WSR 07-14-030
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed June 26, 2007, 11:15 a.m., effective June 27, 2007]

Effective Date of Rule: June 27, 2007.

Purpose: The department is codifying new special terms and conditions in the new family planning/TAKE CHARGE waiver as set forth by the Centers for Medicare and Medicaid Services (CMS) for the state of Washington.

Citation of Existing Rules Affected by this Order: Amending WAC 388-532-050, 388-532-100, 388-532-110, 388-532-120, 388-532-520, 388-532-530, 388-532-700, 388-532-710, 388-532-720, 388-532-730, 388-532-740, 388-532-750, 388-532-760, 388-532-780, and 388-532-790.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.800.

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

Reasons for this Finding: This emergency rule adoption is necessary while the permanent rule-making process is being completed because the current rules are out of compliance with special terms and conditions of the new family planning/TAKE CHARGE waiver set forth by the CMS for the state of Washington. The waiver was signed August 31, 2006, and is retroactive effective July 1, 2006. Immediate adoption of this emergency rule is required to prevent loss of 90% federal match funds for the family planning/TAKE CHARGE program.

This continues the emergency rule that is currently in effect under WSR 07-06-018 while the department completes the permanent rule-making process. The department has filed a proposed rule-making notice under WSR 07-07-102 and held a public hearing on May 8, 2007. The department anticipates adopting the permanent rule (CR-103) by July 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 15, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 15, Repealed 0.

Date Adopted: June 21, 2007.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-050 Reproductive health services—Definitions. The following definitions and those found in WAC 388-500-005, Medical definitions, apply to this chapter.

"Complication"—A condition occurring subsequent to and directly arising from the family planning services received under the rules of this chapter.

"Comprehensive family planning preventive medicine visit" -For the purposes of this program, is a comprehensive, preventive, contraceptive visit which includes:

• An age and gender appropriate history and examination offered to female Medicaid clients at-risk for pregnancy;

• Education and counseling for risk reduction (ECRR) regarding the prevention of unintended pregnancy; and

• For family planning only and TAKE CHARGE clients, routine gonorrhea and chlamydia testing for women thirteen through twenty-five years of age only.

This preventive visit may only be billed once every twelve months, per client by a department-contracted TAKE CHARGE provider and only for female clients needing contraception.

"Contraception"—Preventing pregnancy through the use of contraceptives.

"Contraceptive"—A device, drug, product, method, or surgical intervention used to prevent pregnancy.

"Delayed pelvic protocol" - The practice of allowing a woman to postpone a pelvic exam during a contraceptive visit to facilitate initiation or continuation of a hormonal contraceptive method.

"Department"—The department of social and health services.

"Department-approved family planning provider"—A physician, advanced registered nurse practitioner (ARNP), or clinic that has:

• Agreed to the requirements of WAC 388-532-110;

• Signed a core provider agreement with the department;

• Assigned a unique family planning provider number by the department; and

• ((~~Signed a special agreement that allows the provider~~)) Agreed to bill for family planning laboratory services provided to clients enrolled in a department-managed care plan through an independent laboratory certified through the Clinical Laboratory Improvements Act (CLIA).

"Family planning services"—Medically safe and effective medical care, educational services, and/or contraceptives that enable individuals to plan and space the number of children and avoid unintended pregnancies.

"Medical identification card"—The document the department uses to identify a client's eligibility for a medical program.

"Natural family planning"—Also known as fertility awareness method, means methods such as observing, recording, and interpreting the natural signs and symptoms associated with the menstrual cycle to identify the fertile days of the menstrual cycle and avoid unintended pregnancies.

"Over-the-counter (OTC)"—See WAC 388-530-1050 for definition.

"Sexually transmitted disease infection (STD-I)"—Is a disease or infection acquired as a result of sexual contact.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-100 Reproductive health services—Client eligibility. (1) The department covers limited reproductive health services for clients eligible for the following medical assistance programs:

(a) Children's health insurance program (CHIP);

(b) Categorically needy program (CNP);

(c) General assistance unemployable (GAU);

(d) Limited casualty program-medically needy program (LCP-MNP); and

(e) Alcohol and Drug Abuse Treatment and Support Act (ADATSA).

(2) Clients enrolled in a department managed care plan may self-refer outside their plan for family planning services (excluding sterilizations for clients twenty-one years of age or older), abortions, and STD-I services to any of the following:

(a) A department-approved family planning provider;

(b) A department-contracted local health department/STD-I clinic; ((~~or~~))

(c) A department-contracted provider for abortion services; or

(d) A department-contracted pharmacy for:

(i) Over-the-counter contraceptive drugs and supplies;

(ii) Contraceptives and STD-I related prescriptions from a department-approved family planning provider or department-contracted local health department/STD-I clinic.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-110 Reproductive health services—Provider requirements. To be reimbursed by the department for reproductive health services provided to eligible clients, physicians, ARNPs, licensed midwives, and department-approved family planning providers must:

(1) Meet the requirements in chapter 388-502 WAC, Administration of medical programs—Provider rules;

(2) Provide only those services that are within the scope of their licenses;

(3) Educate clients on Food and Drug Administration (FDA)-approved prescription birth control methods and over-the-counter (OTC) birth control drugs and supplies and related medical services;

(4) Provide medical services related to FDA-approved prescription birth control methods and OTC birth control drugs and supplies upon request;

(5) Supply or prescribe FDA-approved prescription birth control methods and OTC birth control drugs and supplies upon request; and

(6) Refer the client to an appropriate provider if unable to meet the requirements of subsections (3), (4), and (5) of this section.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-120 Reproductive health—Covered services. In addition to those services listed in WAC 388-531-0100 Physician's related services, the department covers the following reproductive health services:

(1) **Services for women**

(a) ((~~Cervical, vaginal, and breast cancer screening examination once per year as medically necessary~~)) One of the following per client, per year as medically necessary:

(i) One comprehensive family planning preventive medicine visit billable by a TAKE CHARGE provider only. Under a delayed pelvic protocol, the comprehensive family planning preventive medicine visit may be split into two visits, per client, per year; or

(ii) A gynecological examination, billed by a provider other than a TAKE CHARGE provider, which may include a cervical and vaginal cancer screening examination, when it is medically necessary.

(b) The comprehensive family planning preventive medicine visit must be:

(i) Provided by one or more of the following TAKE CHARGE trained providers:

(A) Physician or physician's assistant (PA);

(B) An advanced registered nurse practitioner (ARNP); or

(C) A registered nurse (RN), licensed practical nurse (LPN), a trained and experienced health educator, medical assistant, or certified nursing assistant when used for assisting and augmenting the above listed clinicians.

(ii) Documented in the client's chart with detailed information that would allow for a well-informed follow-up visit.

((~~(b)~~)) (c) Food and Drug Administration (FDA) approved prescription contraception methods as identified in chapter 388-530 WAC, Pharmacy services.

((~~(c)~~)) (d) Over-the-counter (OTC) contraceptives, drugs and supplies (as described in chapter 388-530 WAC, Pharmacy services).

((~~(d)~~)) (e) Sterilization procedures that meet the requirements of WAC 388-531-1550, if it is:

(i) Requested by the client; and

(ii) Performed in an appropriate setting for the procedure.

((~~(e)~~)) (f) Screening and treatment for sexually transmitted diseases-infections (STD-I), including laboratory tests and procedures.

((~~(f)~~)) (g) Education and supplies for FDA-approved contraceptives, natural family planning and abstinence.

((~~(g)~~)) (h) Mammograms for clients forty years of age and older, once per year;

((~~(h)~~)) (i) Colposcopy and related medically necessary follow-up services;

((~~(i)~~)) (j) Maternity-related services as described in chapter 388-533 WAC; and

((~~(j)~~)) (k) Abortion.

(2) **Services for men**

(a) Office visits where the primary focus and diagnosis is contraceptive management and/or there is a medical concern;

(b) Over-the-counter (OTC) contraceptives, drugs and supplies (as described in chapter 388-530 WAC, Pharmacy services).

(c) Sterilization procedures that meet the requirements of WAC 388-531-1550(1), if it is:

(i) Requested by the client; and

(ii) Performed in an appropriate setting for the procedure.

(d) Screening and treatment for sexually transmitted diseases-infections (STD-I), including laboratory tests and procedures.

(e) Education and supplies for FDA-approved contraceptives, natural family planning and abstinence.

(f) Prostate cancer screenings for men ((~~who are fifty years of age and older~~)), once per year, when medically necessary.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-520 Family planning only program—Provider requirements. To be reimbursed by the department for services provided to clients eligible for the family planning only program, physicians, ARNPs, and/or department-approved family planning providers must:

(1) Meet the requirements in chapter 388-502 WAC, Administration of medical programs—Provider rules;

(2) Provide only those services that are within the scope of their licenses;

(3) Educate clients on Food and Drug Administration (FDA)-approved prescription birth control methods and over-the-counter (OTC) birth control drugs and supplies and related medical services;

(4) Provide medical services related to FDA-approved prescription birth control methods and ((~~over-the-counter~~)) OTC birth control drugs and supplies upon request;

(5) Supply or prescribe FDA-approved prescription birth control methods and ((~~over-the-counter~~)) OTC birth control drugs and supplies upon request; and

(6) Refer the client to an appropriate provider if unable to meet the requirements of subsections (3), (4), and (5) of this section.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-530 Family planning only program—Covered services. The department covers the following services under the family planning only program:

(1) One of the following, per client, per year as medically necessary:

(a) One comprehensive family planning preventive medicine visit billable by a TAKE CHARGE provider only. Under a delayed pelvic protocol, the comprehensive family planning preventive medicine visit may be split into two visits, per client, per year; or

(b) A gynecological examination ((~~that~~)), billed by a provider other than a TAKE CHARGE provider, which may include a cervical and vaginal cancer screening examination, one per year when it is:

((~~(a)~~)) (i) Provided according to the current standard of care; and

((~~(b)~~)) (ii) Conducted at the time of an office visit with a primary focus and diagnosis of family planning.

(2) The comprehensive family planning preventive medicine visit must be:

(a) Provided by one or more of the following TAKE CHARGE trained providers:

(i) Physician or physician's assistant (PA);

(ii) An advanced registered nurse practitioner (ARNP); or

(iii) A registered nurse (RN), licensed practical nurse (LPN), a trained and experienced health educator, medical assistant, or certified nursing assistant when used for assisting and augmenting the above listed clinicians.

(b) Documented in the client's chart with detailed information that would allow for a well-informed follow-up visit.

(3) An office visit directly related to a family planning problem, when medically necessary.

(4) Food and Drug Administration (FDA) approved prescription contraception methods meeting the requirements of chapter 388-530 WAC, Pharmacy services.

((~~(3)~~)) (5) Over-the-counter (OTC) contraceptive, drugs and supplies (as described in chapter 388-530 WAC, Pharmacy services).

((~~(4)~~)) (6) Sterilization procedure that meets the requirements of WAC 388-531-1550, if it is:

(a) Requested by the client; and

(b) Performed in an appropriate setting for the procedure.

((~~(5)~~)) (7) Screening and treatment for sexually transmitted diseases-infections (STD-I), including laboratory test and procedures only when the screening and treatment is:

(a) For chlamydia and gonorrhea as part of the comprehensive family planning preventive medicine visit for women thirteen to twenty-five years of age; or

(b) Performed in conjunction with an office visit that has a primary focus and diagnosis of family planning; and

((~~(b)~~)) (c) Medically necessary for the client to safely, effectively, and successfully use, or to continue to use, her chosen contraceptive method.

((~~(6)~~)) (8) Education and supplies for FDA-approved contraceptives, natural family planning and abstinence.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-700 TAKE CHARGE program—Purpose. TAKE CHARGE is a ((~~five-year~~)) family planning demonstration and research program approved by the federal government under a Medicaid program waiver. The purpose of the TAKE CHARGE program is to make family planning services available to men and women with incomes at or below two hundred percent of the federal poverty level. ((~~TAKE CHARGE is approved by the federal government under a Medicaid program waiver and runs from July 1, 2001, through June 30, 2006 (unless terminated or extended prior to June 30, 2006).~~)) See WAC 388-532-710 for a definition of TAKE CHARGE.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-710 TAKE CHARGE program—Definitions. The following definitions and those found in WAC 388-500-0005 medical definitions and WAC 388-532-050 apply to the ((~~medical assistance administration's (MAA's)~~)) department's TAKE CHARGE program.

"Ancillary services"—Those family planning services provided to TAKE CHARGE clients by ((~~MAA's~~)) department-contracted providers who are not TAKE CHARGE providers. These services include, but are not limited to, family planning pharmacy services, family planning laboratory services and sterilization ((~~surgical~~)) services.

"Application assistance"—The process a TAKE CHARGE provider follows in helping a client to complete and submit an application to MAA for the TAKE CHARGE program.

"Education, counseling and risk reduction intervention" or **"ECRR"**—((~~A stand alone department designated service, specifically intended for clients at higher risk of contraceptive failure, that strengthen a client's decision making skills to make the best choice of contraceptive method and reduce the risk of unintended pregnancy. ECRR services must include:~~

~~(1) Helping the client critically evaluate which contraceptive method is most acceptable and can be used most effectively by her/him.~~

~~(2) Assessing and addressing other client personal considerations, risk factors (including sexually transmitted infections), and behaviors that impact her/his use of contraception.~~

~~(3) Facilitating a discussion of the male role in successful use of chosen contraceptive method, as appropriate.~~

~~(4) Facilitating contingency planning (the back-up method) regarding the chosen contraceptive method, including planning for emergency contraception.~~

~~(5) Scheduling a follow-up appointment as medically necessary for birth control evaluation for the safe, effective and successful use of the client's chosen contraceptive method and to reinforce positive contraceptive and other self protective behaviors.~~

~~(6) If no contraceptive method is chosen, discussing the likelihood of a pregnancy and helping the client assess his/her emotional, physical, and financial readiness for pregnancy and/or parenting~~)) Client-centered education and counseling services designed to strengthen decision making skills and support a client's safe, effective and successful use of his or her chosen contraceptive method. For women, ECRR is part of the annual preventive medicine visit. For men, ECRR is a stand alone service for those men seeking family planning services and whose partners are at moderate to high risk of unintended pregnancy.

((~~**"Intensive follow-up services"** or **"IFS"—**Those supplemental services specified in some TAKE CHARGE provider contracts that support clients in the successful use of contraceptive methods. Department-selected TAKE CHARGE providers perform IFS as part of the research component of the TAKE CHARGE program (see WAC 388-532-730 (1)(f)).~~))

"TAKE CHARGE"—The department's ((~~five-year~~)) demonstration and research program approved by the federal government under a Medicaid program waiver to provide family planning services.

"TAKE CHARGE provider"—A provider who is approved by the department to participate in TAKE CHARGE by:

(1) Being a department-approved family planning provider; and

(2) Having a supplemental TAKE CHARGE agreement to provide TAKE CHARGE family planning services to eligible clients under the terms of the federally approved Medicaid waiver for the TAKE CHARGE program.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-720 TAKE CHARGE program—Eligibility. (1) The TAKE CHARGE program is for men and women. To be eligible for the TAKE CHARGE program, an applicant must:

(a) Be a United States citizen, U.S. National, or "qualified alien" as described in chapter 388-424 WAC and provide proof of citizenship or qualified alien status, and identity;

(b) Be a resident of the state of Washington as described in WAC 388-468-0005;

(c) Have income at or below two hundred percent of the federal poverty level as described in WAC 388-478-0075;

(d) Need family planning services;

(e) Apply voluntarily for family planning services with a TAKE CHARGE provider; and

((~~(e) Need family planning services but have:~~

~~(i) No family planning coverage through another medical assistance program; or~~

~~(ii) Family planning coverage that does not cover one hundred percent of the applicant's chosen birth control~~)) (f) Not currently covered through another medical assistance program for family planning or have any health insurance that covers family planning.

(2) A client who is currently pregnant or sterilized is not eligible for TAKE CHARGE.

(3) A client is authorized for TAKE CHARGE coverage for one year from the date the department determines eligibility or for the duration of the demonstration and research program, whichever is shorter, as long as the criteria in subsection (1) and (2) of this section continue to be met. Upon reapplication for TAKE CHARGE by the client, the department may renew the coverage for additional periods of up to one year each, or for the duration of the demonstration and research program, whichever is shorter.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-730 TAKE CHARGE program—Provider requirements. (1) A TAKE CHARGE provider must:

(a) Be a department-approved family planning provider as described in WAC 388-532-050;

(b) Sign the supplemental TAKE CHARGE agreement to participate in the TAKE CHARGE demonstration and research program according to the department's TAKE CHARGE program guidelines;

(c) Participate in the department's specialized training for the TAKE CHARGE demonstration and research program prior to providing TAKE CHARGE services. Providers must ((~~assure~~)) document that each individual responsible for providing TAKE CHARGE services is trained on all aspects of the TAKE CHARGE program;

(d) Comply with the required general department and TAKE CHARGE provider policies, procedures, and administrative practices as detailed in the department's billing instructions and provide referral information to clients regarding available and affordable nonfamily planning primary care services; ((~~and~~))

(e) If requested by the department, participate in the research and evaluation component of the TAKE CHARGE demonstration and research program. ((~~If selected by the department for the research and evaluation component, the provider must accept assignment to either:~~

~~(i) A randomly selected group of providers that give intensive follow-up service (IFS) to TAKE CHARGE clients under a TAKE CHARGE research component client services contract. See WAC 388-532-740(2) for a related limitation; or~~

~~(ii) A randomly selected control group of providers subject to a TAKE CHARGE research component client services contract.~~))

(f) Unless otherwise requested in writing by the client, forward the client's medical identification card and TAKE CHARGE brochure to the client within seven working days of receipt;

(g) Inform the client of their right to see any TAKE CHARGE provider within the state; and

(h) Refer the client to available and affordable non-family planning care services, as needed.

(2) Department providers (e.g., pharmacies, laboratories, surgeons performing sterilization procedures) who are not TAKE CHARGE providers may furnish family planning ((~~ancil take charge lary~~)) ancillary TAKE CHARGE services, as defined in this chapter, to eligible clients. The department reimburses for these services under the rules and fee schedules applicable to the specific services provided under the department's other programs.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-740 TAKE CHARGE program—Covered services for women. (1) The department covers the following TAKE CHARGE services for ((~~men and~~)) women:

(a) One session of application assistance per client, per year;

(b) Food and Drug Administration (FDA) approved prescription and nonprescription contraceptives as provided in chapter 388-530 WAC;

(c) Over-the-counter (OTC) contraceptives, drugs, and supplies (as described in chapter ((~~388-538~~)) 388-530 WAC, Pharmacy services);

(d) ((~~Gynecological examination that may include a cervical and vaginal cancer screening exam, one per year when it is:~~

~~(i) Provided according to the current standard of care; and~~

~~(ii) Conducted at the time of an office visit with a primary focus and diagnosis of family planning.~~

~~(e) Education, counseling, and risk reduction (ECRR) intervention, specifically intended for clients at higher risk of contraceptive failure, that have identified or demonstrated risks of unintended pregnancy. MAA limits ECRR as follows:~~

~~(i) For women at risk of unintended pregnancy, limited to one ECRR service every ten months;~~

~~(ii) For men whose sexual partner is at risk of unintended pregnancy, limited to one ECRR service every twelve months;~~

~~(iii) Must be a minimum of thirty minutes in duration;~~

~~(iv) Must be appropriate and individualized to the client's needs, age, language, cultural background, risk behaviors, sexual orientation, and psychosocial history;~~

~~(v) Must be provided by one of the following TAKE CHARGE trained providers:~~

~~(A) An advanced registered nurse practitioner (ARNP);~~

~~(B) Registered nurse (RN), licensed practical nurse (LPN);~~

~~(C) Physician or physician's assistant (PA); or~~

~~(D) A trained and experienced health educator or medical assistant when used for assisting and augmenting the above listed clinicians.~~

~~(vi) Must be documented in the client's chart with detailed information that would allow for a well-informed follow-up visit;~~

~~(vii) A client who does not have identified or demonstrated risks of unintended pregnancy and who is not at increased risk of contraceptive failure is not eligible for ECRR.~~

~~(f)~~)) One comprehensive family planning preventive medicine visit billable by a TAKE CHARGE provider only. Under a delayed pelvic protocol, the comprehensive family planning preventive medicine visit may be split into two visits, per client, per year.

(e) Sterilization procedure that meets the requirements of WAC 388-531-1550, if the service is:

(i) Requested by the TAKE CHARGE client; and

(ii) Performed in an appropriate setting for the procedure.

(((~~g~~))) (f) Screening and treatment for sexually transmitted diseases-infections (STD-I), including laboratory tests and procedures, only when the screening and treatment is:

(i) For chlamydia and gonorrhea as part of the comprehensive family planning preventive medicine visit for women thirteen to twenty-five years of age; or

(ii) Performed in conjunction with an office visit that has a primary focus and diagnosis of family planning; and

(((~~ii~~))) (iii) Medically necessary for the client to safely, effectively, and successfully use, or continue to use, his or her chosen contraceptive method.

(((~~h~~))) (g) Education and supplies for FDA-approved contraceptives, natural family planning and abstinence.

(2) ((~~The department covers intensive follow-up services (IFS) for certain clients as part of the research component of the TAKE CHARGE demonstration and research program. Only those clients served by the department's randomly selected research sites receive IFS (see WAC 388-532-730 (1)(e)(i)). The specific elements of IFS are negotiated with each research site~~)) The comprehensive family planning preventive medicine visit must be:

(a) Provided by one or more of the following TAKE CHARGE trained providers:

(i) Physician or physician's assistant (PA);

(ii) An advanced registered nurse practitioner (ARNP); or

(iii) A registered nurse (RN), licensed practical nurse (LPN), a trained and experienced health educator, medical assistant, or certified nursing assistant when used for assisting and augmenting the above listed clinicians.

(b) Documented in the client's chart with detailed information that would allow for a well-informed follow-up visit.

(3) An office visit directly related to a family planning problem, when medically necessary.

NEW SECTION

WAC 388-532-745 TAKE CHARGE Program - Covered services for men. The department covers the following TAKE CHARGE services for men:

(1) One session of application assistance per client, per year;

(2) Over-the-counter (OTC) contraceptives, drugs, and supplies (as described in chapter 388-530 WAC, Pharmacy Services);

(3) Sterilization procedure that meets the requirements of WAC 388-531-1550, if the service is:

(a) Requested by the TAKE CHARGE client; and

(b) Performed in an appropriate setting for the procedure.

(4) Screening and treatment for sexually transmitted diseases-infections (STD-I), including laboratory tests and procedures, only when the screening and treatment is related to, and medically necessary for, a sterilization procedure.

(5) Education and supplies for FDA-approved contraceptives, natural family planning and abstinence.

(6) One education and counseling session for risk reduction (ECRR) per client, every twelve months. ECRR must be:

(a) Provided by one or more of the following TAKE CHARGE trained providers:

(i) Physician or physician's assistant (PA);

(ii) An advanced registered nurse practitioner (ARNP); or

(iii) A registered nurse (RN), licensed practical nurse (LPN), a trained and experienced health educator, medical assistant, or certified nursing assistant when used for assisting and augmenting the above listed clinicians; and

(b) Documented in the client's chart with detailed information that would allow for a well-informed follow-up visit.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-750 TAKE CHARGE program—Noncovered services. The department does not cover medical services under the TAKE CHARGE program ((~~unless those services are~~)):

(1) Abortions and other pregnancy-related services;

(2) Any other medical services, unless those services are:

(a) Performed in relation to a primary focus and diagnosis of family planning; and

(((~~2~~))) (b) Medically necessary for the client to safely, effectively, and successfully use, or continue to use, his or her chosen contraceptive method.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-760 TAKE CHARGE program—Documentation requirements. In addition to the documentation requirements in WAC 388-502-0020, TAKE CHARGE providers must keep the following records:

(1) TAKE CHARGE ((~~preapplication worksheet~~)) application form(s) ((~~and application(s)~~));

(2) Signed supplemental TAKE CHARGE agreement to participate in the TAKE CHARGE program;

(3) Documentation of the department's specialized TAKE CHARGE training and/or in-house in-service TAKE CHARGE training for each individual responsible for providing TAKE CHARGE.

(4) Chart notes that reflect the primary focus and diagnosis of the visit was family planning;

(5) Contraceptive methods discussed with the client;

(6) Notes on any discussions of emergency contraception and needed prescription(s);

(7) The client's plan for the contraceptive method to be used, or the reason for no contraceptive method and plan;

(8) Documentation of the education, counseling and risk reduction (ECRR) service, if provided, ((~~including all of the required components as defined in WAC 388-532-710~~)) with sufficient detail that allows for follow-up;

(9) Documentation of referrals to or from other providers;

(10) A form signed by the client authorizing release of information for referral purposes, as necessary; ((~~and~~))

(11) The client's written and signed consent requesting that his or her medical identification card be sent to the TAKE CHARGE provider's office to protect confidentiality;

(12) A copy of the client's picture identification;

(13) Documentation used to establish US citizenship or legal permanent resident; and

(14) If applicable, a copy of the completed DSHS sterilization consent form [DSHS 13-364 - available for download at http://www.dshs.wa.gov/msa/forms/eforms.html] (see WAC 388-531-1550).

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-780 TAKE CHARGE program—Reimbursement and payment limitations. (1) The department

limits reimbursement under the TAKE CHARGE program to those services that:

(a) Have a primary focus and diagnosis of family planning as determined by a qualified licensed medical practitioner; and

(b) Are medically necessary for the client to safely, effectively, and successfully use, or continue to use, his or her chosen contraceptive method.

(2) The department reimburses providers for covered TAKE CHARGE services according to the department's published TAKE CHARGE fee schedule.

(3) ((~~(3)~~)) The department limits reimbursement for TAKE CHARGE ((~~intensive follow-up services (IFS) to those randomly selected research sites described in WAC 388-532-740(2). See WAC 388-532-730 (1)(e)(i) for related information~~)) research and evaluation activities to selected research sites.

(4) Federally qualified health centers (FQHCs), rural health centers (RHCs), and Indian health providers who choose to become TAKE CHARGE providers must bill the department for TAKE CHARGE services without regard to their special rates and fee schedules. The department does not reimburse FQHCs, RHCs or Indian health providers under the encounter rate structure for TAKE CHARGE services.

(5) The department requires TAKE CHARGE providers to meet the billing requirements of WAC 388-502-0150 (billing time limits). In addition, all final billings and billing adjustments related to the TAKE CHARGE program must be completed no later than ((~~June 30, 2008, or no later than~~)) two years after the demonstration and research program terminates((~~, whichever occurs first~~)). The department will not accept new billings or billing adjustments that increase expenditures for the TAKE CHARGE program after the cut-off date ((~~in this subsection~~)).

(6) The department does not cover inpatient services under the TAKE CHARGE program. However, inpatient charges may be incurred as a result of complications arising directly from a covered TAKE CHARGE service. If this happens, providers of TAKE CHARGE related inpatient services that are not otherwise covered by third parties or other medical assistance programs must submit to the department a complete report of the circumstances and conditions that caused the need for inpatient services for the department to consider payment under WAC 388-501-0165.

(7) The department requires a provider under WAC 388-501-0200 to seek timely reimbursement from a third party when a client has available third party resources. The exceptions to this requirement are described under WAC 388-501-0200 (2) and (3) and 388-532-790.

AMENDATORY SECTION (Amending WSR 05-24-032, filed 11/30/05, effective 12/31/05)

WAC 388-532-790 TAKE CHARGE program—Good cause exemption from billing third party insurance. (1) TAKE CHARGE applicants who are ((~~either adolescents or young adults~~)) eighteen years of age or younger and ((~~who~~)) depend on their parents' medical insurance, or individuals who are domestic violence victims who depend on their spouses insurance may request an exemption of available third party family planning coverage due to "good cause." Under the TAKE CHARGE program, "good cause" means that use of the third party coverage would violate his or her privacy because the third party:

(a) Routinely or randomly sends verification of services to the third party subscriber and that subscriber is other than the applicant; and/or

(b) Requires the applicant to use a primary care provider who is likely to report the applicant's request for family planning services to another party.

(2) If subsection (1)(a) or (1)(b) of this section applies, the applicant is considered for TAKE CHARGE without regard to the available third party family planning coverage.

WSR 07-14-071
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed June 29, 2007, 11:53 a.m., effective July 1, 2007]

Effective Date of Rule: July 1, 2007.

Purpose: The department is creating WAC 388-832-0001 through 388-832-0470 to combine three family support programs into one individual and family services program as directed by the legislature.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.040.

Other Authority: Chapter 283, Laws of 2007 (2SSB 5467).

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

Reasons for this Finding: Chapter 283, Laws of 2007 (2SSB 5467) directs the department to create the individual and family services program for persons with developmental disabilities by July 1, 2007. A preproposal statement of inquiry (CR-101) was filed as WSR 07-10-018 on April 20, 2007. At that time, the department proposed amending chapter 388-825 WAC but has since decided that a new chapter is required, due to the length of the new rules. Proposed rule making CR-102 will be filed by August 15, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 88, Amended 0, Repealed 0.

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

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

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

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

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 88, Amended 0, Repealed 0.

Date Adopted: June 26, 2007.

Stephanie E. Schiller
Rules Coordinator

Chapter 388-832 WAC

INDIVIDUAL AND FAMILY SERVICES PROGRAM

NEW SECTION

WAC 388-832-0001 What definitions apply to this chapter? The following definitions apply to this Chapter:

"Agency Provider" means a licensed and/or ADSA certified business that is contracted with ADSA or a county to provide DDD services (e.g., personal care, respite care, residential services, therapy, nursing, employment, etc.).

"Allocation" means an amount of funding available to the client & family for a maximum of twelve months, based upon assessed need.

"Authorization" means DDD approval of funding for a service as identified in the individual support plan or evidence of payment of a service.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(3) who also has been determined eligible to receive services by the division under chapter 71A.16 RCW.

"DDD" means the division of developmental disabilities, a division within the aging and disability services administration (ADSA), department of social and health services (DSHS).

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

"Emergency" means the client's health or safety is in jeopardy.

"Family" means individuals, of any age, living together in the same household and related by blood, marriage, adoption or as a result of sharing legal custody of a minor child.

"Family Home" means the residence where you and your relatives live.

"Individual Provider" means an individual who is contracted with DDD to provide medicaid or waiver personal care, respite care, or attendant care services.

"Individual Support Plan" or **"ISP"** is a document that authorizes the DDD paid services to meet a client's needs identified in the DDD Assessment.

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

"Parent family support contract" means a contract between DDD and the parent to reimburse the parent for the purchase of goods and services paid for by the parent.

"Pass through contract" means a contract between DDD and a third party to reimburse the third party for the purchase of goods and services paid for by the third party.

"Residential Habilitation Center" or **"RHC"** is a state operated facility certified to provide ICF/MR and/or nursing facility level of care for persons with developmental disabilities per chapter 71A.20 RCW.

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

"State supplementary payment" or **"SSP"** means a state paid cash assistance program for certain DDD clients eligible for supplemental security income per chapter 388-827 WAC.

"You" means the client.

DESCRIPTION

NEW SECTION

WAC 388-832-0005 What is the individual and family services program? The "individual and family services program" (IFS Program) is a state-only funded program that:

(1) Provides an array of services to families to help maintain and stabilize the family unit; and

(2) Replaces WAC 388-825-200 through 388-825-242 (the family support opportunity program); WAC 388-825-252 through 388-832-256 (the traditional family support program), and WAC 388-825-500 through 388-832-595, (the flexible family support pilot program), and WAC 388-825-244 through 388-832-250 (other family support rules).

NEW SECTION

WAC 388-832-0007 What is the purpose of the individual and family services (IFS) program? The purpose of the IFS program is to have one DDD family support program that will:

(1) Form a partnership between the state and families to help support families who have a client of DDD living in the family home; and

(2) Provide families with a choice of services and allow families more control over the resources allocated to them.

ELIGIBILITY

NEW SECTION

WAC 388-832-0015 Am I eligible to participate in the IFS program? You are eligible to be considered for the IFS program if you meet the following criteria:

(1) You are currently an eligible client of DDD;

(2) You live in your family home;

(3) You are not enrolled in a DDD home and community based services waiver defined in chapter 388-845 WAC;

(4) You are currently enrolled in traditional family support, family support opportunity or the family support pilot or funding has been approved for you to receive IFS program services;

(5) You are age three or older as of July 1, 2007; and

(6) You have been assessed as having a need for IFS program services as listed in WAC 388-832-0140.

NEW SECTION

WAC 388-832-0020 Will I be authorized to receive IFS services if I meet the eligibility criteria in WAC 388-832-0015? Meeting eligibility criteria for the IFS program does not ensure access to or receipt of the IFS program services.

(1) Receipt of IFS services is limited by availability of funding and your assessed need.

(2) WAC 388-832-0085 through 388-832-0090 describes how DDD will determine who will be approved to receive funding.

NEW SECTION

WAC 388-832-0022 What determines the allocation of funds available to me to purchase IFS services? The allocation of funds is based on your service level, as described in WAC 388-832-0130. The DDD assessment will determine your service level based on your assessed need.

NEW SECTION

WAC 388-832-0023 If I qualify for another DDD service, will my IFS program be reduced or terminated? Since your IFS amount is based on the assessed need, if your needs change, the dollar amount will be impacted. However, if you are qualified for another DDD service, you can still receive IFS as long as you continue to have an assessed need and have met the eligibility criteria for the IFS Program.

NEW SECTION

WAC 388-832-0024 If I participate in the IFS program, will I be eligible for services through the DDD home and community based services (HCBS) waiver? If you participate in the IFS program you may not participate in the DDD HCBS waiver at the same time. You may request enrollment in a DDD HCBS waiver at any time per WAC 388-845-0050. Participation in the IFS program will not affect your potential waiver eligibility.

NEW SECTION

WAC 388-832-0025 Am I eligible for the IFS program if I currently receive other DDD paid services? If you receive other non-waiver DDD funded services, you may be eligible for the IFS program.

NEW SECTION

WAC 388-832-0030 What if I receive SSP funding in lieu of the IFS program? If you receive SSP funding in lieu of IFS, your SSP funding will remain unchanged for the first year of the DDD assessment (June 1, 2007 through May 31, 2008) and you will not receive IFS funding.

NEW SECTION

WAC 388-832-0035 What happens if I am no longer eligible for SSP in lieu of the IFS program? If your SSP eligibility is based on your eligibility for the IFS program and you become ineligible for SSP funding, you will be assessed for enrollment in the IFS program.

NEW SECTION

WAC 388-832-0045 What if there are two or more family members who are eligible for the IFS program? If there are two or more family members who are eligible for the IFS program, each family member will be assessed to determine their IFS program allocation based on their individual need.

NEW SECTION

WAC 388-832-0050 How do I request IFS program services? You may contact your DDD case/resource manager at any time to request IFS program services. You will receive written notice of DDD's approval or denial along with your administrative hearing rights.

NEW SECTION

WAC 388-832-0055 How long do I remain eligible for the IFS program? To remain eligible for the IFS program you must be reassessed at least every twelve months or sooner if there is a significant change in your needs per WAC 388-828-1500.

NEW SECTION

WAC 388-832-0060 Can DDD terminate my eligibility for the IFS program? You may be terminated from the IFS program for any of the following reasons:

(1) You no longer meet DDD eligibility per WAC 388-823-0010 through 388-823-0170;

(2) You no longer meet the eligibility criteria for the IFS program per WAC 388-832-0015;

(3) You have not used an IFS program service during the last twelve calendar months;

(4) You cannot be located or do not make yourself available for the annual DDD assessment; and/or

(5) You refuse to participate with DDD in service planning.

NEW SECTION

WAC 388-832-0065 If I go into a temporary out of home placement, will I be eligible for IFS upon my return home? You can apply for the IFS program once you return home from placement by contacting your DDD case manager. Your case manager will schedule an assessment with you, and if you meet all the eligibility criteria per WAC, have an assessed need, and funding is available you will receive an IFS program allocation.

INDIVIDUAL AND FAMILY SERVICES PROGRAM WAIT LIST

NEW SECTION

WAC 388-832-0070 What is the IFS program wait list? The IFS wait list is a list of clients who live with their family and the family has requested family support services.

NEW SECTION

WAC 388-832-0075 Do I have to have a DDD assessment before I can be added to the IFS wait list? You do not have to have a DDD assessment prior to your name being added to the IFS wait list.

(1) Your name and request date will be added to the wait list.

(2) A notice will be sent to you to let you know your name has been added to the IFS wait list.

NEW SECTION

WAC 388-832-0085 When there is state funding available to enroll new clients in the IFS program, how will DDD select from the clients on the IFS program wait list? When there is state funding available for new IFS participants, DDD may enroll participants based on the following considerations:

(1) Clients who have requested RHC respite, emergency services, or residential placement.

(2) Clients with the highest scores on the mini assessment.

(3) Clients who have been on the IFS program wait list the longest.

NEW SECTION

WAC 388-832-0087 What happens next if I am selected from the IFS program wait list? If you are selected from the IFS program wait list:

(1) Your DDD case/resource manager will contact you, and determine if you meet the eligibility criteria for IFS program per WAC 388-832-0015 (1) though (6);

(2) If you meet the criteria per (1) above, your case/resource manager will schedule an appointment to complete your DDD assessment or reassessment.

(3) If you have not been receiving any DDD paid services, your DDD eligibility will need to be reviewed per WAC 388-823-1010(3)

(4) Your DDD eligibility must be completed prior to doing the DDD assessment.

NEW SECTION

WAC 388-832-0090 If I currently receive funding from the traditional family support program, the family support opportunity program or the family support pilot program, will I qualify for the IFS program? If you currently receive funding from the traditional family support program, the family support opportunity program or the family support pilot program, you will continue to receive funding under the IFS program if your DDD assessment identifies that you have a need for the IFS program.

NEW SECTION

WAC 388-832-0095 What happens if DDD finds me ineligible for the IFS program? If you do not meet the criteria for the IFS program, DDD will terminate your family support eligibility and funding. You will receive written notice of this decision along with your administrative hearing rights.

ASSESSMENT

NEW SECTION

WAC 388-832-0100 What assessment will DDD use to assess my need? The DDD assessment will be used to assess your need. The DDD assessment is an assessment tool designed to measure the support needs of persons with developmental disabilities, and is described in chapter 388-828 WAC.

NEW SECTION

WAC 388-832-0110 Will DDD ask about my family's income? DDD is required to collect family income information for:

(1) Families of children who are seventeen years of age or younger; and

(2) All individuals who are receiving state-only funded services.

NEW SECTION

WAC 388-832-0113 Will my IFS allocation be impacted by my income? The amount of services you receive will be solely based on your assessed needs. Your income will not affect your level of service.

NEW SECTION

WAC 388-832-0114 What is family income? Family income is defined as the total unadjusted, annual family (or household) income from all sources for the last calendar year as reported to the internal revenue service (IRS).

NEW SECTION

WAC 388-832-0115 How is an individual's access to DDD paid services affected if family income information is not provided? An individual's access to DDD paid services is not affected when families decline to provide DDD with family income information.

NEW SECTION

WAC 388-832-0127 What if I have assessed needs that cannot be met by the IFS program? If you complete the DDD assessment and are assessed to have an unmet need and there is no approved funding to support that need, DDD

will offer you referral information for ICF/MR services. In addition, DDD may:

(1) Provide information and referral for non-DDD community-based supports;

(2) Add your name to the waiver data base, if you have requested enrollment in a DDD HCBS waiver per chapter 388-845 WAC; and

(3) Authorize short-term emergency services as an exception to rule (ETR) per WAC 388-440-0001.

NEW SECTION

WAC 388-832-0128 What is the plan effective date? The plan effective date is the date the family gives verbal or written approval to the ISP.

ALLOCATION

NEW SECTION

WAC 388-832-0130 What is the amount of the IFS program allocation my family is going to receive? The DDD assessment, described in chapter 388-828 WAC, will determine your level of need. The IFS program annual allocations are as follows:

(1) Level 1 - Up to $2,000;

(2) Level 2 - Up to $3,000;

(3) Level 3 - Up to $4,000; and

(4) Level 4 - Up to $6,000.

NEW SECTION

WAC 388-832-0135 How can my family use its IFS program allocation? Your IFS program allocation is available to pay for any of the services listed in WAC 388-832-0140 if:

(1) The service need relates to and results from your developmental disability, and

(2) The need is identified in your DDD assessment and authorized on your ISP.

NEW SECTION

WAC 388-832-0136 If I have a family support reimbursement contract, can DDD ask me to verify my purchases through reviewing receipts? If you have a family support reimbursement contract, DDD can ask you to verify your purchases through reviewing receipts. You should submit receipts to your case manager whenever you are asking for reimbursement.

NEW SECTION

WAC 388-832-0137 May I use my allocation over a two year period for large costly expenditures? You may not use your allocation over a two year period for a large costly expenditure. Your annual allocation must be used during the twelve month period your assessed needs were determined. If your IFS program services are not used in the twelve month period, you will be terminated from the IFS program.

SERVICES

NEW SECTION

WAC 388-832-0140 What services are available through the IFS program? The services available in the IFS program are limited to the following:

(1) Respite care;

(2) Therapies:

(a) Physical therapy (PT);

(b) Occupational therapy (OT); and

(c) Speech, language and communication therapy.

(3) Architectural and vehicular modifications;

(4) Equipment and supplies;

(5) Specialized nutrition and clothing;

(6) Excess medical costs not covered by another source;

(7) Co-pays for medical and therapeutic services;

(8) Transportation;

(9) Training;

(10) Counseling;

(11) Behavior management;

(12) Parent/sibling education;

(13) Recreational opportunities; and

(14) Community service grants.

NEW SECTION

WAC 388-832-0143 What is respite care? Respite care is short-term intermittent relief for persons who normally provide care for individuals.

NEW SECTION

WAC 388-832-0145 Who is eligible to receive respite care? The person providing your care is eligible to receive respite care if you are in the IFS program and:

(1) You live with a family member who is an unpaid caregiver; or

(2) You live with a paid caregiver who is a natural, step or adoptive parent.

NEW SECTION

WAC 388-832-0150 Where can respite care be provided? (1) Respite care can be provided in the following location(s):

(a) Individual's home; or

(b) Relative's home.

(2) Respite care can be also be provided in the following location(s) but require a DDD agency respite contract:

(a) Licensed children's foster home;

(b) Licensed, contracted and DDD certified group home;

(c) Licensed boarding home contracted as an adult residential center;

(d) Licensed and contracted adult family home;

(e) Children's licensed group home, licensed staffed residential home, or licensed childcare center; or

(f) Adult day health.

NEW SECTION

WAC 388-832-0155 Who are qualified providers of respite care? Providers of respite care can be any of the following individuals or agencies contracted with DDD for respite care:

(1) Individuals meeting the provider qualifications under chapter 388-825 WAC;

(2) Homecare/home health agencies, licensed under WAC 246-335-012(1);

(3) Licensed and contracted group homes, foster homes, child placing agencies, staffed residential homes and foster group care homes;

(4) Licensed and contracted adult family home;

(5) Licensed and contracted adult residential care facility;

(6) Licensed and contracted adult residential rehabilitation center under WAC 246-325-012;

(7) Licensed childcare center under chapter 388-295 WAC;

(8) Licensed child daycare center under chapter 388-295 WAC;

(9) Adult day/health care centers contracted with DDD;

(10) Certified provider per chapter 388-101 WAC when respite is provided within the DDD contract for certified residential services; or

(11) Other DDD contracted providers such as community center, senior center, parks and recreation, summer Programs, adult day/health care.

NEW SECTION

WAC 388-832-0160 Are there limits to the respite care I receive? The following limitations apply to the respite care you can receive:

(1) Respite cannot replace:

(a) Daycare while a parent or guardian is at work; and/or

(b) Personal care hours available to you. When determining your unmet need, DDD will first consider the personal care hours available to you.

(2) Respite providers have the following limitations and requirements:

(a) If respite is provided in a private home, the home must be licensed unless it is the client's home or the home of a relative of specified degree per WAC 388-825-345;

(b) The respite provider cannot be the spouse of the caregiver receiving respite if the spouse and the caregiver reside in the same residence; and

(c) If you receive respite from a provider who requires licensure, the respite services are limited to those age-specific services contained in the provider's license.

(3) Your caregiver cannot receive respite services for you while being paid to provide DDD services for other persons at the same time.

(4) The need for respite must be identified in your ISP and cannot exceed your IFS allocation.

NEW SECTION

WAC 388-832-0165 What are considered excess medical costs not covered by another source? Excess medical costs are medical expenses incurred by a client after medicaid or private insurance have been accessed or when the client does not have medical insurance. This may include the following:

(1) Skilled nursing services (ventilation, catheterization, and insulin shots);

(2) Psychiatric services; and/or

(3) Medical services related to the persons disability and an allowable medicaid covered expense.

NEW SECTION

WAC 388-832-0170 What therapies can I receive? The therapies the individual can receive are:

(1) Physical therapy;

(2) Occupational therapy; and/or

(3) Speech, hearing and language therapy.

NEW SECTION

WAC 388-832-0175 Who is a qualified therapist? Providers must be certified, registered or licensed therapists as required by law and contracted with DDD for the therapy they are providing.

NEW SECTION

WAC 388-832-0180 Are there limits to the therapy I can receive? The following limitations apply to therapy you may receive:

(1) Additional therapy may be authorized as a service only after you have accessed what is available to you under medicaid and any other private health insurance plan or school;

(2) DDD does not pay for treatment determined by DSHS to be experimental;

(3) DDD and the treating professional determine the need for and amount of service you can receive;

(a) DDD may to require a second opinion from a DDD selected provider.

(b) DDD will require evidence that you have accessed your full benefits through medicaid, private insurance and the school before authorizing this service.

(4) The need for therapies must be identified in your ISP and cannot exceed your IFS allocations.

NEW SECTION

WAC 388-832-0185 What are architectural and vehicular modifications? (1) Architectural and vehicular modifications are physical adaptations to the home and vehicle of the individual to:

(a) Ensure the health, welfare and safety of the client and or caregiver; or

(b) Enable a client who would otherwise require a more restrictive environment to function with greater independence in the home or in the community.

(2) Architectural modifications include the following:

(a) Installation of ramps and grab bars;

(b) Widening of doorways;

(c) Modification of bathroom facilities; or

(d) Installing specialized electrical and or plumbing systems necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual.

(3) Vehicular modifications include the following:

(a) Wheel chair lifts;

(b) Strap downs; or

(c) Other access modifications.

NEW SECTION

WAC 388-832-0190 Who is a qualified provider for architectural and vehicular modifications? The provider making these architectural and vehicular modifications must be a registered contractor per chapter 18.27 RCW and contracted with DDD.

NEW SECTION

WAC 388-832-0195 What limits apply to architectural and vehicular modifications? The following service limitations apply to architectural and vehicular modifications are in addition to any limitations in other rules governing this service:

(1) Prior approval by the director of DDD or designee is required.

(2) Architectural and vehicular modifications to the home and vehicle are excluded if they are of general utility without direct medical or remedial benefit to the individual, such as carpeting, roof repair, central air conditioning, fencing for the yard, etc.

(3) Architectural modifications cannot add to the square footage of the home.

(4) DDD will require evidence that you accessed your full benefits through medicaid, private insurance and the division of vocational rehabilitation (DVR) before authorizing this service.

(5) Architectural and vehicular modifications must be the most cost effective modification.

NEW SECTION

WAC 388-832-0200 What are specialized medical equipment and supplies? (1) Specialized medical equipment and supplies are items that:

(a) Help clients with their activities of daily living or better participate in their environment;

(b) Are primarily and customarily used to service a medical purpose; and

(c) Are generally not useful to a person in the absence of illness, injury, or disability.

(2) Included are devices, controls, appliances, and items necessary for life support; ancillary supplies and equipment necessary to the proper functioning of such items; and durable and nondurable medical equipment not available through medicaid under the medicaid state plan. Examples are mobility devices such as walkers and wheel chairs, communication devices, and medical supplies. Diapers and wipes may be approved only for those three years and older.

NEW SECTION

WAC 388-832-0205 Who are qualified providers of specialized medical equipment and supplies? The provider of specialized medical equipment and supplies must be a medical equipment supplier contracted with DDD (or a parent who has a contract with DDD or the cost reimbursement contract).

NEW SECTION

WAC 388-832-0210 Are there limitations to my receipt of specialized medical equipment and supplies? The following limitations apply to your receipt of specialized medical equipment and supplies:

(1) Prior approval by the director of DDD or designee is required for each authorization.

(2) DDD may require a second opinion by a DDD-selected provider.

(3) Items reimbursed with state funds shall be in addition to any medical equipment and supplies furnished under medicaid.

(4) Items must be of direct medical or remedial benefit to the individual and necessary as a result of the individual's disability.

(5) Medications, prescribed or nonprescribed, and vitamins/supplements are excluded.

(6) The need for specialized medical equipment and supplies must be identified in your ISP and cannot exceed your IFS allocation.

NEW SECTION

WAC 388-832-0215 What is specialized nutrition and specialized clothing? (1) Specialized nutrition is specialized formulas or specially prepared foods for which a written recommendation has been provided by a qualified and appropriate professional (e.g., licensed physician or licensed dietician).

(2) Specialized clothing is clothing adapted for a physical disability, excessive wear clothing, or specialized footwear for which a written recommendation has been provided by a qualified and appropriate professional (e.g., a podiatrist, physical therapist, or behavior specialist).

NEW SECTION

WAC 388-832-0220 How do I pay for specialized nutrition and specialized clothing? Specialized nutrition and specialized clothing can be a reimbursable expense through the parent family support contract and the pass through contract.

NEW SECTION

WAC 388-832-0225 Are there limits for specialized nutrition and specialized clothing? The need for specialized nutrition and specialized clothing must be identified in your ISP and cannot exceed your IFS allocation.

NEW SECTION

WAC 388-832-0235 What are co-pays for medical and therapeutic services? Co-pays for medical and therapeutic services are for disability related services you may have received that were not covered by your private insurance.

NEW SECTION

WAC 388-832-0240 How do I pay for medical and therapeutic co-pays? Medical and therapeutic co-pays can be a reimbursable expense through the parent family support contract.

NEW SECTION

WAC 388-832-0245 Are there limits to medical and therapeutic co-pays? (1) Medical and therapeutic co-pays must be identified as a need in your ISP and may not exceed your IFS program allocation.

(2) The co-pays must be for your disability related medical or therapeutic needs.

NEW SECTION

WAC 388-832-0250 What are transportation services? (1) Transportation services are costs associated with client access to essential medical services and medical appointments, including mileage, ferry, or transit costs.

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

NEW SECTION

WAC 388-832-0255 Who is a qualified provider? (1) The provider of transportation services can be an individual or agency contracted with DDD.

(2) Transportation services can be a reimbursable expense through the parent family support contract.

NEW SECTION

WAC 388-832-0260 Are there limitations to the transportation services I can receive? The following limitations apply to transportation services:

(1) Costs of transportation services to/from medical or medically related appointments that are covered by the client's medicaid may not be reimbursed with IFS program funds.

(2) Transportation is limited to travel to and from an essential medical service.

(3) Transportation does not include the purchase of a bus pass or transportation to and from school.

(4) Reimbursement for provider mileage requires prior approval by the director of DDD or designee and is paid according to contract.

(5) This service does not cover the cost of purchase, lease, or rental of vehicles.

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

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

(8) You are not eligible for transportation services if the cost and responsibility for transportation is already included in providers' contract and payment.

(9) Car expenses, maintenance, tires or repairs, or motor vehicle insurance are not covered.

(10) The need for transportation services must be identified in your ISP and cannot exceed your IFS allocation.

NEW SECTION

WAC 388-832-0265 What is training and counseling? Training and counseling is professional assistance provided to families to better meet the specific needs of the individual outlined in their ISP including:

(1) Health and medication monitoring;

(2) Positioning and transfer;

(3) Augmentative communication systems; and

(4) Family counseling.

NEW SECTION

WAC 388-832-0270 Who is qualified provider for training and counseling? To provide training and counseling, a provider must be one of the following licensed, registered or certified professionals and be contracted with DDD for the service specified in the individual support plan:

(1) Audiologist;

(2) Licensed practical nurse;

(3) Marriage and family therapist;

(4) Mental health counselor;

(5) Occupational therapist;

(6) Physical therapist;

(7) Registered nurse;

(8) Sex offender treatment provider;

(9) Speech/language pathologist;

(10) Social worker;

(11) Psychologist;

(12) Certified American sign language instructor;

(13) Nutritionist;

(14) Registered counselor; or

(15) Certified dietician.

NEW SECTION

WAC 388-832-0275 Are there limitations to the training and counseling I can receive? (1) Expenses to the family for room and board or attendance, including registration fees for conferences are excluded as a service under family counseling and training.

(2) Genetic counseling is not included.

(3) The need for training and counseling must be identified in your ISP and cannot exceed your IFS allocation.

NEW SECTION

WAC 388-832-0280 What is behavior management? Behavior management is the development and implementation of programs designed to support the client using positive behavioral techniques. Behavior management programs help

the client decrease aggressive, destructive, sexually inappropriate or other behaviors that compromises the client's ability to remain in the family home, and develop strategies for effectively relating to caregivers and other people in the client's life.

NEW SECTION

WAC 388-832-0285 Who is a qualified provider of behavior management? The provider of behavior management and consultation must be one of the following professionals contracted with DDD and duly licensed, registered or certified to provide this service:

(1) Marriage and family therapist;

(2) Mental health counselor;

(3) Psychologist;

(4) Sex offender treatment provider;

(5) Social worker;

(6) Registered nurse (RN) or licensed practical nurse (LPN);

(7) Psychiatrist;

(8) Psychiatric advanced registered nurse practitioner (ARNP);

(9) Physician assistant working under the supervision of a psychiatrist;

(10) Registered counselor; or

(11) Polygrapher.

NEW SECTION

WAC 388-832-0290 Are there limits to behavior management? The following limits apply to your receipt of behavior management:

(1) DDD and the treating professional will determine the need and amount of service you will receive.

(2) DDD may require a second opinion from DDD-selected provider.

(3) Only scientifically proven, nonexperimental methods may be utilized.

(4) Providers may not use methods that cause pain, threats, isolation or locked settings.

(5) The need for behavior management must be identified in your ISP and cannot exceed your IFS allocation.

NEW SECTION

WAC 388-832-0300 What is parent/sibling education? Parent sibling education is the cost of attending class training for parents and siblings who have a family member with a developmental disability offering relevant topics. Examples of topics could be coping with family stress, addressing your child's behavior, manage the family's daily schedule or advocating for your child.

NEW SECTION

WAC 388-832-0305 Who are qualified providers? Parent/sibling education may be a reimbursable expense through the parent family support contract and the pass through contract.

NEW SECTION

WAC 388-832-0310 Are there limitations to parent/sibling education? (1) Parent/sibling education does not include conference fees or lodging.

(2) Viewing of VHS or DVD at home by yourself does not meet the definition of parent or sibling education.

(3) The need for parent/sibling education must be identified in your ISP and cannot exceed your IFS allocation.

NEW SECTION

WAC 388-832-0315 What are recreational opportunities? Recreational opportunities are activities that may be available to a child with a developmental disability such as summer camps, YMCA activities, day trips or typical activities available in your community.

NEW SECTION

WAC 388-832-0320 How are recreational opportunities paid for? Recreational opportunities may be a reimbursable expense through the parent family support contract, agency contract and the pass through contract.

NEW SECTION

WAC 388-832-0325 Are there limitations to recreation opportunities? (1) The recreational opportunities must occur in your community or the bordering states addressed in WAC 388-832-0455.

(2) The need for recreation opportunities must be identified in your ISP and cannot exceed your IFS allocation.

NEW SECTION

WAC 388-832-0330 Does my family have a choice of IFS program services? In collaboration with your case manager and based upon your assessed need, you may choose the services available with this program.

NEW SECTION

WAC 388-832-0331 May I receive IFS program services out of state? You may receive IFS program services in a recognized out of-state bordering city on the same basis as in-state services. The only recognized bordering cities are: Couer d'Alene, Moscow, Sandpoint, Priest River and Lewiston Idaho; and Portland, The Dalles, Hermiston, Hood River, Rainier, Milton-Freewater, and Astoria Oregon.

NEW SECTION

WAC 388-832-0332 Will I have a choice of provider? You may choose a qualified individual, agency or licensed provider within the guidelines described in WAC 388-825-300 through 388-825-400. These WACs describe:

(1) Qualifications for individuals and agencies providing DDD services in the client's residence or the provider's residence or other settings; and

(2) Conditions under which DDD will pay for the services of an individual provider or a home care agency provider or other provider.

NEW SECTION

WAC 388-832-0333 What restrictions apply to the IFS program services? The following restrictions apply to the IFS program services:

(1) IFS program services are authorized only after you have accessed what is available to you under medicaid, including medicaid personal care, and any other private health insurance plan, school, or child development services.

(2) All IFS program service payments must be agreed to by DDD and the client in your ISP.

(3) DDD will contract directly with a service provider or parent for the reimbursement of goods or services purchased by the family member.

(4) DDD will not pay for treatment determined by DSHS/MAA or private insurance to be experimental.

(5) Your choice of qualified providers and services may be limited to the most cost effective option that meets your assessed need.

(6) The IFS program will not pay for services provided after the death of the eligible client. Payment may occur after the date of death, but not the service.

(7) DDD's authorization period will start when you agree to be in the IFS program and have given written or verbal approval for your ISP. The period will last up to one year and may be renewed if you continue to need and utilize services. If you have not utilized the services within one year period you will be terminated from this program.

(8) IFS program will not pay for psychological evaluations or testing, DNA or genetic testing.

(9) Supplies/materials related to community integration or recreational activities are the responsibility of the family.

ONE TIME AWARDS

NEW SECTION

WAC 388-832-0335 What is a one-time award? One time awards are payments to individuals and families who meet the IFS program eligibility requirements and have a one time unmet need not covered by any other sources for which they are eligible. One time awards can only be used for architectural/vehicular modifications, or specialized equipment.

NEW SECTION

WAC 388-832-0340 Who is eligible for a one-time award? You are eligible to be considered for a one-time award if:

(1) You are not currently authorized for IFS program services in your ISP.

(2) You meet the eligibility for the IFS program.

(3) The need for an architectural or vehicular modification or specialized equipment is identified in your current DDD assessment and:

(a) The need is critical to the health or safety of you or your caregiver

(b) You and your family have no other resource to meet the need or your resources do not cover all of the expense.

NEW SECTION

WAC 388-832-0345 Are there limitations to one-time awards? (1) One time awards are limited to architectural/vehicular modifications or specialized equipment.

(2) One time awards cannot exceed six thousand dollars in a twenty-four month period.

(3) One time awards must be approved by the director of DDD or designee.

(4) Eligibility for a one-time award does not guarantee approval and authorization of the service by DDD. Services are based on availability of funding.

NEW SECTION

WAC 388-832-0350 How do I apply for the one-time award? If you have a need for a one-time award, you can make the request to your case manager.

NEW SECTION

WAC 388-832-0353 Do I need to have a DDD assessment before I receive a one-time award? You do not need to have a DDD assessment prior to receiving a one-time award, however the regional manager/designee may request DDD assessment for a client at any time.

EMERGENCY

NEW SECTION

WAC 388-832-0355 What is an emergency service? Emergency services are respite care, behavior management or nursing services in response to a single incident, situation or short term crisis.

NEW SECTION

WAC 388-832-0360 What situations qualify for emergency services? The following situations qualify as an emergency:

(1) You lose your family caregiver due to care giver hospitalization, or death;

(2) There are changes in your caregiver's mental or physical status resulting in your family caregiver's inability to perform effectively for the individual; or

(3) There are significant changes in your emotional or physical condition that require emergency services.

NEW SECTION

WAC 388-832-0365 Who is a qualified provider of emergency services? The provider of the service you need to meet your emergency must meet the provider qualifications required to contract for that specific service per the following WAC's:

(1) Respite per WAC 388-832-0155.

(2) Behavior Management per WAC 388-832-0285.

(3) Nursing per WAC 388-845-1705.

NEW SECTION

WAC 388-832-0366 What limitations apply to emergency services? (1) Emergency service may be granted to individuals and families who are on the IFS wait list and have an emergent need.

(2) Funds are provided for a limited period not to exceed sixty days.

(3) All requests are reviewed and approved or denied by the director of DDD or designee.

NEW SECTION

WAC 388-832-0367 What if the client or family situation requires more than sixty days of emergency service? (1) Any need that requires more than sixty days of an emergency service does not meet the definition of an emergency service.

(2) To initially request more than sixty days of emergency services or to extend the emergency services, there must be a new or reviewed DDD assessment and approval for service funding.

GRANTS

NEW SECTION

WAC 388-832-0370 What are the IFS community service grants? Community service grants are grants to agencies or individuals funded by the IFS program to promote community oriented projects that benefit families. Community service grants may fund long-term or short-term projects that benefit children and/or adults.

NEW SECTION

WAC 388-832-0375 How does a proposed project qualify for funding? To qualify for funding, a proposed project must:

(1) Address one or more of the following topics:

(a) Provider support and development;

(b) Parent helping parent; or

(c) Community resource development for inclusion of all.

(2) Meet most of the following goals:

(a) Enable families to use generic resources which are integrated activities and/or, resources community members typically have access to;

(b) Reflect geographic, cultural and other local differences;

(c) Support families in a variety of non crisis-oriented ways;

(d) Prioritize support for unserved families;

(e) Address the diverse needs of Native Americans, communities of color and limited or non-English speaking groups;

(f) Be family focused;

(g) Increase inclusion of persons with developmental disabilities;

(h) Benefit families who have children or adults eligible for services from DDD and who do not receive other DDD paid services; and

(i) Promote community collaboration, joint funding, planning and decision making.

HEARINGS AND APPEALS

NEW SECTION

WAC 388-832-0460 How will DDD notify me on their decisions? Your case resource manager will call you and send a written planned action notice per WAC 388-825-100.

NEW SECTION

WAC 388-832-0470 What are my appeal rights under the individual family services program? You have the appeal rights described in WAC 388-825-100 through 388-825-165.

WSR 07-14-072

EMERGENCY RULES

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed June 29, 2007, 11:56 a.m., effective July 1, 2007]

Effective Date of Rule: July 1, 2007.

Purpose: The department is creating WAC 388-828-9000, 388-828-9020, 388-828-9040, 388-828-9060, 388-828-9080, 388-828-9100, 388-828-9120, and 388-828-9140 to combine three family support programs into one individual and family services program as directed by the legislature.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.040.

Other Authority: Chapter 283, Laws of 2007 (2SSB 5467).

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

Reasons for this Finding: Chapter 283, Laws of 2007 (2SSB 5467) directs the department to create the individual and family services program for persons with developmental disabilities by July 1, 2007. DDD must incorporate rules for the algorithm used to determine a personal award amount into chapter 388-828 WAC.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 8, Amended 0, Repealed 0.

Date Adopted: June 27, 2007.

Stephanie E. Schiller
Rules Coordinator

Chapter 388-828 WAC

INDIVIDUAL AND FAMILY SERVICES ASSESSMENT

NEW SECTION

WAC 388-828-9000 What is the individual and family services assessment? The individual and family services assessment is an algorithm in the DDD assessment that determines an award amount that you may receive if DDD has authorized you to receive individual and family services per chapter 388-832 WAC.

NEW SECTION

WAC 388-828-9020 What is the purpose of the individual and family services assessment? The purpose of the individual and family services assessment is to determine your individual and family services level and score using your assessed support levels from:

(1) The DDD protective supervision acuity scale (See WAC 388-828-5000 to WAC 388-828-5100);

(2) The DDD caregiver status acuity scale (See WAC 388-828-5120 to WAC 388-828-5360);

(3) The DDD behavioral acuity scale; (See WAC 388-828-5500 to WAC 388-828-5640)

(4) The DDD medical acuity scale; (See WAC 388-828-5660 to WAC 388-828-5700); and

(5) The DDD activities of daily living (ADL) acuity scale (See WAC 388-828-5380 to WAC 388-828-5480)

NEW SECTION

WAC 388-828-9040 How does DDD determine your individual and family services level? (1) DDD determines your individual and family services level using the following table:

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your individual and family services level is:
0	None	1	None	1
0	None	1	Low	1
0	None	1	Medium	1
0	None	1	High	2
0	None	2 or 3	None	1
0	None	2 or 3	Low	1
0	None	2 or 3	Medium	2
0	None	2 or 3	High	2
0	Low	1	None	1
0	Low	1	Low	1
0	Low	1	Medium	1
0	Low	1	High	2
0	Low	2 or 3	None	1
0	Low	2 or 3	Low	1
0	Low	2 or 3	Medium	2
0	Low	2 or 3	High	2
0	Medium	1	None	1
0	Medium	1	Low	1
0	Medium	1	Medium	1
0	Medium	1	High	2
0	Medium	2 or 3	None	1
0	Medium	2 or 3	Low	1
0	Medium	2 or 3	Medium	2
0	Medium	2 or 3	High	2
0	High	1	None	1
0	High	1	Low	1

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your individual and family services level is:
0	High	1	Medium	2
0	High	1	High	2
0	High	2 or 3	None	2
0	High	2 or 3	Low	2
0	High	2 or 3	Medium	2
0	High	2 or 3	High	3
0	Immediate	1	None	1
0	Immediate	1	Low	1
0	Immediate	1	Medium	2
0	Immediate	1	High	2
0	Immediate	2 or 3	None	2
0	Immediate	2 or 3	Low	2
0	Immediate	2 or 3	Medium	2
0	Immediate	2 or 3	High	3
1	None	1	None	1
1	None	1	Low	1
1	None	1	Medium	1
1	None	1	High	2
1	None	2 or 3	None	1
1	None	2 or 3	Low	1
1	None	2 or 3	Medium	2
1	None	2 or 3	High	3
1	Low	1	None	1
1	Low	1	Low	1
1	Low	1	Medium	1
1	Low	1	High	2
1	Low	2 or 3	None	1
1	Low	2 or 3	Low	1
1	Low	2 or 3	Medium	2
1	Low	2 or 3	High	3
1	Medium	1	None	1
1	Medium	1	Low	1
1	Medium	1	Medium	2
1	Medium	1	High	3
1	Medium	2 or 3	None	1
1	Medium	2 or 3	Low	2
1	Medium	2 or 3	Medium	2
1	Medium	2 or 3	High	3
1	High	1	None	2
1	High	1	Low	2
1	High	1	Medium	2
1	High	1	High	3
1	High	2 or 3	None	2
1	High	2 or 3	Low	2
1	High	2 or 3	Medium	3

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your individual and family services level is:
1	High	2 or 3	High	4
1	Immediate	1	None	2
1	Immediate	1	Low	2
1	Immediate	1	Medium	2
1	Immediate	1	High	3
1	Immediate	2 or 3	None	2
1	Immediate	2 or 3	Low	2
1	Immediate	2 or 3	Medium	3
1	Immediate	2 or 3	High	4
2 or 3	None	1	None	1
2 or 3	None	1	Low	1
2 or 3	None	1	Medium	2
2 or 3	None	1	High	3
2 or 3	None	2 or 3	None	2
2 or 3	None	2 or 3	Low	2
2 or 3	None	2 or 3	Medium	2
2 or 3	None	2 or 3	High	4
2 or 3	Low	1	None	1
2 or 3	Low	1	Low	1
2 or 3	Low	1	Medium	2
2 or 3	Low	1	High	3
2 or 3	Low	2 or 3	None	2
2 or 3	Low	2 or 3	Low	2
2 or 3	Low	2 or 3	Medium	2
2 or 3	Low	2 or 3	High	4
2 or 3	Medium	1	None	2
2 or 3	Medium	1	Low	2
2 or 3	Medium	1	Medium	2
2 or 3	Medium	1	High	3
2 or 3	Medium	2 or 3	None	2
2 or 3	Medium	2 or 3	Low	2
2 or 3	Medium	2 or 3	Medium	3
2 or 3	Medium	2 or 3	High	4
2 or 3	High	1	None	2
2 or 3	High	1	Low	2
2 or 3	High	1	Medium	2
2 or 3	High	1	High	3
2 or 3	High	2 or 3	None	2
2 or 3	High	2 or 3	Low	2
2 or 3	High	2 or 3	Medium	3
2 or 3	High	2 or 3	High	4
2 or 3	Immediate	1	None	2
2 or 3	Immediate	1	Low	2
2 or 3	Immediate	1	Medium	2
2 or 3	Immediate	1	High	3

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your individual and family services level is:
2 or 3	Immediate	2 or 3	None	2
2 or 3	Immediate	2 or 3	Low	2
2 or 3	Immediate	2 or 3	Medium	3
2 or 3	Immediate	2 or 3	High	4
4	None	1	None	2
4	None	1	Low	2
4	None	1	Medium	2
4	None	1	High	3
4	None	2 or 3	None	2
4	None	2 or 3	Low	2
4	None	2 or 3	Medium	3
4	None	2 or 3	High	4
4	Low	1	None	2
4	Low	1	Low	2
4	Low	1	Medium	2
4	Low	1	High	3
4	Low	2 or 3	None	2
4	Low	2 or 3	Low	2
4	Low	2 or 3	Medium	3
4	Low	2 or 3	High	4
4	Medium	1	None	2
4	Medium	1	Low	2
4	Medium	1	Medium	3
4	Medium	1	High	3
4	Medium	2 or 3	None	2
4	Medium	2 or 3	Low	3
4	Medium	2 or 3	Medium	3
4	Medium	2 or 3	High	4
4	High	1	None	2
4	High	1	Low	2
4	High	1	Medium	3
4	High	1	High	3
4	High	2 or 3	None	2
4	High	2 or 3	Low	3
4	High	2 or 3	Medium	4
4	High	2 or 3	High	4
4	Immediate	1	None	2
4	Immediate	1	Low	2
4	Immediate	1	Medium	3
4	Immediate	1	High	3
4	Immediate	2 or 3	None	2
4	Immediate	2 or 3	Low	3
4	Immediate	2 or 3	Medium	4
4	Immediate	2 or 3	High	4
5	None	1	None	2

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your individual and family services level is:
5	None	1	Low	2
5	None	1	Medium	3
5	None	1	High	4
5	None	2 or 3	None	3
5	None	2 or 3	Low	3
5	None	2 or 3	Medium	4
5	None	2 or 3	High	5
5	Low	1	None	2
5	Low	1	Low	2
5	Low	1	Medium	3
5	Low	1	High	4
5	Low	2 or 3	None	3
5	Low	2 or 3	Low	3
5	Low	2 or 3	Medium	4
5	Low	2 or 3	High	5
5	Medium	1	None	2
5	Medium	1	Low	2
5	Medium	1	Medium	3
5	Medium	1	High	4
5	Medium	2 or 3	None	3
5	Medium	2 or 3	Low	3
5	Medium	2 or 3	Medium	4
5	Medium	2 or 3	High	5
5	High	1	None	2
5	High	1	Low	2
5	High	1	Medium	3
5	High	1	High	4
5	High	2 or 3	None	3
5	High	2 or 3	Low	3
5	High	2 or 3	Medium	4
5	High	2 or 3	High	5
5	Immediate	1	None	2
5	Immediate	1	Low	2
5	Immediate	1	Medium	3
5	Immediate	1	High	4
5	Immediate	2 or 3	None	3
5	Immediate	2 or 3	Low	3
5	Immediate	2 or 3	Medium	4
5	Immediate	2 or 3	High	5
6	None	1	None	2
6	None	1	Low	3
6	None	1	Medium	3
6	None	1	High	4
6	None	2 or 3	None	3
6	None	2 or 3	Low	3

If your protective supervision support level is:	And your primary caregiver risk level is:	And your backup caregiver risk score is:	And your behavioral acuity level is:	Then your individual and family services level is:
6	None	2 or 3	Medium	4
6	None	2 or 3	High	5
6	Low	1	None	2
6	Low	1	Low	3
6	Low	1	Medium	3
6	Low	1	High	4
6	Low	2 or 3	None	3
6	Low	2 or 3	Low	3
6	Low	2 or 3	Medium	4
6	Low	2 or 3	High	5
6	Medium	1	None	3
6	Medium	1	Low	3
6	Medium	1	Medium	3
6	Medium	1	High	4
6	Medium	2 or 3	None	3
6	Medium	2 or 3	Low	4
6	Medium	2 or 3	Medium	4
6	Medium	2 or 3	High	5
6	High	1	None	3
6	High	1	Low	3
6	High	1	Medium	4
6	High	1	High	4
6	High	2 or 3	None	4
6	High	2 or 3	Low	4
6	High	2 or 3	Medium	5
6	High	2 or 3	High	5
6	Immediate	1	None	3
6	Immediate	1	Low	3
6	Immediate	1	Medium	4
6	Immediate	1	High	4
6	Immediate	2 or 3	None	4
6	Immediate	2 or 3	Low	4
6	Immediate	2 or 3	Medium	5
6	Immediate	2 or 3	High	5

(2) DDD adds one level to your individual and family services level when your individual and family services level is determined to be:

(a) Level one, two, three, or four; and

(b) You have a score of four for question two "Other caregiving for persons who are disabled, seriously ill, or under five" in the DDD caregiver status acuity scale. See WAC 388-828-5260.

NEW SECTION

WAC 388-828-9060 How does DDD determine your individual and family services rating? (1) Your individual and family services rating is determined by using the following table:

If your individual and family services level is:	Then your individual and family services support rating is:
1	0
2	240
3	336
4	432
5	528

NEW SECTION

WAC 388-828-9080 Does DDD make an adjustment to your individual and family services rating? DDD only makes an adjustment to your individual and family services support rating when you are **not** receiving medicaid personal care services per chapter 388-828 WAC.

NEW SECTION

WAC 388-828-9100 If you are not receiving medicaid personal care services, how does DDD determine the number to use in the adjustment of your individual and family services support rating? DDD determines the amount of the adjustment for your individual and family services support rating using the following tables:

(1)

If your individual and family services level is 1		And your ADL support needs level for the SIS per WAC 388-828-5480			
		None	Low	Medium	High
And your medical acuity level per WAC 388-828-5700	None	57	57	76	85
	Low	57	57	76	85
	Medium	57	88	122	145
	High	57	145	245	287

(2)

If your individual and family services level is 2		And your ADL support needs level for the SIS per WAC 388-828-5480			
		None	Low	Medium	High
And your medical acuity level per WAC 388-828-5700	None	297	297	316	325
	Low	297	297	316	325
	Medium	297	328	362	385
	High	297	385	485	527

(3)

If your individual and family services level is 3		And your ADL support needs level for the SIS per WAC 388-828-5480			
		None	Low	Medium	High
And your medical acuity level per WAC 388-828-5700	None	393	393	412	421
	Low	393	393	412	421
	Medium	393	424	458	481
	High	393	481	581	623

(4)

If your individual and family services level is 4		And your ADL support needs level for the SIS per WAC 388-828-5480			
		None	Low	Medium	High
And your medical acuity level per WAC 388-828-5700	None	489	489	508	517
	Low	489	489	508	517
	Medium	489	520	554	577
	High	489	577	677	719

(5)

If your individual and family services level is 5		And your ADL support needs level for the SIS per WAC 388-828-5480			
		None	Low	Medium	High
And your medical acuity level per WAC 388-828-5700	None	585	585	604	613
	Low	585	585	604	613
	Medium	585	616	650	673
	High	585	673	773	815

Example: If your individual and family service level is 3 and your ADL support needs level is "low" and your medical acuity level is "medium," the amount of your adjustment is 424.

NEW SECTION

WAC 388-828-9120 How does DDD determine your individual and family services score? (1) If you receive medicaid personal care per chapter 388-106 WAC, your individual and family services support rating is equal to your individual and family services score.

(2) If you are not receiving medicaid personal care, DDD adds your individual and family support rating to the amount of the adjustment determined in WAC 388-828-9100.

Example: If you are not receiving medicaid personal care services and your individual and family services support rating is 336 and the amount of your adjustment is 424, your individual and family services score is 760.

NEW SECTION

WAC 388-828-9140 How does DDD determine the amount of your individual and family service award? DDD uses the following table to determine the amount of your individual and family services award:

If your individual and family services score is:	Then the amount of your award is up to:
0 to 60	No Award
61 to 240	$2000
241 to 336	$3000
337 to 527	$4000
528 or more	$6000

WSR 07-15-002
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Health and Recovery Services Administration)
[Filed July 6, 2007, 8:59 a.m., effective July 10, 2007]

Effective Date of Rule: July 10, 2007.

Purpose: The department is adopting these rule amendments to comply with federal standards changes effective January 1, 2007, and April 1, 2007. This continues the emergency rule that was adopted under WSR 07-07-031 while the permanent rule-making process is completed.

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0070 and 388-478-0080.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.500.

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

Reasons for this Finding: Federal standards changed effective January 1, 2007, and April 1, 2007, leaving the current rules out of compliance with federal requirements. The department began the permanent rule-making process by filing a preproposal statement of inquiry as WSR 07-07-003.

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

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

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

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

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

Date Adopted: June 29, 2007.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-06-013, filed 2/17/06, effective 3/20/06)

WAC 388-478-0070 Monthly income and countable resource standards for medically needy (MN). (1) Beginning January 1, ((~~2006~~)) 2007, the medically needy income level (MNIL) is:

(a) One person	$((~~603~~)) 623
(b) Two persons	$((~~603~~)) 623
(c) Three persons	$667
(d) Four persons	$742
(e) Five persons	$858
(f) Six persons	$975
(g) Seven persons	$1,125
(h) Eight persons	$1,242
(i) Nine persons	$1,358
(j) Ten persons and more	$1,483

(2) The MNIL standard for a person who meets institutional status requirements is in WAC 388-513-1305(3).

(3) Countable resource standards for the MN program is:

(a) One person	$2,000
(b) Two persons	$3,000
(c) For each additional family member add	$50

AMENDATORY SECTION (Amending WSR 06-06-013, filed 2/17/06, effective 3/20/06)

WAC 388-478-0080 Supplemental security income (SSI) standards; SSI-related categorically needy income level (CNIL); and countable resource standards. (1) The SSI payment standards, also known as the federal benefit rate (FBR), beginning January 1, ((~~2006~~)) 2007 are:

(a) Living alone (in own home or alternate care, does not include nursing homes or medical situations)

Individual	$((~~603~~)) 623
Individual with an ineligible spouse	$((~~603~~)) 623

Couple	$((~~904~~)) 934

(b) Shared living (in the home of another)

Individual	$((~~402~~)) 416
Individual with an ineligible spouse	$((~~402~~)) 416
Couple	$((~~603~~)) 623

(c) Living in an institution

Individual	$30

(2) See WAC 388-478-0055 for the amount of the state supplemental payments (SSP) for SSI recipients.

(3) The SSI-related CNIL standards are:

(a) Single person	$((~~603~~)) 623
(b) Married couple - both eligible	$((~~904~~)) 934
(c) Supplied shelter - single person	$((~~402~~)) 416
(d) Supplied shelter couple - both eligible	$((~~603~~)) 623

(4) The countable resource standards for SSI and SSI-related CN medical programs are:

(a) One person	$2,000
(b) A legally married couple	$3,000

WSR 07-15-004
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 07-135—Filed July 6, 2007, 11:16 a.m., effective July 6, 2007, 11:16 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900C; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: During routine biological sampling at Wells and Dryden dams, a small number of chinook will be sampled for management and research purposes. The biological sampling is necessary to better estimate the stock structure and the number of wild fish returning to the upper Columbia River Basin. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: July 5, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-61900C Exceptions to statewide rules—Columbia and Okanogan rivers. Notwithstanding the provisions of WAC 232-28-619, effective immediately through October 15, 2007, in those waters of the Columbia River from Priest Rapids Dam upriver to Chief Joseph Dam, and those waters of the Okanogan River from the mouth upstream to the first Hwy 97 Bridge, salmon with an external floy tag must be released.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 15, 2007:

WAC 232-28-61900C	Exceptions to statewide rules—Columbia River.

WSR 07-15-005
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 07-136—Filed July 6, 2007, 11:19 a.m., effective July 6, 2007, 11:19 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500R; and amending WAC 220-56-255.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: This rule conforms to federal action taken by Pacific Fisheries Management Council. There is sufficient recreational halibut quota to provide for an additional fishing day in Marine Areas 3 and 4. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: July 3, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 220-56-25500S Halibut—Seasons—Daily and possession limits. (1) Notwithstanding the provisions of WAC 220-56-255, effective immediately until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(a) Catch Record Card Area 1 - Closed.

(b) Catch Record Card Area 2 - Closed.

(c) Catch Record Card Areas 3 and 4 - Open only 12:01 a.m. through 11:59 p.m. July 7, 2007.

(i) Effective immediately until further notice, on days when halibut fishing is closed in Catch Record Card Areas 3, and 4, unless otherwise provided, it is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour as defined by the following coordinates:

48º 23.9' N.; 124º 44.2' W.
48º 23.6' N.; 124º 44.9' W.
48º 18.6' N.; 124º 43.6' W.
48º 18.6' N.; 124º 48.2' W.
48º 10.0' N.; 124º 48.8' W.
48º 02.4' N.; 124º 49.3' W.
47º 37.6' N.; 124º 34.3' W.
47º 31.7' N.; 124º 32.4' W.

(ii) The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48º18' N., 125º18' W.; thence to
48º18'N., 124º59'W.; thence to
48º11'N., 124º59'W.; thence to
48º11'N., 125º11'W., thence to
48º04'N., 125º11'W.; thence to
48º04'N., 124º59'W.; thence to
48ºN., 124º59'W.; thence to
48ºN., 125º18'W.; thence to point of origin.

(d) Catch Record Card Areas 6 through 11 and Catch Record Card Area 13 - Closed.

(e) Catch Record Card Area 5 - Open until further notice, except closed to fishing for halibut 12:01 a.m. of each Tuesday through 11:59 p.m. of each Wednesday.

(f) Daily limit one halibut. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

REPEALER

The following section of the Washington Administrative code is repealed:

WAC 220-56-25500R	Halibut—Seasons—Daily and possession limits. (07-129)

WSR 07-15-006
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 07-138—Filed July 6, 2007, 11:21 a.m., effective July 7, 2007]

Effective Date of Rule: July 7, 2007.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900U; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Wheelchair bound anglers have limited options for sport fishing opportunity. This site, developed by Tacoma Power, will provide much needed access. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: July 5, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 232-28-61900E Exceptions to statewide rules—Cowlitz River (Lewis Co.) Notwithstanding the provisions of WAC 232-28-619 and WAC 220-55-065, effective July 7, 2007, until further notice, those waters of the Cowlitz River within a 100' radius of the new Cowlitz Trout Hatchery outfall structure are closed to fishing, except wheelchair bound anglers and their designated harvesters may fish in the area designated as the special wheelchair site.

REPEALER

The following section of the Washington Administrative Code is repealed effective July 7, 2007:

WAC 232-28-61900U	Exceptions to statewide rules—Cowlitz River. (07-46)

WSR 07-15-007
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 07-139—Filed July 6, 2007, 11:23 a.m., effective July 6, 2007, 11:23 a.m.]

Effective Date of Rule: Immediately.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000J.

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

Other Authority: *United States v. Oregon,* Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407); *Northwest Gillnetters Ass'n v. Sandison,* 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Rescinds fishing period for summer chinook commercial season schedule to occur on the evening of July 9, 2007. In season run size of summer chinook was downgraded to 40,000 fish, which reduces the number of fish allocated to non-Indian fisheries. Commercial fisheries were allocated 1,650 summer chinook based on the preseason forecast of 45,600 fish, the *United States v Oregon* 2005-2007 bridge agreement and DFW commission guidance. Harvestable upper Columbia summer chinook are not available under the current run size update. Action is consistent with compact action of July 5, 2007. There is insufficient time to promulgate permanent rules.

Washington and Oregon jointly regulate Columbia River fisheries under the congressionally ratified Columbia River compact. Four Indian tribes have treaty fishing rights in the Columbia River. The treaties preempt state regulations that fail to allow the tribes an opportunity to take a fair share of the available fish, and the states must manage other fisheries accordingly. *Sohappy v. Smith,* 302 F. Supp. 899 (D. Or. 1969). A federal court order sets the current parameters for sharing between treaty Indians and others. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2005-2007 Interim Management Agreement For Upriver Chinook, Sockeye, Steelhead, Coho & White Sturgeon (May 11, 2005) (Doc. No. 2407).

Some Columbia River Basin salmon and steelhead stocks are listed as threatened or endangered under the federal Endangered Species Act. The National Marine Fisheries Service has issued biological opinions under 16 U.S.C. § 1536 that allow for some incidental take of these species in treaty and nontreaty Columbia River fisheries. The Washington (WDFW) and Oregon (ODFW) fish and wildlife commissions have developed policies to guide the implementation of these biological opinions in the states' regulation of nontreaty fisheries.

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

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

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

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

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

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

Date Adopted: July 6, 2007.

J. P. Koenings
Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-33-01000J	Columbia River season below Bonneville. (07-120)

WSR 07-15-019
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 07-140—Filed July 11, 2007, 1:46 p.m., effective July 23, 2007, 6:00 a.m.]

Effective Date of Rule: July 23, 2007, 6:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-071.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Harvestable amounts of sea cucumbers are available in sea cucumber districts listed. Prohibition of all diving within two days of scheduled sea cucumber openings discourages the practice of fishing on closed days and hiding the unlawful catch underwater until the legal opening. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: July 10, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 220-52-07100H Sea cucumbers. Notwithstanding the provisions of WAC 220-52-071, effective immediately until further notice, it is unlawful to take or possess sea cucumbers for commercial purposes except as provided for in this section:

(1) Effective 6:00 a.m. July 23, 2007, until further notice, sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber Districts 1, 2, 3, and 5 on Monday, Tuesday, and Wednesday of each week.

(2) It is unlawful to dive for any purpose from a commercially licensed sea cucumber fishing vessel on Saturday and Sunday of each week, except by written permission from the Director.

WSR 07-15-020
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 07-141—Filed July 11, 2007, 1:48 p.m., effective July 11, 2007, 1:48 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900C; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The emergency rule was needed to provide the option for Washington department of fish and wildlife (WDFW) to use MS-222 to anesthetize summer chinook for stock assessment and broodstock purposes. We are currently using CO2 but were unsure if its efficacy on large summer chinook, hence the option for MS-222. WDFW staff are now sufficiently confident in the efficacy of CO2 where we do not anticipate the need for MS-222; therefore the emergency rule excluding tagged chinook from the harvest is no longer needed. A Colville tribal/WDFW summer chinook selective capture gear study will be relying upon captured tags in the harvest for evaluation purpose; therefore, the existing emergency rule would be in conflict with Colville tribal/WDFW summer chinook selective capture gear evaluation.

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

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

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

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

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

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

Date Adopted: July 11, 2007.

J. P. Koenings
Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900C	Exceptions to statewide rules—Columbia and Okanogan rivers. (07-135)

WSR 07-15-021
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 07-142—Filed July 11, 2007, 1:49 p.m., effective July 11, 2007, 1:49 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500S; and amending WAC 220-56-255.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: This rule conforms to federal action taken by Pacific Fisheries Management Council. There is sufficient recreational halibut quota to provide for an additional fishing day in Marine Areas 3 and 4. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: July 11, 2007.

Lori Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 220-56-25500T Halibut—Seasons—Daily and possession limits. (1) Notwithstanding the provisions of WAC 220-56-255, effective immediately until further notice, it is unlawful to fish for or possess halibut taken for personal use, except as provided in this section:

(a) Catch Record Card Area 1 - Closed.

(b) Catch Record Card Area 2 - Closed.

(c) Catch Record Card Areas 3 and 4 - Open only 12:01 a.m. through 11:59 p.m. July 22, 2007.

(i) Effective immediately until further notice, on days when halibut fishing is closed in Catch Record Card Areas 3, and 4, unless otherwise provided, it is unlawful to fish for or possess bottomfish seaward of a line approximating the 20-fathom depth contour as defined by the following coordinates:

48º 23.9' N.; 124º 44.2' W.
48º 23.6' N.; 124º 44.9' W.
48º 18.6' N.; 124º 43.6' W.
48º 18.6' N.; 124º 48.2' W.
48º 10.0' N.; 124º 48.8' W.
48º 02.4' N.; 124º 49.3' W.
47º 37.6' N.; 124º 34.3' W.
47º 31.7' N.; 124º 32.4' W.

(ii) The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48º18' N., 125º18' W.; thence to
48º18'N., 124º59'W.; thence to
48º11'N., 124º59'W.; thence to
48º11'N., 125º11'W., thence to
48º04'N., 125º11'W.; thence to
48º04'N., 124º59'W.; thence to
48ºN., 124º59'W.; thence to
48ºN., 125º18'W.; thence to point of origin.

(d) Catch Record Card Areas 6 through 11 and Catch Record Card Area 13 - Closed.

(e) Catch Record Card Area 5 - Open through August 3, 2007, except closed to fishing for halibut 12:01 a.m. of each Tuesday through 11:59 p.m. of each Wednesday.

(f) Daily limit one halibut. The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

REPEALER

The following section of the Washington Administrative code is repealed:

WAC 220-56-25500S	Halibut—Seasons—Daily and possession limits. (07-136)

WSR 07-15-022
EMERGENCY RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 07-143—Filed July 11, 2007, 1:50 p.m., effective July 11, 2007, 1:50 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-44-05000Q; and amending WAC 220-44-050.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: These rules were adopted by the Pacific Fisheries Management Council and provide harvest of available stocks of bottomfish, while reserving brood stock for future fisheries. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: July 11, 2007.

Lori Preuss
for Jeff Koenings
Director

NEW SECTION

WAC 220-44-05000R Coastal bottom fish catch limits. Notwithstanding the provisions of WAC 220-44-050, effective immediately until further notice: (1) It is unlawful to possess, transport through the waters of the state, or land into any Washington port, bottom fish taken from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 60A-1, 60A-2, 61, 62, or 63, in excess of the amounts or less than the minimum sizes, or in violation of any gear, handling or landing requirement, established by the Pacific Fisheries Management Council and published in the Federal Register, Volume 72, Number 128 published on July 5, 2007. Therefore, persons must consult the federal regulations, which are incorporated by reference and made a part of Chapter 220-44 WAC. Where rules refer to the fishery management area, that area is extended to include Washington State waters coterminous with the Exclusive Economic Zone.

(a) Effective immediately until further notice, it is unlawful to possess, transport through the waters of the state, or land into any Washington port, walleye pollock taken with trawl gear from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 60A-1, 60A-2, 61, 62, or 63, except by trawl vessels participating in the directed Pacific whiting fishery and the directed coastal groundfish fishery.

(b) Effective immediately until further notice, it is unlawful for trawl vessels participating in the directed Pacific whiting and/or the directed coastal groundfish fishery to land incidental catches of walleye pollock greater than forty percent of their total landing by weight, not to exceed 10,000 pounds.

(2) At the time of landing of coastal bottom fish into a Washington port, the fish buyer receiving the fish is required to clearly mark on the fish receiving ticket, in the space reserved for dealer's use, all legally defined trawl gear aboard the vessel at the time of delivery. The three trawl gear types are: midwater trawl, roller trawl, and small foot rope trawl (foot rope less than eight inches in diameter). The notation of the gear type(s) aboard the vessel is required prior to the signing of the fish receiving ticket by the vessel representative.

(3) Vessels engaged in chartered research for the National Marine Fisheries Service (NMFS) may land and sell bottomfish caught during that research without the catch being counted toward any trip or cumulative limit for the participating vessel. Vessels that have been compensated for research work by NMFS with an Exempted Fishing Permit (EFP) to land fish as payment for such research may land and sell fish authorized under the EFP without the catch being counted toward any trip or cumulative limit for the participating vessel. Any bottomfish landed during authorized NMFS research or under the authority of a compensating EFP for past chartered research work must be reported on a separate fish receiving ticket and not included on any fish receiving ticket reporting bottomfish landed as part of any trip or cumulative limit. Bottomfish landed under the authority of NMFS research work or an EFP compensating research with fish must be clearly marked "NMFS Compensation Trip" on the fish receiving ticket in the space reserved for dealer's use. The NMFS scientist in charge must sign the fish receiving ticket in the area reserved for dealer's use if any bottomfish are landed during authorized NMFS research. If the fish are landed under the authority of an EFP as payment for research work, the EFP number must be listed in the dealer's use space.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-44-05000Q	Coastal bottomfish catch limits. (07-66)

WSR 07-15-023
EMERGENCY RULES
PUBLIC EMPLOYMENT RELATIONS COMMISSION

[Filed July 12, 2007, 8:25 a.m., effective July 23, 2007]

Effective Date of Rule: July 23, 2007.

Purpose: It is necessary to adopt a rule to clarify that certain procedures and requirements within chapter 391-25 WAC are inapplicable to representation elections conducted under the authority of chapter 184, Laws of 2007 (providing collective bargaining rights for adult family home providers).

Statutory Authority for Adoption: RCW 41.56.090, 41.58.050.

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

Reasons for this Finding: Chapter 184, Laws of 2007, becomes effective on July 22, 2007. In order to prevent delay, the processing of a representation petition filed under this law without delay, an emergency rule is necessary.

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

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

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

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

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

Date Adopted: July 10, 2007.

Kenneth J. Latsch
Operations Manager

NEW SECTION

WAC 391-25-072 Special provision—Adult family home providers. This emergency rule consolidates special procedures applicable to adult family home providers under chapter 184, laws of 2007, which became effective July 23, 2007. Chapter 184, law of 2007 extended the coverage of chapter 41.56 RCW to any "adult family home provider" defined as a provider as defined in RCW 70.128.010 who receives payments from the medicaid and state-funded long-term care programs.

(1) The posting of notice requirement in WAC 391-25-140 is inapplicable to the bargaining unit affected by chapter 184, laws of 2007.

(2) The description of bargaining unit requirement of WAC 391-25-190 is limited to a single, statewide unit of adult family home providers under the chapter 184, laws of 2007.

(3) The description of bargaining unit requirement of WAC 391-25-210(2) is limited to a single, statewide unit of adult family home providers under the chapter 184, laws of 2007.

(4) The provisions of WAC 391-25-210(3) relating to alternative units or mergers of units are inapplicable to the bargaining unit affected by chapter 184, laws of 2007.

(5) The posting requirement in WAC 391-25-220(2), relating to investigation statements, is inapplicable to the bargaining unit affected by chapter 184, laws of 2007.

(6) The posting requirement in WAC 391-25-230(2), relating to election agreements, is inapplicable to the bargaining unit affected by chapter 184, laws of 2007.

(7) The cross-check procedures in WAC 391-25-250, 391-25-391, and 391-25-410 are inapplicable to the bargaining unit affected by chapter 184, laws of 2007.

(8) The unit determination election procedures in WAC 391-25-420 are inapplicable to the bargaining unit affected by chapter 184, laws of 2007.

(9) The requirements of WAC 391-25-430, relating to posting of election notices on the employer's premises, is inapplicable to the bargaining unit affected by chapter 184, laws of 2007.

(10) Any representation election for the bargaining unit affected by chapter 184, laws of 2007 shall be conducted by mail ballot under WAC 391-25-470, with the following modifications:

(a) Together with the procedures for casting ballots, the notice supplied to adult family home providers may describe the collective bargaining rights established by chapter 184, laws of 2007 and agreements reached by the parties to the proceedings concerning the election process;

(b) The notice and ballot materials supplied to all adult family home providers shall be set forth in English and any other language the agency deems reasonably necessary to conduct a fair election;

(c) The notice and ballot materials supplied to adult family home providers shall include a card return-addressed to the agency by which eligible voters can individually request ballot materials in languages other than those received. Upon receipt of such a request card, the agency shall promptly supply notice and ballot materials to the eligible voter in the requested language.

(d) At least twenty-one days shall be provided between the date on which ballot materials are mailed to adult family home providers and the deadline for return of cast ballots to the agency.

(e) The executive director shall have discretion to vary tally arrangements and procedures from those customarily used, because of the large size of the bargaining unit involved, so long as the principles of secret balloting are preserved.

(f) The reference in WAC 391-25-470 to WAC 391-25-140 shall be interpreted in light of subsection (1) of this section.

(11) The procedure for on-site elections in WAC 391-25-490 is inapplicable to the bargaining unit affected by chapter 184, laws of 2007.

Explanation: This rule is patterned after WAC 391-25-051 and WAC 391-25-071, which are the special rules adopted by the Commission for representation elections involving individual providers under the Home Care Quality Authority (HCQA) and Family Child Care Act. In both the HCQA and FCCA situations: (1) a state-wide unit were required; (2) the number of eligible voters is very large; (3) the eligible voters are employed in private residences, so required posting of notices on employer premises cannot be enforced; and (4) multiple languages may be needed for ballot materials. A similar rule is necessary to conduct an election under chapter 184, laws of 2007.

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

WSR 07-15-030
EMERGENCY RULES
HEALTH CARE AUTHORITY
(Basic Health)

[Order 07-05—Filed July 12, 2007, 11:06 a.m., effective July 22, 2007]

Effective Date of Rule: July 22, 2007.

Purpose: Chapter 259, Laws of 2007, adds foster parents licensed under chapter 74.15 RCW with incomes up to 300% of the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, to the definition of "subsidized enrollee" for purposes of Basic Health eligibility and premium calculation. Basic Health must revise its rules consistent with these requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 182-25-010 and 182-25-080.

Statutory Authority for Adoption: RCW 70.47.050.

Other Authority: Chapter 259, Laws of 2007.

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

Reasons for this Finding: Chapter 259, Laws of 2007, takes effect July 22, 2007, and the current rules must be revised to be consistent with the requirements of the law allowing specified foster parents to enroll in health coverage. The health care authority is in the process of adopting permanent rules, but the time requirements of notice and opportunity to comment make it impossible to adopt a permanent rule to be effective July 22, 2007.

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

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

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

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

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

Date Adopted: July 12, 2007.

Jason Siems
Rules Coordinator

AMENDATORY SECTION (Amending Order 05-06, filed 5/24/06, effective 7/1/06)

WAC 182-25-010 Definitions. The following definitions apply throughout these rules.

(1) "Administrator" means the administrator of the Washington state health care authority (HCA) or designee.

(2) "Appeal procedure" means a formal written procedure for resolution of problems or concerns raised by enrollees which cannot be resolved in an informal manner to the enrollee's satisfaction.

(3) "Basic health plan" (or "BHP") means the system of enrollment and payment for basic health care services administered by the administrator through managed health care systems.

(4) "BHP Plus" means the program of expanded benefits available to children through coordination between the department of social and health services (DSHS) and basic health plan. Eligibility for BHP Plus is determined by the department of social and health services, based on Medicaid eligibility criteria. To be eligible for the program children must be under age nineteen, with a family income at or below two hundred percent of federal poverty level, as defined by the United States Department of Health and Human Services. They must be Washington state residents, not eligible for Medicare, and may be required to meet additional DSHS eligibility requirements.

(5) "Co-payment" means a payment indicated in the schedule of benefits which is made by an enrollee to a health care provider or to the MHCS.

(6) "Covered services" means those services and benefits in the BHP schedule of benefits (as outlined in the member handbook issued to the enrollee, or to a subscriber on behalf of the enrollee), which an enrollee shall be entitled to receive from a managed health care system in exchange for payment of premium and applicable co-payments, coinsurance and deductible.

(7) "Disenrollment" means the termination of coverage for a BHP enrollee.

(8) "Effective date of enrollment" means the first date, as established by BHP, on which an enrollee is entitled to receive covered services from the enrollee's respective managed health care system.

(9) "Dependent," as it applies to the subsidized or nonsubsidized programs, means:

(a) The subscriber's lawful spouse, not legally separated, who resides with the subscriber; or

(b) The unmarried child of the subscriber or the subscriber's dependent spouse, whether by birth, adoption, legal guardianship, or placement pending adoption, who is:

(i) Younger than age nineteen, and who has not been relinquished for adoption by the subscriber or the subscriber's dependent spouse; or

(ii) Younger than age twenty-three, and a registered student at an accredited secondary school, college, university, technical college, or school of nursing, attending full time, other than during holidays, summer and scheduled breaks; or

(c) A person of any age who is incapable of self-support due to disability, and who is the unmarried child of the subscriber or the subscriber's dependent spouse, whether by birth, adoption, or legal guardianship; or

(d) An unmarried child younger than age nineteen who is residing with the subscriber under an informal guardianship agreement. For a child to be considered a dependent of the subscriber under this provision:

(i) The guardianship agreement must be signed by the child's parent;

(ii) The guardianship agreement must authorize the subscriber to obtain medical care for the child;

(iii) The subscriber must be providing at least fifty percent of the child's support; and

(iv) The child must be on the account for BHP coverage.

(10) "Eligible full-time employee" means an employee who meets all eligibility requirements in WAC 182-25-030 and who is regularly scheduled to work thirty or more hours per week for an employer. The term includes a self-employed individual (including a sole proprietor or a partner of a partnership, and may include an independent contractor) if the individual:

(a) Is regularly scheduled to work thirty hours or more per week; and

(b) Derives at least seventy-five percent of his or her income from a trade or business that is licensed to do business in Washington.

Persons covered under a health benefit plan pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1986 shall not be considered eligible employees for purposes of minimum participation requirements.

(11) "Eligible part-time employee" means an employee who meets all the criteria in subsection (10) of this section, but who is regularly scheduled to work fewer than thirty hours per week for an employer.

(12) "Employee" means one who is in the employment of an employer, as defined by RCW 50.04.080.

(13) "Employer" means an enterprise licensed to do business in Washington state, as defined by RCW 50.04.080, with employees in addition to the employer, whose wages or salaries are paid by the employer.

(14) "Enrollee" means a person who meets all applicable eligibility requirements, who is enrolled in BHP, and for whom applicable premium payments have been made.

(15) "Family" means an individual or an individual and eligible spouse and dependents. For purposes of eligibility determination and enrollment in BHP, an individual cannot be a member of more than one family.

(16) "Financial sponsor" means a person, organization or other entity, approved by the administrator, that is responsible for payment of all or a designated portion of the monthly premiums on behalf of a subscriber and any dependents.

(17) "Gross family income" means total cash receipts, as defined in (a) of this subsection, before taxes, from all sources, for subscriber and dependents whether or not they are enrolled in BHP, with the exceptions noted in (b) of this subsection. An average of documented income received over a period of several months will be used for purposes of eligibility determination, unless documentation submitted confirms a change in circumstances so that an average would not be an accurate reflection of current income. A twelve-month average will be used when calculating gambling income, lump-sum payments, and income from capital gains. A twelve-month history of receipts and expenses will be required for calculating self-employment or rental income unless the applicant or enrollee has not owned the business for at least twelve months.

(a) Income includes:

(i) Wages, tips and salaries before any deductions;

(ii) Net receipts from nonfarm self-employment (receipts from a person's own business, professional enterprise, or partnership, after deductions for business expenses). A net loss from self-employment will not be used to offset other income sources. In calculating net self-employment income, deductions will not be allowed for noncash-flow items such as depreciation, amortization, or business use of home, except that:

(A) A deduction for business use of the home may be allowed in cases where the enrollee has documented that more than fifty percent of their home is used for the business for the majority of the year; or

(B) A deduction for business use of the home may be allowed in cases where the enrollee has documented that they maintain a separate building located on the same property as their home that is used exclusively for the business;

(iii) Net receipts from farm self-employment (receipts from a farm which one operates as an owner, renter, or sharecropper, after deductions for farm operating expenses). In calculating net self-employment income, deductions will not be allowed for noncash-flow items such as depreciation, amortization, or business use of home, and a net loss from self-employment will not be used to offset other income sources;

(iv) Periodic payments from Social Security, railroad retirement, military pension or retirement pay, military disability pensions, military disability payments, government employee pensions, private pensions, unemployment compensation, workers' compensation, and strike benefits from union funds;

(v) Payments for punitive damages;

(vi) Public assistance, alimony, child support, and military family allotments;

(vii) Work study, assistantships, or training stipends;

(viii) Dividends and interest accessible to the enrollee without a penalty for early withdrawal;

(ix) Net rental income, net royalties, and net gambling or lottery winnings;

(x) Lump sum inheritances and periodic receipts from estates or trusts; and

(xi) Short-term capital gains, such as from the sale of stock or real estate.

(b) Income does not include the following types of money received:

(i) Any assets drawn down as withdrawals from a bank, the sale of property, a house or a car;

(ii) Tax refunds, gifts, loans, one-time insurance payments, other than for punitive damages, and one-time payments or winnings received more than one month prior to application;

(iii) Noncash receipts, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, goods or services received due to payments a trust makes to a third party, and such noncash benefit programs as Medicare, Medicaid, food stamps, school lunches, state supplementary payment income that is specifically dedicated to reimburse for services received, and housing assistance;

(iv) Income earned by dependent children with the exception of distributions from a corporation, partnership, or business;

(v) Income of a family member who resides in another household when such income is not available to the subscriber or dependents seeking enrollment in BHP;

(vi) College or university scholarships, grants, and fellowships;

(vii) Payments from the department of social and health services adoption support program authorized under RCW 26.33.320 and 74.13.100 through 74.13.145;

(viii) Long-term capital gains;

(ix) Crime victims' compensation;

(x) Documented child care expenses for the care of a dependent child of a subscriber may be deducted (at a rate set by the administrator and consistent with Internal Revenue Service requirements) when calculating gross family income. To qualify for this deduction:

(A) The subscriber and the spouse listed as a dependent on the account, if any, must be employed or attending school full-time during the time the child care expenses were paid; and

(B) Payment may not be paid to a parent or stepparent of the child or to a dependent child of the subscriber or his/her spouse.

(18) "Home care agency" means a private or public agency or organization that administers or provides home care services directly or through a contract arrangement to ill, disabled, or infirm persons in places of temporary or permanent residence, and is licensed by the department of social and health services (DSHS) as a home care agency. In order to qualify, the agency must be under contract with one of the following DSHS programs: Chore, Medicaid Personal Care, Community Options Program Entry System (COPES) or Respite Care (up to level three).

(19) "Institution" means a federal, state, county, city or other government correctional or detention facility or government-funded facility where health care historically has been provided and funded through the budget of the operating agency, and includes, but is not limited to: Washington state department of corrections institutions; federal, county and municipal government jail and detention institutions; Washington state department of veterans affairs soldiers' and veterans' homes; department of social and health services state hospitals and facilities and juvenile rehabilitation institutions and group homes. An institution does not include: Educational institutions; government-funded acute health care or mental health facilities except as provided above; chemical dependency facilities; and nursing homes.

(20) "Institutionalized" means to be confined, voluntarily or involuntarily, by court order or health status, in an institution, as defined in subsection (19) of this section. This does not include persons on work release or who are residents of higher education institutions, acute health care facilities, alcohol and chemical dependency facilities, or nursing homes.

(21) "Insurance broker" or "agent" means a person who is currently licensed as a disability insurance broker or agent, according to the laws administered by the office of the insurance commissioner under chapter 48.17 RCW.

(22) "Managed health care system" (or "MHCS") means:

(a) Any health care organization (including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof) which has entered into a contract with the HCA to provide basic health care services; or

(b) A self-funded or self-insured method of providing insurance coverage to subsidized enrollees provided under RCW 41.05.140 and subject to the limitations under RCW 70.47.100(7).

(23) "Maternity benefits through medical assistance," also known as S-Medical, means the coordinated program between BHP and DSHS for eligible pregnant women. This program includes all Medicaid benefits, including maternity coverage. Eligible members must be at or below one hundred eighty-five percent of the federal poverty level. Eligibility for this program is determined by DSHS, based on Medicaid eligibility criteria.

(24) "Medicaid" means the Title XIX Medicaid program administered by the department of social and health services, and includes the medical care programs provided to the "categorically needy" and the "medically needy" as defined in chapter 388-503 WAC.

(25) "Medicare" means programs established by Title XVIII of Public Law 89-97, as amended, "Health Insurance for the Aged and Disabled."

(26) "Nonsubsidized enrollee" or "full premium enrollee" means an individual who enrolls in BHP, as the subscriber or dependent, and who pays or on whose behalf is paid the full costs for participation in BHP, without subsidy from the HCA.

(27) "Open enrollment" means a time period designated by the administrator during which enrollees may enroll additional dependents or apply to transfer their enrollment from one managed health care system to another.

(28) "Participating employee" means an employee of a participating employer or home care agency who has met all the eligibility requirements and has been enrolled for coverage under BHP.

(29) "Participating employer" means an employer who has been approved for enrollment in BHP as an employer group.

(30) "Preexisting condition" means any illness, injury or condition for which, in the six months immediately preceding an enrollee's effective date of enrollment in BHP:

(a) Treatment, consultation or a diagnostic test was recommended for or received by the enrollee; or

(b) Medication was prescribed or recommended for the enrollee; or

(c) Symptoms existed which would ordinarily cause a reasonably prudent individual to seek medical diagnosis, care or treatment.

(31) "Premium" means a periodic payment, determined under RCW 70.47.060(2), which an individual, an employer, a financial sponsor, or other entity makes to BHP for enrollment in BHP.

(32) "Program" means subsidized BHP, nonsubsidized BHP, BHP Plus, maternity benefits through medical assistance, or other such category of enrollment specified within this chapter.

(33) "Provider" or "health care provider" means a health care professional or institution duly licensed and accredited to provide covered services in the state of Washington.

(34) "Rate" means the amount, including administrative charges and any applicable premium and prepayment tax imposed under RCW 48.14.0201, negotiated by the administrator with and paid to a managed health care system, to provide BHP health care benefits to enrollees.

(35) "Schedule of benefits" means the basic health care services adopted and from time to time amended by the administrator, which an enrollee shall be entitled to receive from a managed health care system in exchange for payment of premium and applicable co-payments, as described in the member handbook.

(36) "Service area" means the geographic area served by a managed health care system as defined in its contract with HCA.

(37) "Subscriber" is a person who applies to BHP on his/her own behalf or on behalf of his/her dependents, if any, who is responsible for payment of premiums and to whom BHP sends notices and communications. The subscriber may be a BHP enrollee or the spouse, parent, or guardian of an enrolled dependent and may or may not be enrolled for coverage. Notices to a subscriber and, if applicable, a financial sponsor or employer shall be considered notice to the subscriber and his/her enrolled dependents.

(38) "Subsidized enrollee" or "reduced premium enrollee" means an individual who ((~~enrolls in BHP, either as the subscriber or an eligible dependent, whose current gross family income does not exceed twice the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA. Full-time students who have received a temporary visa to study in the United States are not eligible to enroll as subsidized enrollees. To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, "subsidized enrollee" also means an individual who enrolls in BHP, either as the subscriber or an eligible dependent, whose current gross family income is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA~~)) is not a full-time student who has received a temporary visa to study in the United States and who otherwise meets the criteria in (a), (b), or (c) of this subsection.

(a) An individual who enrolls in BHP, either as the subscriber or an eligible dependent, whose current gross family income does not exceed twice the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA.

(b) An individual who enrolls in BHP, either as the subscriber or an eligible dependent, and who is a foster parent licensed under chapter 74.15 RCW and whose current gross family income does not exceed three hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA.

(c) To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, "subsidized enrollee" also means an individual who enrolls in BHP, either as the subscriber or an eligible dependent, whose current gross family income is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA.

(39) "Subsidy" means the difference between the amount of periodic payment the HCA makes to a managed health care system on behalf of a subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

(40) "Washington state resident" or "resident," for purposes of this chapter, means a person who physically resides and maintains a residence in the state of Washington.

(a) To be considered a Washington resident, enrollees who are temporarily out of Washington state for any reason:

(i) May be required to demonstrate their intent to return to Washington state; and

(ii) May not be out of Washington state for more than three consecutive calendar months.

(b) Dependent children who meet the requirements of subsection (9)(b)(ii) of this section and are attending school out-of-state may be considered to be residents if they are out-of-state during the school year, provided their primary residence is in Washington state and they return to Washington state during breaks. Dependent children attending school out-of-state may also be required to provide proof that they pay out-of-state tuition, vote in Washington state and file their federal income taxes using a Washington state address.

(c) "Residence" may include, but is not limited to:

(i) A home the person owns or is purchasing or renting;

(ii) A shelter or other physical location where the person is staying in lieu of a home; or

(iii) Another person's home.

AMENDATORY SECTION (Amending Order 04-03, filed 11/5/04, effective 1/1/05)

WAC 182-25-080 Premiums and co-payments. (1) Subscribers or their employer or financial sponsor shall be responsible for paying the full monthly premium to BHP, on behalf of the subscriber and all enrolled dependents, according to the most current premium schedule. A third party may, with the approval of the administrator, become a financial sponsor and pay all or a designated portion of the premium on behalf of a subscriber and dependents, if any.

(2) The amount of premium due from or on behalf of a subsidized enrollee will be based upon the subscriber's gross family income, the managed health care system selected by the subscriber, rates payable to managed health care systems, and the number and ages of individuals in the subscriber's family.

(3) Once BHP has determined that an applicant and his/her dependents (if any) are eligible for enrollment, the applicant or employer or financial sponsor will be informed of the amount of the first month's premium for the applicant and his/her enrolled dependents. New enrollees will not be eligible to receive covered services on the effective date of enrollment specified by BHP unless the premium has been paid by the due date given. Thereafter, BHP will bill each subscriber or employer or financial sponsor monthly.

(4) Full payment for premiums due must be received by BHP by the date specified on the premium statement. If BHP does not receive full payment of a premium by the date specified on the premium statement, BHP shall issue a notice of delinquency to the subscriber, at the subscriber's last address on file with BHP or, in the case of group or financial sponsor coverage, to the employer or financial sponsor. If full payment is not received by the date specified in the delinquency notice, the subscriber and enrolled family members will be suspended from coverage for one month. If payment is not received by the due date on the notice of suspension, the subscriber and enrolled family members will be disenrolled effective the date of the initial suspension. If an enrollee's coverage is suspended more than two times in a twelve-month period, the enrollee will be disenrolled for nonpayment under the provisions of WAC 182-25-090(2). Partial payment of premiums due, payment which for any reason cannot be applied to the correct BHP enrollee's account, or payment by check which is not signed, cannot be processed, or is returned due to nonsufficient funds will be regarded as nonpayment.

(5) Enrollees shall be responsible for paying any required co-payment, coinsurance, or deductible directly to the provider of a covered service or directly to the MHCS. Repeated failure to pay co-payments, coinsurance, or other cost-sharing in full on a timely basis may result in disenrollment, as provided in WAC 182-25-090(2).

(6) Monthly premiums due for foster parents with gross family income up to two hundred percent of the federal poverty level will be set at the minimum premium amount charged to enrollees with income below sixty-five percent of the federal poverty level. Monthly premiums due for foster parents with gross family income between two hundred percent and three hundred percent of the federal poverty level will not exceed one hundred dollars per month.

WSR 07-15-054
EMERGENCY RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)

[Filed July 16, 2007, 10:09 a.m., effective July 16, 2007, 10:09 a.m.]

Effective Date of Rule: Immediately.

Purpose: The division of developmental disabilities (DDD) is proposing this emergency rule to amend chapter 388-828 WAC to ensure consistency with the legislature's request to collect data on family income for minor children with developmental disabilities and all individuals who are receiving state-only funded services and remove the penalty for not reporting income information.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-828-1240, 388-828-1260 and 388-828-1280; and amending WAC 388-828-1200, 388-828-1220, and 388-828-1300.

Statutory Authority for Adoption: RCW 71A.12.30 [71A.12.030].

Other Authority: Title 71A RCW.

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

Reasons for this Finding: This emergency rule amends chapter 388-828 WAC to remove penalties for clients and their families that decline to provide income information when receiving the DDD assessment. Without this emergency rule, clients may be incorrectly found ineligible for services or benefits. This rule is also necessary to implement the conditions and limitations set by the legislature when appropriating funding for DDD programs in the Washington state's 2007-2009 budget (section 205, chapter 522, Laws of 2007). The legislature requested that DDD collect data on family income for families with minor children with developmental disabilities and all individuals who are receiving state-only funded services.

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

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

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

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

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

Date Adopted: July 11, 2007.

Stephanie E. Schiller
Rules Coordinator

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

WAC 388-828-1200 ((~~Will DDD ask your family to disclose~~)) Who does DDD ask to disclose financial ((~~and dependent~~)) information? When administering the DDD assessment, DDD ((~~will only~~)) is required to ask for ((~~information regarding your family's~~)) annual gross income information ((~~and the number of household dependents when~~)) from:

(1) Your family, if:

(a) You are age seventeen or younger; and

(((~~2~~))) (b) Your family has not made a request for your admission to a residential habilitation center (RHC)((~~.~~)), or

(2) You, if:

(a) You are age eighteen or older, and

(b) You are receiving state-only funded services.

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

WAC 388-828-1220 Will DDD require ((~~your family to provide supporting documentation of their annual gross income and number of household dependents~~)) the reported annual gross income to be verified with supporting documentation? DDD accepts ((~~your family's~~)) a verbal report of annual gross income and does not require ((~~your family to provide~~)) supporting documentation ((~~of their annual gross income and number of household dependents~~)) to verify the reported information.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-828-1240	What does DDD do when family income and household dependent information are not provided?
WAC 388-828-1260	What action will DDD take if your family does not report income and dependent information?
WAC 388-828-1280	How will your access to, or receipt of, DDD HCBS waiver services be affected if your family does not report family income and dependent information?

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

WAC 388-828-1300 How will your access to, or receipt of, ((~~Medicaid personal care~~)) DDD paid services, private duty nursing services, or SSP be affected if ((~~your family does not report family~~)) income ((~~and dependent~~)) information is not reported? Your access to, or receipt of, ((~~Medicaid personal care~~)) DDD paid services per ((~~chapter 388-106~~)) WAC 388-828-1440, Private duty nursing services for children seventeen years of age and younger per WAC 388-551-3000, or SSP per chapter 388-827 WAC is not affected if ((~~your family does not report~~)) income ((~~and dependent~~)) information is not reported.

WSR 07-15-057

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 07-144—Filed July 16, 2007, 2:33 p.m., effective July 22, 2007]

Effective Date of Rule: July 22, 2007.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-55-010.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: Statutory requirements have changed and external display of a shellfish and seaweed or razor clam license is no longer required. These rules are interim until permanent rules take effect.

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

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

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

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

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

Date Adopted: July 13, 2007.

J. P. Koenings

Director

NEW SECTION

WAC 220-55-01000A Recreational shellfish and seaweed license. Notwithstanding the provisions of WAC 220-55-010, effective July 22, 2007, until further notice, a personal use shellfish and seaweed or razor clam license no longer needs to be visible on one's person at all times.

WSR 07-15-058

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 07-145—Filed July 16, 2007, 2:33 p.m., effective July 16, 2007, 2:33 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900F; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The Klickitat Salmon Hatchery is expected to reach its escapement goal of spring chinook, making more hatchery adult salmon available for recreational harvest. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: July 16, 2007.

J. P. Koenings

Director

NEW SECTION

WAC 232-28-61900F Exceptions to statewide rules—Klickitat River. Notwithstanding the provisions of WAC 232-28-619, effective immediately through July 31, 2007, in those waters of the Klickitat River from the mouth upstream to the Fisher Hill Bridge and from 400 feet upstream from #5 fishway, to boundary markers below Klickitat Salmon Hatchery, open 7 days a week. Daily limit of six salmon, no more than 2 adults, release all wild Chinook, minimum size is 12 inches.

REPEALER

The following section of the Washington Administrative Code is repealed, effective August 1, 2007:

WAC 232-28-61900F	Exceptions to statewide rules—Klickitat River.

WSR 07-15-072

EMERGENCY RULES

DEPARTMENT OF AGRICULTURE

[Filed July 17, 2007, 1:55 p.m., effective July 17, 2007, 1:55 p.m.]

Effective Date of Rule: Immediately.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The Washington state department of agriculture (WSDA) has entered into a memorandum of understanding (MOU) with the United States Department of Agriculture (USDA), agreeing that the WSDA will comply with all provisions of the national poultry improvement plan.

Purpose: Language is added to existing rule requiring that all poultry must come from United States Pullorum-Typhoid Clean or equivalent flocks or have a negative pullorum-typhoid test within ninety days before going to public exhibition.

Citation of Existing Rules Affected by this Order: Amending WAC 16-59-030.

Statutory Authority for Adoption: RCW 16.36.040.

Other Authority: Chapter 34.05 RCW.

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

Reasons for this Finding: In order to receive federal funding for indemnity for commercial flocks in the event of depopulation for infection with low pathogenic avian influenza, USDA requires that states have a pullorum-typhoid testing requirement for poultry shown at public exhibition. WSDA is undertaking emergency rule making in order [to] avoid delay in receipt of the federal funding and to obtain the benefits for poultry producers that come with state participation in the program including access to federal indemnification funds.

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

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

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

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

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

Date Adopted: July 17, 2007.

Robert W. Gore
Deputy Director

AMENDATORY SECTION (Amending WSR 99-09-024, filed 4/15/99, effective 5/16/99)

WAC 16-59-030 Testing of breeding stock. (1)(a) **Pullorum-typhoid:** All poultry, including exhibition, exotic, and game birds, but excluding waterfowl, that are going to public exhibition shall come from U.S. Pullorum-Typhoid Clean or equivalent flocks, as defined by Title 9 CFR Section 145.53 (January 1, 2007), or have had a negative pullorum-typhoid test within ninety days before going to public exhibition.

(b) All poultry and hatching eggs in interstate movement must originate from parent or grandparent stock ((~~which~~)) that are registered as participating flocks under NPIP or equivalent state program. The poultry and hatching eggs must be classified as pullorum-typhoid free or must be tested negative for pullorum-typhoid within thirty days ((~~of~~)) before movement. Acceptable tests are standard tube agglutination, microagglutination, enzyme-linked immuno-sorbent assay (ELISA) or rapid serum test. The stained antigen, rapid whole blood test can be used for all poultry except turkeys. The state veterinarian may allow cloacal swab or environmental testing in lieu of blood testing for certain species of ratites. Any person who sells poultry or hatching eggs as pullorum-typhoid free must qualify under the provisions of this rule.

(c) Exempt from pullorum-typhoid requirements are:

(((~~a~~))) (i) Eggs for table consumption;

(((~~b~~))) (ii) Poultry for immediate slaughter; and

(((~~c~~))) (iii) Shipments consigned to a diagnostic laboratory or research institute approved by the department.

(2) **Infectious laryngotracheitis; infectious coryza:** Poultry cannot be imported if naturally infected or exposed to natural infection with infectious laryngotracheitis or infectious coryza. Such poultry can be imported under permit from the state veterinarian. The shipment can only be moved into the state when accompanied by an official federal form VS1-27 completed and signed by a federal or state veterinarian. The shipment will be quarantined once it reaches its Washington destination. A permit will be granted when available information indicates that the poultry to be transported will not present a disease hazard to state of Washington flocks. Exempted from the infectious laryngotracheitis and infectious coryza requirements are:

(a) Poultry for immediate slaughter;

(b) Poultry consigned to a diagnostic laboratory or research institute approved by the department; and

(c) Eggs for table consumption from flocks naturally infected or vaccinated with virulent vaccines. To meet this exemption, eggs for table consumption must be washed and sanitized by methods required by the state veterinarian after consultation with Washington state poultry pathologists. Crates, equipment, and packaging material used for transportation must be cleaned and disinfected to the department's satisfaction or must be burned before leaving the slaughter, diagnostic, or egg processing premises. If crates, equipment and packaging material cannot be burned, they must be disposed of by a method in compliance with local air quality standards that still provide for destruction of pathogens.

(3) **Ornithosis:** Poultry and eggs are not to be imported into or moved intrastate in Washington if ornithosis is suspected or has been diagnosed. The state veterinarian may make an exception and issue a permit for importation or movement after proper treatment with a recommended antibiotic and observation of the appropriate withdrawal time.

WSR 07-15-093

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 07-148—Filed July 18, 2007, 10:26 a.m., effective July 18, 2007, 10:26 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100G; and amending WAC 220-52-051.

Statutory Authority for Adoption: RCW 77.12.047.

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

Reasons for this Finding: The regional 2007 state/tribal shrimp harvest management plans for Puget Sound require adoption of harvest seasons and the prohibition on night time fishing contained in this emergency rule. This emergency rule closes the shrimp fishery in Catch Area 26B-1 because of projected quota completion in that area. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: July 18, 2007.

J. P. Koenings
Director

NEW SECTION

WAC 220-52-05100H~~2G~~ Puget Sound shrimp pot and beam trawl fishery—Season. Notwithstanding the provisions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound, except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1A, 1C, 2E, 2W, 3, 4, and 6 are open immediately to the harvest of all shrimp species, until further notice, except as provided for in this section:

~~(i)~~ All waters of Catch Areas 23A-C, 23A-E, 26B-1, and the Discovery Bay Shrimp District are closed.

(i) ~~(ii) Effective 6:00 p.m. July 3, 2007 immediately, Catch Area 23A-E 26B-1 is closed to the harvest of all shrimp species, until further notice.~~

(b) The shrimp accounting week is Monday through Sunday.

(c) Effective immediately until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, except that any fisher whose weekly shrimp harvest activity is exclusively limited to Marine Fish-Shellfish Catch and Reporting Area 29 shall not be subject to the weekly spot shrimp trip limit for that week. ~~Effective July 2 and July 3, 2007, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 200 pounds per week in Catch Area 23A-E.~~ It is unlawful to fish for any shrimp while in possession, on board the fishing vessel, of any spot shrimp from any previous accounting week.

(d) It is unlawful to set or pull shellfish pots with a mesh size of less than the size as defined below in all waters of Shrimp Management Areas 1A, 1C, 2E, 2W, 4, and 6, on days when fishing for or retaining spot shrimp. Spot shrimp taken in these areas are not subject to the minimum carapace length restriction.

(i) The minimum mesh size for rigid mesh pots is 1-inch defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels.

(ii) The minimum mesh size for flexible mesh pots is defined as 1-3/4-inch stretched mesh measure.

(e) It is unlawful to retain spot shrimp taken by shellfish pot gear that have a carapace length less than 1-3/16 inch as measured from the posterior mid-dorsal margin to the posterior-most part of the eye stalk orbit, in all waters of Shrimp Management Area 3.

(f) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include the following additional information:

(i) The number of pots being moved to a new area, and the Marine Fish-Shellfish Management and Catch Reporting Area that the pots are being moved to.

(g) It is unlawful to set or pull shellfish pots in one Marine Fish-Shellfish Management and Catch Reporting Area while in possession of shrimp harvested from another Marine Fish-Shellfish Management and Catch Reporting Area, except that shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section 1(f) above.

(2) Shrimp beam trawl gear:

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

(a) That portion of Catch Areas 21A and 22A within Shrimp Management Area 1B is open immediately, until further notice.

~~(b) Effective 6:00 a.m. July 1, 2007, that portion of Catch Area 21A within Shrimp Management Area 1B is open immediately, until further notice.~~

(3) It is unlawful to set or pull shrimp beam trawl gear from one hour after official sunset to one hour before official sunrise.

(4) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100~~F~~G-	Puget Sound shrimp pot and beam trawl fishery—Season (07-~~127~~132)

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

Reviser's note: The unnecessary underscoring and strikethrough 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.