space per bird. Oiled bird rehabilitation holding pens shall be constructed in a manner such that no point within the pen is greater than two feet from a pen wall. Oiled bird rehabilitation holding pens shall be elevated a minimum of twelve inches above the floor surface.

(ii) Space requirements: In addition to the space required for prewash oiled bird rehabilitation holding pens, an additional 3.2 square feet of dedicated workspace shall be provided in the prewash holding area for each bird held in the prewash holding area. The floor of the prewash holding area

shall be impermeable. Water shall not be allowed to accumulate on the floor.

(d) Wash/rinse resource requirements: Wash/rinse shall occur in an indoor area. A bird shall be provided wash/rinse space and associated resources within twenty-four hours after intake.

(i) Water requirements: A minimum of three hundred gallons of fresh water with the following characteristics shall be made available within each wash/rinse space for each oiled bird being washed and rinsed:

(A) The water temperature shall be adjustable and maintainable at any given temperature between 102°F–108°F;

(B) The water hardness shall be maintained between 34 mg–85 mg calcium carbonate/liter (2–5 grain hardness);

(C) The water pressure shall be maintained between 40–60 p.s.i.;

(D) The water flow rate shall be not less than two gallons per minute from the wash/rinse supply line measured with the wash/rinse nozzle in place.

(E) All water requirements listed above shall remain within the specified ranges at all times.

(ii) Cleaning agent requirements: Liquid dishwashing detergents are the only cleaning agents that shall be used to remove oil from birds.

(iii) Space requirements: One hundred square feet of contiguous floor space shall be provided for each group of sixteen live oiled birds, or portion of each group of sixteen, that are ready to be washed and rinsed. The floor of the wash/rinse area shall be impermeable. Water shall not be allowed to accumulate on the floor.

(e) Drying resource requirements: Drying shall occur in an indoor area. Oiled bird rehabilitation pen space and the associated dedicated workspace shall be provided in the drying area. Drying shall be accomplished by warming the air in the drying pen. The drying temperature shall be adjustable and maintainable at any given temperature between 90°F–106°F.

(i) Oiled bird rehabilitation drying pen requirements: Oiled bird rehabilitation drying pens shall be no smaller than three feet in length by two feet in width; and a minimum of two feet high. Oiled bird rehabilitation drying pens shall be constructed with knotless nylon net bottoms with a stretched mesh size of one-half inch and shall provide 2.7 square feet of pen space per bird. Each oiled bird rehabilitation pen shall be constructed in a manner such that no point within the pen is greater than two feet from a pen wall. Oiled bird rehabilitation drying pens shall be elevated a minimum of twelve inches above the floor surface. If prewash oiled bird rehabilitation holding pens meet the criteria for use as oiled bird rehabilitation drying pens and are used in the drying process, they must be cleaned of oil residue prior to use.

(ii) Space requirements: In addition to the space required for oiled bird rehabilitation drying pens, an additional 3.2 square feet of dedicated workspace shall be provided in the drying area for each bird held in the drying area. The floor of the drying area shall be impermeable. Water shall not be allowed to accumulate on the floor.

(f) Oiled bird rehabilitation pool resource requirements: Oiled bird rehabilitation pools shall be filled with unheated fresh water. Oiled bird rehabilitation pool space shall be pro-

vided immediately after a bird has been dried, and shall be provided until the bird is released.

(i) Oiled bird rehabilitation pool requirements: Each bird shall be afforded a minimum of 7.5 square feet of water surface space (e.g., a twelve-foot diameter oiled bird rehabilitation pool shall house not more than fifteen birds). Each oiled bird rehabilitation pool shall be of dimensions such that no point within the pool is greater than eight feet from a side of the pool. In addition, each oiled bird rehabilitation pool shall have a breathable cover to prevent birds from escaping. Each oiled bird rehabilitation pool shall be constantly supplied with water sufficient to maintain a depth of three feet and an exchange rate of not less than four and one-quarter times per day. Water exiting the oiled bird rehabilitation pool shall come from the surface of the pool so that floating debris and oil are removed. Water from oiled bird rehabilitation pools may be reused within a facility if made oil free.

(ii) Space requirements: Oiled bird rehabilitation pools shall be within the oiled bird rehabilitation facility. Oiled bird rehabilitation pools shall be no closer than four feet from another structure.

(g) Semi-static areas:

Space requirements: Semi-static areas shall be indoor areas. The floors in semi-static areas shall be impermeable. Water shall not be allowed to accumulate on the floor. When the total number of birds in an oiled bird rehabilitation facility, on a given day, is less than fifty, there are no minimum space requirements for semi-static areas. When the total number of birds in an oiled bird rehabilitation facility, on a given day, is between fifty and one thousand, each semi-static area listed in Table 1 shall be allocated the associated space. When the total number of birds in an oiled bird rehabilitation facility, on a given day, is between one thousand one and two thousand, each semi-static area listed in Table 1 shall be allocated two times the associated space, and, when the total number of birds in the oiled bird rehabilitation facility, on a given day, is between two thousand one and three thousand, each semi-static area listed in Table 1 shall be allocated three times the associated space, etc. Space for the semi-static areas listed in Table 1 shall be accommodated within an oiled bird rehabilitation facility with the exception of the morgue/ necropsy.

Table 1:

Semi-static area space requirements by activity type.

Area	Space
Morgue/necropsy	250 sq. ft.
Bird food preparation	300 sq. ft.
Storage	100 sq. ft.
Freezers	100 sq. ft.

(h) Static areas:

Space requirements: Static areas shall be indoor areas. The floors in static areas shall be impermeable. Water shall not be allowed to accumulate on the floor. When the total number of birds in an oiled bird rehabilitation facility, on a given day, is less than fifty, there are no minimum space requirements for static areas. When the number of birds in an oiled bird rehabilitation facility, on a given day, exceeds fifty,

each static area listed in Table 2 shall be allocated the associated space. All of the space associated with the areas listed in Table 2 shall be accommodated within an oiled bird rehabilitation facility with the exception of the laundry.

Table 2:
Static area space requirements by activity type.

Area	Space
Isolation/intensive care unit	200 sq. ft.
Medical laboratory	200 sq. ft.
Laundry	200 sq. ft.
Electrical	100 sq. ft.
Mechanical	250 sq. ft.))

and possesses a current wildlife rehabilitator permit from the department.

NEW SECTION

WAC 232-12-841 Wildlife rehabilitation permits—Requirements and restrictions. (1) Wildlife rehabilitation permits.

(a) The department may issue a wildlife rehabilitation permit if the applicant:

(i) Completes and submits a current application form to the department's wildlife rehabilitation manager;

(ii) Demonstrates completion of at least six months, or one thousand hours, of experience in wildlife rehabilitation under the direct supervision of a wildlife rehabilitator. At least three months, or five hundred hours, of this experience must occur during the spring or summer. The department, at its discretion, may consider education in wildlife rehabilitation to suffice as a partial substitute for experience;

(iii) Submits to the department a written letter of recommendation from a wildlife rehabilitator who has two or more years of experience in wildlife rehabilitation and who agrees to advise and assist the applicant in performing wildlife rehabilitation;

(iv) Submits to the department a written agreement from a veterinarian who is willing to serve as the principal veterinarian for the applicant;

(v) Successfully completes the Washington general wildlife rehabilitation examination by correctly answering eighty percent or more of the questions. An applicant who fails the exam may retake it beginning fourteen days from the date of the failed exam.

(vi) Possesses, is employed by, or volunteers at suitable facilities that are inspected and approved by the department.

(b) Veterinarians are exempt from the requirements in (a)(ii) through (v) of this subsection.

(c) The department will determine which species the wildlife rehabilitator is qualified to care for and may tailor the permit according to the applicant's training, experience, capabilities, and facilities.

(d) Wildlife rehabilitators must display the wildlife rehabilitation permit or a copy of the permit in a location at the facility that is visible to the public.

(e) Wildlife rehabilitation permits are valid for up to three years, as long as the information on the permit remains

valid and the permittee adheres to permit conditions and department rules.

(f) Wildlife rehabilitators must report any permit information changes to the department within ten business days of the change.

(g) The department may refuse to issue a wildlife rehabilitation permit to an applicant if the applicant:

(i) Was convicted of a fish or wildlife offense; or

(ii) Was convicted of any offense involving animal cruelty or neglect, or child abuse or neglect.

(2) Large-carnivore rehabilitation endorsement.

(a) A person must possess a large-carnivore rehabilitation endorsement to rehabilitate large carnivores. Large carnivores are brown bear, black bear, cougar, wolf, bobcat, and lynx. The department may issue large-carnivore endorsements to wildlife rehabilitators who:

(i) Have at least three months, or five hundred hours, of direct rehabilitation practice with and handling of large carnivores;

(ii) Have received training in large-animal restraint techniques, including knowledge of proper catchpole use and immobilization-drug administration;

(iii) Submit to the department a written recommendation from a wildlife rehabilitator who has two or more years of experience in large-carnivore rehabilitation and who agrees to advise and assist the applicant in performing large-carnivore rehabilitation;

(iv) Successfully complete the written large-carnivore rehabilitation examination by correctly answering eighty percent or more of the questions. An applicant who fails the exam may retake it beginning fourteen days from the date of the failed exam; and

(v) Possess department-inspected and -approved facilities suitable for large carnivores as required by department rule and the standards set by the International Wildlife Rehabilitation Council (IWRC) and the National Wildlife Rehabilitators Association (NWRA).

(b) Applicants are exempt from the requirements in (a)(i) and (iii) of this subsection if they are or were employed for at least three months or five hundred hours as a zookeeper or wildlife biologist with direct practice handling and housing large carnivores.

(3) Raptor rehabilitation endorsement. A person must possess a raptor rehabilitation endorsement to rehabilitate raptors. The department may issue raptor rehabilitation endorsements to wildlife rehabilitators who:

(a) Demonstrate one hundred hours direct practice with and handling of raptors;

(b) Successfully complete the written raptor rehabilitation examination by correctly answering eighty percent or more of the questions. An applicant who fails the exam may retake it beginning fourteen days from the date of the failed exam; and

(c) Possess department-inspected and -approved facilities suitable for raptor housing and rehabilitation as required by department rule and the standards set by the IWRC and the NWRA; and

(d) Submit to the department a written recommendation from a wildlife rehabilitator who has two or more years of

experience in raptor rehabilitation and who agrees to advise and assist the applicant in performing raptor rehabilitation.

(4) Raptors-only rehabilitation permit.

(a) The department may issue raptors-only rehabilitation permits that allow a person to rehabilitate only raptors and no other wildlife. To qualify for these permits, an applicant must:

(i) Demonstrate one hundred hours direct practice with and handling of raptors;

(ii) Successfully complete the raptor rehabilitation examination by correctly answering eighty percent or more of the questions. An applicant who fails the raptor rehabilitation examination may retake it beginning fourteen days from the date of the failed exam;

(iii) Submit to the department a written recommendation from a wildlife rehabilitator who has two or more years of experience in raptor rehabilitation and who agrees to advise and assist the applicant in performing raptor rehabilitation; and

(iv) Possess department-inspected and -approved facilities suitable for raptor housing and rehabilitation as required by department rule and IWRC/NWRA.

(b) General falconers licensed for three years or more and master falconers are exempt from the requirements in (a)(i) and (iii) of this subsection.

(5) Oiled-wildlife rehabilitation endorsement. An oiled-wildlife rehabilitation endorsement is required to rehabilitate oiled-wildlife. The department may issue oiled-wildlife rehabilitation endorsements to wildlife rehabilitators who possess or have permission to access or use department-inspected and -approved facilities for oiled-wildlife.

(6) Wildlife rehabilitation permit renewal. To renew a wildlife rehabilitation permit, the permittee must submit the following information at least thirty days prior to his or her permit expiring:

(a) A new, completed wildlife rehabilitation permit application form; and

(b) Documentation demonstrating ten hours or more of continuing education during the previous permit period. Continuing education includes:

(i) Documented attendance at state wildlife rehabilitator meetings, NWRA annual meetings, or IWRC Annual Symposiums;

(ii) A certificate of completion of an IWRC online or in-person class;

(iii) Completion and documented attendance of privately offered wildlife rehabilitation training;

(iv) Completion and documented attendance of wildlife rehabilitation classes at a college or university;

(v) Documented training with a wildlife rehabilitator; or

(vi) Other continuing education activities as approved by the department.

(7) Reinstatement of expired permits.

(a) A permit expired for less than three years may be reinstated for the facility and species listed on the expired permit so long as the facilities have not changed within that three-year period. If the facilities change after the permit expires, the department must inspect and approve the facilities before the permit is reinstated.

(b) Permits expired for three years or more may be reinstated if:

(i) The applicant possesses facilities that meet the standards set by the department, the NWRA, and the IWRC's minimum standards for wildlife rehabilitation for treating and housing wildlife for rehabilitation;

(ii) The facilities are inspected and approved by the department; and

(iii) The applicant takes and successfully completes the Washington general wildlife rehabilitation examination, the raptor rehabilitation examination, or large carnivore rehabilitation examination, whichever examination is applicable, by correctly answering eighty percent or more of the questions. An applicant who fails the examination may retake it beginning fourteen days from the date of the failed exam.

(8) Out-of-state wildlife rehabilitators. Wildlife rehabilitators who have a current wildlife rehabilitation permit or a comparable permit issued by another state, and who move to Washington state for the purpose of residency and wish to practice wildlife rehabilitation in Washington, must follow the same procedures and requirements as a new applicant for a Washington state wildlife rehabilitation permit. However, out-of-state wildlife rehabilitators are exempt from the requirement of providing a letter of recommendation from another wildlife rehabilitator.

(9) A violation of this section by a person who engages in wildlife rehabilitation without a department permit is punishable under the appropriate statute for the species being rehabilitated, including RCW 77.15.120 for endangered fish or wildlife; RCW 77.15.130 for protected fish or wildlife; RCW 77.15.400 for wild birds; RCW 77.15.410 for big game; and RCW 77.15.430 for wild animals not classified as big game.

(10) A violation of this section by a person who has a wildlife rehabilitation permit is punishable under RCW 77.15.750(1), Unlawful use of a department permit—Penalty.

NEW SECTION

WAC 232-12-843 Wildlife rehabilitation—Responsibilities of primary permittees and subpermittees.

(1) A primary permittee on a wildlife rehabilitation permit is the person who applies for the permit. A primary permittee may include other persons on his or her permit. These other people, known as "subpermittees," operate with the permission and under the direction of the primary permittee.

(2) A primary permittee has the following responsibilities for his or her subpermittees:

(a) Ensuring that subpermittees listed on the permit abide by the permit's conditions and state and federal laws and regulations, when conducting wildlife rehabilitation practices or actions associated with wildlife rehabilitation on or off the facility premises; and

(b) Notifying the department within ten business days of removing or adding a subpermittee or changing the address of a subpermittee's facilities.

(3) Subpermittees must:

(a) Be listed on the primary permittee's wildlife rehabilitation permit;

(b) Be eighteen years of age or older;

(c) Be employed by or a registered volunteer for the primary permittee's wildlife rehabilitation facility, have assisted or observed all facets of wildlife care practices at the facility, and possess sufficient experience to tend to the species in his or her care to the satisfaction of the primary wildlife rehabilitator and the department;

(d) Possess direct contact information for at least one other employee or volunteer of the permitted facility in addition to the primary permittee, who the subpermittee must be able to reach at any time;

(e) Have read the national wildlife rehabilitators association/international wildlife rehabilitation council minimum standards for wildlife rehabilitation and retained a copy of the publication for reference; and

(f) Comply with all federal migratory bird treaty act rules.

(4) A violation of this section by a primary permittee or a subpermittee is punishable under RCW 77.15.750(1), Unlawful use of a department permit—Penalty.

NEW SECTION

WAC 232-12-845 Wildlife rehabilitation—Permit revocation, modification, or suspension. (1) The department may revoke, modify, or suspend a wildlife rehabilitation permit if the primary permittee or a subpermittee violates any conditions of the permit. Such violations include, but are not limited to:

(a) Violating a department rule;

(b) Failing to comply with permit conditions;

(c) Failing to provide adequate facilities for the care and housing of wildlife;

(d) Possessing a species of wildlife not expressly permitted in the wildlife rehabilitation permit or by department authorization;

(e) Failing to provide adequate care, feed for, or maintenance of the health of wildlife in the permittee's care;

(f) Treating wildlife in the permittee's care inhumanely, or negligently, or keeping the wildlife in unsanitary conditions;

(g) Publicly displaying wildlife in rehabilitation or using wildlife in rehabilitation for public education or profit;

(h) Improperly handling, imprinting, habituation, or taming wildlife at the facility; or

(i) Failing to maintain a daily patient log or ledger.

(2) A primary permittee who is in violation of permit conditions or department wildlife rehabilitation rules, or whose subpermittee is in violation of permit conditions or department wildlife rehabilitation rules, except for oiled bird facility requirements as provided in WAC 232-12-869, may provide a corrective-action plan to return to compliance. The primary permittee must provide the plan to the department within ten days of the notice of the violation. If the department accepts the plan for corrective action, it will allow the primary permittee at least thirty days to correct the permit violation. If the primary permittee fails to return to compliance by the deadline the department gave him or her, the department may revoke his or her permit.

(3) If the department revokes, suspends, or modifies a permit, then the department or the U.S. Fish and Wildlife Service may seize and find a new rehabilitator for the primary permittee's wildlife.

(4) The department's revocation, modification, or suspension of a rehabilitation permit under this section does not preclude the department from taking criminal action against the primary permittee, subpermittee, or both.

(5) Any primary permittee whose rehabilitation permit is revoked, modified, or suspended under this section may request an administrative hearing to appeal the department's action. The department will administer such appeals in accordance with chapter 34.05 RCW, the Administrative Procedure Act.

NEW SECTION

WAC 232-12-847 Wildlife rehabilitation—Facility requirements and inspections—On- and off-site care. (1) The facility requirements listed in this section address wildlife health and safety. The department of labor and industries and other local, state, or federal agencies may have additional requirements relating to human health and safety. It is the primary permittee's responsibility to comply with all state and federal laws and regulations, and to ensure that his or her subpermittees do the same.

(2) Facilities.

(a) Primary permittees on a wildlife rehabilitation permit must maintain approved facilities that meet the standards set by the department, the National Wildlife Rehabilitators Association (NWRRA), and the International Wildlife Rehabilitation Council's (IWRC) minimum standards for wildlife rehabilitation, unless as otherwise provided by the department. More information on facilities requirements is available at www.wdfw.wa.gov.

(b) All wildlife held under a wildlife rehabilitation permit must be maintained in humane, healthful, and secluded conditions.

(c) The wildlife rehabilitation facility must protect wildlife from predators, weather extremes, undue human contact and noise, and domestic animals.

(d) In-home wildlife rehabilitation facilities must designate separate and exclusive rooms used only for wildlife housing, treatment, and rehabilitation. It is unlawful to house, treat, or handle wildlife in other parts of the residence. It is unlawful to house or treat wildlife anywhere human food is prepared, stored, or consumed.

(e) The primary permittee must notify the department at least thirty days prior to moving if he or she intends to transfer his or her wildlife rehabilitation facilities to another location. The new facilities must pass a department facility inspection before wildlife is moved to the new facility.

(f) The wildlife rehabilitation facility must be associated with a primary permittee at all times. If a facility is left with no primary permittees, facility personnel must notify the department within five days of the departure of the last primary permittee. The facility has thirty days in which to bring a primary permittee into the facility. After thirty days, if the facility is no longer associated with a primary permittee, the

facility must transfer wildlife to another facility associated with a primary permittee.

(3) Off-site care.

(a) A primary permittee is responsible for ensuring that his or her off-site facilities, or those of his or her subpermittee, meet all species- and treatment-stage-specific facility requirements as provided by department rule.

(b) A primary permittee, or subpermittee authorized to care for wildlife off-site from the wildlife rehabilitation facilities, must have adequate facilities to house the species in his or her care, based on the criteria for wildlife rehabilitation facilities outlined in the NWRA/IWRC minimum standards for wildlife rehabilitation.

(c) It is unlawful for a subpermittee to care for wildlife in his or her off-site facility, or for the primary permittee to transfer wildlife to the subpermittee, unless the following requirements are met:

(i) The primary facility is overcrowded or there is a need for twenty-four-hour or after-hours care, such as nestling care or nursing small mammals, or critical care;

(ii) The subpermittee only houses the following species off-site: Common small mammals (except bats), ducks and geese (except swans), pheasant, grouse, quail, pigeon and dove, woodpeckers (except pileated woodpecker), and songbirds and perching birds;

(iii) The wildlife receives an initial intake exam at the primary permittee's facility before wildlife is transferred to the subpermittee for off-site care;

(iv) The wildlife exhibits no signs of a reportable disease;

(v) The subpermittee follows a treatment plan developed by the veterinarian or primary permittee if a treatment plan is prescribed for any nonreportable condition;

(vi) The subpermittee returns the animal to the wildlife rehabilitation facility under which the subpermittee is permitted as soon as the facility is able to care for the animal, such as space becoming available; and

(vii) The subpermittee possesses a copy of the wildlife rehabilitation permit at all times while in possession of wildlife, including while transporting wildlife for the wildlife rehabilitation facility.

(d) It is unlawful for a subpermittee to house large carnivores at his or her off-site facilities.

(e) It is unlawful for a subpermittee to house, possess, care for, or treat state and federally designated threatened or endangered species at his or her off-site facilities.

(4) Inspections.

(a) Wildlife rehabilitation facilities, records, equipment, and animals may be inspected without advance notice at reasonable times and in a reasonable manner by authorized state or federal personnel. This includes off-site wildlife rehabilitation facilities, records, equipment, and animals.

(b) Inspecting authorities may not enter the facilities or disturb wildlife unless the primary permittee, a subpermittee, or a designated staff member or volunteer is present.

(c) If wildlife rehabilitation facilities are on property owned by a person other than the primary permittee or a subpermittee, the permittee must submit a signed, dated statement in which the property owner:

(i) Gives written permission to the permittee to engage in wildlife rehabilitation on the property; and

(ii) Agrees that the wildlife rehabilitation facilities may be inspected by the department at reasonable times and in a reasonable manner.

(5) A violation of this section by a primary permittee or a subpermittee is punishable under RCW 77.15.750(1), Unlawful use of a department permit—Penalty.

NEW SECTION

WAC 232-12-849 Wildlife rehabilitation—Releasing wildlife. (1) A primary permittee must release rehabilitated wildlife according to subsection (3) of this section as soon as the animal is deemed physically, behaviorally, and psychologically capable of surviving in the wild.

(2) A primary permittee must obtain department authorization if he or she wishes to retain wildlife longer than the one hundred eighty-day time limit normally allowed for wildlife rehabilitation. The department will grant an extension of time if the permittee needs to find suitable placement for the wildlife, or the wildlife is over-wintering, molting, or completing recovery.

(3) A primary permittee must release wildlife into the same area from which the wildlife was taken. If doing this poses a substantial risk to the health or safety of the wildlife or humans, the permittee may release the wildlife at a location within its normal individual range and appropriate habitat. The primary permittee must obtain department approval prior to releasing wildlife at a location other than where it was taken or outside its normal individual range. The department may direct the permittee to release wildlife at a location other than where the wildlife was taken.

(4) A group of unrelated wildlife that are of the same species and that were raised together for socialization purposes may be released at the same location even if that location is not where the wildlife was originally taken. All other release requirements must be followed.

(5) If a primary permittee does not know where wildlife was originally taken, he or she must release the wildlife into appropriate habitat and at a location where substantial risk to the health or safety of the wildlife and humans is minimal. Primary permittees must obtain department authorization for the release location prior to releasing cervids, large carnivores, or coyotes.

(6) The primary permittee must notify the department at least seventy-two hours prior to releasing state or federally designated threatened, endangered, or sensitive species.

(7) Hacking of orphaned raptors is permitted at or through a permitted facility where appropriate hacking facilities are available.

(8) A violation of this section is punishable under RCW 77.15.750(1), Unlawful use of a department permit—Penalty.

NEW SECTION

WAC 232-12-851 Wildlife rehabilitation—Veterinary care. (1) Veterinarians may provide initial care for wildlife without a wildlife rehabilitation permit. However, veterinarians must transfer the wildlife to a primary permittee

after stabilizing the wildlife, preferably within forty-eight hours of receiving wildlife.

(2) A violation of this section is punishable under the statute for the species being rehabilitated, including RCW 77.15.120 for endangered fish or wildlife; RCW 77.15.130 for protected fish or wildlife; RCW 77.15.400 for wild birds; RCW 77.15.410 for big game; and RCW 77.15.430 for wild animals not classified as big game.

(3) A wildlife rehabilitation permit is not a veterinary license.

NEW SECTION

WAC 232-12-853 Wildlife rehabilitation—Records retention and reporting requirements. (1) This section contains records retention and reporting requirements for primary permittees on wildlife rehabilitation permits. Other state and federal laws and regulations may require additional records retention and reporting. It is the primary permittee's responsibility to comply with all state and federal laws and regulations, and to ensure that his or her subpermittees do the same.

(2) Retaining records.

(a) The primary permittee must keep all required permits and records at the wildlife rehabilitation facility and retain those permits and records for a period of five years.

(b) The primary permittee must make the permits and records available for inspection by department personnel upon request.

(3) Daily ledger.

(a) The primary permittee must record the following information in his or her daily ledger and report the information to the department within twenty-four hours of the rehabilitation activity occurring: All wildlife acquisitions; transfers; admissions; releases; deaths; reasons for admission; nature of illness or injury; dates of release, transfer, or any other disposition; and any tag or band numbers.

(b) The primary permittee must make the daily ledger available for inspection by department personnel upon request.

(4) Annual report.

(a) The primary permittee must fill out the annual report form provided by the department and submit the annual report to the department no later than January 31st of each year.

(b) Along with the annual report form, the primary permittee must submit a copy of his or her daily ledger containing records for the year.

(5) Reporting requirements for threatened, endangered, or sensitive wildlife.

(a) The primary permittee must notify the department within twenty-four hours of receiving wildlife designated as a threatened or endangered species under state or federal laws or rules.

(b) The primary permittee must notify the department within seventy-two hours of receiving a state designated sensitive species or marked, tagged, or banded wildlife.

(c) The primary permittee must notify the department within twenty-four hours if a state or federally designated threatened or endangered species in his or her possession

dies. The primary permittee must receive prior department approval before disposing of deceased state or federally designated threatened or endangered species.

(6) The primary permittee must notify the department within seventy-two hours if he or she admits any wildlife that has a band, research marker, tag, or transmitter attached to it. The primary permittee must include band numbers and any other relevant information in the report. Primary permittees must send these reports, in writing, to the department's wildlife rehabilitation manager at P.O. Box 43200, Olympia, WA 98504-3200, or at rehabcoord@dfw.wa.gov.

(7) The primary permittee must report the following diseases, confirmed by a veterinarian, to the department's wildlife veterinarian within twenty-four hours of diagnosis: West Nile virus, white-nose syndrome, avian cholera, avian pox, duck viral enteritis, psittacosis, rabies, environmental toxins, canine distemper, tuberculosis, Newcastle disease, salmonellosis, hair loss syndrome, deer adenovirus, plague, leptospirosis, and tularemia.

(8) If wildlife is stolen or missing from a primary permittee or subpermittee, the primary permittee must report the stolen or missing wildlife to the department and to the U.S. Fish and Wildlife Service Regional Law Enforcement office within twenty-four hours of discovering the theft of the wildlife.

(9) A violation of this section is punishable under RCW 77.15.750(1), Unlawful use of a department permit—Penalty.

NEW SECTION

WAC 232-12-855 Wildlife rehabilitation—Falconers assisting with raptor rehabilitation. (1) A general or master falconer may assist a primary permittee in rehabilitating raptors to prepare the birds for release into the wild so long as the primary permittee and falconer comply with all applicable federal rules. Only master-class falconers may assist in rehabilitating bald or golden eagles.

(2) If the raptor is assigned to a falconer, the primary permittee must provide the falconer with:

(a) A copy of the U.S. Fish and Wildlife Service (USFWS) wildlife rehabilitation permit showing the falconer listed as a subpermittee; and

(b) A written document identifying the bird and explaining that the falconer is assisting in the bird's rehabilitation. The written document must accompany the raptor at all times, including during transport and at the housing location of the raptor. Raptors held by falconers for rehabilitation remain under the primary permittee's permit.

(3) The primary permittee is responsible for ensuring that falconers adhere to permit terms, state law, department rules, and federal law and regulations at all times when assisting in rehabilitation activities under the primary permittee's rehabilitation permit.

(4) A falconer may house and treat a raptor undergoing rehabilitation at an approved falconry facility that does not meet wildlife rehabilitation facility standards so long as the facility meets the standards under department rule for housing raptors.

(5) Any raptor that cannot be permanently released into the wild must be returned to the primary permittee or transferred to the department within one hundred eighty days, unless:

(a) The department authorizes retaining the raptor for longer than one hundred eighty days; or

(b) The primary permittee or department transfers the raptor to a permitted educational facility.

(6) A primary permittee may transfer a raptor directly to a falconer for falconry purposes so long as the falconer can lawfully possess the species of raptor and complies with all applicable state and federal laws and regulations. The primary permittee must notify the department of the transfer of the raptor to a falconer within ten days of the transfer. The USFWS may also require notification of raptor transfers and release. It is the primary permittee's and falconer's responsibility to ensure compliance with all state and federal laws and regulations.

(7)(a) A violation of this section by a primary permittee is punishable under RCW 77.15.750(1), Unlawful use of a department permit—Penalty.

(b) A violation of this section by a falconer assisting a primary permittee is punishable under the statute for the species being rehabilitated, including RCW 77.15.120 for endangered birds; RCW 77.15.130 for protected birds; and RCW 77.15.400 for all other wild birds.

NEW SECTION

WAC 232-12-857 Wildlife rehabilitation—Transfer, import, and export of wildlife. (1) A primary permittee may import wildlife into Washington state for wildlife rehabilitation purposes if it is legal to import that species and the primary permittee possesses a health certificate for the animal.

(2) It is unlawful to transfer Washington state mammals to an out-of-state rehabilitator without obtaining prior department approval.

(3) It is unlawful to import species in the order Cervidae, and rabies vector species, into Washington state for rehabilitation purposes.

(a) Cervids are Roosevelt and Rocky Mountain elk, mule deer, black-tailed deer, white-tailed deer, moose, and caribou.

(b) Rabies vector species are bat, skunk, fox, raccoon, and coyote.

(4) Transferring wildlife for socialization.

(a) Transferring wildlife undergoing rehabilitation between Washington wildlife rehabilitators for the purpose of orphan imprinting, appropriate companionship, socialization, appropriate species behavior maintenance, flight conditioning and specialized care is permissible and encouraged.

(b) Wildlife possessed for rehabilitation may be transferred between Washington wildlife rehabilitators without prior department approval if the receiving wildlife rehabilitator is permitted to possess those species.

(5) A violation of this section is punishable under RCW 77.15.290, Unlawful transportation of fish or wildlife—Penalty.

NEW SECTION

WAC 232-12-859 Wildlife rehabilitation—Possession of dead wildlife and wildlife parts. (1) A primary permittee may receive and possess dead wildlife from the department for the purpose of feeding wildlife in rehabilitation.

(2)(a) A primary permittee may possess bird feathers for imping as long as he or she possesses a valid wildlife rehabilitation permit. Permittees may receive or exchange feathers of birds from and with other wildlife rehabilitators if the rehabilitators possess and comply with necessary U.S. Fish and Wildlife Service migratory bird treaty act permits.

(b) A primary permittee may donate feathers from rehabilitation birds to any person or institution with a valid permit to possess feathers, except feathers from golden eagle or bald eagle.

(c) A primary permittee may leave feathers that are molted or otherwise lost by a bird in wildlife rehabilitation where they fall, store the feathers, or destroy the feathers, except that the rehabilitator must gather primary or secondary flight feathers or retrices from golden eagle and bald eagle and send these feathers or retrices, if not kept for imping, to the National Eagle Repository.

(d) A primary permittee whose permit is expired, suspended, or revoked must donate any feathers from wildlife that was in his or her care to a person or institution with a valid permit to possess the feathers, or the primary permittee must burn, bury, or otherwise destroy the feathers.

(3) A violation of this section is punishable under the statute for the species being unlawfully retained, including RCW 77.15.120 for endangered fish or wildlife; RCW 77.15.130 for protected fish or wildlife; RCW 77.15.400 for wild birds; RCW 77.15.410 for big game; or RCW 77.15.430 for wild animals not classified as big game.

NEW SECTION

WAC 232-12-861 Wildlife rehabilitation—Disposition of nonreleasable and habituated, imprinted, and tamed wildlife. (1) A primary permittee may retain live, non-releasable wildlife for the purposes of:

(a) Orphan imprinting, socialization, and appropriate wild behavior retention and development, if the permittee possesses valid U.S. Fish and Wildlife Service (USFWS) permits and written authorization from the department. The department determines whether wildlife may be retained for these purposes on a case-by-case basis. Permittees cannot retain live, nonreleasable wildlife for these purposes if the wildlife is tamed, imprinted, or habituated.

(b) Display and education, if the permittee possesses valid USFWS permits and written authorization from the department.

(i) Wildlife tamed by, imprinted on, or habituated to humans before admission to the primary permittee's facility can be retained for education if the department authorizes this in writing. The department will make such determinations on a case-by-case basis.

(ii) Wildlife tamed, imprinted, or habituated while at the rehabilitation facility cannot be retained for any reason.

(iii) Permittees must house wildlife used for educational purposes separately and out of sight of wildlife in rehabilitation.

(iv) Wildlife retained for education purposes may not be used for orphan imprinting or companionship for wildlife in rehabilitation.

(2) Wildlife tamed by, imprinted on, or habituated to humans while at the primary permittee's facility must be:

(a) Humanely euthanized no later than one hundred eighty days following admission to the rehabilitation facility, to protect the public and to protect the animal from human abuse; or

(b) Transferred within one hundred eighty days following admission to the rehabilitation facility to a facility that the department has authorized to possess wildlife for education or display. In these cases, the primary permittee must notify the department of the transfer within ten working days of the transfer.

(3) A violation of this section is punishable under RCW 77.15.750, Unlawful use of a department permit—Penalty.

NEW SECTION

WAC 232-12-863 Wildlife rehabilitation—Euthanizing protected, threatened, or endangered wildlife and migratory birds. (1) Bald eagles, golden eagles, peregrine falcons and other state or federally endangered or protected wildlife may be euthanized, without prior department approval, if the animal is suffering and untreatable or has a terminal illness or injury. In all other cases, prior department approval must be obtained before euthanizing bald eagles, golden eagles, peregrine falcons, and other state or federally endangered or protected wildlife.

(2) Any bird that has sustained injuries requiring amputation of a leg, foot, or wing at the elbow (humero-ulnar joint) or above, or a bird that is completely blind must be euthanized.

(3) If a migratory bird cannot, after medical management, feed itself, perch upright, or ambulate without inflicting additional injury, the bird must be euthanized.

(4) The primary permittee must comply with all applicable migratory bird treaty act rules when taking action under this section.

(5) A violation of this section is punishable under RCW 77.15.120 for endangered birds; RCW 77.15.130 for protected birds; or RCW 77.15.400 for all other wild birds, depending on the bird species.

NEW SECTION

WAC 232-12-865 Wildlife rehabilitation—Disposing of wildlife remains. (1) Wildlife carcasses must be burned, buried, or otherwise destroyed, according to local laws and regulations, within ten days of the animal's death or after final necropsy by a veterinarian. However:

(a) Wildlife carcasses may be donated to any person or institution authorized under state or federal law to acquire and possess wildlife carcasses or parts.

(b) A primary permittee on a wildlife rehabilitation permit may keep the carcass of any bird, except golden eagle or

bald eagle, so the feathers on the carcass are available for imping and education.

(c) A primary permittee must send the entire carcass of a golden eagle or bald eagle, including all talons, feathers (unless feathers are kept for imping purposes), and other parts, to the National Eagle Repository within thirty days of the bird's death.

(d) A primary permittee may retain wildlife carcasses and skins, instead of disposing of the carcasses or skins, to have the carcass mounted or the skin prepared by a taxidermist for the purpose of public display and education programs. The primary permittee must supply the taxidermist with written documentation that the carcass or skin is possessed pursuant to a wildlife rehabilitation permit. The taxidermist must possess the written documentation at all times while the carcass or skin is in the taxidermist's possession. The primary permittee must keep the mount at the wildlife rehabilitation facility and may use it for public display for education programs. If the wildlife carcass is a banded bird or has an implanted microchip, the band or microchip must stay in place.

(e) A primary permittee who retains a wildlife carcass or parts may only possess the carcass or parts so long as the primary permittee possesses a valid wildlife rehabilitation permit and complies with all applicable federal laws.

(2) A primary permittee must take appropriate precautions to avoid the risk of poisoning scavenging wildlife when disposing of carcasses of euthanized wildlife. Wildlife euthanized by chemical injection may not be buried or taken to a landfill.

(3) A violation of this section by a permittee on a wildlife rehabilitation permit is punishable under RCW 77.15.750, Unlawful use of a department permit—Penalty.

(4) A violation of this section by a person who lacks a valid wildlife rehabilitation permit is punishable under RCW 77.15.120 for endangered birds; RCW 77.15.130 for protected birds; or RCW 77.15.400 for all other wild birds, depending on the bird species.

NEW SECTION

WAC 232-12-867 Wildlife rehabilitation—Prohibition on commercial uses. (1) It is unlawful to sell, offer for sale, purchase, or use for commercial purposes wildlife or parts of wildlife under any circumstances under a wildlife rehabilitation permit.

(2) As long as a primary permittee or rehabilitation facility is not paid and does not collect a fee or receive compensation, the primary permittee may use photographs, films, live video, or other sources of information to:

(a) Provide education on the practice of wildlife rehabilitation or the biology, ecological roles, and conservation needs of wildlife;

(b) Raise funds to support the wildlife rehabilitation facility or wildlife rehabilitation activities, so long as the primary permittee complies to the following criteria:

(i) He or she may not require payment or sell items, but may request a "suggested donation." Money exchanged for any item must be by donation only. A primary permittee may not refuse to give an item to a person if the person refuses to

donate money or donates less money than the suggested donation;

(ii) All funds received through fund-raising efforts must go to operating the wildlife rehabilitation facility or supporting wildlife rehabilitation activities; and

(iii) The primary permittee may not keep money received through fund-raising efforts for personal use.

(3) A violation of this section is punishable under RCW 77.15.260 or 77.15.750, or both.

NEW SECTION

WAC 232-12-869 Oiled bird rehabilitation—Facility requirements. (1) The facility requirements listed in this section address oiled bird health and safety. The department of labor and industries and other government agencies may have additional requirements relating to human health and safety. It is the primary permittee's responsibility to ensure compliance with all state and federal laws and regulations.

(2) Air temperature and air exchange requirements within indoor areas:

(a) Air temperature: A primary permittee must ensure that the air temperature in all indoor areas where live birds are kept is adjustable and can be maintained at between 65°F - 85°F. When the number of birds in an oiled bird rehabilitation facility at a given time exceeds fifty, the following requirements also apply:

(i) Intake and prewash holding areas must be air-temperature controlled independently of other oiled bird rehabilitation facility areas. However, intake and prewash holding areas may be controlled together;

(ii) Wash/rinse and drying areas must be air-temperature controlled independently of other oiled bird rehabilitation facility areas. However, wash/rinse and drying areas may be controlled together; and

(iii) The isolation/intensive care unit must be air-temperature controlled independently of other oiled bird rehabilitation facility areas.

(b) Air exchange: A primary permittee must ensure that all indoor areas where live birds are kept allow the exchange of the air volume a minimum of ten times per hour with fresh air from outside.

The fresh-air exchange rate for any given indoor area may be reduced by the use of an air-recirculation system that employs a high efficiency particulate air (HEPA) filter and an activated carbon filter. The volume of air filtered by the recirculation system may replace an equal volume of air in the fresh air exchange requirement. Recirculation cannot account for more than ninety percent of the fresh-air exchange requirement. The filters in the recirculation system must be maintained in accordance with the manufacturer's recommendations. When the number of birds in an oiled bird rehabilitation facility at a given time exceeds fifty, the following requirements also apply:

(i) Intake and prewash holding areas must be independent of other oiled bird rehabilitation facility air-exchange systems, but they may be combined on the same air-exchange system;

(ii) Wash/rinse and drying areas must be independent of other oiled bird rehabilitation facility air-exchange systems, but they may be combined on the same air exchange system;

(iii) The isolation/intensive care unit air-exchange system must be independent of other oiled bird rehabilitation facility areas; and

(iv) The morgue/necropsy air-exchange system must be independent of other oiled bird rehabilitation facility areas.

(3) **Intake space requirement:** Intake of oiled birds must occur in an indoor area. Forty square feet of contiguous floor space must be provided for each group of sixty live or dead oiled birds, or portion of each group of sixty, that have been collected and are awaiting intake. The floor of the intake space must be impermeable. Water must not accumulate on the floor.

(4) **Prewash holding resource requirements:** Prewash holding must occur in an indoor area. Oiled bird rehabilitation pen space and the associated dedicated workspace must be provided in the prewash holding area.

(a) Oiled bird rehabilitation pen requirements: Prewash oiled bird rehabilitation holding pens must be:

(i) Two feet in length by two feet in width or larger;

(ii) At least two feet high;

(iii) Constructed with knotless nylon net-bottoms with a stretched mesh size of one-half inch;

(iv) Constructed so that no point within the pen is greater than two feet from a pen wall;

(v) Elevated twelve inches or more above the floor surface; and

(vi) Constructed to provide 1.6 square feet of pen space per bird.

(b) Space requirements: In addition to the space required for prewash oiled bird rehabilitation holding pens, an additional 3.2 square feet of dedicated workspace must be provided in the prewash holding area for each bird held in the prewash holding area. The floor of the prewash holding area must be impermeable. Water must not accumulate on the floor.

(5) **Wash/rinse resource requirements:** Wash/rinse must occur in an indoor area. A bird must be provided wash/rinse space and associated resources within twenty-four hours after intake.

(a) Water requirements: A minimum of three hundred gallons of fresh water with the following characteristics must be made available within each wash/rinse space for each oiled bird being washed and rinsed:

(i) The water temperature must be adjustable and maintainable at any given temperature between 102°F - 108°F;

(ii) The water hardness must be maintained between 34 mg - 85 mg calcium carbonate/liter (2-5 grain hardness);

(iii) The water pressure must be maintained between 40-60 p.s.i.;

(iv) The water flow rate must be no less than two gallons per minute from the wash/rinse supply line measured with the wash/rinse nozzle in place; and

(v) All water requirements listed above must remain within the specified ranges at all times.

(b) Cleaning agent requirements: The only cleaning agents that may be used to remove oil from birds are liquid dishwashing detergents. Use of any other cleaning agent to

remove oil from birds must be approved by the department prior to use.

(c) **Space requirements:** One hundred square feet of contiguous floor space must be provided for each group of sixteen live oiled birds, or portion of each group of sixteen, that are ready to be washed and rinsed. The floor of the wash/rinse area must be impermeable. Water must not accumulate on the floor.

(6) **Drying resource requirements:** Drying must occur in an indoor area. Oiled bird rehabilitation pen space and the associated dedicated workspace must be provided in the drying area. Drying must be accomplished by warming the air in the drying pen. The drying temperature must be adjustable and maintainable at any given temperature between 90°F - 106°F.

(a) Oiled bird rehabilitation drying pen requirements.

(i) Oiled bird rehabilitation drying pens must be:

(A) A minimum of three feet in length by two feet in width;

(B) At least two feet high;

(C) Constructed with knotless nylon net-bottoms with a stretched mesh size of one-half inch;

(D) Constructed so that no point within the pen is greater than two feet from a pen wall;

(E) Constructed to provide 2.7 square feet of pen space per bird; and

(F) Elevated twelve inches or more above the floor surface.

(ii) If prewash oiled bird rehabilitation holding pens meet the criteria for use as oiled bird rehabilitation drying pens and are used in the drying process, they must be cleaned of oil residue prior to use.

(b) **Space requirements:** In addition to the space required for oiled bird rehabilitation drying pens, an additional 3.2 square feet of dedicated workspace must be provided in the drying area for each bird held in the drying area. The floor of the drying area must be impermeable. Water must not accumulate on the floor.

(7) **Oiled bird rehabilitation pool resource requirements:** Oiled bird rehabilitation pools must be filled with fresh water. Oiled bird rehabilitation pool space must be provided immediately after a bird has been dried, and must be provided until the bird is released.

(a) Oiled bird rehabilitation pool requirements: Water from oiled bird rehabilitation pools may be reused within a facility if made oil-free. Each oiled bird rehabilitation pool must:

(i) Afford a minimum of seven and one-half square feet of water-surface space for each bird (e.g., a twelve-foot diameter oiled bird rehabilitation pool may not house more than fifteen birds);

(ii) Have dimensions so no point within the pool is greater than eight feet from a side of the pool;

(iii) Have a breathable cover to prevent birds from escaping;

(iv) Have a constant supply of water sufficient to maintain a depth of three feet and an exchange rate of not less than four and one-half times per day;

(v) Be constructed so that water exiting the pool comes from the surface of the pool so that floating debris and oil are removed.

(b) **Space requirements:** Oiled bird rehabilitation pools must be located within the oiled bird rehabilitation facility and constructed at least four feet away from another structure.

(8) **Semi-static areas:**

(a) Semi-static areas must be indoor areas constructed with impermeable floors. Water must not accumulate on the floor.

(b) **Space requirements:**

(i) When the total number of birds, on a given day, is less than fifty, there are no minimum space requirements for semi-static areas.

(ii) When the total number of birds, on a given day, is between fifty and one thousand, each semi-static area listed in Table 1, below, must be allocated the associated space.

(iii) When the total number of birds, on a given day, is between one thousand one and two thousand, each semi-static area listed in Table 1 must be allocated two times the associated space.

(iv) When the total number of birds, on a given day, is between two thousand one and three thousand, each semi-static area listed in Table 1 must be allocated three times the associated space, etc.

(v) Space for the semi-static areas listed in Table 1 must be accommodated within an oiled bird rehabilitation facility, with the exception of the morgue/necropsy area.

Table 1
Semi-static area space requirements by activity type.

Area	Space
Morgue/necropsy	250 sq. ft.
Bird food preparation	300 sq. ft.
Storage	100 sq. ft.
Freezers	100 sq. ft.

(9) **Static areas:**

(a) Static areas must be indoor areas constructed with impermeable floors. Water must not be allowed to accumulate on the floor.

(b) **Space requirements:**

(i) When the total number of birds, on a given day, is less than fifty, there are no minimum space requirements for static areas.

(ii) When the number of birds, on a given day, exceeds fifty, each static area listed in Table 2 must be allocated the associated space.

(iii) All of the space associated with the areas listed in Table 2 must be accommodated within an oiled bird rehabilitation facility, with the exception of the laundry area.

Table 2
Static area space requirements by activity type.

Area	Space
Isolation/intensive care unit	200 sq. ft.
Medical laboratory	200 sq. ft.

Area	Space
Laundry	200 sq. ft.
Electrical	100 sq. ft.
Mechanical	250 sq. ft.

(10) Violation of facility requirements:

(a) The department will give primary permittees who violate the provisions of this section twenty-four hours to correct the violations, or the department may suspend or revoke his or her oiled-wildlife endorsement.

(b) The department may reinstate a suspended oiled-wildlife endorsement on a case-by-case basis.

(11) A failure to correct oiled bird rehabilitation facility violations as required by this section is punishable under RCW 77.15.750, Unlawful use of a department permit—Penalty.

NEW SECTION

WAC 232-12-871 Reporting receipt, death, carcass retention, and release of oiled birds. (1) A primary permittee on a rehabilitation permit must have an oiled-wildlife endorsement or written department approval to retain oiled birds. If the primary permittee does not possess an oiled-wildlife endorsement, the permittee must transfer the oiled birds to a primary permittee who has an oiled-wildlife endorsement, or obtain department approval to retain the oiled birds.

(2) A primary permittee must notify the department within twenty-four hours of the receipt or death of oiled birds.

(3) A primary permittee must notify the department seventy-two hours prior to releasing oiled birds into the wild.

(4) A primary permittee must not dispose of dead oiled birds without obtaining prior department approval.

(5) A violation of this section is punishable under RCW 77.15.750, Unlawful use of a department permit—Penalty.

WSR 13-10-078

PROPOSED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2013-05—Filed May 1, 2013, 9:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-04-087.

Title of Rule and Other Identifying Information: Responding electronically to the office of the insurance commissioner regarding consumer complaints.

Hearing Location(s): Insurance Commissioner's Office, TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on June 4, 2013, at 1:30 p.m.

Date of Intended Adoption: June 5, 2013.

Submit Written Comments to: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, e-mail rulescoordinator@oic.wa.gov, fax (360) 586-3109, by June 3, 2013.

Assistance for Persons with Disabilities: Contact Lorrie [Lorie] Villaflores by June 3, 2013, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 284-30-360 and 284-30-650 require insurers, health care service contractors, and health maintenance organizations to respond in writing to the insurance commissioner regarding consumer complaints. The commissioner will consider amending these WAC sections to require that the response be submitted in an electronic format. This would allow these entities to transmit private information electronically in a secure method rather than by the use of "snail mail."

Reasons Supporting Proposal: It is anticipated that using an electronic method will reduce the processing time for handling the complaints.

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

Statute Being Implemented: RCW 48.30.010, 48.44-050, and 48.46.200.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7036; Implementation and Enforcement: John Harmje, P.O. Box 40256, Olympia, WA 98504-0256, (360) 725-7262.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The increased cost for insurers, health care service contractors and health maintenance organizations to meet this proposed new requirement is significantly less than 0.3 percent of the average Washington revenue of the smallest of these organizations. Therefore a small business economic impact statement is not required for this proposed rule.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7036, fax (360) 586-3109, e-mail rulescoordinator@oic.wa.gov.

May 1, 2013

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2007-08, filed 5/20/09, effective 8/21/09)

WAC 284-30-360 Standards for the insurer to acknowledge pertinent communications. (1) Within ten working days after receiving notification of a claim under an individual insurance policy, or within fifteen working days with respect to claims arising under group insurance contracts, the insurer must acknowledge its receipt of the notice of claim.

(a) If payment is made within that period of time, (~~acknowledgement~~) acknowledgment by payment constitutes a satisfactory response.

(b) If an ~~((acknowledgement))~~ acknowledgment is made by means other than writing, an appropriate notation of the ~~((acknowledgement))~~ acknowledgment must be made in the claim file of the insurer describing how, when, and to whom the notice was made.

(c) Notification given to an agent of the insurer is notification to the insurer.

(2) Upon receipt of any inquiry from the commissioner concerning a complaint, every insurer must furnish the commissioner with an adequate response to the inquiry within fifteen working days after receipt of the commissioner's inquiry using the commissioner's electronic company complaint system.

(3) For all other pertinent communications from a claimant reasonably suggesting that a response is expected, an appropriate reply must be provided within ten working days for individual insurance policies, or fifteen working days with respect to communications arising under group insurance contracts.

(4) Upon receiving notification of a claim, every insurer must promptly provide necessary claim forms, instructions, and reasonable assistance so that first party claimants can comply with the policy conditions and the insurer's reasonable requirements. Compliance with this paragraph within the time limits specified in subsection (1) of this section constitutes compliance with that subsection.

AMENDATORY SECTION (Amending Order R 87-5, filed 4/21/87)

WAC 284-30-650 Prompt responses required. It is an unfair practice for an insurer, and a prohibited practice for a health care service contractor or a health maintenance organization, to fail to respond promptly to any inquiry from the insurance commissioner relative to the business of insurance. A lack of response within fifteen business days from receipt of an inquiry will be considered untimely. A response must be in writing ~~((, unless otherwise indicated in the inquiry))~~ and submitted using the commissioner's electronic company complaint system.

WSR 13-10-083

PROPOSED RULES

DEPARTMENT OF FISH AND WILDLIFE

[Filed May 1, 2013, 11:12 a.m.]

Supplemental Notice to WSR 13-02-094.

Preproposal statement of inquiry was filed as WSR 12-18-008 on August 23, 2012, and WSR 13-06-063 on March 5, 2013.

Title of Rule and Other Identifying Information: WAC 220-56-235 Possession limits—Bottomfish, 220-56-310 Shellfish—Daily limits, 220-56-390 Squid, octopus and 220-20-100 General provisions—Marine protected areas; and new sections in chapter 220-16 WAC, including WAC 220-16-881 through 220-16-887.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on June 7-8, 2013, at 8:30 a.m.

Date of Intended Adoption: On or after August 2, 2013.

Submit Written Comments to: Lori Preuss, Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Lori.Preuss@dfw.wa.gov, fax (360) 902-2155, by May 31, 2013.

Assistance for Persons with Disabilities: Contact Tami Linger by May 31, 2013, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal contains options for recreational octopus-harvest rules, including changing harvest seasons and/or locations; abolishing octopus harvest; creating new octopus-harvest rules; and making no changes to existing octopus rules. It also contains changes to WAC 220-56-235 Possession limits—Bottomfish, relating to cabezon, shark, lingcod, and rockfish.

The Washington fish and wildlife commission held a public hearing on the cabezon rules in February 2013. However, the commission delayed adopting the rules to allow additional public comment. Those rules, as well as rules for shark, lingcod and rockfish, were included in WSR 13-02-094. Notice of forthcoming changes to the octopus rules was filed as WSR 13-06-063.

Reasons Supporting Proposal: The commission directed the department to consider changes to octopus harvest rules based on recommendations from the Giant Pacific Octopus Advisory Group. Changes to the harvest rules for octopus, cabezon, shark, lingcod, and rockfish are needed for species conservation and are based on department data, public feedback, and changes in fish and shellfish populations. The department makes similar adjustments annually to maximize conservation and recreational-fishing opportunity.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.013, 77.04.055, and 77.12.047.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Charmane Ashbrook, 1111 Washington Street, Olympia, (360) 902-2672; Implementation: Jim Scott, 1111 Washington Street, Olympia, (360) 902-2736; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule amendments do not affect small business and do not directly regulate small business. The rules apply to recreational fishers.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

May 1, 2013

Joanna M. Eide

Administrative Regulations Analyst

Option B1

AMENDATORY SECTION (Amending Order 09-27, filed 2/25/09, effective 5/1/09)

WAC 220-20-100 General provisions—Marine protected areas. (1) It is unlawful to fish for or possess fish, shellfish, or wildlife taken from any conservation area defined in chapter 220-16 WAC.

(2) The following marine preserves are closed to the taking of fish, shellfish, and wildlife as indicated:

(a) The Admiralty Head Marine Preserve is closed to the taking of fish and wildlife, and closed to the taking of shellfish except sea cucumbers and sea urchins.

(b) The Colvos Passage Marine Preserve is closed to the taking of shellfish and wildlife, closed to all commercial harvest of fish, and closed to recreational harvest of fish except it is lawful to take salmon for personal use by trolling, defined as fishing from a vessel under power and in gear making forward progress.

(c) The San Juan Island Marine Preserve is closed to the taking of shellfish except it is lawful to take crab from Parks Bay, and closed to the taking of food fish other than salmon except it is lawful to take herring and Yellow and Low Island Preserve is closed to the taking of food fish.

(d) The Titlow Beach Marine Preserve is closed to the taking of shellfish and wildlife, closed to the commercial harvest of all fish, and closed to the recreational harvest of all fish except that it is lawful to take salmon if taken with artificial lures from shore or from a nonmotorized vessel.

(e) The Z's Reef Marine Preserve is closed to the taking of shellfish and wildlife, closed to the commercial harvest of all fish, and closed to the recreational harvest of all fish except that it is lawful to take salmon with fly fishing gear as defined in WAC 220-56-210.

(f) The Seattle city park Marine Preserves (Golden Gardens, Carkeek, Lincoln, Discovery, Emma Schmitz, and Richey Viewpoint) are closed to removal of organisms from the intertidal areas, except that finfish may be harvested using hook and line gear, provided it is lawful under other WDFW fishing regulations. Any organism except finfish taken by hook and line in the intertidal area must be placed unharmed in the location it was found. Removal of organisms of unclassified marine invertebrates in numbers less than the daily limits is an infraction. All other penalties for larger numbers removed apply.

(g) The Saltwater State Park Marine Preserve is closed to all recreational harvest.

(h) The Redondo Beach Marine Preserve is closed to all recreational harvest.

Option B2

AMENDATORY SECTION (Amending Order 09-27, filed 2/25/09, effective 5/1/09)

WAC 220-20-100 General provisions—Marine protected areas. (1) It is unlawful to fish for or possess fish, shellfish, or wildlife taken from any conservation area defined in chapter 220-16 WAC.

(2) The following marine preserves are closed to the taking of fish, shellfish, and wildlife as indicated:

(a) The Admiralty Head Marine Preserve is closed to the taking of fish and wildlife, and closed to the taking of shellfish except sea cucumbers and sea urchins.

(b) The Colvos Passage Marine Preserve is closed to the taking of shellfish and wildlife, closed to all commercial harvest of fish, and closed to recreational harvest of fish except it is lawful to take salmon for personal use by trolling, defined as fishing from a vessel under power and in gear making forward progress.

(c) The San Juan Island Marine Preserve is closed to the taking of shellfish except it is lawful to take crab from Parks Bay, and closed to the taking of food fish other than salmon except it is lawful to take herring and Yellow and Low Island Preserve is closed to the taking of food fish.

(d) The Titlow Beach Marine Preserve is closed to the taking of shellfish and wildlife, closed to the commercial harvest of all fish, and closed to the recreational harvest of all fish except that it is lawful to take salmon if taken with artificial lures from shore or from a nonmotorized vessel.

(e) The Z's Reef Marine Preserve is closed to the taking of shellfish and wildlife, closed to the commercial harvest of all fish, and closed to the recreational harvest of all fish except that it is lawful to take salmon with fly fishing gear as defined in WAC 220-56-210.

(f) The Seattle city park Marine Preserves (Golden Gardens, Carkeek, Lincoln, Discovery, Emma Schmitz, and Richey Viewpoint) are closed to removal of organisms from the intertidal areas, except that finfish may be harvested using hook and line gear, provided it is lawful under other WDFW fishing regulations. Any organism except finfish taken by hook and line in the intertidal area must be placed unharmed in the location it was found. Removal of organisms of unclassified marine invertebrates in numbers less than the daily limits is an infraction. All other penalties for larger numbers removed apply.

(g) The Saltwater State Park Marine Preserve is closed to all recreational harvest.

(h) The Redondo Beach Marine Preserve is closed to all recreational harvest.

(i) The Alki Beach Seacrest Coves 1, 2, and 3 Marine Preserve is closed to all recreational harvest.

Option C

AMENDATORY SECTION (Amending Order 09-27, filed 2/25/09, effective 5/1/09)

WAC 220-20-100 General provisions—Marine protected areas. (1) It is unlawful to fish for or possess fish, shellfish, or wildlife taken from any conservation area defined in chapter 220-16 WAC.

(2) The following marine preserves are closed to the taking of fish, shellfish, and wildlife as indicated:

(a) The Admiralty Head Marine Preserve is closed to the taking of fish and wildlife, and closed to the taking of shellfish except sea cucumbers and sea urchins.

(b) The Colvos Passage Marine Preserve is closed to the taking of shellfish and wildlife, closed to all commercial har-

vest of fish, and closed to recreational harvest of fish except it is lawful to take salmon for personal use by trolling, defined as fishing from a vessel under power and in gear making forward progress.

(c) The San Juan Island Marine Preserve is closed to the taking of shellfish except it is lawful to take crab from Parks Bay, and closed to the taking of food fish other than salmon except it is lawful to take herring and Yellow and Low Island Preserve is closed to the taking of food fish.

(d) The Titlow Beach Marine Preserve is closed to the taking of shellfish and wildlife, closed to the commercial harvest of all fish, and closed to the recreational harvest of all fish except that it is lawful to take salmon if taken with artificial lures from shore or from a nonmotorized vessel.

(e) The Z's Reef Marine Preserve is closed to the taking of shellfish and wildlife, closed to the commercial harvest of all fish, and closed to the recreational harvest of all fish except that it is lawful to take salmon with fly fishing gear as defined in WAC 220-56-210.

(f) The Seattle city park Marine Preserves (Golden Gardens, Carkeek, Lincoln, Discovery, Emma Schmitz, and Richey Viewpoint) are closed to removal of organisms from the intertidal areas, except that finfish may be harvested using hook and line gear, provided it is lawful under other WDFW fishing regulations. Any organism except finfish taken by hook and line in the intertidal area must be placed unharmed in the location it was found. Removal of organisms of unclassified marine invertebrates in numbers less than the daily limits is an infraction. All other penalties for larger numbers removed apply.

(g) The Saltwater State Park Marine Preserve is closed to all recreational harvest.

(h) The Redondo Beach Marine Preserve is closed to all recreational harvest of giant Pacific octopus.

(i) The Three Tree Point Marine Preserve is closed to all recreational harvest of giant Pacific octopus.

(j) The Alki Beach Seacrest Coves 1, 2, and 3 Marine Preserve is closed to all recreational harvest of giant Pacific octopus.

(k) The Les Davis Marine Preserve is closed to all recreational harvest of giant Pacific octopus.

(l) The Alki Beach Junk Yard Marine Preserve is closed to all recreational harvest of giant Pacific octopus.

(m) The Days Island Marine Preserve is closed to all recreational harvest of giant Pacific octopus.

(n) The Deception Pass Marine Preserve is closed to all recreational harvest of giant Pacific octopus.

AMENDATORY SECTION (Amending Order 12-17, filed 2/16/12, effective 3/18/12)

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

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

(a) Lingcod~~((--))~~; 2 fish(~~(=~~

~~(+))~~; Minimum length is 22 inches in Catch Record Card Areas 1 through ~~((3))~~ 4.

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

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

(c) Wolfeel~~((--))~~; 0 fish from Catch Record Card Area 4.

(d) Cabezon~~((--2))~~; 1 fish. In Marine Area 4, the minimum size limit is 18 inches and all cabezon must be released from June 16 through April 30.

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

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

Rockfish in Marine Area 5 except	1 fish May 1 through September 30. Only black or blue rockfish may be retained.
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in Marine Area 5 west of Slip Point	3 fish. Only black or blue rockfish may be retained.
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in Marine Area 6.	0 fish
Surfperch	10 fish
Pacific cod	2 fish
Pollock	2 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	((2)) <u>1</u> fish
Pacific hake	2 fish

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

Rockfish	0 fish
Surfperch	10 fish
Pacific cod	2 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	((2)) <u>1</u> fish
Pollock	2 fish
Pacific hake	2 fish

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

Rockfish	0 fish
Surfperch	10 fish
Pacific cod	0 fish
Pollock	0 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	((2)) <u>1</u> fish
Pacific hake	0 fish

(d) Catch Area 12: Closed.

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

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

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

~~(h)) In Marine Areas 5 through 11 and 13, the minimum size limit for cabezon is 18 inches. All cabezon must be released in Catch Record Card Areas 5 through 11 and 13 from June 16 through April 30.~~

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

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

AMENDATORY SECTION (Amending Order 10-64, filed 3/19/10, effective 5/1/10)

WAC 220-56-310 Shellfish—Daily limits. It is unlawful for any one person to take (~~in any one day for personal use~~) more than the following quantities and sizes of shellfish for personal use in any one day:

(1) Cockles, borers and clams in the shell, other than razor clams, geoduck clams and horse clams, 40 clams (~~in the aggregate~~) total, or 10 pounds, whichever is achieved first except:

(a) In Skagit Bay, east of a line projected from Browns Point to Swinomish Slough entrance(---); Diggers may additionally retain up to 20 pounds of eastern softshell clams in the shell.

(b) In Willapa Bay(---); Diggers may additionally retain up to (~~twenty-four~~) 24 cockles.

(2) Razor clams: 15 clams.

(3) Geoduck clams: 3 clams.

(4) Horse clams: 7 clams.

(5) Oysters: 18 oysters, shucked and the shells left on the beach. Minimum size before shucking two and one-half inches along the longest dimension of the shell.

(6) Rock scallops: 6 scallops.

(7) Weathervane scallops: 12 scallops (over 4 inches).

(8) Spiny and pink scallops: 10 pounds or 5 quarts in the shell, in the aggregate.

(9) Shrimp:

(a) In Areas 1((-) through 3 and Area 4 west of the Bonilla-Tatoosh line(---); Total weight ((+0)) 25 pounds, maximum ((80)) 200 spot shrimp as part of the ((+0)) 25-pound limit.

(b) In Area 4 east of the Bonilla-Tatoosh line and Areas 5 ((-)) through 13((-)); First Saturday in May through May 31, daily limit 80 shrimp((-); during all other open periods total weight 10 pounds, maximum 80 spot shrimp as part of the 10-pound limit.

(10) Octopus:

(a) Marine Areas 1 through 3 and 4 west of the Bonilla-Tatoosh line: 1 octopus.

(b) Marine Areas 4 east of the Bonilla-Tatoosh line, 5 through 13: Closed.

(11) Pinto abalone: Closed statewide.

(12) Crawfish: 10 pounds in the shell. Minimum size is 3 1/4 inches from tip of rostrum to tip of tail. Female crawfish with eggs or young attached to the abdomen must be released immediately.

(13) Squid other than Humboldt squid: 10 pounds or 5 quarts. In addition a person may retain up to 5 Humboldt squid per day.

(14) Sea cucumbers: 25 sea cucumbers.

(15) Red sea urchins: 18 sea urchins.

(16) Purple sea urchins: 18 sea urchins.

(17) Green sea urchins: 36 sea urchins.

(18) Dungeness crab((s)):

(a) In Area 1 except when fishing from the north jetty of the Columbia River and Areas 2, 3, and 4 west of the Bonilla-Tatoosh line - 6 male crab((s)).

(b) In Area 4 east of the Bonilla-Tatoosh line, and Areas 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12 and 13 - 5 male crabs.

(c) In the Columbia River upstream of a line from the outermost end of the north jetty to the exposed end of the south jetty, or when fishing from the north jetty of the Columbia River - 12 male crab((s)).

(19) Red rock crab((s)): 6 crab((s)).

(20) Mussels: 10 pounds in the shell, in the aggregate.

(21) Goose barnacles: 10 pounds of whole barnacles or 5 pounds of barnacle stalks.

(22) Ghost and mud shrimp: 10 dozen.

(23) King and box crab: Closed statewide.

(24) Tanner crab((s)): 6 crab((s)).

AMENDATORY SECTION (Amending Order 06-67, filed 4/11/06, effective 5/12/06)

WAC 220-56-390 Squid, octopus. (1) It is lawful to take, fish for or possess squid (~~and octopus~~) the entire year except closed year-round in Catch Record Card Area 12.

(2) It is unlawful to take, fish for or possess squid taken for personal use with more than one line. A maximum of four

squid lures may be used. If gear utilizes conventional hooks, it shall not exceed a total of nine points. Herring rakes and hand dip net gear may be used to take squid. In the field each person taking squid must use a separate container to hold their catch. Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(3) It is unlawful to take octopus in Marine Areas 4 east of the Bonilla-Tatoosh line through 13.

(4) It is unlawful to take octopus in Marine Areas 1, 2, 3 and 4 west of the Bonilla-Tatoosh line except by hand or by any instrument which will not penetrate or mutilate the body except that it is lawful to retain octopus taken while angling with hook and line gear. Violation of this subsection is an infraction, punishable under RCW 77.15.160.

((4)) (5) It is unlawful to possess squid or octopus taken with gear that violates the provisions of this section. Possession of squid or octopus while using gear in violation of the provisions of this section is a rebuttable presumption that the squid or octopus were taken with such gear. Possession of such squid or octopus is punishable under RCW 77.15.380 Unlawful recreational fishing in the second degree—Penalty, unless the squid or octopus are taken in the amounts or manner to constitute a violation of RCW 77.15.370 Unlawful recreational fishing in the first degree—Penalty.

NEW SECTION

WAC 220-16-881 Redondo Beach Marine Preserve. "Redondo Marine Preserve" is defined as the waters, bed lands, and tidelands within the area described by a line starting from shore at 122°19'27.69"W, 47°20'55.64"N; then northwesterly to 122°19'30.77"W, 47°20'56.82"N; then to 122°19'33.84"W, 47°20'57.31"N; then northeasterly to 122°19'29.78"W, 47°21'02.32"N; then returning to shore at 122°19'25.27"W, 47°21'00.64"N.

NEW SECTION

WAC 220-16-882 Three Tree Point Marine Preserve. "Three Tree Point Marine Preserve" is defined as the waters, bed lands, and tidelands within the area described by a line starting from shore at 122°22'48.68"W, 47°27'06.46"N; then northwesterly to 122°22'58.06"W, 47°27'15.30"N; then northeasterly to 122°22'36.99"W, 47°27'25.51"N; then returning to shore at 122°22'27.63"W, 47°27'16.67"N.

NEW SECTION

WAC 220-16-883 Alki Beach Seacrest Coves 1, 2 and 3 Marine Preserve. "Alki Beach Seacrest Coves 1, 2 and 3 Marine Preserve" is defined as the waters, bed lands, and tidelands within the area described by a line starting from shore at 122°22'38.72"W, 47°35'13.52"N; then northeasterly and offshore to 122°22'34.60"W, 47°35'16.85"N; then northwesterly to 122°22'48.62"W, 47°35'27.55"N; then returning to shore at 122°22'54.02"W, 47°35'26.35"N. The preserve does not include waters within 150 feet of the Seacrest Public

Fishing Pier as demarcated at the surface with buoys and on the sea floor by a perimeter line.

NEW SECTION

WAC 220-16-884 Les Davis Marine Preserve. "Les Davis Marine Preserve" is defined as the waters, bed lands, and tidelands within the area described by a line starting from shore at 122°29'07.21"W, 47°17'05.15"N; the northeasterly to 122°29'0.97"W, 47°17'10.57"N; then southeasterly to 122°28'53.00"W, 47°17'6.33"N; then returning to shore at 122°28'58.77"W, 47°17'1.07"N.

NEW SECTION

WAC 220-16-885 Alki Beach Junk Yard Marine Preserve. "Alki Beach Junk Yard Marine Preserve" is defined as the waters, bed lands, and tidelands within the area described by a line starting from shore at 122°24'57.17"W, 47°34'40.64"N; then northwesterly to 122°25'03.25"W, 47°34'50.03"N; then northeasterly to 122°24'40.68"W, 47°34'56.75"N; then returning to shore at 122°24'34.48"W, 47°34'47.34"N.

NEW SECTION

WAC 220-16-886 Days Island Marine Preserve. "Days Island Marine Preserve" is defined as the waters, bed lands, and tidelands within the area described by a line starting from shore at 122°33'49.16"W, 47°14'07.49"N; then west to 122°34'01.41"W, 47°14'07.58"N; then north to 122°34'0.78"W, 47°14'38.37"N; then returning to shore at 122°33'47.22"W, 47°14'38.21"N.

NEW SECTION

WAC 220-16-887 Deception Pass Marine Preserve. "Deception Pass Marine Preserve" is defined as the waters, bed lands, and tidelands east of a line starting at 122°39'48.07"W, 48°24'08.05"N and north to 122°39'50.68"W, 48°24'55.51"N; and west of a line starting at 122°36'54.24"W, 48°24'29.52"N; and north to 122°36'54.73"W, 48°24'48.92"N.

WSR 13-10-087

PROPOSED RULES DEPARTMENT OF FISH AND WILDLIFE

[Filed May 1, 2013, 11:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-06-068 on March 6, 2013.

Title of Rule and Other Identifying Information: The subject of this proposed rule-making effort is the amendment of cougar hunting seasons and regulations for 2013-2014.

Hearing Location(s): Natural Resources Building, Commission Office, 1111 Washington Street S.E., Olympia, WA 98504, on June 21, 2013, at 8:30 a.m.

Date of Intended Adoption: On or after June 21, 2013.

Submit Written Comments to: Wildlife Program Commission Meeting Public Comments, 600 Capitol Way North, Olympia, WA 98501-1091, fax (360) 902-2162, by June 11, 2013.

Assistance for Persons with Disabilities: Contact Tami Lininger by June 14, 2013, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments to WAC 232-28-297 will further distinguish authorized areas for hunting cougar.

Reasons Supporting Proposal: To clarify hunt-area boundaries and maintain consistency with existing regulations.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, and 77.15.245.

Statute Being Implemented: RCW 77.04.012, 77.04.-055, 77.12.047, and 77.15.245.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Nate Pamplin, Natural Resources Building, Olympia, (360) 902-2693; and Enforcement: Bruce Bjork, Natural Resources Building, Olympia, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not directly regulate small business.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal is not related to hydraulics rules.

May 1, 2013

Lori Preuss

Rules Coordinator

AMENDATORY SECTION (Amending Order 12-70, filed 5/2/12, effective 6/2/12)

WAC 232-28-297 2012-2013, 2013-2014, and 2014-2015 Cougar hunting seasons and regulations. (1) As used in this section and in the context of general cougar hunting seasons, "harvest guideline" means the estimated allowable harvest; the actual harvest may be less than or more than the harvest guideline.

(2) Season dates and harvest guidelines for each license year:

Hunt Area	Harvest Guideline	Early Hunting Season	Late Hunting Season	Legal Weapon
GMU 101	7-9	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMU 105	2	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 108, 111	5-6	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMU 113	4-6	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMU 117	6-8	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMU 121	5-6	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 124, 127, 130	7-9	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 133, 136, 139, 142, 248, 254, 260, 262, 266, 269, 272, 278, 284, 290, 330, 334, 371, 372, 373, 379, 381	None	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 149, 154, ((457,)) 162, 163	4-6	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 145, 166, 175, 178	3-4	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 169, 172, 181, 186	3-4	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMU 203	4-6	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMU 204	6-8	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 209, 215	4-5	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 218, 231	4-6	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMU 224	2-3	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 233, 239	3-4	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 242, 243	4-6	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 244, 246, 247	5-6	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 245, 250	5-6	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 249, 251	5-6	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon

Hunt Area	Harvest Guideline	Early Hunting Season	Late Hunting Season	Legal Weapon
GMUs 328, 329, 335	6-8	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 336, 340, 342, 346	5-7	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 352, 356, 360, 364, 368	5-7	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 382, 388	3-4	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMU 407	None	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 418, 426, 437	11-15	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 448, 450	9-13	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMU 454	None	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMU 460	5-7	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 466, 485, 490	2-3	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 501, 504, 506, 530	7-10	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 503, 505, 520, 550	6-8	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 510, 513	3-4	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMU 516	3-5	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs ((§22;)) 524, 554, 556	3-4	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMU 560	5-6	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 564, 568	3-4	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMU 572	3-4	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 574, 578	3-5	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 601, 602, 603, 612	5-7	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 607, 615	4-5	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 618, 636, 638	4-5	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 621, 624, 627, 633	None	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 642, 648, 651	6-8	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 652, 666	None	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 653, 654	4-6	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMUs 658, 660, 663, 672, 673, 681, 684, 699	9-12	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon
GMU 667	3-4	Sept. 1 - Dec. 31	Jan. 1 - Mar. 31	Any Legal Weapon

(a) In hunt areas with a harvest guideline, the director may close the cougar late hunting season after January 1st in one or more GMUs if cougar harvest meets or exceeds the guideline.

(b) In hunt areas with a harvest guideline, starting January 1st, cougar hunters may hunt cougar from January 1st until the hunt area harvest guideline has been met and the director has closed the cougar late hunting season, or March 31st, whichever occurs first.

(3) Harvest guideline system:

(a) All cougar killed by licensed hunters during the early and late hunting seasons, and seasons authorized under WAC 232-12-243 shall be counted toward the harvest guideline.

(b) Individual problem cougar will continue to be killed on an as-needed basis utilizing depredation permits, landowner kill permits, and WDFW depredation authority regardless of harvest guidelines.

(c) It is each cougar hunter's responsibility to verify if the cougar late hunting season is open or closed in hunt areas with a harvest guideline. Cougar hunters can verify if the sea-

son is open or closed by calling the toll-free cougar hunting hotline or visiting the department's web site.

(4) Cougar hunting season requirements and special restrictions.

(a) A valid big game hunting license which includes cougar as a species option is required to hunt cougar.

(b) The statewide bag limit is one (1) cougar per license year; excluding removals authorized under WAC 232-12-243. It is unlawful to kill or possess spotted cougar kittens or adult cougars accompanied by spotted kittens.

(c) The use of dogs to hunt cougar is prohibited; except by a commission authorized permit (WAC 232-12-243).

(d) Any person who takes a cougar must comply with the notification and sealing requirements in WAC 232-12-024.

(e) A special cougar permit is required to hunt cougar in GMU 485.

WSR 13-10-088
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
 [Filed May 1, 2013, 11:56 a.m.]

Supplemental Notice to WSR 13-06-072.

Preproposal statement of inquiry was filed as WSR 13-01-064 on December 17, 2012.

Title of Rule and Other Identifying Information: WAC 220-47-307 Closed areas—Puget Sound salmon, 220-47-311 Purse seine—Open periods, 220-47-411 Gillnet—Open periods, and

220-47-428 Beach seine—Open periods.

Hearing Location(s): Natural Resources Building, Room 635, 1111 Washington Street S.E., Olympia, WA 98504, on Tuesday, June 4, 2013, at 1:00 p.m. to 2:00 p.m.

Date of Intended Adoption: On or after Friday, June 7, 2013.

Submit Written Comments to: Lori Preuss, Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Lori.preuss@dfw.wa.gov, fax (360) 902-2155, by May 31, 2013.

Assistance for Persons with Disabilities: Contact Tami Lininger by May 31, 2013, (360) 902-2207 or TTY 1-800-833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal reflects changes to WAC 220-47-311 and 220-47-411 from what was proposed in WSR 13-06-072, plus the addition of WAC 220-47-307. Following is a summary of the changes between what was filed with WSR 13-06-072 and this supplemental filing.

This summarizes changes that were not included in the original CR-102 filed as WSR 13-06-072.

Closures:

For Puget Sound salmon closed areas, WAC 220-47-307, changes include:

An additional purse-seine closure in Area 10 during pink directed fisheries. This closure is to the area within 500 feet of the eastern shore in Area 10 north of latitude 47°44'50"N.

Season Structural Changes:

For purse-seine open periods, WAC 220-47-311, changes include:

Areas 7 and 7A, adjustment to open dates during chum fishery, per tribal agreement;

Area 7B, adjustment of schedule during the week of September 15 to match standard management weeks;

Area 8, adjustment of schedule during pink fishery, per agreement between purse-seine and gillnet gear groups;

Area 8A, adjustment of schedule during pink fishery, per agreement between purse-seine and gillnet gear groups, and adjustment of schedule during coho limited participation fishery;

Area 10, addition to number of vessels allowed during limited-participation pink fisheries, and adjustment of schedule during pink fishery, per agreement between purse-seine and gillnet gear groups; and

Area 12C, fishing closure added during the week of November 4 to remain consistent with previous year's openings.

For gillnet open periods, WAC 220-47-411, changes include:

Area 6D, added a day to the fishery on 9/21 and removed a day on 9/23 per industry request and tribal agreement;

Areas 7 and 7A, adjustment to open dates during chum fishery, per tribal agreement;

Area 8, adjustment of schedule during pink fishery, per agreement between purse seine and gillnet gear groups;

Area 8A, adjustment of schedule during pink fishery, per agreement between purse seine and gillnet gear groups, and adjustment of schedule during coho limited participation fishery;

Area 10, addition to number of vessels allowed during limited participation pink fisheries and adjustment of schedule during pink fishery, per agreement between purse seine and gillnet gear groups; and

Area 12C, correction of fishing days during the week of November 24 to remain consistent with the Hood Canal Salmon Management Plan.

For beach seine open periods, WAC 220-47-428, there are no changes from the initial filing.

Reasons Supporting Proposal: These changes incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable fish in commercial salmon fisheries in Puget Sound while protecting species of fish listed as endangered.

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

Statute Being Implemented: RCW 77.12.045, 77.12.-047, and 77.04.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington department of fish and wildlife (WDFW), governmental.

Name of Agency Personnel Responsible for Drafting: Kendall Henry, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2717; Implementation: Jim Scott, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

1. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule:

These rules will incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon in Puget Sound while protecting species of fish, marine mammals, and sea birds listed as endangered. The rules include legal gear requirements, area restrictions, and open periods for commercial salmon fisheries occurring in Puget Sound.

2. Kinds of Professional Services That a Small Business Is Likely to Need in Order to Comply with Such Requirements:

These rule changes clarify dates for anticipated open periods and areas for full-fleet and limited-participation salmon fisheries, and legal gear requirements for those fisheries. There are no anticipated professional services required to comply.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: The proposed rules adjust opening and closing dates. The proposed rules do not require any additional equipment, supplies, labor, or administrative costs. Therefore, there is no additional cost to comply with the proposed rules.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? The proposed rules do not affect the harvestable numbers of salmon available to nontreaty fleets. Therefore, the proposed rules should not cause any businesses to lose sales or revenue.

5. Cost of Compliance for Small Businesses Compared with the Cost of Compliance for the Ten Percent of Businesses That Are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;
2. Cost per hour of labor; or
3. Cost per one hundred dollars of sales.

None - The proposed rules do not require any additional equipment, supplies, labor, or administrative costs.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So: Most businesses affected by these rules are small businesses. As indicated above, all of the gear restrictions proposed by the rules are identical to gear restrictions WDFW has required in past salmon fishery seasons. Therefore, the gear restrictions will not impose new costs on small businesses.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: As in previous years, WDFW interacts with and receives input from affected businesses through the North of Falcon process, which is a series of public meetings occurring from February through April each year. These meetings allow small businesses to participate in formulating these rules.

8. A List of Industries That Will Be Required to Comply with the Rule: All licensed fishers attempting to harvest salmon in the all-citizen commercial salmon fisheries occurring in Puget Sound will be required to comply with these rules.

9. An Estimate of the Number of Jobs That Will Be Created or Lost as a Result of Compliance with the Proposed Rule: As explained above, these rules impose similar requirements to those for previous years' commercial salmon fisheries. Compliance with the rules will not result in the creation or loss of jobs.

A copy of the statement may be obtained by contacting Lori Preuss, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail Lori.preuss@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

May 1, 2013

Lori Preuss

Rules Coordinator

AMENDATORY SECTION (Amending Order 12-131, filed 7/12/12, effective 8/12/12)

WAC 220-47-307 Closed areas—Puget Sound salmon. It is unlawful at any time, unless otherwise provided, to take, fish for, or possess salmon taken for commercial purposes with any type of gear from the following portions of Puget Sound Salmon Management and Catch Reporting Areas, except that closures listed in this section do not apply to reef net fishing areas listed in RCW 77.50.050:

Areas 4B, 5, 6, 6B, and 6C - The Strait of Juan de Fuca Preserve as defined in WAC 220-47-266.

Area 6D - That portion within 1/4-mile of each mouth of the Dungeness River.

Area 7 - (1) The San Juan Island Preserve as defined in WAC 220-47-262.

(2) Those waters within 1,500 feet of shore on Orcas Island from Deer Point northeasterly to Lawrence Point, thence west to a point intercepting a line projected from the northernmost point of Jones Island, thence 90° true to Orcas Island.

(3) Those waters within 1,500 feet of the shore of Cypress Island from Cypress Head to the northernmost point of Cypress Island.

(4) Those waters easterly of a line projected from Iceberg Point to Iceberg Island, to the easternmost point of Charles Island, then true north from the northernmost point of Charles Island to the shore of Lopez Island.

(5) Those waters northerly of a line projected from the southernmost point of land at Aleck Bay to the westernmost point of Colville Island, thence from the easternmost point of Colville Island to Point Colville.

(6) Those waters easterly of a line projected from Biz Point on Fidalgo Island to the Williamson Rocks Light, thence to the Dennis Shoal Light, thence to the light on the westernmost point of Burrows Island, thence to the southwestern-most point of Fidalgo Head, and including those waters within 1,500 feet of the western shore of Allan Island, those waters within 1,500 feet of the western shore of Burrows Island, and those waters within 1,500 feet of the shore of Fidalgo Island from the southwestern-most point of Fidalgo Head northerly to Shannon Point.

(7) Additional Fraser sockeye and pink seasonal closure: Those waters within 1,500 feet of the shore of Fidalgo Island from the Initiative 77 marker northerly to Biz Point.

(8) Those waters within 1,500 feet of the eastern shore of Lopez Island from Point Colville northerly to Lopez Pass, and those waters within 1,500 feet of the eastern shore of Decatur Island from the southernmost point of land northerly to Fauntleroy Point, and including those waters within 1,500 feet of the shore of James Island.

Area 7A - The Drayton Harbor Preserve as defined in WAC 220-47-252.

Area 7B - (1) That portion south and east of a line from William Point on Samish Island to Saddlebag Island to the southeastern tip of Guemes Island, and that portion northerly of the railroad trestle in Chuckanut Bay.

(2) That portion of Bellingham Bay and Portage Bay adjacent to Lummi Indian Reservation is closed north and west of a line from the intersection of Marine Drive and Hoff Road (48°46'59"N, 122°34'25"W) projected 180° true for

2.75 nautical miles (nm) to a point at 48°45'11"N, 122°34'25"W, then 250° true for 1.4 nm to a point at 48°44'50"N, 122°35'42"W, then 270° true for 1.4 nm to 48°44'50"N, 122°37'08"W, then 230° true for 1.3 nm to 48°44'24"N, 122°37'52"W, then 200° true for 1 nm to 48°43'45"N, 122°38'12"W, then 90° true for 1 nm to a point just northeast of Portage Island (48°43'45"N, 122°37'14"W), then 160° true for 1.4 nm to a point just east of Portage Island (48°42'52"N, 122°36'37"W).

(3) Additional coho seasonal closure: September 1 through September 21, closed to gillnets in the waters of Area 7B west of a line from Point Francis (48°41'42"N, 122°36'40"W) to the red and green buoy southeast of Point Francis (48°40'22"N, 122°35'30"W), then to the northernmost tip of Eliza Island (48°39'37"N, 122°35'45"W), then along the eastern shore of the island to a point intersecting a line drawn through Eliza Rock Light (48°38'35"N, 122°34'40"W) and Fish Point (48°34'35"N, 122°29'45"W), and then southeastward along that line to Fish Point. Non-treaty purse seiners fishing in this area must release coho.

Area 7C - That portion southeasterly of a line projected from the mouth of Oyster Creek 237° true to a fishing boundary marker on Samish Island.

Area 8 - (1) That portion of Skagit Bay easterly of a line projected from Brown Point on Camano Island to a white monument on the easterly point of Ika Island, thence across the Skagit River to the terminus of the jetty with McGlenn Island.

(2) Those waters within 1,500 feet of the western shore of Camano Island south of a line projected true west from Rocky Point.

Area 8A - (1) Those waters easterly of a line projected from Mission Point to Buoy C1, excluding the waters of Area 8D, thence through the green light at the entrance jetty of the Snohomish River and across the mouth of the Snohomish River to landfall on the eastern shore, and those waters northerly of a line from Camano Head to the northern boundary of Area 8D, except when open for pink fisheries.

(2) Additional coho seasonal closure prior to October 3: Those waters southerly of a line projected from the Clinton ferry dock to the Mukilteo ferry dock.

(3) Adjusted pink seasonal closure: Those waters easterly of a line projected from the southernmost point of Area 8D, the point of which begins from a line projected 225° from the pilings at Old Bower's Resort to a point 2,000 feet offshore, thence through the green light at the entrance jetty of the Snohomish River and across the mouth of the Snohomish River to landfall on the eastern shore, and those waters northerly of a line from Camano Head to the northern boundary of Area 8D, and waters southerly of a line projected from the Clinton ferry dock to the Mukilteo ferry dock.

Area 8D - Those waters easterly of a line projected from Mission Point to Hermosa Point.

Area 9 - Those waters lying inside and westerly of a line projected from the Point No Point light to Sierra Echo buoy, thence to Forbes Landing wharf east of Hansville.

Area 10 - (1) Those waters easterly of a line projected from Meadow Point to West Point.

(2) Those waters of Port Madison westerly of a line projected from Point Jefferson to the northernmost portion of Point Monroe.

(3) Additional pink seasonal closure: The area east inside of the line originating from West Point and extending west to the closest midchannel buoy, thence true through Point Wells until reaching latitude 47°44'500"N, thence extending directly east to the shoreline.

(4) Additional purse seine pink seasonal closure: The area within 500 feet of the eastern shore in Area 10 is closed to purse seines north of latitude 47°44'500"N.

(5) Additional coho and chum seasonal closure: Those waters of Elliott Bay east of a line from Alki Point to the light at Fourmile Rock, and those waters northerly of a line projected from Point Wells to "SF" Buoy, then west to President's Point.

Area 10E - Those waters of Liberty Bay north of a line projected due east from the southernmost Keyport dock, those waters of Dyes Inlet north of the Manette Bridge, and those waters of Sinclair Inlet southwest of a line projected true east from the Bremerton ferry terminal.

Area 11 - (1) Those waters northerly of a line projected true west from the light at the mouth of Gig Harbor, and those waters south of a line from Browns Point to the northernmost point of land on Point Defiance.

(2) Additional coho seasonal closure: Those waters south of a line projected from the light at the mouth of Gig Harbor to the Tahlequah ferry dock, then south to the Point Defiance ferry dock, and those waters south of a line projected from the Point Defiance ferry dock to Dash Point.

Area 12 - Those waters inside and easterly of a line projected from Lone Rock to the navigation light off Big Beef Creek, thence southerly to the tip of the outermost northern headland of Little Beef Creek.

Area 12A - Those waters north of a line projected due east from Broad Spit.

Area 12B - Those waters within 1/4-mile of the mouths of the Dosewallips, Duckabush, and Hamma Hamma rivers and Anderson Creek.

Areas 12, 12A, and 12B - (1) Those waters within 1,000 feet of the mouth of the Quilcene River.

(2) Additional Chinook seasonal closure: Those waters north and east of a line projected from Tekiu Point to Triton Head.

Areas 12, 12B and 12C - Those waters within 1,000 feet of the eastern shore.

Area 12C - (1) Those waters within 2,000 feet of the western shore between the dock at Glen Ayr R.V. Park and the Hoodsport marina dock.

(2) Those waters south of a line projected from the Cushman Powerhouse to the public boat ramp at Union.

(3) Those waters within 1/4-mile of the mouth of the Dewatto River.

Areas 12 and 12D - Additional coho and chum seasonal closure: Those waters of Area 12 south and west of a line projected 94 degrees true from Hazel Point to the light on the opposite shore, bounded on the west by the Area 12/12B boundary line, and those waters of Area 12D.

Area 13A - Those waters of Burley Lagoon north of State Route 302; those waters within 1,000 feet of the outer

oyster stakes off Minter Creek Bay, including all waters of Minter Creek Bay; those waters westerly of a line drawn due north from Thompson Spit at the mouth of Glen Cove; and those waters within 1/4-mile of Green Point.

AMENDATORY SECTION (Amending Order 12-131, filed 7/12/12, effective 8/12/12)

WAC 220-47-311 Purse seine—Open periods. It is unlawful to take, fish for, or possess salmon taken with purse seine gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas and during the periods provided for in each respective Management and Catch Reporting Area:

AREA	TIME	DATE
7, 7A:	7AM - 6PM	((10/11, 10/14,)) <u>10/12, 10/13, 10/15, 10/17, 10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2((-11/3))</u>
	7AM - 5PM	<u>11/3, 11/4, 11/5, 11/6, 11/7, 11/8, 11/9((-11/10))</u>
Note: In Areas 7 and 7A, it is unlawful to fail to brail when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).		
7B, 7C:	6AM - 9PM	((8/15)) <u>8/14</u>
7B, 7C:	6AM - 8PM	((8/22, 8/29, 9/5)) <u>8/21, 8/28, 9/4</u>
7B:	7AM - 8PM	((9/10, 9/12, 9/14)) <u>9/9, 9/11, 9/13</u>
	7AM - 7PM	((9/17, 9/19, 9/21)) <u>9/16, 9/18, 9/20</u>
	7AM ((9/23))	6PM ((10/27)) <u>10/26</u>
	7AM ((10/29))	4PM ((11/2)) <u>11/1</u>
	7AM ((11/5))	4PM ((11/9)) <u>11/8</u>
	7AM ((11/12))	4PM ((11/16)) <u>11/15</u>
	7AM ((11/19))	4PM ((11/23)) <u>11/22</u>
	7AM ((11/26))	4PM ((11/30)) <u>11/29</u>
		<u>11/25</u>

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to purse seines beginning at 12:01 a.m. on the last Monday in October and until 4:00 p.m. on the first Friday in December.

AREA	TIME	DATE
8:	6AM - 7PM	<u>8/21, 8/22, 8/26, 8/27, 9/4</u>
8A:	6AM - 7PM	<u>8/19, 8/20, 8/28, 8/29, 9/3</u>

AREA	TIME	DATE
	7AM - 7PM	Limited participation - Two boats ((9/17, 9/24)) <u>9/23, 9/30</u>
8D:	7AM - 7PM	((9/17, 9/24, 10/1, 10/8)) <u>9/23, 9/30, 10/7</u>
	7AM - 6PM	((10/16, 10/22, 10/24, 10/29)) <u>10/14, 10/21, 10/28, 10/30</u>
	7AM - 5PM	((11/5, 11/7,)) <u>11/4, 11/11, 11/13, ((11/20))</u> <u>11/18</u>
10:	6AM - 7PM	Limited participation - 5 boats <u>8/15, 8/21, 8/22, 8/27</u>
10, 11:	7AM - 6PM	((10/15, 10/23, 10/25, 10/29)) <u>10/22, 10/28, 10/30</u>
	7AM - 5PM	((11/6, 11/8, 11/12, 11/20)) <u>11/5, 11/11, 11/13, 11/19, 11/26</u>
12, 12B:	7AM - 6PM	((10/15, 10/23, 10/25, 10/29)) <u>10/22, 10/28, 10/30</u>
	7AM - 5PM	((11/6, 11/8, 11/12, 11/20)) <u>11/5, 11/11, 11/13, 11/19</u>
12C:	7AM - 5PM	((11/6, 11/8, 11/12, 11/20)) <u>11/11, 11/13, 11/19, 11/26</u>

Note: In Area 10 during any open period occurring in August or September, it is unlawful to fail to brail or use a brailing bunt when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f). During limited participation fisheries it is unlawful for vessels to take or fish for salmon without department observers on board.

It is unlawful to retain the following salmon species taken with purse seine gear within the following areas during the following periods:

- Chinook salmon - At all times in Areas 7, 7A, 8, 8A, 8D, 10, 11, 12, 12B, and 12C, and after October 20 in Area 7B.
- Coho salmon - At all times in Areas 7, 7A, 10, and 11, and prior to September ((2)) 1 in Area 7B.
- Chum salmon - Prior to October 1 in Areas 7 and 7A, and at all times in 8A.

All other saltwater and freshwater areas - Closed.

AMENDATORY SECTION (Amending Order 12-131, filed 7/12/12, effective 8/12/12)

WAC 220-47-411 Gillnet—Open periods. It is unlawful to take, fish for, or possess salmon taken with gillnet gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided for in each respective fishing area:

AREA	TIME		DATE(S)	MINIMUM MESH
6D: Skiff gillnet only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM	-	7PM 9/21, ((9/22,)) <u>9/24, 9/25, 9/26, 9/27, (9/28)</u> <u>9/30, 10/1, 10/2, 10/3, 10/4, (10/5)</u> <u>10/7, 10/8, 10/9, 10/10, 10/11, (10/12)</u> <u>10/14, 10/15, 10/16, 10/17, 10/18, (10/19)</u> <u>10/21, 10/22, 10/23, 10/24, 10/25</u>	5"

Note: In Area 6D, it is unlawful to use other than 5-inch minimum mesh in the skiff gillnet fishery. It is unlawful to retain Chinook taken in Area 6D at any time, or any chum salmon taken in Area 6D prior to October 16. In Area 6D, any Chinook or chum salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

7, 7A:	7AM	-	Midnight; use of recovery box required ((10/11, 10/14,)) <u>10/12, 10/13, 10/15, 10/17, 10/18, 10/19</u> ((10/20))	6 1/4"
	7AM	-	Midnight <u>10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3, 11/4, 11/5, 11/6, 11/7, 11/8, 11/9</u> ((11/10))	6 1/4"

Note: In Areas 7 and 7A after October 9 but prior to October 21, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gillnet web enters the water, until the gillnet is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f) when coho and Chinook release is required.

7B, 7C:	7PM	-	8AM NIGHTLY ((8/12,)) <u>8/11, 8/13, 8/14, (8/15)</u> <u>8/18, 8/19, 8/20, 8/21, (8/22, 8/26, 8/28, 8/29, 8/30)</u> <u>8/25, 8/27, 8/28</u>	7"
7B, 7C:	7AM ((9/2))	-	7AM ((9/7)) <u>9/6</u>	5"
	<u>9/1</u>	-	7AM ((9/13)) <u>9/12</u>	
	<u>9/8</u>	-	7AM ((9/20)) <u>9/19</u>	5"
	7AM ((9/16)) <u>9/15</u>	-	Midnight ((10/27)) <u>10/26</u>	5"
	7AM ((9/23)) <u>9/22</u>	-	4PM ((11/2)) <u>11/1</u>	6 1/4"
	<u>10/28</u>	-	4PM ((11/9)) <u>11/8</u>	6 1/4"
	6AM ((11/5)) <u>11/4</u>	-	4PM ((11/16)) <u>11/15</u>	6 1/4"
	6AM ((11/12)) <u>11/11</u>	-	4PM ((11/23)) <u>11/22</u>	6 1/4"
	6 AM ((11/19)) <u>11/18</u>	-	4PM ((11/30)) <u>11/29</u>	6 1/4"
	7 AM ((11/26)) <u>11/25</u>	-		

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squilicum Harbor is open to gillnets using 6 1/4-inch minimum mesh beginning 12:01 AM on the last day in October and until 4:00 PM on the first Friday in December.

8:	<u>5AM</u>	=	<u>11PM</u>	<u>8/19, 8/20, 8/28, 8/29</u>	<u>5" minimum and 5 1/2" maximum</u>
	<u>5:30AM</u>	=	<u>11PM</u>	<u>9/3</u>	<u>5" minimum and 5 1/2" maximum</u>

Note: In Area 8 it is unlawful to take or fish for pink salmon with drift gillnets greater than 60-mesh maximum depth. Fishers must also use minimum 5" and maximum 5 1/2" mesh during pink salmon management periods.

8A:	<u>5AM</u>	=	<u>11PM</u>	<u>8/21, 8/22, 8/26, 8/27</u>	<u>5" minimum and 5 1/2" maximum</u>
	<u>5:30AM</u>	=	<u>11PM</u>	<u>9/4</u>	<u>5" minimum and 5 1/2" maximum</u>
	6PM	-	8AM	Limited participation; 2 boats only ((9/19)) <u>9/24</u>	5"

AREA	TIME		DATE(S)	MINIMUM MESH
	6PM	-	8AM NIGHTLY (9/25, 9/26) <u>10/1, 10/2</u>	5"
Note: In Area 8A fishers must use minimum 5" and maximum 5 1/2" mesh during pink salmon management periods.				
8D:	6PM	-	8AM NIGHTLY (9/16, 9/20, 9/23, 9/27, 9/30, 10/4) <u>9/22, 9/26, 9/29, 10/3, 10/6, 10/10</u>	5"
	6PM	-	8AM ((9/20)) <u>9/26</u>	5"
	(9/17) <u>9/23</u>			
	6PM	-	8AM ((9/27)) <u>10/3</u>	5"
	(9/24) <u>9/30</u>			
	6PM	-	8AM ((10/4)) <u>10/10</u>	5"
	(10/1) <u>10/7</u>			
	5PM	-	8AM ((10/7, 10/11)) <u>10/13, 10/17</u>	5"
	5PM	-	8AM ((10/11)) <u>10/17</u>	5"
	(10/8) <u>10/14</u>			
	5PM	-	9AM ((10/14, 10/18, 10/21, 10/25, 10/28, 11/1)) <u>10/20, 10/24, 10/27, 10/31, 11/3, 11/7</u>	5"
	5PM	-	9AM ((10/18)) <u>10/24</u>	5"
	(10/15) <u>10/21</u>			
	5PM	-	9AM ((10/25)) <u>10/31</u>	5"
	(10/22) <u>10/28</u>			
	5PM	-	9AM ((11/1)) <u>11/7</u>	5"
	(10/29) <u>11/4</u>			
	6AM	-	6PM ((11/7, 11/8, 11/14, 11/15, 11/21, 11/22)) <u>11/13, 11/14, 11/20, 11/21, 11/27, 11/28</u>	6 1/4"
	6AM	-	4PM ((11/9, 11/16, 11/23)) <u>11/15, 11/22, 11/29</u>	6 1/4"
9A: Skiff gillnet only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM	-	7PM ((10/27)) <u>11/2</u>	5"
	(8/19) <u>8/25</u>			
Note: It is unlawful to retain chum salmon taken in Area 9A prior to October 1, and it is unlawful to retain Chinook salmon at any time. Any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.				
10:	<u>5AM</u>	=	<u>11PM</u> Limited participation - 5 boats <u>8/14, 8/19, 8/20, 8/27</u>	<u>4 1/2" minimum and 5 1/2" maximum</u>
Note: In Area 10 fishers must use minimum 4 1/2" and maximum 5 1/2" mesh during pink salmon management periods. Also, during August or September openings, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gillnet web enters the water, until the gillnet is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f). During all limited participation fisheries, it is unlawful for vessels to take or fish for salmon without department observers on board.				
10, 11:	5PM	-	9AM NIGHTLY ((10/16, 10/17, 10/21, 10/30, 10/31)) <u>10/20, 10/23, 11/3, 11/6</u>	6 1/4"
	<u>5PM</u>	=	<u>8AM</u> <u>10/29</u>	<u>6 1/4"</u>
	4PM	-	9AM NIGHTLY ((11/4, 11/13, 11/18)) <u>11/12, 11/17, 11/24</u>	6 1/4"
	4PM	-	Midnight NIGHTLY ((10/24, 11/7, 11/14, 11/21)) <u>10/31, 11/14, 11/20, 11/27</u>	6 1/4"
12A: Skiff gillnet only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM	-	7PM Dates determined per agreement with tribal co-managers in-season if Summer Chum Salmon Conservation Initiative goals are met allowing for openings of gillnet gear.	5"
Note: In Area 12A, it is unlawful to use other than 5-inch minimum mesh in the skiff gillnet fishery. It is unlawful to retain Chinook or chum salmon taken in Area 12A at any time, and any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.				
12, 12B:	7AM	-	8PM ((10/16, 10/18, 10/22, 10/24, 10/30, 11/1)) <u>10/21, 10/23, 10/29, 10/31, 11/4, 11/6</u>	6 1/4"
	6AM	-	6PM ((11/5, 11/7, 11/13, 11/15, 11/19)) <u>11/12, 11/14, 11/18, 11/20</u>	6 1/4"
12C:	6AM	-	6PM ((11/5, 11/7, 11/13, 11/15, 11/19, 11/21)) <u>11/12, 11/14, 11/18, 11/20, 11/24, 11/25</u>	6 1/4"

AREA	TIME	DATE(S)	MINIMUM MESH
All other saltwater and freshwater areas - Closed.			
Nightly openings refer to the start date.			
Within an area or areas, a mesh size restriction remains in effect from the first date indicated until a mesh size change is shown, and the new mesh size restriction remains in effect until changed.			

AMENDATORY SECTION (Amending Order 12-131, filed 7/12/12, effective 8/12/12)

WAC 220-47-428 Beach seine—Open periods. It is unlawful to take, fish for, or possess salmon taken with beach seine gear for commercial purposes from Puget Sound except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided hereinafter in each respective Management and Catch Reporting Area:

All areas:

AREA	TIME	DATE(S)
12A:	7AM - 7PM	8/21, 8/22, 8/23, (8/24) 8/26, 8/27, 8/28, 8/29, 8/30, (8/31) 9/2, 9/3, 9/4, 9/5, 9/6, (9/7) 9/9, 9/10, 9/11, 9/12, 9/13, (9/14) 9/16, 9/17, 9/18, 9/19, 9/20, (9/21) 9/23, 9/24, 9/25, 9/26, 9/27(9/28)
12H:	7AM - 7PM	November (dates determined per agreement with tribal co-managers in-season if harvestable surplus of salmon remain).

It is unlawful to retain Chinook taken with beach seine gear in all areas, and it is unlawful to retain chum from Area 12A.