

WSR 12-16-024
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed July 25, 2012, 8:00 a.m., effective July 28, 2012]

Effective Date of Rule: July 28, 2012.

Purpose: Combining medically needy and categorically needy home and community based waivers per approval by Centers for Medicare and Medicaid Services under Waiver WA.0049.06.04, WA004.01.03, WA.0049.06.04 effective April 1, 2012. Under section 6014 of the Deficit Reduction Act of 2005, medicaid will not pay for long-term care services for individuals whose equity interest in their home exceeds \$500,000. Effective January 1, 2011, these limits were increased each year by the percentage increase in the consumer price index urban. Effective January 1, 2011, the excess home equity limits was [were] \$506,000. The standard utility allowance reference has changed effective October 1, 2011, this emergency adoption corrects the reference. Eliminating reference to general assistance and/or disability lifeline and referencing to the correct aged, blind or disabled cash program or medical care services.

Citation of Existing Rules Affected by this Order: Amending WAC 388-513-1305, 388-513-1315, 388-513-1350, 388-513-1380, 388-515-1505, 388-515-1506, 388-515-1507, 388-515-1508, 388-515-1509, 388-515-1512, 388-515-1514, 388-515-1540, and 388-515-1550.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.09.500, and 74.09.530.

Other Authority: Deficit Reduction Act (DRA) of 2005.

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 CR-103E filing replaces and supersedes the CR-103E filed as WSR 12-08-035 on March 29, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 13, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 13, Repealed 0.

Date Adopted: July 20, 2012.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-07-077, filed 3/13/06, effective 4/13/06)

WAC 388-513-1305 Determining eligibility for non-institutional medical assistance in an alternate living facility (ALF). This section describes how the department defines the monthly income standard and uses it to determine eligibility for noninstitutional medical assistance for a client who lives in a department-contracted ALF. Refer to WAC 388-478-0045 for the personal needs allowance (PNA) amount that applies in this rule.

(1) The eligibility criteria for noninstitutional medical assistance in an ALF follows SSI-related medical rule described in WAC 182-512-0050 through 182-512-0960 with the exception of the higher medical standard based on the daily rate described in subsection (3).

(2) Alternate living facilities (AFH) include the following:

(a) An adult family home (AFH), a licensed family home that provides its residents with personal care and board and room for two to six adults unrelated to the person(s) providing the care. Licensed as an adult family home under chapter 70.128 RCW and chapter 388-76 WAC;

(b) An adult residential care facility (ARC) (formally known as a CCF) is a licensed facility that provides its residents with shelter, food, household maintenance, personal care and supervision. Licensed as a boarding home under chapter 18.20 RCW and chapter 388-78A WAC;

(c) An adult residential rehabilitation center (ARRC) described in WAC 388-865-0235 or adult residential treatment facility (ARTF) described in WAC 388-865-0465. These are licensed facilities that provide its residents with twenty-four hour residential care for impairments related to mental illness;

(d) ((An adult residential treatment facility (ARTF))) Assisted living facility (AL), a licensed facility for aged and disabled low-income persons with functional disabilities. COPEs eligible clients are often placed in assisted living. Licensed as a boarding home under chapter 18.20 RCW and chapter 388-78A WAC;

(e) ((An assisted living facility (AL))) Division of developmental disabilities (DDD) group home (GH), a licensed facility that provides its residents with twenty-four hour supervision. Depending on size of a DDD group home may be licensed as an adult family home under chapter 70.128 RCW or a boarding home under chapter 18.20 RCW. Group home means a residence that is licensed as either a boarding home or an adult family home by the department under chapters 388-78A or 388-76 WAC. Group homes provide community residential instruction, supports, and services to two or more clients who are unrelated to the provider; and

(f) ((A division of developmental disabilities (DDD) group home (GH); and

(g) An enhanced adult residential care facility (EARC). (2)) Enhanced adult residential care facility (EARC), a licensed facility that provides its residents with those services provided in an ARC, in addition to those required because of the client's special needs. Licensed as a boarding home under chapter 18.20 RCW.

(3) The monthly income standard for noninstitutional medical assistance under the categorically needy (CN) pro-

gram ~~((that cannot exceed the special income level (SIL) equals the following amounts. For a client who lives in:~~

~~(a) An ARC, an ARRC, an ARTF, an AL, a DDD-GH, or an EARC, the department contracted rate based on a thirty-one day month plus the PNA; or~~

~~(b) An AFH, the department contracted rate based on a thirty-one day month plus the PNA plus the cost of any add-on hours authorized by the department.~~

~~(3)) has two steps:~~

~~(a) The gross nonexcluded monthly income cannot exceed the special income level (SIL) which is three hundred percent of the federal benefit rate (FBR); and~~

~~(b) The countable income cannot be greater than the department contracted daily rate times thirty one days, plus the PNA/CPI described in WAC 388-478-0045.~~

~~(4) The monthly income standard for noninstitutional medical assistance under the medically needy (MN) program equals the private facility daily rate ~~((based on a thirty-one day month))~~ times thirty one days, plus the PNA/CPI described in WAC 388-478-0045. Follow MN rules described in chapter 388-519 WAC.~~

~~((4) The monthly income standard for noninstitutional medical assistance under the general assistance (GA) program equals the GA grant standard described in WAC 388-478-0045.)~~

~~(5) The department determines a client's nonexcluded resources for noninstitutional medical assistance under the~~

~~(a) General assistance (GA) and temporary assistance for needy families (TANF) programs as described in chapter 388-470 WAC; and~~

~~(b) SSI-related medical program as described in chapter 388-475 WAC)) SSI related program as described in chapter 182-512 WAC.~~

~~(6) The department determines a client's nonexcluded income for noninstitutional medical assistance under the SSI related program as described in~~

~~(a) Chapter 388-450 WAC for GA and TANF programs; and~~

~~(b) Chapter 388-475 WAC and WAC 388-506-0620 for SSI-related medical programs)) chapter 182-512 WAC.~~

~~(7) The department approves CN noninstitutional medical assistance for a period of up to twelve months for a client ~~((who receives Supplemental Security Income (SSI) or))~~ who is SSI-related as described in WAC ~~((388-475-0050))~~ 182-512-0050, if:~~

~~(a) The client's nonexcluded resources described in subsection (5) do not exceed the standard described in WAC 388-513-1350(1); and~~

~~(b) The client's nonexcluded income described in subsection (6) does not exceed the CN standard described in subsection ~~((2))~~ (3).~~

~~(8) The department approves MN noninstitutional medical assistance for a period of months described in chapter ~~((388-416))~~ 182-504 WAC for an SSI-related client, if:~~

~~(a) The client's nonexcluded resources described in subsection (5) do not exceed the standard described in WAC 388-513-1350(1); and~~

~~(b) The client satisfies any spenddown liability as described in chapter 388-519 WAC.~~

~~(9) The department ~~((approves GA and TANF noninstitutional medical assistance for a period of months described in chapter 388-416 WAC))~~ determines eligibility for a cash grant for individuals residing in an alternate living facility (ALF) using the following program rules:~~

~~(a) WAC 388-400-0005 temporary assistance for needy families (TANF);~~

~~(b) WAC 388-400-0060 aged, blind, and disabled (ABD) cash benefit; and~~

~~(c) WAC 388-400-0030 refugee assistance.~~

~~(10) The client described in subsection ~~((s(7) and (9) keeps the PNA amount and pays remaining income to the facility for board and room))~~ (9) of this section residing in an adult family home receives a grant based on a payment standard described in WAC 388-478-0030 due to an obligation to pay shelter costs to the adult family home. The client would keep a CPI described in WAC 388-478-0045 and pay the remainder of the grant to the adult family home as room and board.~~

~~(11) The client described in subsection (9) residing in an ALF described in subsections (2)(b) through (2)(g) (all other residential settings) keeps the PNA/CPI amount described in WAC 388-478-0045.~~

~~(12) The client described in subsection (7) and receiving medicaid personal care (MPC) from the department keeps \$62.79 as a PNA and pays the remainder of their income to the ALF for room and board and personal care.~~

AMENDATORY SECTION (Amending WSR 10-01-158, filed 12/22/09, effective 1/22/10)

WAC 388-513-1315 Eligibility for long-term care (institutional, waiver, and hospice) services. This section describes how the department determines a client's eligibility for medical for clients residing in a medical institution, on a waiver, or receiving hospice services under the categorically needy (CN) or medically needy (MN) programs. Also described are the eligibility requirements for these services under the ~~((general assistance (GA) program in subsection (12))~~ aged, blind, or disabled (ABD) cash assistance, medical care services (MCS) and the state funded ~~((nursing facility))~~ long-term care services program described in subsection (11).

(1) To be eligible for long-term care (LTC) services described in this section, a client must:

(a) Meet the general eligibility requirements for medical programs described in WAC 388-503-0505 (2) and (3)(a) through (f);

(b) Attain institutional status as described in WAC 388-513-1320;

(c) Meet functional eligibility described in chapter 388-106 WAC for waiver and nursing facility coverage;

(d) Not have a penalty period of ineligibility as described in WAC 388-513-1363, 388-513-1364, 388-513-1365 or 388-513-1366;

(e) Not have equity interest greater than ~~((five hundred thousand dollars in their primary residence as))~~ the amount described in WAC 388-513-1350; and

(f) Must disclose to the state any interest the applicant or spouse has in an annuity and meet annuity requirements described in chapter 388-561 WAC:

(i) This is required for all institutional or waiver services and includes those individuals receiving Supplemental Security Income (SSI).

(ii) A signed and completed eligibility review for long term care benefits or application for benefits form can be accepted for SSI individuals applying for long-term care services.

(2) To be eligible for institutional, waiver, or hospice services under the CN program, a client must either:

(a) Be related to the Supplemental Security Income (SSI) program as described in WAC 388-475-0050 (1), (2) and (3) and meet the following financial requirements, by having:

(i) Gross nonexcluded income described in subsection (8)(a) that does not exceed the special income level (SIL) (three hundred percent of the federal benefit rate (FBR)); and

(ii) Countable resources described in subsection (7) that do not exceed the resource standard described in WAC 388-513-1350; or

(b) Be approved and receiving ~~((the general assistance expedited medicaid disability (GA-X) or general assistance aged (GA-A) or general assistance disabled (GA-D) described in WAC 388-505-0110(6)))~~ aged, blind, or disabled cash assistance described in WAC 388-400-0060 and meet citizenship requirements for federally funded medicaid described in WAC 388-424-0010; or

(c) Be eligible for CN apple health for kids described in WAC 388-505-0210; or CN family medical described in WAC 388-505-0220; or family and children's institutional medical described in WAC 388-505-0230 through 388-505-0260. Clients not meeting the citizenship requirements for federally funded medicaid described in WAC 388-424-0010 are not eligible to receive waiver services. Nursing facility services require prior approval for the state funded nursing facility program described in WAC 388-438-0125 for noncitizen children; or

(d) Be eligible for the temporary assistance for needy families (TANF) program as described in WAC 388-400-0005. Clients not meeting disability or blind criteria described in WAC 388-475-0050 are not eligible for waiver services.

(3) The department allows a client to reduce countable resources in excess of the standard. This is described in WAC 388-513-1350.

(4) To be eligible for waiver services, a client must meet the program requirements described in:

(a) WAC 388-515-1505 through 388-515-1509 for COPEs, New Freedom, PACE, and WMIP services; or

(b) WAC 388-515-1510 through 388-515-1514 for DDD waivers; or

(c) WAC 388-515-1540 for the medically needy residential waiver (MNRW); or

(d) WAC 388-515-1550 for the medically needy in-home waiver (MNIW).

(5) To be eligible for hospice services under the CN program, a client must:

(a) Meet the program requirements described in chapter 388-551 WAC; and

(b) Be eligible for a noninstitutional categorically needy program (CN-P) if not residing in a medical institution thirty days or more; or

(c) Reside at home and benefit by using home and community based waiver rules described in WAC 388-515-1505 through 388-515-1509 (SSI related clients with income over the MNIL and at or below the 300 percent of the FBR or clients with a community spouse); or

(d) Receive home and community waiver (HCS) or DDD waiver services in addition to hospice services. The client's responsibility to pay toward the cost of care (participation) is applied to the waiver service provider first; or

(e) Be eligible for institutional CN if residing in a medical institution thirty days or more.

(6) To be eligible for institutional or hospice services under the MN program, a client must be:

(a) Eligible for MN children's medical program described in WAC 388-505-0210, 388-505-0255, or 388-505-0260; or

(b) Related to the SSI program as described in WAC 388-475-0050 and meet all requirements described in WAC 388-513-1395; or

(c) Eligible for the MN SSI related program described in WAC 388-475-0150 for hospice clients residing in a home setting; or

(d) Eligible for the MN SSI related program described in WAC 388-513-1305 for hospice clients not on a medically needy waiver and residing in an alternate living facility.

(e) Be eligible for institutional MN if residing in a medical institution thirty days or more described in WAC 388-513-1395.

(7) To determine resource eligibility for an SSI-related client under the CN or MN program, the department:

(a) Considers resource eligibility and standards described in WAC 388-513-1350; and

(b) Evaluates the transfer of assets as described in WAC 388-513-1363, 388-513-1364, 388-513-1365 or 388-513-1366.

(8) To determine income eligibility for an SSI-related client under the CN or MN program, the department:

(a) Considers income available as described in WAC 388-513-1325 and 388-513-1330;

(b) Excludes income for CN and MN programs as described in WAC 388-513-1340;

(c) Disregards income for the MN program as described in WAC 388-513-1345; and

(d) Follows program rules for the MN program as described in WAC 388-513-1395.

(9) A client who meets the requirements of the CN program is approved for a period of up to twelve months.

(10) A client who meets the requirements of the MN program is approved for a period of months described in WAC 388-513-1395(6) for:

(a) Institutional services in a medical institution; or

(b) Hospice services in a medical institution.

(11) The department determines eligibility for ~~((the))~~ state funded ~~((nursing facility program described in WAC 388-438-0110 and 388-438-0125. Nursing facility services under the state funded nursing facility program must be pre-~~

approved by aging and disability services administration (ADSA).

~~(12) The department determines eligibility for institutional services under the GA program described in WAC 388-448-0001 for a client who meets all other requirements for such services but is not eligible for programs described in subsections (9) through (11).~~

~~(13)) programs under the following rules:~~

~~(a) A client who is eligible for ABD cash assistance program described in WAC 388-400-0060 but is not eligible for federally funded medicaid due to citizenship requirements receives MCS medical described in WAC 182-508-0005. A client who is eligible for MCS may receive institutional services but is not eligible for hospice or HCB waiver services.~~

~~(b) A client who is not eligible for ABD cash assistance but is eligible for MCS coverage only described in WAC 182-508-0005 may receive institutional services but is not eligible for hospice or HCB waiver services.~~

~~(c) A noncitizen client who is not eligible under subsections (11)(a) or (b) and needs long-term care services may be eligible under WAC 388-438-0110 and WAC 388-438-0125. This program must be pre-approved by aging and disability services administration (ADSA).~~

(12) A client is eligible for medicaid as a resident in a psychiatric facility, if the client:

(a) Has attained institutional status as described in WAC 388-513-1320; and

(b) Is under the age of twenty-one at the time of application; or

(c) Is receiving active psychiatric treatment just prior to their twenty-first birthday and the services extend beyond this date and the client has not yet reached age twenty-two; or

(d) Is at least sixty-five years old.

~~((14))~~ (13) The department determines a client's eligibility as it does for a single person when the client's spouse has already been determined eligible for LTC services.

~~((15))~~ (14) If an individual under age twenty one is not eligible for medicaid under SSI related in WAC 388-475-0050 or ~~((general assistance (GA) described in WAC 388-448-0001 and 388-505-0110(6))~~) ABD cash assistance described in WAC 388-400-0060 or MCS described in 182-508-0005, consider eligibility under WAC 388-505-0255 or 388-505-0260.

~~((16))~~ (15) Noncitizen individuals under age nineteen can be considered for the apple health for kids program described in WAC 388-505-0210 if they are admitted to a medical institution for less than thirty days. Once an individual resides or is likely to reside in a medical institution for thirty days or more, the department determines eligibility under WAC 388-505-0260 and must be preapproved for coverage by ADSA as described in WAC 388-438-0125.

(16) Noncitizen clients not eligible under subsection (15) of this section can be considered for LTC services under WAC 388-438-0125. These clients must be pre-approved by ADSA.

(17) The department determines a client's total responsibility to pay toward the cost of care for LTC services as follows:

(a) For SSI-related clients residing in a medical institution see WAC 388-513-1380;

(b) For clients receiving HCS CN waiver services see WAC 388-515-1509;

(c) For clients receiving DDD CN waiver services see WAC 388-515-1514;

(d) For clients receiving HCS MN waiver services see WAC 388-515-1540 or 388-515-1550; or

(e) For TANF related clients residing in a medical institution see WAC 388-505-0265.

(18) Clients not living in a medical institution who are considered to be receiving SSI benefits for the purposes of medicaid do not pay service participation toward their cost of care. Clients living in a residential setting do pay room and board as described in WAC 388-515-1505 through 388-515-1509 or WAC 388-515-1514. Groups deemed to be receiving SSI and for medicaid purposes are eligible to receive CN-P medicaid. These groups are described in WAC 388-475-0880.

AMENDATORY SECTION (Amending WSR 09-12-058, filed 5/28/09, effective 7/1/09)

WAC 388-513-1350 Defining the resource standard and determining resource eligibility for long-term care (LTC) services. This section describes how the department defines the resource standard and countable or excluded resources when determining a client's eligibility for LTC services. The department uses the term "resource standard" to describe the maximum amount of resources a client can have and still be resource eligible for program benefits.

(1) The resource standard used to determine eligibility for LTC services equals:

(a) Two thousand dollars for:

(i) A single client; or

(ii) A legally married client with a community spouse, subject to the provisions described in subsections (8) through (11) of this section; or

(b) Three thousand dollars for a legally married couple, unless subsection (3) of this section applies.

(2) When both spouses apply for LTC services the department considers the resources of both spouses as available to each other through the month in which the spouses stopped living together.

(3) When both spouses are institutionalized, the department will determine the eligibility of each spouse as a single client the month following the month of separation.

(4) If the department has already established eligibility and authorized services for one spouse, and the community spouse needs LTC services in the same month, (but after eligibility has been established and services authorized for the institutional spouse), then the department applies the standard described in subsection (1)(a) of this section to each spouse. If doing this would make one of the spouses ineligible, then the department applies (1)(b) of this section for a couple.

(5) When a single institutionalized individual marries, the department will redetermine eligibility applying the rules for a legally married couple.

(6) The department applies the following rules when determining available resources for LTC services:

(a) WAC 388-475-0300, Resource eligibility;

(b) WAC 388-475-0250, How to determine who owns a resource; and

(c) WAC 388-470-0060(6), Resources of an alien's sponsor.

(7) For LTC services the department determines a client's countable resources as follows:

(a) The department determines countable resources for SSI-related clients as described in WAC 388-475-0350 through 388-475-0550 and resources excluded by federal law with the exception of:

(i) WAC 388-475-0550(16);

(ii) WAC 388-475-0350 (1)(b) clients who have submitted an application for LTC services on or after May 1, 2006 and have an equity interest greater than five hundred thousand dollars in their primary residence are ineligible for LTC services. This exception does not apply if a spouse or blind, disabled or dependent child under age twenty-one is lawfully residing in the primary residence. Clients denied or terminated LTC services due to excess home equity may apply for an undue hardship waiver described in WAC 388-513-1367. Effective January 1, 2011, the excess home equity limits increase to five hundred six thousand dollars. On January 1, 2012 and on January 1 of each year thereafter, this standard may be increased or decreased by the percentage increased or decreased in the consumer price index-urban (CPIU). For current excess home equity standard starting January 1, 2011 and each year thereafter, see <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(b) For an SSI-related client one automobile per household is excluded regardless of value if it is used for transportation of the eligible individual/couple.

(i) For an SSI-related client with a community spouse, the value of one automobile is excluded regardless of its use or value.

(ii) A vehicle not meeting the definition of automobile is a vehicle that has been junked or a vehicle that is used only as a recreational vehicle.

(c) For an SSI-related client, the department adds together the countable resources of both spouses if subsections (2), (5) and (8)(a) or (b) apply, but not if subsection (3) or (4) apply.

(d) For an SSI-related client, excess resources are reduced:

(i) In an amount equal to incurred medical expenses such as:

(A) Premiums, deductibles, and coinsurance/copayment charges for health insurance and medicare;

(B) Necessary medical care recognized under state law, but not covered under the state's medicaid plan;

(C) Necessary medical care covered under the state's medicaid plan incurred prior to medicaid eligibility.

(ii) As long as the incurred medical expenses:

(A) Are not subject to third-party payment or reimbursement;

(B) Have not been used to satisfy a previous spend down liability;

(C) Have not previously been used to reduce excess resources;

(D) Have not been used to reduce client responsibility toward cost of care;

(E) Were not incurred during a transfer of asset penalty described in WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366; and

(F) Are amounts for which the client remains liable.

(e) Expenses not allowed to reduce excess resources or participation in personal care:

(i) Unpaid expense(s) prior to waiver eligibility to an adult family home (AFH) or boarding home is not a medical expense.

(ii) Personal care cost in excess of approved hours determined by the CARE assessment described in chapter 388-106 WAC is not a medical expense.

(f) The amount of excess resources is limited to the following amounts:

(i) For LTC services provided under the categorically needy (CN) program:

(A) Gross income must be at or below the special income level (SIL), 300% of the federal benefit rate (FBR).

(B) In a medical institution, excess resources and income must be under the state medicaid rate.

(C) For CN waiver eligibility, incurred medical expenses must reduce resources within allowable resource limits for CN-waiver eligibility. The cost of care for the waiver services cannot be allowed as a projected expense.

(ii) For LTC services provided under the medically needy (MN) program when excess resources are added to nonexcluded income, the combined total is less than the:

(A) Private medical institution rate plus the amount of recurring medical expenses for institutional services; or

(B) Private hospice rate plus the amount of recurring medical expenses, for hospice services in a medical institution.

(C) For MN waiver eligibility, incurred medical expenses must reduce resources within allowable resource limits for MN-waiver eligibility. The cost of care for the waiver services cannot be allowed as a projected expense.

(g) For a client not related to SSI, the department applies the resource rules of the program used to relate the client to medical eligibility.

(8) For legally married clients when only one spouse meets institutional status, the following rules apply. If the client's current period of institutional status began:

(a) Before October 1, 1989, the department adds together one-half the total amount of countable resources held in the name of:

(i) The institutionalized spouse; or

(ii) Both spouses.

(b) On or after October 1, 1989, the department adds together the total amount of nonexcluded resources held in the name of:

(i) Either spouse; or

(ii) Both spouses.

(9) If subsection (8)(b) of this section applies, the department determines the amount of resources that are allocated to the community spouse before determining countable resources used to establish eligibility for the institutionalized spouse, as follows:

(a) If the client's current period of institutional status began on or after October 1, 1989 and before August 1, 2003, the department allocates the maximum amount of resources

ordinarily allowed by law. Effective January 1, 2009, the maximum allocation is one hundred and nine thousand five hundred and sixty dollars. This standard increases annually on January 1st based on the consumer price index. (For the current standard starting January 2009 and each year thereafter, see long-term care standards at <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>); or

(b) If the client's current period of institutional status began on or after August 1, 2003, the department allocates the greater of:

(i) A spousal share equal to one-half of the couple's combined countable resources as of the beginning of the current period of institutional status, up to the amount described in subsection (9)(a) of this section; or

(ii) The state spousal resource standard of forty-five thousand one hundred four dollars effective July 1, 2007 through June 30, 2009. Effective July 1, 2009 this standard increases to forty-eight thousand six hundred thirty-nine dollars (this standard increases every odd year on July 1st). This increase is based on the consumer price index published by the federal bureau of labor statistics. For the current standard starting July 2009 and each year thereafter, see long-term care standards at <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(10) The amount of the spousal share described in (9)(b)(i) can be determined anytime between the date that the current period of institutional status began and the date that eligibility for LTC services is determined. The following rules apply to the determination of the spousal share:

(a) Prior to an application for LTC services, the couple's combined countable resources are evaluated from the date of the current period of institutional status at the request of either member of the couple. The determination of the spousal share is completed when necessary documentation and/or verification is provided; or

(b) The determination of the spousal share is completed as part of the application for LTC services if the client was institutionalized prior to the month of application, and declares the spousal share exceeds the state spousal resource standard. The client is required to provide verification of the couple's combined countable resources held at the beginning of the current period of institutional status.

(11) The amount of allocated resources described in subsection (9) of this section can be increased, only if:

(a) A court transfers additional resources to the community spouse; or

(b) An administrative law judge establishes in a fair hearing described in chapter 388-02 WAC, that the amount is inadequate to provide a minimum monthly maintenance needs amount for the community spouse.

(12) The department considers resources of the community spouse unavailable to the institutionalized spouse the month after eligibility for LTC services is established, unless subsection (5) or (13)(a), (b), or (c) of this section applies.

(13) A redetermination of the couple's resources as described in subsection (7) is required, if:

(a) The institutionalized spouse has a break of at least thirty consecutive days in a period of institutional status;

(b) The institutionalized spouse's countable resources exceed the standard described in subsection (1)(a), if subsection (8)(b) applies; or

(c) The institutionalized spouse does not transfer the amount described in subsections (9) or (11) to the community spouse or to another person for the sole benefit of the community spouse as described in WAC 388-513-1365(4) by either:

(i) The first regularly scheduled eligibility review; or

(ii) The reasonable amount of additional time necessary to obtain a court order for the support of the community spouse.

AMENDATORY SECTION (Amending WSR 09-07-037, filed 3/10/09, effective 4/10/09)

WAC 388-513-1380 Determining a client's financial participation in the cost of care for long-term care (LTC) services. This rule describes how the department allocates income and excess resources when determining participation in the cost of care (the post-eligibility process). The department applies rules described in WAC 388-513-1315 to define which income and resources must be used in this process.

(1) For a client receiving institutional or hospice services in a medical institution, the department applies all subsections of this rule.

(2) For a client receiving waiver services at home or in an alternate living facility, the department applies only those subsections of this rule that are cited in the rules for those programs.

(3) For a client receiving hospice services at home, or in an alternate living facility, the department applies rules used for the community options program entry system (COPES) for hospice applicants with income under the medicaid special income level (SIL) (300% of the federal benefit rate (FBR)), if the client is not otherwise eligible for another non-institutional categorically needy medicaid program. (Note: For hospice applicants with income over the medicaid SIL, medically needy medicaid rules apply.)

(4) The department allocates nonexcluded income in the following order and the combined total of (4)(a), (b), (c), and (d) cannot exceed the medically needy income level (MNIL):

(a) A personal needs allowance (PNA) of:

(i) Seventy dollars for the following clients who live in a state veteran's home and receive a needs based veteran's pension in excess of ninety dollars:

(A) A veteran without a spouse or dependent child.

(B) A veteran's surviving spouse with no dependent children.

(ii) The difference between one hundred sixty dollars and the needs based veteran's pension amount for persons specified in subsection (4)(a)(i) of this section who receive a veteran's pension less than ninety dollars.

(iii) One hundred sixty dollars for a client living in a state veterans' home who does not receive a needs based veteran's pension;

(iv) Forty-one dollars and sixty-two cents for all clients in a medical institution receiving (~~general assistance~~) ABD cash assistance.

(v) Effective July 1, 2007 through June 30, 2008 fifty-five dollars and forty-five cents for all other clients in a medical institution. Effective July 1, 2008 this PNA increases to fifty-seven dollars and twenty-eight cents.

(vi) Current PNA and long-term care standards can be found at <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(b) Mandatory federal, state, or local income taxes owed by the client.

(c) Wages for a client who:

(i) Is related to the Supplemental Security Income (SSI) program as described in WAC 388-475-0050(1); and

(ii) Receives the wages as part of a department-approved training or rehabilitative program designed to prepare the client for a less restrictive placement. When determining this deduction employment expenses are not deducted.

(d) Guardianship fees and administrative costs including any attorney fees paid by the guardian, after June 15, 1998, only as allowed by chapter 388-79 WAC.

(5) The department allocates nonexcluded income after deducting amounts described in subsection (4) in the following order:

(a) Income garnished for child support or withheld according to a child support order in the month of garnishment (for current and back support):

(i) For the time period covered by the PNA; and

(ii) Is not counted as the dependent member's income when determining the family allocation amount.

(b) A monthly maintenance needs allowance for the community spouse not to exceed, effective January 1, 2008, two thousand six hundred ten dollars, unless a greater amount is allocated as described in subsection (7) of this section. The community spouse maintenance allowance is increased each January based on the consumer price index increase (from September to September, <http://www.bls.gov/cpi/>). Starting January 1, 2008 and each year thereafter the community spouse maintenance allocation can be found in the long-term care standards chart at <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>. The monthly maintenance needs allowance:

(i) Consists of a combined total of both:

(A) One hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>); and

(B) Excess shelter expenses as described under subsection (6) of this section.

(ii) Is reduced by the community spouse's gross countable income; and

(iii) Is allowed only to the extent the client's income is made available to the community spouse.

(c) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community spouse or institutionalized person who:

(i) Resides with the community spouse:

(A) In an amount equal to one-third of one hundred fifty percent of the two person federal poverty level less the dependent family member's income. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>).

(ii) Does not reside with the community spouse or institutionalized person, in an amount equal to the MNIL for the

number of dependent family members in the home less the dependent family member's income.

(ii) Child support received from a noncustodial parent is the child's income.

(d) Medical expenses incurred by the institutional client and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC 388-513-1350.

(e) Maintenance of the home of a single institutionalized client or institutionalized couple:

(i) Up to one hundred percent of the one-person federal poverty level per month;

(ii) Limited to a six-month period;

(iii) When a physician has certified that the client is likely to return to the home within the six-month period; and

(iv) When social services staff documents the need for the income exemption.

(6) For the purposes of this section, "excess shelter expenses" means the actual expenses under subsection (6)(b) less the standard shelter allocation under subsection (6)(a). For the purposes of this rule:

(a) The standard shelter allocation is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>); and

(b) Shelter expenses are the actual required maintenance expenses for the community spouse's principal residence for:

(i) Rent;

(ii) Mortgage;

(iii) Taxes and insurance;

(iv) Any maintenance care for a condominium or cooperative; and

(v) The food stamp standard utility allowance (~~for four persons~~) described in WAC 388-450-0195, provided the utilities are not included in the maintenance charges for a condominium or cooperative.

(7) The amount allocated to the community spouse may be greater than the amount in subsection (6)(b) only when:

(a) A court enters an order against the client for the support of the community spouse; or

(b) A hearing officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(8) A client who is admitted to a medical facility for ninety days or less and continues to receive full SSI benefits is not required to use the SSI income in the cost of care for medical services. Income allocations are allowed as described in this section from non-SSI income.

(9) Standards described in this section for long-term care can be found at: <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

AMENDATORY SECTION (Amending WSR 08-22-052, filed 11/3/08, effective 12/4/08)

WAC 388-515-1505 Long-term care home and community based services and hospice. (1) This chapter describes the general and financial eligibility requirements for categorically needy (CN) home and community based (HCB) services administered by home and community ser-

vices (HCS) and hospice services administered by (~~health and recovery services administration (HRSA))~~ the health care authority (HCA).

(2) The HCB service programs are:

- (a) Community options program entry system (COPEs);
- (b) Program of all-inclusive care for the elderly (PACE);
- (c) Washington medicaid integration partnership

(WMIP); or

(d) New Freedom consumer directed services (New Freedom).

(3) Roads to community living (RCL) services. For RCL services this chapter is used only to determine your cost of care. Medicaid eligibility is guaranteed for three hundred sixty-five days upon discharge from a medical institution.

(4) Hospice services if you don't reside in a medical institution and:

(a) Have gross income at or below the special income level (SIL); and

(b) Aren't eligible for another CN or medically needy (MN) medicaid program.

(5) WAC 388-515-1506 describes the general eligibility requirements for HCS CN waivers.

(6) WAC 388-515-1507 describes eligibility for waiver services when you are eligible for medicaid using noninstitutional CN rules.

(7) WAC 388-515-1508 describes the initial financial eligibility requirements for waiver services when you are not eligible for noninstitutional CN medicaid described in WAC 388-515-1507(1).

(8) WAC 388-515-1509 describes the rules used to determine your responsibility in the cost of care for waiver services if you are not eligible for medicaid under a CN program listed in WAC 388-515-1507(1). This is also called client participation or post eligibility.

AMENDATORY SECTION (Amending WSR 08-22-052, filed 11/3/08, effective 12/4/08)

WAC 388-515-1506 What are the general eligibility requirements for home and community based (HCB) services and hospice? (1) To be eligible for home and community based (HCB) services and hospice you must:

(a) Meet the program and age requirements for the specific program:

- (i) COPEs, per WAC 388-106-0310;
- (ii) PACE, per WAC 388-106-0705;
- (iii) WMIP waiver services, per WAC 388-106-0750;
- (iv) New Freedom, per WAC 388-106-1410;
- (v) Hospice, per chapter (~~388-554~~) 182-551 WAC; or
- (vi) Roads to community living (RCL), per WAC 388-106-0250, 388-106-0255 and 388-106-0260.

(b) Meet the disability criteria for the Supplemental Security Income (SSI) program as described in WAC 388-475-0050;

(c) Require the level of care provided in a nursing facility described in WAC 388-106-0355;

(d) Be residing in a medical institution as defined in WAC (~~388-500-0005~~) 182-500-0050, or likely to be placed in one within the next thirty days without HCB services provided under one of the programs listed in subsection (1)(a);

(e) Have attained institutional status as described in WAC 388-513-1320;

(f) Be determined in need of services and be approved for a plan of care as described in subsection (1)(a);

(g) Be able to live at home with community support services and choose to remain at home, or live in a department-contracted:

- (i) Enhanced adult residential care (EARC) facility;
- (ii) Licensed adult family home (AFH); or
- (iii) Assisted living (AL) facility.

(h) Not be subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363 through 388-513-1366;

(i) Not have a home with equity in excess of the requirements described in WAC 388-513-1350.

(2) Refer to WAC 388-513-1315 for rules used to determine countable resources, income, and eligibility standards for long-term care services.

(3) Current income and resource standard charts are located at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.html>.

AMENDATORY SECTION (Amending WSR 09-14-043, filed 6/24/09, effective 7/25/09)

WAC 388-515-1507 What are the financial requirements for home and community based (HCB) services when you are eligible for a noninstitutional categorically needy (CN) medicaid program? (1) You are eligible for medicaid under one of the following programs:

(a) Supplemental Security Income (SSI) eligibility described in WAC 388-474-0001. This includes SSI clients under 1619B status;

(b) SSI-related CN medicaid described in WAC 388-475-0100 (2)(a) and (b);

(c) SSI-related healthcare for workers with disabilities program (HWD) described in WAC 388-475-1000. If you are receiving HWD, you are responsible to pay your HWD premium as described in WAC 388-475-1250. This change is effective April 1, 2009;

(d) (~~General assistance expedited medicaid disability (GAX) or general assistance based on aged/blind/disabled criteria~~) Aged, blind, or disabled (ABD) cash assistance described in WAC (~~388-505-0110(6)~~) 388-400-0060 and are receiving CN medicaid.

(2) You do not have a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363 through 388-513-1366. This does not apply to PACE or hospice services.

(3) You do not have a home with equity in excess of the requirements described in WAC 388-513-1350.

(4) You do not have to meet the initial eligibility income test of having gross income at or below the special income level (SIL).

(5) You do not pay (participate) toward the cost of your personal care services.

(6) If you live in a department contracted facility listed in WAC 388-515-1506 (1)(g), you pay room and board up to the ADSA room and board standard. The ADSA room and board standard is based on the federal benefit rate (FBR)

minus the current personal needs allowance (PNA) for HCS CN waivers in an alternate living facility.

(a) If you live in an assisted living (AL) facility, enhanced adult residential center (EARC), or adult family home (AFH) you keep a PNA of sixty-two dollars and seventy-nine cents and use your income to pay up to the room and board standard.

(b) If subsection (6)(a) applies and you are receiving HWD described in WAC 388-475-1000, you are responsible to pay your HWD premium as described in WAC 388-475-1250, in addition to the room and board standard.

(7) If you are eligible for ~~((general assistance expedited medicaid disability (GAX) or general assistance based on aged/blind/disabled criteria described in WAC 388-505-0110(6);))~~ aged, blind or disabled (ABD) cash assistance program described in WAC 388-400-0060 you do not participate in the cost of personal care and you may keep the following:

(a) When you live at home, you keep the cash grant amount authorized under ~~((the general assistance program))~~ WAC 388-478-0033;

(b) When you live in an AFH, you keep a PNA of thirty-eight dollars and eighty-four cents, and pay any remaining income and ~~((general assistance))~~ ABD cash grant to the facility for the cost of room and board up to the ADSA room and board standard; or

(c) When you live in an assisted living facility or enhanced adult residential center, you are only eligible to receive a ABD cash grant of thirty-eight dollars and eighty-four cents, which you keep for your PNA.

(8) Current resource and income standards are located at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(9) Current PNA and ADSA room and board standards are located at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/lcstandardsPNAchartsubfile.shtml>.

AMENDATORY SECTION (Amending WSR 08-22-052, filed 11/3/08, effective 12/4/08)

WAC 388-515-1508 How does the department determine if you are financially eligible for home and community based (HCB) services authorized by home and community services (HCS) and hospice if you are not eligible for medicaid under a categorically needy (CN) program listed in WAC 388-515-1507(1)? (1) If you are not eligible for medicaid under a categorically needy (CN) program listed in WAC 388-515-1507(1), the department must determine your eligibility using institutional medicaid rules. This section explains how you may qualify using institutional medicaid rules.

(2) You must meet the general eligibility requirements described in WAC 388-513-1315 and 388-515-1506.

(3) You must meet the following resource requirements:

(a) Resource limits described in WAC 388-513-1350.

(b) If you have resources over the standard allowed in WAC 388-513-1350, the department reduces resources over the standard by your unpaid medical expenses described in WAC 388-513-1350 (d), (e) and (f) if you verify these expenses.

(4) You must meet the following income requirements:

(a) Your gross nonexcluded income must be at or below the special income level (SIL) which is three hundred percent of the federal benefit rate (FBR); or

(b) For home and community based (HCB) service programs authorized by HCS your gross nonexcluded income is:

(i) Above the special income level (SIL) which is three hundred percent of the federal benefit rate (FBR); and

(ii) Net income is no greater than the medically needy income level (MNIL). Net income is calculated by reducing gross nonexcluded income by:

(A) Medically needy (MN) disregards found in WAC 388-513-1345; and

(B) The average monthly nursing facility state rate is five thousand six hundred and twenty six dollars. This rate will be updated annually starting October 1, 2012 and each year thereafter on October 1. This standard will be updated annually in the long-term care standard section of the EAZ manual described at <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(5) The department follows the rules in WAC 388-515-1325, 388-513-1330, and 388-513-1340 to determine available income and income exclusions.

(6) Current resource and income standards (including the SIL, MNIL and FBR) for long-term care are found at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

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

AMENDATORY SECTION (Amending WSR 08-22-052, filed 11/3/08, effective 12/4/08)

WAC 388-515-1509 How does the department determine how much of my income I must pay towards the cost of my care if I am only eligible for home and community based (HCB) services under WAC 388-515-1508? If you are only eligible for medicaid under WAC 388-515-1508, the department determines how much you must pay based upon the following:

(1) If you are single and living at home as defined in WAC 388-106-0010, you keep all your income up to the federal poverty level (FPL) for your personal needs allowance (PNA).

(2) If you are married living at home as defined in WAC 388-106-0010, you keep all your income up to the medically needy income level (MNIL) for your PNA.

(3) If you live in an assisted living (AL) facility, enhanced adult residential center (EARC), or adult family home (AFH), you:

(a) Keep a PNA from your gross nonexcluded income. The PNA is sixty-two dollars and seventy-nine cents effective July 1, 2008; and

(b) Pay for your room and board up to the ADSA room and board standard.

(4) In addition to paying room and board, you may also have to pay toward the cost of personal care. This is called your participation. Income that remains after the PNA and any room and board deduction is reduced by allowable deductions in the following order:

(a) If you are working, the department allows an earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income.

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter 388-79 WAC;

(c) Current or back child support garnished or withheld from your income according to a child support order in the month of the garnishment if it is for the current month. If the department allows this as deduction from your income, the department will not count it as your child's income when determining the family allocation amount;

(d) A monthly maintenance needs allowance for your community spouse not to exceed that in WAC 388-513-1380 (5)(b) unless a greater amount is allocated as described in subsection (e) of this section. This amount:

(i) Is allowed only to the extent that you make your income available to your community spouse; and

(ii) Consists of a combined total of both:

(A) One hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1 (<http://aspe.os.dhhs.gov/poverty/>); and

(B) Excess shelter expenses. For the purposes of this section, excess shelter expenses are the actual required maintenance expenses for your community spouse's principal residence. These expenses are determined in the following manner:

(I) Rent, including space rent for mobile homes, plus;

(II) Mortgage, plus;

(III) Taxes and insurance, plus;

(IV) Any required payments for maintenance care for a condominium or cooperative, (~~minus~~) plus;

(V) The food assistance standard utility allowance (SUA) (~~((for long-term care services this is set at the standard utility allowance for a four-person household.))~~) described in WAC 388-450-0195 provided the utilities are not included in the maintenance charges for a condominium or cooperative, minus;

(VI) The standard shelter allocation. This standard is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1 (http://aspe.os.dhhs.gov/poverty).

(e) Is reduced by your community spouse's gross countable income.

(f) The amount allocated to the community spouse may be greater than the amount in subsection (d)(ii) only when:

(i) There is a court order approving the higher amount for the support of your community spouse; or

(ii) A hearing officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(g) A monthly maintenance needs amount for each minor or dependent child, dependent parent, or dependent sibling of your community or institutional spouse. The amount the department allows is based on the living arrangement of the dependent. If the dependent:

(i) Resides with your community spouse, the amount is equal to one-third of the community spouse allocation as described in WAC 388-513-1380 (5)(b)(i)(A) that exceeds the dependent family member's income (child support

received from a noncustodial parent is considered the child's income);

(ii) Does not reside with the community spouse, the amount is equal to the MNIL based on the number of dependent family members in the home less their separate income (child support received from a noncustodial parent is considered the child's income).

(h) Your unpaid medical expenses which have not been used to reduce excess resources. Allowable medical expenses are described in WAC 388-513-1350.

(i) The total of the following deductions cannot exceed the SIL (three hundred percent of the FBR):

(i) Personal needs allowance in subsections (1), (2) and (3)(a) and (b); and

(ii) Earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income in subsection (4)(a); and

(iii) Guardianship fees and administrative costs in subsection (4)(b).

(5) You must pay your provider the combination of the room and board amount and the cost of personal care services after all allowable deductions.

(6) You may have to pay third party resources described in WAC 388-501-0200 in addition to the room and board and participation. The combination of room and board, participation, and third party resources is the total amount you must pay.

(7) Current income and resource standards for long-term care (including SIL, MNIL, FPL, FBR) are located at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(8) If you are in multiple living arrangements in a month (an example is a move from an adult family home to a home setting on HCB services), the department allows you the highest PNA available based on all the living arrangements and services you have in a month.

(9) Current PNA and ADSA room and board standards are located at: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/lcstandardsPNAchartsfile.shtml>.

AMENDATORY SECTION (Amending WSR 08-24-069, filed 12/1/08, effective 1/1/09)

WAC 388-515-1512 What are the financial requirements if I am eligible for medicaid under the noninstitutional categorically needy program (CN-P)? (1) You automatically meet income and resource eligibility for DDD waiver services if you are eligible for medicaid under a categorically needy program (CN-P) under one of the following programs:

(a) Supplemental Security Income (SSI) eligibility described in WAC 388-474-0001. This includes SSI clients under 1619B status. These clients have medicaid eligibility determined and maintained by the Social Security Administration;

(b) Healthcare for workers with disabilities (HWD) described in WAC 388-475-1000 through 388-475-1250;

(c) SSI-related CN-P medicaid described in WAC 388-475-0100 (2)(a) and (b) or meets the requirements in WAC

388-475-0880 and is CN-P eligible after the income disregards have been applied;

(d) CN-P medicaid for a child as described in WAC 388-505-0210 (1), (2), (7) or (8); or

(e) ~~((General assistance expedited medicaid disability (GA-X) or general assistance based on aged/blind/disabled criteria described in WAC 388-505-0110(6)))~~ Aged, blind or disabled (ABD) cash assistance described in WAC 388-400-0060.

(2) If you are eligible for a CN-P medicaid program listed in subsection (1) above, you do not have to pay (participate) toward the cost of your personal care and/or habilitation services.

(3) If you are eligible for a CN-P medicaid program listed in subsection (1) above, you do not need to meet the initial eligibility income test of gross income at or below the special income level (SIL), which is three hundred percent of the federal benefit rate (FBR).

(4) If you are eligible for a CN-P medicaid program listed in subsection (1), you pay up to the ADSA room and board standard described in WAC 388-515-1505. Room and board and long-term care standards are located at <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(a) If you live in an ARC, AFH or DDD group home, you keep a personal needs allowance (PNA) and use your income to pay up to the ADSA room and board standard. Effective January 1, 2009 the PNA is sixty-two dollars and seventy-nine cents.

(5) If you are eligible for a premium based medicaid program such as healthcare for workers with disabilities (HWD), you must continue to pay the medicaid premium to remain eligible for that CN-P program.

AMENDATORY SECTION (Amending WSR 08-24-069, filed 12/1/08, effective 1/1/09)

WAC 388-515-1514 How does the department determine how much of my income I must pay towards the cost of my care if I am not eligible for medicaid under a categorically needy program (CN-P) listed in WAC 388-515-1512(1)? If you are not eligible for medicaid under a categorically needy program (CN-P) listed in WAC 388-515-1512(1), the department determines how much you must pay based upon the following:

(1) If you are an SSI-related client living at home as defined in WAC 388-106-0010, you keep all your income up to the SIL (three hundred percent of the FBR) for your personal needs allowance (PNA).

(2) If you are an SSI-related client and you live in an ARC, AFH or DDD group home, you:

(a) Keep a personal needs allowance (PNA) from your gross nonexcluded income. Effective January 1, 2009 the PNA is sixty-two dollars and seventy-nine cents; and

(b) Pay for your room and board up to the ADSA room and board rate described in <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>.

(3) Income that remains after the allocation described in (2) above, is reduced by allowable deductions in the following order:

(a) If you are working, we allow an earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter 388-79 WAC;

(c) Current or back child support garnished from your income or withheld according to a child support order in the month of the garnishment if it is for the current month. If we allow this as deduction from your income, we will not count it as your child's income when determining the family allocation amount;

(d) A monthly maintenance needs allowance for your community spouse not to exceed that in WAC 388-513-1380 (5)(b) unless a greater amount is allocated as described in subsection (e) of this section. This amount:

(i) Is allowed only to the extent that your income is made available to your community spouse; and

(ii) Consists of a combined total of both:

(A) One hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>); and

(B) Excess shelter expenses. For the purposes of this section, excess shelter expenses are the actual required maintenance expenses for your community spouse's principal residence. These expenses are determined in the following manner:

(I) Rent, including space rent for mobile homes, plus;

(II) Mortgage, plus;

(III) Taxes and insurance, plus;

(IV) Any required payments for maintenance care for a condominium or cooperative minus;

(V) The food assistance standard utility allowance ~~((for long term care services this is set at the standard utility allowance (SUA) for a four person household;))~~ provided the utilities are not included in the maintenance charges for a condominium or cooperative, minus;

(VI) The standard shelter allocation. This standard is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>); and

(VII) Is reduced by your community spouse's gross countable income.

(iii) May be greater than the amount in subsection (d)(ii) only when:

(A) There is a court order approving a higher amount for the support of your community spouse; or

(B) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(e) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of your community or institutionalized spouse. The amount we allow is based on the living arrangement of the dependent. If the dependent:

(i) Resides with your community spouse, the amount is equal to one-third of the community spouse allocation as described in WAC 388-513-1380 (5)(b)(i)(A) that exceeds the dependent family member's income (child support

received from a noncustodial parent is considered the child's income);

(ii) Does not reside with the community spouse, the amount is equal to the MNIL based on the number of dependent family members in the home less their separate income (child support received from a noncustodial parent is considered the child's income).

(f) Your unpaid medical expenses which have not been used to reduce excess resources. Allowable medical expenses are described in WAC 388-513-1350.

(g) The total of the following deductions cannot exceed the SIL (three hundred percent of the FBR):

(i) Personal needs allowances in subsection (1) for in home or subsection (2)(a) in a residential setting; and

(ii) Earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income in subsection (3)(a); and

(iii) Guardianship fees and administrative costs in subsection (3)(b).

(4) If you are eligible for ~~((general assistance expedited medicare disability (GA-X) or general assistance based on aged/blind/disabled criteria described in WAC 388-505-0110(6-)))~~ aged, blind or disabled (ABD) cash assistance described in WAC 388-400-0060 you do not participate in the cost of personal care and you may keep the following:

(a) When you live at home, you keep the cash grant amount authorized under the ~~((general assistance))~~ ABD cash program;

(b) When you live in an AFH, you keep a PNA of thirty-eight dollars and eighty-four cents, and pay any remaining income and ~~((general assistance))~~ ABD cash grant to the facility for the cost of room and board up to the ADSA room and board standard described in <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandards/pna.shtml>; or

(c) When you live in an ARC or DDD group home, you are only eligible to receive a cash grant of thirty-eight dollars and eighty-four cents which you keep for your PNA.

(5) The combination of the room and board amount and the cost of personal care and/or habilitation services (participation) after all allowable deductions have been considered is called your total responsibility. You pay this amount to the ARC, AFH or DDD group home provider.

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

WAC 388-515-1540 Medically needy residential waiver (MNRW) effective March 17, 2003 through March 31, 2012. Effective 4/1/2012 home and community based services authorized by home and community services (HCS) combines the categorically needy and medically needy programs described in WAC 388-515-1505 and 388-515-1508.

This section describes the financial eligibility requirements for waiver services under the medically needy residential waiver (MNRW) and the rules used to determine a client's responsibility in the total cost of care.

(1) To be eligible for MNRW, a client must meet the following conditions:

(a) Does not meet financial eligibility for medicaid personal care or the COPEs program;

(b) Is eighteen years of age or older;

(c) Meets the SSI related criteria described in WAC 388-475-0050;

(d) Requires the level of care provided in a nursing facility as described in WAC 388-106-0355;

(e) In the absence of waiver services described in WAC 388-106-0400, would continue to reside in a medical facility as defined in WAC 388-513-1301, or will likely be placed in one within the next thirty days;

(f) Has attained institutional status as described in WAC 388-513-1320;

(g) Has been determined to be in need of waiver services as described in WAC 388-106-0410;

(h) Lives in one of the following department-contracted residential facilities:

(i) Licensed adult family home (AFH);

(ii) Assisted living (AL) facility; or

(iii) Enhanced adult residential care (EARC) facility.

(i) Is not subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366; and

(j) Meets the resource and income requirements described in subsections (2) through (6).

(2) The department determines a client's nonexcluded resources under MNRW as described in WAC 388-513-1350;

(3) Nonexcluded resources, after disregarding excess resources described in (4), must be at or below the resource standard described in WAC 388-513-1350 (1) and (2).

(4) In determining a client's resource eligibility, the department disregards excess resources above the standard described in subsection (3) of this section:

(a) In an amount equal to incurred medical expenses such as:

(i) Premiums, deductibles, and co-insurance/co-payment charges for health insurance and medicare premiums;

(ii) Necessary medical care recognized under state law, but not covered under the state's medicaid plan; or

(iii) Necessary medical care covered under the state's medicaid plan.

(b) As long as the incurred medical expenses:

(i) Are not subject to third-party payment or reimbursement;

(ii) Have not been used to satisfy a previous spend down liability;

(iii) Have not previously been used to reduce excess resources;

(iv) Have not been used to reduce client responsibility toward cost of care; and

(v) Are amounts for which the client remains liable.

(5) The department determines a client's countable income under MNRW in the following way:

(a) Considers income available described in WAC 388-513-1325 and 388-513-1330 (1), (2), and (3);

(b) Excludes income described in WAC 388-513-1340;

(c) Disregards income described in WAC 388-513-1345;

(d) Deducts monthly health insurance premiums, except medicare premiums.

(6) If the client's countable income is:

(a) Less than the residential facility's department-contracted rate, based on an average of 30.42 days in a month the client may qualify for MNRW subject to availability per WAC 388-106-0435;

(b) More than the residential facility's department-contracted rate, based on an average of 30.42 days in a month the client may qualify for MNRW when they meet the requirements described in subsections (7) through (9), subject to availability per WAC 388-106-0435.

(7) The portion of a client's countable income over the department-contracted rate is called "excess income."

(8) A client who meets the requirements for MNRW chooses a three or six month base period. The months must be consecutive calendar months.

(9) A client who has or will have "excess income" is not eligible for MNRW until the client has medical expenses which are equal in amount to that excess income. This is the process of meeting "spenddown." The excess income from each of the months in the base period is added together to determine the total "spenddown" amount.

(10) Medical expenses described in subsection (4) of this WAC may be used to meet spenddown if not already used in subsection (4) of this WAC to disregard excess resources or to reduce countable income as described in subsection (5)(d).

(11) In cases where spenddown has been met, medical coverage begins the day services are authorized.

(12) The client's income that remains after determining available income in WAC 388-513-1325 and 388-513-1330 (1), (2), (3) and excluded income in WAC 388-513-1340 is paid towards the cost of care after deducting the following amounts in the order listed:

(a) An earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Personal needs allowance (PNA) described in WAC 388-515-1505. (Long-term care standards can be found at <http://www1.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCstandardspna.shtml>);

(c) Medicare and health insurance premiums not used to meet spenddown or reduce excess resources described in WAC 388-513-1350;

(d) Incurred medical expenses described in (4) not used to meet spenddown or reduce excess resources described in WAC 388-513-1350.

AMENDATORY SECTION (Amending WSR 07-03-087, filed 1/18/07, effective 2/18/07)

WAC 388-515-1550 Medically needy in-home waiver (MNIW) effective May 1, 2004 through March 31, 2012. Effective 4/1/2012 home and community based services authorized by home and community services (HCS) combines the categorically needy and medically needy programs described in WAC 388-515-1505 and 388-515-1508.

This section describes the financial eligibility requirements for waiver services under the medically needy in-home waiver (MNIW) and the rules used to determine a client's responsibility in the total cost of care.

(1) To be eligible for MNIW, a client must:

(a) Not meet financial eligibility for medicaid personal care or the COPES program;

(b) Be eighteen years of age or older;

(c) Meet the SSI-related criteria described in WAC 388-475-0050(1);

(d) Require the level of care provided in a nursing facility as described in WAC 388-106-0355;

(e) In the absence of waiver services described in WAC 388-106-0500, continue to reside in a medical facility as defined in WAC 388-513-1301, or will likely be placed in one within the next thirty days;

(f) Have attained institutional status as described in WAC 388-513-1320;

(g) Have been determined to be in need of waiver services as described in WAC 388-106-0510;

(h) Be able to live at home with community support services and choose to remain at home;

(i) Not be subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366; and

(j) Meet the resource and income requirements described in subsections (2) through (6) of this section.

(2) The department determines a client's nonexcluded resources under MNIW as described in WAC 388-513-1350.

(3) Nonexcluded resources, after disregarding excess resources described in subsection (4) of this section, must be at or below the resource standard described in WAC 388-513-1350.

(4) In determining a client's resource eligibility, the department disregards excess resources above the standard described in subsection (3) of this section:

(a) In an amount equal to incurred medical expenses such as:

(i) Premiums, deductibles, and co-insurance/co-payment charges for health insurance and medicare premiums;

(ii) Necessary medical care recognized under state law, but not covered under the state's medicaid plan; or

(iii) Necessary medical care covered under the state's medicaid plan.

(b) As long as the incurred medical expenses:

(i) Are not subject to third-party payment or reimbursement;

(ii) Are not the result of medical and remedial care expenses that were incurred as the result of imposition of a transfer of asset penalty described in WAC 388-513-1363, 388-513-1364 and 388-513-1365.

(iii) Have not been used to satisfy a previous spenddown liability;

(iv) Have not previously been used to reduce excess resources;

(v) Have not been used to reduce client responsibility toward cost of care; and

(vi) Are amounts for which the client remains liable.

(5) The department determines a client's countable income under MNIW in the following way:

(a) Considers income available described in WAC 388-513-1325 and 388-513-1330 (1), (2), and (3);

(b) Excludes income described in WAC 388-513-1340;

(c) Disregards income described in WAC 388-513-1345;

(d) Deducts monthly health insurance premiums, except medicare premiums, not used to reduce excess resources in subsection (4) of this section;

(e) Allows an income deduction for a nonapplying spouse, equal to the one person medically needy income level (MNIL) less the nonapplying spouse's income, if the nonapplying spouse is living in the same home as the applying person.

(6) A client whose countable income exceeds the MNIL may become eligible for MNIW:

(a) When they have or expect to have medical expenses to offset their income which is over the MNIL; and

(b) Subject to availability in WAC 388-106-0535.

(7) The portion of a client's countable income over the MNIL is called "excess income."

(8) A client who has or will have "excess income" is not eligible for MNIW until the client has medical expenses which are equal in amount to that excess income. This is the process of meeting "spenddown." The excess income from each of the months in the base period is added together to determine the total "spenddown" amount.

(9) The following medical expenses may be used to meet spenddown if not already used in subsection (4) of this section to disregard excess resources or to reduce countable income as described in subsection (5)(d) of this section:

(a) An amount equal to incurred medical expenses such as:

(i) Premiums, deductibles, and co-insurance/co-payment charges for health insurance and medicare premiums;

(ii) Necessary medical care recognized under state law, but not covered under the state's medicaid plan; and

(iii) Necessary medical care covered under the state's medicaid plan.

(b) The cost of waiver services authorized during the base period.

(c) As long as the incurred medical expenses:

(i) Are not subject to third-party payment or reimbursement;

(ii) Are not the result of medical and remedial care expenses that were incurred as the result of imposition of a transfer of asset penalty described in WAC 388-513-1363, 388-513-1364 and 388-513-1365.

(iii) Have not been used to satisfy a previous spenddown liability;

(iv) Have not been used to reduce client responsibility toward cost of care; and

(v) Are amounts for which the client remains liable.

(10) Eligibility for MNIW is effective the first full month the client has met spenddown.

(11) In cases where spenddown has been met, medical coverage and MNIW begin the day services are authorized.

(12) A client who meets the requirements for MNIW chooses a three or six month base period. The months must be consecutive calendar months.

(13) The client's income that remains after determining available income in WAC 388-513-1325 and 388-513-1330 (1), (2), (3) and excluded income in WAC 388-513-1340 is paid towards the cost of care after deducting the following amounts in the order listed:

(a) An earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Personal needs allowance (PNA) in an amount equal to the one-person federal poverty level (FPL) described in WAC 388-478-0075(4);

(c) Medicare and health insurance premiums not used to meet spenddown or reduce excess resources;

(d) Incurred medical expenses described in subsection (4) of this section not used to meet spenddown or reduce excess resources.

WSR 12-17-007

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 12-170—Filed August 1, 2012, 3:04 p.m., effective August 1, 2012, 3:04 p.m.]

Effective Date of Rule: Immediately.

Purpose: To amend WAC 232-28-619 for the Samish River from the mouth to Farm to Market Road, where bait or lure must be suspended below a float: A "float" or "bobber" is defined as a hookless, floating device that is attached to or slides along the mainline or leader above the hook(s) for the purpose of suspending hook(s) (which are part of the bait, lure or fly) off the bottom of the stream and visually signaling (from the surface of the water) a fish's strike at the hook(s).

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900L; 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 department is in the process of adopting a permanent rule containing the definition in this emergency rule. This emergency rule is needed because the Samish River from the mouth to Farm to Market Road is home to a very popular hatchery chinook-targeted fishery. The media and public support clarification of the definition of "float" or "bobber" to deter snagging and other illegal, unsportsman-like methods of taking hatchery chinook in the Samish River. There is insufficient time to adopt the permanent rule for this fishery prior to the fishery's start in 2012.

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

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

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

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

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

Date Adopted: August 1, 2012.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900Z Washington food fish and game fish—Freshwater exceptions to statewide rules—Samish River (Skagit County). Notwithstanding the provisions of WAC 232-28-619, effective immediately until further notice, in the Samish River, Skagit County, from the mouth to Farm to Market Road, bait or lure must be suspended below a float. A "float" or "bobber" is defined as a hook-less, floating device that is attached to or slides along the mainline or leader above the hook(s) for the purpose of suspending hook(s) (which are part of the bait, lure or fly) off the bottom of the stream and visually signaling (from the surface of the water) a fish's strike at the hook(s).

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900L	Washington food fish and game fish—Freshwater exceptions to statewide rules—Samish River (Skagit County). (12-161)
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**WSR 12-17-009
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-165—Filed August 1, 2012, 3:44 p.m., effective August 4, 2012]

Effective Date of Rule: August 4, 2012.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Hatchery summer chinook returns to the Wenatchee River are predicted to be in excess of spawning escapement needs. The population is not listed under the Endangered Species Act. The majority of spring chinook and bull trout will have migrated to the upper

Wenatchee River, and few steelhead will remain in the mainstem. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 1, 2012.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900T Exceptions to statewide rules—Wenatchee River. Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Effective August 4 through October 15, 2012, it is permissible to fish for salmon in waters of the Wenatchee River from the mouth to 400 feet below Dryden Dam; daily limit of two hatchery Chinook. Selective gear rules and night closure in effect. All Chinook with a floy (anchor) tag attached and/or one or more round 1/4 inch in diameter holes punched in the caudal (tail) fin must be released.

(2) Effective September 1 through October 15, 2012, it is permissible to fish for salmon in waters of the Wenatchee River from the confluence of Peshastin Creek at a line perpendicular to the river at a marker on the opposite shore, to the Icicle Creek road bridge on the west end of Leavenworth. Daily limit of two hatchery Chinook. Selective gear rules and night closure in effect. All Chinook with a floy (anchor) tag attached and/or one or more round 1/4 inch in diameter holes punched in the caudal (tail) fin must be released.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 16, 2012:

WAC 232-28-61900T	Exceptions to statewide rules—Wenatchee River.
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WSR 12-17-010
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-166—Filed August 1, 2012, 3:47 p.m., effective August 4, 2012]

Effective Date of Rule: August 4, 2012.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2012 return of sockeye will be sufficient to provide for the Lake Wenatchee spawning escapement goal. This means that additional fish will be present to provide for sport fishing opportunity. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 1, 2012.

Philip Anderson
 Director

NEW SECTION

WAC 232-28-61900W Exceptions to statewide rules—Lake Wenatchee. Notwithstanding the provisions of WAC 232-28-619, effective August 4 one hour before official sunrise, through August 31, 2012, a person may fish for salmon in Lake Wenatchee. Daily limit three sockeye, minimum size 12 inches in length. Selective gear rules and night closure in effect for all species. Bull trout, steelhead, and Chinook salmon must be released unharmed without removing the fish from the water. All sockeye with a floy (anchor) tag attached and/or one or more round 1/4 inch in diameter holes punched in the caudal (tail) fin must be released.

REPEALER

The following section of the Washington Administrative code is repealed effective September 1, 2012:

WAC 232-28-61900W Exceptions to statewide rules—Lake Wenatchee.

WSR 12-17-011
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-169—Filed August 1, 2012, 4:07 p.m., effective August 1, 2012, 4:07 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-20-010.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: ESB 5661 modifies RCW 77.12.870 which establishes mandatory reporting of lost or abandoned commercial net gear. These rules are needed to implement the program and are currently being adopted by the department. 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: August 1, 2012.

Philip Anderson
 Director

NEW SECTION

WAC 220-20-01000F General provisions—Lawful and unlawful acts. Notwithstanding the provisions of WAC 220-20-010, effective immediately until further notice, it is unlawful for any person who loses or abandons commercial

net fishing gear (e.g. trawl, gill, seine, lampara, reef) within the waters of the state to fail to:

(1) Contact the Department of Fish and Wildlife within 24 hours of the loss by phone at 855-542-3935 or online at <http://wdfw.wa.gov/fishing/derelict/>; and

(2) Provide the following required information:

Type of gear
General location
Latitude (if known)
Longitude (if known)
Estimated water depth
Date lost
Time lost
Name
Telephone number
E-mail address (if available)

(3) Failing to report lost or abandoned commercial net gear is punished as an infraction under RCW 77.15.160.

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

WSR 12-17-013
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-167—Filed August 2, 2012, 8:48 a.m., effective August 2, 2012, 8:48 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000L and 220-24-04000M; and amending WAC 220-24-040.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: A harvestable quota of salmon is available for the troll fleet. Chinook catch rates have been lower than expected. An increase in the chinook open period limit is needed to ensure the coastal salmon troll fishery meets the season objectives. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans and the National Marine Fisheries Service from an in-season call. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 2, 2012.

Joe Stohr
for Philip Anderson
Director

NEW SECTION

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

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

August 3 through August 7, 2012;
August 10 through August 14, 2012;
August 17 through August 21, 2012;
August 24 through August 27, 2012;
August 31 through September 3, 2012;
September 7 through September 10, 2012; and
September 14 through September 17, 2012.

(2) Landing and possession limit of 90 Chinook and 35 coho per boat per each entire open period for the entire catch areas 1, 2, 3 and 4.

(3) The Cape Flattery and Columbia River Control Zones are closed. Mandatory Yelloweye Rockfish Conservation Area is closed.

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

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

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

(7) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. Exclusive Economic Zone, and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude, and west of 125°05'00" W longitude.

(8) Columbia Control Zone - This is defined as an area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09' N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line, which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07" W. long, to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°14'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(9) Mandatory Yelloweye Rockfish Conservation Area - This is defined as the area in Washington Marine Catch Area 3 from 48°00.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°16.50' W longitude to 48°00.00' N latitude; 125°16.50' W longitude and connecting back to 48°00.00' N latitude; 125°14.00' W longitude.

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

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

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-24-04000L All-citizen commercial salmon troll. (12-154)

The following section of the Washington Administrative Code is repealed effective September 19, 2012:

WAC 220-24-04000M All-citizen commercial salmon troll.

WSR 12-17-014 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 12-168—Filed August 2, 2012, 10:47 a.m., effective August 2, 2012, 10:47 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07100S; and amending WAC 220-52-071.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Harvestable amounts of sea cucumbers are available in sea cucumber districts listed. Daily landing limits for sea cucumbers have been requested by the industry in an effort to conserve harvest quota and maximize market opportunities. Prohibition of all diving from licensed sea cucumber harvest vessels within two days of scheduled openings discourages the practice of fishing on closed days and hiding the unlawful catch underwater until the legal opening. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 1, 2012.

Philip Anderson
Director

NEW SECTION

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

(1) Sea cucumber harvest using shellfish diver gear is allowed in Sea Cucumber Districts 1 and 5 on Monday and Tuesday of each week.

(2) The maximum cumulative landing of sea cucumbers for each two-day fishery opening period is 1,600 pounds per valid designated sea cucumber harvest license. It is permissible for all or any fraction of the maximum 1,600 pound total to be harvested during any legal harvest date so long as the cumulative total for the two-day opening does not exceed the maximum.

(3) 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.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07100S Sea cucumbers. (12-121)

WSR 12-17-022
EMERGENCY RULES
DEPARTMENT OF
EARLY LEARNING

[Filed August 6, 2012, 10:31 a.m., effective August 6, 2012, 10:31 a.m.]

Effective Date of Rule: Immediately.

Purpose: To remove language regarding the effect of child support ordered on behalf of a child who will receive child care subsidy benefits on other children not receiving child support. The language removed negatively impacts the general welfare of the public by making certain families ineligible for working connections child care subsidy benefits under existing rules, and increasing copays for others. The department will adopt this rule under the regular rule-making process with a subsequent filing.

Citation of Existing Rules Affected by this Order: Amending WAC 170-290-0060.

Statutory Authority for Adoption: Chapter 43.215 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: It is necessary for the general welfare of the public to remove language stating that child support ordered on behalf of a child who will receive child care subsidy benefits does not affect other children in the family who are not receiving child support. Under existing rules, this language would require separate family eligibility determinations, and additional copayment determinations, with respect to children who receive child support and other children in the same family who do not. Removing this language is necessary to maintain access and eligibility, and to prevent higher aggregate copayments for such families.

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 1, Repealed 0.

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

Date Adopted: August 6, 2012.

Elizabeth M. Hyde
Director

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

WAC 170-290-0060 Countable income. DSHS counts income as money an applicant or consumer earns or receives from:

(1) A TANF grant, except when the grant is for the first three consecutive calendar months after the consumer starts a new job. The first calendar month is the month in which he or she starts working;

(2) The following child support payment amounts:

(a) For applicants or consumers who are not receiving DSHS division of child support services, the amount as shown on a current court or administrative order; or

(b) For applicants or consumers who are receiving DSHS division of child support services, the amount as verified by the DSHS division of child support((;

~~(c) Child support ordered on behalf of a child who will receive child care subsidy benefits does not affect the other children in the family who are not receiving child support. All other family size rules in WAC 170-290-0015 apply).~~

(3) Supplemental security income (SSI);

(4) Other Social Security payments, such as SSA and SSDI;

(5) Refugee assistance payments;

(6) Payments from the Veterans' Administration, disability payments, or payments from labor and industries (L&I);

(7) Unemployment compensation;

(8) Other types of income not listed in WAC 170-290-0070;

(9) VISTA volunteers, AmeriCorps, and Washington Service Corps (WSC) if the income is taxed;

(10) Gross wages from employment or self-employment as defined in WAC 170-290-0003. Gross wages includes any wages that are taxable;

(11) Corporate compensation received by or on behalf of the consumer, such as rent, living expenses, or transportation expenses;

(12) Lump sums as money a consumer receives from a one-time payment such as back child support, an inheritance, or gambling winnings; and

(13) Income for the sale of property as follows:

(a) If a consumer sold the property before application, DSHS considers the proceeds an asset and does not count as income;

(b) If a consumer sold the property in the month he or she applies or during his or her eligibility period, DSHS counts it as a lump sum payment as described in WAC 170-290-0065(2);

(c) Property does not include small personal items such as furniture, clothes, and jewelry.

WSR 12-17-030
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-173—Filed August 6, 2012, 3:33 p.m., effective August 8, 2012]

Effective Date of Rule: August 8, 2012.

Purpose: Amend recreational fishing 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 and 77.04.020.

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

Reasons for this Finding: Surplus hatchery origin Kokanee are available for harvest in Merwin Reservoir, and planted hatchery rainbow trout are available for harvest in Swift Reservoir, providing additional recreational angling opportunity. The modified landlocked-lake rules in Swift Reservoir will prohibit harvest of anadromous salmon released into the lake for reintroduction purposes and allow these fish to spawn. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 6, 2012.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900F Exceptions to statewide rules—Merwin Reservoir, Swift Reservoir. Notwithstanding the provisions of WAC 232-28-619, effective August 8, 2012, through November 30, 2012, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) Merwin Reservoir - Daily limit of 10 Kokanee.

(2) Swift Reservoir - From Swift Dam to Eagle Cliff Bridge, daily limit of 10 trout. Landlocked-salmon rules in effect, except release salmon greater than 15 inches in length.

REPEALER

The following section of the Washington Administrative Code is repealed effective December 1, 2012:

WAC 232-28-61900F Exceptions to statewide rules.

WSR 12-17-034
EMERGENCY RULES
BUILDING CODE COUNCIL

[Filed August 7, 2012, 11:13 a.m., effective August 7, 2012, 11:13 a.m.]

Effective Date of Rule: Immediately.

Purpose: To renew the emergency rule filed under WSR 11-24-037 and since renewed under WSR 12-09-054; this was originally filed to correct certain errata contained in model code language; to provide an exception for certain markings for existing buildings.

Citation of Existing Rules Affected by this Order: Amending WAC 51-54-4600.

Statutory Authority for Adoption: Chapter 19.27 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: An error in the model code (2009 International Fire Code) was inadvertently carried over into the state Fire Code in WAC 51-54-4600, and has resulted in unintended economic impacts on certain existing building owners. The council is currently engaged in the 2012 permanent rule-making process. Continuing this emergency rule will provide time for all of the issues and impacts to be fully vetted while delaying potential economic impacts on building owners.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: July 13, 2012 (second renewal).

C. Ray Allshouse
Chair

AMENDATORY SECTION (Amending WSR 12-01-099, filed 12/20/11, effective 4/1/12)

WAC 51-54-4600 Chapter 46—Existing buildings.

CHAPTER 46 CONSTRUCTION REQUIREMENTS FOR EXISTING BUILDINGS

SECTION 4601 GENERAL

4601.1 Scope. The provisions of this chapter shall apply to existing buildings constructed prior to the adoption of this Code.

4601.2 Intent. The intent of this chapter is to provide a minimum degree of fire and life safety to persons occupying buildings by providing for alterations to such existing buildings that do not comply with the minimum requirements of the International Building Code.

4601.3 Permits. Permits shall be required as set forth in Section 105.7 and the International Building Code and this Code.

4601.4 Owner notification. Where a building is found to be in noncompliance, the fire code official shall duly notify the owner of the building. Upon receipt of such notice, the owner shall, subject to the following time limits, take necessary actions to comply with the provisions of this chapter.

4601.4.1 Construction documents. Construction documents for the necessary alterations shall be completed within a time schedule approved by the fire code official.

4601.4.2 Completion of work. Work on the required alterations to the building shall be completed within a time schedule approved by the fire code official.

4601.4.3 Extension of time. The fire code official is authorized to grant necessary extensions of time when it can be shown that the specified time periods are not physically practical or pose an undue hardship. The granting of an extension of time for compliance shall be based on the showing of good cause and subject to the filing of an acceptable systematic plan of correction with the fire code official.

SECTION 4602 DEFINITIONS

4602.1 Definitions. The following word and term shall, for the purpose of this chapter and as used elsewhere in this Code, have the meaning shown herein.

EXISTING. Buildings, facilities or conditions that are already in existence, constructed or officially authorized prior to the adoption of this Code.

SECTION 4603 FIRE SAFETY REQUIREMENTS FOR EXISTING BUILDINGS

4603.1 Required construction. Existing buildings shall comply with not less than the minimum provisions specified in Table 4603.1 and as further enumerated in Sections 4603.2 through 4603.7.3.

The provisions of this chapter shall not be construed to allow the elimination of fire protection systems or a reduction in the level of fire safety provided in buildings constructed in accordance with previously adopted codes.

EXCEPTION: Group U occupancies.

4603.2 Elevator operation. Existing elevators with a travel distance of 25 feet (7620 mm) or more above or below the main floor or other level of a building and intended to serve the needs of emergency personnel for firefighting or rescue purposes shall be provided with emergency operation in accordance with ASME A17.3.

4603.3 Vertical openings. Interior vertical shafts, including, but not limited to, stairways, elevator hoistways, service and utility shafts, that connect two or more stories of a building, shall be enclosed or protected as specified in Sections 4603.3.1 through 4603.3.7.

4603.3.1 Group I occupancies. In Group I occupancies, interior vertical openings connecting two or more stories shall be protected with 1-hour fire-resistance-rated construction.

4603.3.2 Three to five stories. In other than Group I occupancies, interior vertical openings connecting three to five stories shall be protected by either 1-hour fire-resistance-rated construction or an automatic sprinkler system shall be installed throughout the building in accordance with Section 903.3.1.1 or 903.3.1.2.

EXCEPTIONS:

1. Vertical opening protection is not required for Group R-3 occupancies.
2. Vertical opening protection is not required for open parking garages and ramps.
3. Vertical opening protection is not required for escalators.

4603.3.3 More than five stories. In other than Group I occupancies, interior vertical openings connecting more than five stories shall be protected by 1-hour fire-resistance-rated construction.

EXCEPTIONS:

1. Vertical opening protection is not required for Group R-3 occupancies.
2. Vertical opening protection is not required for open parking garages and ramps.
3. Vertical opening protection is not required for escalators.

TABLE 4603.1 OCCUPANCY AND USE REQUIREMENTS

SECTION	USE			OCCUPANCY CLASSIFICATION																			
	High Rise	Atrium and covered mall	Underground building	A	B	E	F	H-1	H-2	H-3	H-4	H-5	I-1	I-2	I-3	I-4	M	R-1	R-2	R-3	R-4	S	
4603.2	R		R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
4603.3.1	R		R										R	R	R	R							
4603.3.2	R		R	R	R	R	R	R	R	R	R	R					R	R	R			R	R
4603.3.3	R		R	R	R	R	R	R	R	R	R	R					R	R	R			R	R
4603.3.4		R																					
4603.3.5					R												R						
4603.3.6				R		R	R	R	R	R	R	R	R	R	R	R		R	R	R	R	R	R
4603.3.7				R		R	R	R	R	R	R	R	R	R	R	R		R	R	R	R	R	R
4603.4				R			R		R	R							R						
4603.5	R		R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R			R	R
4603.6.1						R																	
4603.6.2													R										
4603.6.3														R									
4603.6.4															R								
4603.6.5																	R						
4603.6.6																			R				
4603.6.7																						R	
4603.7																		R	R	R	R		
4604.4	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R

R = The building is required to comply.

4603.3.4 Atriums and covered malls. In other than Group I occupancies, interior vertical openings in a covered mall building or a building with an atrium shall be protected by either 1-hour fire-resistance-rated construction or an automatic sprinkler system shall be installed throughout the building in accordance with Section 903.3.1.1 or 903.3.1.2.

- EXCEPTIONS:
1. Vertical opening protection is not required for Group R-3 occupancies.
 2. Vertical opening protection is not required for open parking garages and ramps.

4603.3.5 Escalators in Group B and M occupancies. Escalators creating vertical openings connecting any number of stories shall be protected by either 1-hour fire-resistance-rated construction or an automatic fire sprinkler system in accordance with Section 903.3.1.1 installed throughout the building, with a draft curtain and closely spaced sprinklers around the escalator opening.

4603.3.6 Escalators connecting four or fewer stories. In other than Group B and M occupancies, escalators creating vertical openings connecting four or fewer stories shall be protected by either 1-hour fire-resistance-rated construction or an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2 shall be installed throughout the building, and a draft curtain with closely spaced sprinklers shall be installed around the escalator opening.

4603.3.7 Escalators connecting more than four stories. In other than Group B and M occupancies, escalators creating vertical openings connecting five or more stories shall be protected by 1-hour fire-resistance-rated construction.

4603.4 Sprinkler systems. An automatic sprinkler system shall be provided in all existing buildings in accordance with Sections 4603.4.1 and 4603.4.2.

4603.4.1 Pyroxylin plastics. An automatic sprinkler system shall be provided throughout existing buildings where cellulose nitrate film or pyroxylin plastics are manufactured, stored or handled in quantities exceeding 100 pounds (45 kg). Vaults located within buildings for the storage of raw pyroxylin shall be protected with an approved automatic sprinkler system capable of discharging 1.66 gallons per minute per square foot (68 L/min/m²) over the area of the vault.

4603.4.2 Group I-2. An automatic sprinkler system shall be provided throughout existing Group I-2 fire areas. The sprinkler system shall be provided throughout the floor where the Group I-2 occupancy is located, and in all floors between the Group I-2 occupancy and the level of exit discharge.

4603.4.3 Nightclub. An automatic sprinkler system shall be provided throughout Group A-2 nightclubs as defined in this code. No building shall be constructed for, used for, or converted to occupancy as a nightclub except in accordance with this section.

4603.5 Standpipes. Existing structures with occupied floors located more than 50 feet (15,240 mm) above or below the lowest level of fire department vehicle access shall be equipped with standpipes installed in accordance with Section 905. The standpipes shall have an approved fire department connection with hose connections at each floor level above or below the lowest level of fire department access. The fire code official is authorized to approve the installation of manual standpipe systems to achieve compliance with this section where the responding fire department is capable of providing the required hose flow at the highest standpipe outlet.

4603.6 Fire alarm systems. An approved fire alarm system shall be installed in existing buildings and structures in accordance with Sections 4603.6.1 through 4603.6.7 and provide

occupant notification in accordance with Section 907.6 unless other requirements are provided by other sections of this code.

EXCEPTION: Occupancies with an existing, previously approved fire alarm system.

4603.6.1 Group E. A fire alarm system shall be installed in existing Group E occupancies in accordance with Section 907.2.3.

EXCEPTIONS:

1. A manual fire alarm system is not required in a building with a maximum area of 1,000 square feet (93 m²) that contains a single classroom and is located no closer than 50 feet (15,240 mm) from another building.
2. A manual fire alarm system is not required in Group E occupancies with an occupant load less than 50.

4603.6.2 Group I-1. An automatic fire alarm system shall be installed in existing Group I-1 residential care/assisted living facilities in accordance with Section 907.2.6.1.

EXCEPTIONS:

1. Manual fire alarm boxes in resident or patient sleeping areas shall not be required at exits if located at all nurses' control stations or other constantly attended staff locations, provided such stations are visible and continuously accessible and that travel distances required in Section 907.5.2 are not exceeded.
2. Where each sleeping room has a means of egress door opening directly to an exterior egress balcony that leads directly to the exits in accordance with WAC 51-50-1019, and the building is not more than three stories in height.

4603.6.3 Group I-2. An automatic fire alarm system shall be installed in existing Group I-2 occupancies in accordance with Section 907.2.6.2.

EXCEPTION: Manual fire alarm boxes in resident or patient sleeping areas shall not be required at exits if located at all nurses' control stations or other constantly attended staff locations, provided such stations are visible and continuously accessible and that travel distances required in Section 907.5.2.1 are not exceeded.

4603.6.4 Group I-3. An automatic and manual fire alarm system shall be installed in existing Group I-3 occupancies in accordance with Section 907.2.6.3.

4603.6.5 Group R-1. A fire alarm system and smoke alarms shall be installed in existing Group R-1 occupancies in accordance with Sections 4603.6.5.1 through 4603.6.5.2.1.

4603.6.5.1 Group R-1 hotel and motel manual fire alarm system. A manual fire alarm system that activates the occupant notification system in accordance with Section 907.6 shall be installed in existing Group R-1 hotels and motels more than three stories or with more than 20 sleeping units.

EXCEPTIONS:

1. Buildings less than two stories in height where all sleeping units, attics and crawl spaces are separated by 1-hour fire-resistance-rated construction and each sleeping unit has direct access to a public way, exit court or yard.
2. Manual fire alarm boxes are not required throughout the building when the following conditions are met:
 - 2.1. The building is equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2;
 - 2.2. The notification appliances will activate upon sprinkler water flow; and

2.3. At least one manual fire alarm box is installed at an approved location.

4603.6.5.1.1 Group R-1 hotel and motel automatic smoke detection system. An automatic smoke detection system that activates the occupant notification system in accordance with Section 907.6 shall be installed in existing Group R-1 hotels and motels throughout all interior corridors serving sleeping rooms not equipped with an approved, supervised sprinkler system installed in accordance with WAC 51-50-0903.

EXCEPTION: An automatic smoke detection system is not required in buildings that do not have interior corridors serving sleeping units and where each sleeping unit has a means of egress door opening directly to an exit or to an exterior exit access that leads directly to an exit.

4603.6.5.2 Group R-1 boarding and rooming houses manual fire alarm system. A manual fire alarm system that activates the occupant notification system in accordance with Section 907.6 shall be installed in existing Group R-1 boarding and rooming houses.

EXCEPTION: Buildings less than two stories in height where all sleeping units, attics and crawl spaces are separated by 1-hour fire-resistance-rated construction and each sleeping unit has direct access to a public way, exit court or yard.

4603.6.5.2.1 Group R-1 boarding and rooming houses automatic smoke detection system. An automatic smoke detection system that activates the occupant notification system in accordance with Section 907.6 shall be installed in existing Group R-1 boarding and rooming houses throughout all interior corridors serving sleeping units not equipped with an approved, supervised sprinkler system installed in accordance with WAC 51-50-0903.

EXCEPTION: Buildings equipped with single-station smoke alarms meeting or exceeding the requirements of Section 907.2.10.1 and where the fire alarm system includes at least one manual fire alarm box per floor arranged to initiate the alarm.

4603.6.6 Group R-2. An automatic or manual fire alarm system that activates the occupant notification system in accordance with Section 907.6 shall be installed in existing Group R-2 occupancies more than three stories in height or with more than 16 dwelling or sleeping units.

EXCEPTIONS:

1. Where each living unit is separated from other contiguous living units by fire barriers having a fire-resistance rating of not less than 0.75 hour, and where each living unit has either its own independent exit or its own independent stairway or ramp discharging at grade.
2. A separate fire alarm system is not required in buildings that are equipped throughout with an approved supervised automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2 and having a local alarm to notify all occupants.
3. A fire alarm system is not required in buildings that do not have interior corridors serving dwelling units and are protected by an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2, provided that dwelling units either have a means of egress door opening directly to an exterior exit access that leads directly to the exits or are served by open-ended corridors designed in accordance with Section 1023.6, Exception 4.

4603.6.7 Group R-4. This section not adopted.

EXCEPTIONS:

1. Where there are interconnected smoke alarms meeting the requirements of Section 907.2.11 and there is at least one manual fire alarm box per floor arranged to continuously sound the smoke alarms.
2. Other manually activated, continuously sounding alarms approved by the fire code official.

4603.7 Single and multiple-station smoke alarms. Single and multiple-station smoke alarms shall be installed in existing Group R occupancies and in dwellings not classified as Group R occupancies in accordance with Sections 4603.7.1 through 4603.7.3.

4603.7.1 Where required. Existing Group R occupancies and dwellings not classified as Group R occupancies not already provided with single-station smoke alarms shall be provided with single-station smoke alarms. Installation shall be in accordance with Section 907.2.10, except as provided in Sections 4603.7.2 and 4603.7.3.

4603.7.2 Interconnection. Where more than one smoke alarm is required to be installed within an individual dwelling or sleeping unit, the smoke alarms shall be interconnected in such a manner that the activation of one alarm will activate all of the alarms in the individual unit. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed.

EXCEPTIONS:

1. Interconnection is not required in buildings that are not undergoing alterations, repairs or construction of any kind.
2. Smoke alarms in existing areas are not required to be interconnected where alterations or repairs do not result in the removal of interior wall or ceiling finishes exposing the structure, unless there is an attic, crawl space or basement available which could provide access for interconnection without the removal of interior finishes.

4603.7.3 Power source. Single-station smoke alarms shall receive their primary power from the building wiring provided that such wiring is served from a commercial source and shall be equipped with a battery backup. Smoke alarms with integral strobes that are not equipped with battery backup shall be connected to an emergency electrical system. Smoke alarms shall emit a signal when the batteries are low. Wiring shall be permanent and without a disconnecting switch other than as required for overcurrent protection.

EXCEPTIONS:

1. Smoke alarms are permitted to be solely battery operated in existing buildings where no construction is taking place.
2. Smoke alarms are permitted to be solely battery operated in buildings that are not served from a commercial power source.
3. Smoke alarms are permitted to be solely battery operated in existing areas of buildings undergoing alterations or repairs that do not result in the removal of interior walls or ceiling finishes exposing the structure, unless there is an attic, crawl space or basement available which could provide access for building wiring without the removal of interior finishes.

4603.8 Carbon monoxide alarms. Existing Group R occupancies shall be provided with carbon monoxide alarms. R-2 occupancies not already equipped with carbon monoxide alarms shall be provided with carbon monoxide alarms when alterations, repairs or additions requiring a permit occur, or

when one or more sleeping rooms are added or created. The carbon monoxide alarms shall be listed as complying with UL 2034 and be installed and maintained in accordance with NFPA 720 and the manufacturer's instructions.

EXCEPTIONS:

1. Work involving the exterior surfaces of dwellings, such as the replacement of roofing or siding, or the addition or replacement of windows or doors, or the addition of a porch or deck, or electrical permits.
2. Installation, alteration or repairs of noncombustion plumbing or mechanical systems.
3. Sleeping units or dwelling units in R-1 occupancies and R-2 college dormitories, hotel, and DSHS licensed boarding home and residential treatment facility occupancies which do not themselves contain a fuel-burning appliance, a fuel-burning fireplace, or have an attached garage, but which are located in a building with a fuel-burning appliance, a fuel-burning fireplace, or an attached garage, need not be provided with carbon monoxide alarms provided that:
 - a. The sleeping units or dwelling unit is not adjacent to any room which contains a fuel-burning appliance, a fuel-burning fireplace, or an attached garage; and
 - b. The sleeping units or dwelling unit is not connected by duct work or ventilation shafts with a supply or return register in the same room to any room containing a fuel-burning appliance, a fuel-burning fireplace, or to an attached garage; and
 - c. The building is provided with a common area carbon monoxide detection system.
 - d. An open parking garage, as defined in the International Building Code, or enclosed parking garage ventilated in accordance with Section 404 of the International Mechanical Code shall not be deemed to be an attached garage.

SECTION 4604 MEANS OF EGRESS FOR EXISTING BUILDINGS

4604.1 General. Means of egress in existing buildings shall comply with Section 1030 and 4604.2 through 4604.23.

EXCEPTION:

Means of egress conforming to the requirements of the building code under which they were constructed and Section 1030 shall not be required to comply with 4604.2 through ((4604.21)) 4604.23.

4604.1.1 Evaluation. Existing buildings that were not required to comply with a building code at the time of construction, and that constitute a distinct hazard to life as determined by the fire official, shall comply with the minimum egress requirements when specified in Table 4603.1 as further enumerated in Sections 4604.2 through 4604.23. The fire official shall notify the building owner in writing of the distinct hazard and, in addition shall have the authority to require a life safety evaluation be prepared, consistent with the requirements of Section 104.7.2. The life safety evaluation shall identify any changes to the means of egress that are necessary to provide safe egress to occupants and shall be subject to review and approval by the fire and building code officials. The building shall be modified to comply with the recommendations set forth in the approved evaluation.

4604.2 Elevators, escalators and moving walks. Elevators, escalators and moving walks shall not be used as a component of a required means of egress.

EXCEPTIONS:

1. Elevators used as an accessible means of egress where allowed by Section 1007.4.
2. Previously approved escalators and moving walks in existing buildings.

4604.3 Exit sign illumination. Exit signs shall be internally or externally illuminated. The face of an exit sign illuminated from an external source shall have an intensity of not less than 5 foot-candles (54 lux). Internally illuminated signs shall provide equivalent luminance and be listed for the purpose.

EXCEPTION: Approved self-luminous signs that provide evenly illuminated letters shall have a minimum luminance of 0.06 foot-lamberts (0.21 cd/m²).

4604.4 Power source. Where emergency illumination is required in Section 4604.5, exit signs shall be visible under emergency illumination conditions.

EXCEPTION: Approved signs that provide continuous illumination independent of external power sources are not required to be connected to an emergency electrical system.

4604.5 Illumination emergency power. The power supply for means of egress illumination shall normally be provided by the premises' electrical supply. In the event of power supply failure, illumination shall be automatically provided from an emergency system for the following occupancies where such occupancies require two or more means of egress:

1. Group A having 50 or more occupants.

EXCEPTION: Assembly occupancies used exclusively as a place of worship and having an occupant load of less than 300.

2. Group B buildings three or more stories in height, buildings with 100 or more occupants above or below a level of exit discharge serving the occupants or buildings with 1,000 or more total occupants.

3. Group E in interior stairs, corridors, windowless areas with student occupancy, shops and laboratories.

4. Group F having more than 100 occupants.

EXCEPTION: Buildings used only during daylight hours which are provided with windows for natural light in accordance with the International Building Code.

5. Group I.
6. Group M.

EXCEPTION: Buildings less than 3,000 square feet (279 m²) in gross sales area on one story only, excluding mezzanines.

7. Group R-1.

EXCEPTION: Where each sleeping unit has direct access to the outside of the building at grade.

8. Group R-2.

EXCEPTION: Where each dwelling unit or sleeping unit has direct access to the outside of the building at grade.

9. Group R-4.

EXCEPTION: Where each sleeping unit has direct access to the outside of the building at ground level.

4604.5.1 Emergency power duration and installation. In other than Group I-2, the emergency power system shall provide power for not less than 60 minutes and consist of storage batteries, unit equipment or an on-site generator. In Group I-2, the emergency power system shall provide power for not less than 90 minutes and consist of storage batteries, unit equipment or an on-site generator. The installation of the emergency power system shall be in accordance with Section 4604.

4604.6 Guards. Guards complying with this section shall be provided at the open sides of means of egress that are more than 30 inches (762 mm) above the floor or grade below.

4604.6.1 Height of guards. Guards shall form a protective barrier not less than 42 inches (1067 mm) high.

- EXCEPTIONS:
1. Existing guards on the open side of stairs shall be not less than 30 inches (760 mm) high.
 2. Existing guards within dwelling units shall be not less than 36 inches (910 mm) high.
 3. Existing guards in assembly seating areas.

4604.6.2 Opening limitations. Open guards shall have balusters or ornamental patterns such that a 6-inch-diameter (152 mm) sphere cannot pass through any opening up to a height of 34 inches (864 mm).

- EXCEPTIONS:
1. At elevated walking surfaces for access to, and use of, electrical, mechanical or plumbing systems or equipment, guards shall have balusters or be of solid materials such that a sphere with a diameter of 21 inches (533 mm) cannot pass through any opening.
 2. In occupancies in Group I-3, F, H or S, the clear distance between intermediate rails measured at right angles to the rails shall not exceed 21 inches (533 mm).
 3. Approved existing open guards.

4604.7 Minimum required egress width. The means of egress width shall not be less than as required by the code under which constructed but not less than as required by this section. The total width of means of egress in inches (mm) shall not be less than the total occupant load served by the means of egress multiplied by the factors in Table 4604.7 and not less than specified elsewhere in this section. Multiple means of egress shall be sized such that the loss of any one means of egress shall not reduce the available capacity to less than 50 percent of the required capacity. The maximum capacity required from any story of a building shall be maintained to the termination of the means of egress.

TABLE 4604.7
EGRESS WIDTH PER OCCUPANT SERVED

OCCUPANCY	WITHOUT SPRINKLER SYSTEM		WITH SPRINKLER SYSTEM ^a	
	Stairways (inches per occupant)	Other egress components (inches per occupant)	Stairways (inches per occupant)	Other egress components (inches per occupant)
Occupancies other than those listed below	0.3	0.2	0.2	0.15

OCCUPANCY	WITHOUT SPRINKLER SYSTEM		WITH SPRINKLER SYSTEM ^a	
	Stairways (inches per occupant)	Other egress components (inches per occupant)	Stairways (inches per occupant)	Other egress components (inches per occupant)
Hazardous: H-1, H-2, H-3 and H-4	Not permitted	Not permitted	0.3	0.2
Institutional: I-2	Not permitted	Not permitted	0.3	0.2

For SI: 1 inch = 25.4 mm.

a. Buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2.

4604.8 Size of doors. The minimum width of each door opening shall be sufficient for the occupant load thereof and shall provide a clear width of not less than 28 inches (711 mm). Where this section requires a minimum clear width of 28 inches (711 mm) and a door opening includes two door leaves without a mullion, one leaf shall provide a clear opening width of 28 inches (711 mm). The maximum width of a swinging door leaf shall be 48 inches (1219 mm) nominal. Means of egress doors in an occupancy in Group I-2 used for the movement of beds shall provide a clear width not less than 41.5 inches (1054 mm). The height of doors shall not be less than 80 inches (2032 mm).

EXCEPTIONS:

1. The minimum and maximum width shall not apply to door openings that are not part of the required means of egress in occupancies in Groups R-2 and R-3.
2. Door openings to storage closets less than 10 square feet (0.93 m²) in area shall not be limited by the minimum width.
3. Width of door leaves in revolving doors that comply with Section 1008.1.4.1 shall not be limited.
4. Door openings within a dwelling unit shall not be less than 78 inches (1981 mm) in height.
5. Exterior door openings in dwelling units, other than the required exit door, shall not be less than 76 inches (1930 mm) in height.
6. Exit access doors serving a room not larger than 70 square feet (6.5 m²) shall be not less than 24 inches (610 mm) in door width.

4604.9 Opening force for doors. The opening force for interior side-swinging doors without closers shall not exceed a 5-pound (22 N) force. For other side-swinging, sliding and folding doors, the door latch shall release when subjected to a force of not more than 15 pounds (66 N). The door shall be set in motion when subjected to a force not exceeding 30 pounds (133 N). The door shall swing to a full open position when subjected to a force of not more than 50 pounds (222 N). Forces shall be applied to the latch side.

4604.10 Revolving doors. Revolving doors shall comply with the following:

1. A revolving door shall not be located within 10 feet (3048 mm) of the foot or top of stairs or escalators. A dispersal area shall be provided between the stairs or escalators and the revolving doors.
2. The revolutions per minute for a revolving door shall not exceed those shown in Table 4604.10.
3. Each revolving door shall have a conforming side-hinged swinging door in the same wall as the revolving door and within 10 feet (3048 mm).

EXCEPTIONS:

1. A revolving door is permitted to be used without an adjacent swinging door for street-floor elevator lobbies provided a stairway, escalator or door from other parts of the building does not discharge through the lobby and the lobby does not have any occupancy or use other than as a means of travel between elevators and a street.
2. Existing revolving doors where the number of revolving doors does not exceed the number of swinging doors within 20 feet (6096 mm).

4604.10.1 Egress component. A revolving door used as a component of a means of egress shall comply with Section 4604.10 and all of the following conditions:

1. Revolving doors shall not be given credit for more than 50 percent of the required egress capacity.
2. Each revolving door shall be credited with not more than a 50-person capacity.
3. Revolving doors shall be capable of being collapsed when a force of not more than 130 pounds (578 N) is applied within 3 inches (76 mm) of the outer edge of a wing.

4604.11 Stair dimensions for existing stairs. Existing stairs in buildings shall be permitted to remain if the rise does not exceed 8 1/4 inches (210 mm) and the run is not less than 9 inches (229 mm). Existing stairs can be rebuilt.

EXCEPTION: Other stairs approved by the fire code official.

**TABLE 4604.10
REVOLVING DOOR SPEEDS**

INSIDE DIAMETER	POWER-DRIVEN-TYPE SPEED CONTROL (RPM)	MANUAL-TYPE SPEED CONTROL (RPM)
6' 6"	11	12
7' 0"	10	11
7' 6"	9	11
8' 0"	9	10
8' 6"	8	9
9' 0"	8	9
9' 6"	7	8
10' 0"	7	8

For SI: 1 inch = 25.4 mm, 1 foot = 304.8 mm.

4604.11.1 Dimensions for replacement stairs. The replacement of an existing stairway in a structure shall not be required to comply with the new stairway requirements of WAC 51-11-1009 where the existing space and construction will not allow a reduction in pitch or slope.

4604.12 Winders. Existing winders shall be allowed to remain in use if they have a minimum tread depth of 6 inches (152 mm) and a minimum tread depth of 9 inches (229 mm) at a point 12 inches (305 mm) from the narrowest edge.

4604.13 Circular stairways. Existing circular stairs shall be allowed to continue in use provided the minimum depth of tread is 10 inches (254 mm) and the smallest radius shall not be less than twice the width of the stairway.

4604.14 Stairway handrails. Stairways shall have handrails on at least one side. Handrails shall be located so that all portions of the stairway width required for egress capacity are within 44 inches (1118 mm) of a handrail.

EXCEPTION: Aisle stairs provided with a center handrail are not required to have additional handrails.

4604.14.1 Height. Handrail height, measured above stair tread nosings, shall be uniform, not less than 30 inches (762 mm) and not more than 42 inches (1067 mm).

4604.15 Slope of ramps. Ramp runs utilized as part of a means of egress shall have a running slope not steeper than one unit vertical in 10 units horizontal (10 percent slope). The slope of other ramps shall not be steeper than one unit vertical in 8 units horizontal (12.5 percent slope).

4604.16 Width of ramps. Existing ramps are permitted to have a minimum width of 30 inches (762 mm) but not less than the width required for the number of occupants served as determined by Section 1005.1.

4604.17 Fire escape stairs. Fire escape stairs shall comply with Sections 4604.17.1 through 4604.17.7.

4604.17.1 Existing means of egress. Fire escape stairs shall be permitted in existing buildings but shall not constitute more than 50 percent of the required exit capacity.

4604.17.2 Protection of openings. Openings within 10 feet (3048 mm) of fire escape stairs shall be protected by fire door assemblies having a minimum 3/4-hour fire-resistance rating.

EXCEPTION: In buildings equipped throughout with an approved automatic sprinkler system, opening protection is not required.

4604.17.3 Dimensions. Fire escape stairs shall meet the minimum width, capacity, riser height and tread depth as specified in Section 4604.10.

4604.17.4 Access. Access to a fire escape from a corridor shall not be through an intervening room. Access to a fire escape stair shall be from a door or window meeting the criteria of Section 1005.1. Access to a fire escape stair shall be directly to a balcony, landing or platform. These shall be no higher than the floor or window sill level and no lower than 8 inches (203 mm) below the floor level or 18 inches (457 mm) below the window sill.

4604.17.5 Materials and strength. Components of fire escape stairs shall be constructed of noncombustible materials. Fire escape stairs and balconies shall support the dead load plus a live load of not less than 100 pounds per square foot (4.78 kN/m²). Fire escape stairs and balconies shall be provided with a top and intermediate handrail on each side.

The fire code official is authorized to require testing or other satisfactory evidence that an existing fire escape stair meets the requirements of this section.

4604.17.6 Termination. The lowest balcony shall not be more than 18 feet (5486 mm) from the ground. Fire escape stairs shall extend to the ground or be provided with counter-balanced stairs reaching the ground.

EXCEPTION: For fire escape stairs serving 10 or fewer occupants, an approved fire escape ladder is allowed to serve as the termination.

4604.17.7 Maintenance. Fire escapes shall be kept clear and unobstructed at all times and shall be maintained in good working order.

4604.18 Corridors. Corridors serving an occupant load greater than 30 and the openings therein shall provide an effective barrier to resist the movement of smoke. Transoms, louvers, doors and other openings shall be kept closed or self-closing.

EXCEPTIONS:

1. Corridors in occupancies other than in Group H, which are equipped throughout with an approved automatic sprinkler system.
2. Patient room doors in corridors in occupancies in Group I-2 where smoke barriers are provided in accordance with the International Building Code.
3. Corridors in occupancies in Group E where each room utilized for instruction or assembly has at least one-half of the required means of egress doors opening directly to the exterior of the building at ground level.
4. Corridors that are in accordance with the International Building Code.

4604.18.1 Corridor openings. Openings in corridor walls shall comply with the requirements of the International Building Code.

EXCEPTIONS:

1. Where 20-minute fire door assemblies are required, solid wood doors at least 1.75 inches (44 mm) thick or insulated steel doors are allowed.
2. Openings protected with fixed wire glass set in steel frames.
3. Openings covered with 0.5-inch (12.7 mm) gypsum wallboard or 0.75-inch (19.1 mm) plywood on the room side.
4. Opening protection is not required when the building is equipped throughout with an approved automatic sprinkler system.

4604.18.2 Dead ends. Where more than one exit or exit access doorway is required, the exit access shall be arranged such that dead ends do not exceed the limits specified in Table 4604.17.2.

EXCEPTION: A dead-end passageway or corridor shall not be limited in length where the length of the dead-end passageway or corridor is less than 2.5 times the least width of the dead-end passageway or corridor.

4604.18.3 Exit access travel distance. Exits shall be located so that the maximum length of exit access travel, measured from the most remote point to an approved exit along the natural and unobstructed path of egress travel, does not exceed the distances given in Table 4604.17.2.

4604.18.4 Common path of egress travel. The common path of egress travel shall not exceed the distances given in Table 4604.18.2.

4604.19 Stairway discharge identification. A stairway in an exit enclosure which continues below its level of exit discharge shall be arranged and marked to make the direction of egress to a public way readily identifiable.

EXCEPTION: Stairs that continue one-half story beyond their levels of exit discharge need not be provided with barriers where the exit discharge is obvious.

4604.20 Exterior stairway protection. Exterior exit stairs shall be separated from the interior of the building as required in Section 1026.6. Openings shall be limited to those necessary for egress from normally occupied spaces.

EXCEPTIONS: 1. Separation from the interior of the building is not required for buildings that are two stories or less above grade where the level of exit discharge serving such occupancies is the first story above grade.
 2. Separation from the interior of the building is not required where the exterior stairway is served by an exterior balcony that connects two remote exterior stairways or other approved exits, with a perimeter that is not less than 50 percent open. To be considered open, the open-

ing shall be a minimum of 50 percent of the height of the enclosing wall, with the top of the opening not less than 7 feet (2134 mm) above the top of the balcony.

3. Separation from the interior of the building is not required for an exterior stairway located in a building or structure that is permitted to have unenclosed interior stairways in accordance with Section 1022.

4. Separation from the interior of the building is not required for exterior stairways connected to open-ended corridors, provided that:

4.1. The building, including corridors and stairs, is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2.

4.2. The open-ended corridors comply with Section 1018.

4.3. The open-ended corridors are connected on each end to an exterior exit stairway complying with Section 1026.

4.4. At any location in an open-ended corridor where a change of direction exceeding 45 degrees occurs, a clear opening of not less than 35 square feet (3 m²) or an exterior stairway shall be provided. Where clear openings are provided, they shall be located so as to minimize the accumulation of smoke or toxic gases.

**TABLE 4604.18.2
 COMMON PATH, DEAD-END AND TRAVEL DISTANCE LIMITS (by occupancy)**

OCCUPANCY	COMMON PATH LIMIT		DEAD-END LIMIT		TRAVEL DISTANCE LIMIT	
	Unsprinklered (feet)	Sprinklered (feet)	Unsprinklered (feet)	Sprinklered (feet)	Unsprinklered (feet)	Sprinklered (feet)
Group A	20/75 ^a	20/75 ^a	20 ^b	20 ^b	200	250
Group B	75	100	50	50	200	250
Group E	75	75	20	50	200	250
Group F-1, S-1 ^d	75	100	50	50	200	250
Group F-2, S-2 ^d	75	100	50	50	300	400
Group H-1	25	25	0	0	75	75
Group H-2	50	100	0	0	75	100
Group H-3	50	100	20	20	100	150
Group H-4	75	75	20	20	150	175
Group H-5	75	75	20	20	150	200
Group I-1	75	75	20	50	200	250
Group I-2 (Health Care)	NR ^e	NR ^e	NR	NR	150	200 ^e
Group I-3 (Detention and Correctional—Use Conditions II, III, IV, V)	100	100	NR	NR	150 ^e	200 ^e
Group I-4 (Day Care Centers)	NR	NR	20	20	200	250
Group M (Covered Mall)	75	100	50	50	200	400
Group M (Mercantile)	75	100	50	50	200	250
Group R-1 (Hotels)	75	75	50	50	200	250
Group R-2 (Apartments)	75	75	50	50	200	250
Group R-3 (One- and Two-Family)	NR	NR	NR	NR	NR	NR
Group R-4 (Residential Care/Assisted Living)	NR	NR	NR	NR	NR	NR
Group U	75	75	20	50	200	250

For SI: 1 foot = 304.8 mm.

a. 20 feet for common path serving 50 or more persons; 75 feet for common path serving less than 50 persons.

b. See Section 1028.9.5 for dead-end aisles in Group A occupancies.

c. This dimension is for the total travel distance, assuming incremental portions have fully utilized their allowable maximums. For travel distance within the room, and from the room exit access door to the exit, see the appropriate occupancy chapter.

d. See the International Building Code for special requirements on spacing of doors in aircraft hangars.

e. Any patient sleeping room, or any suite that includes patient sleeping rooms, of more than 1,000 square feet (93 m²) shall have at least two exit access doors placed a distance apart equal to not less than one-third of the length of the maximum overall diagonal dimension of the patient sleeping room or suite to be served, measured in a straight line between exit access doors.

NR = No requirements.

4604.21 Minimum aisle width. The minimum clear width of aisles shall be:

1. Forty-two inches (1067 mm) for aisle stairs having seating on each side.

EXCEPTION: Thirty-six inches (914 mm) where the aisle serves less than 50 seats.

2. Thirty-six inches (914 mm) for stepped aisles having seating on only one side.

EXCEPTION: Thirty inches (760 mm) for catchment areas serving not more than 60 seats.

3. Twenty inches (508 mm) between a stepped aisle handrail or guard and seating when the aisle is subdivided by the handrail.

4. Forty-two inches (1067 mm) for level or ramped aisles having seating on both sides.

EXCEPTION: Thirty-six inches (914 mm) where the aisle serves less than 50 seats.

5. Thirty-six inches (914 mm) for level or ramped aisles having seating on only one side.

EXCEPTION: Thirty inches (760 mm) for catchment areas serving not more than 60 seats.

6. Twenty-three inches (584 mm) between a stepped stair handrail and seating where an aisle does not serve more than five rows on one side.

4604.22 Stairway floor number signs. Existing stairs shall be marked in accordance with Section 1022.8.

4604.23 Egress path markings. Existing buildings of Group A, B, E, I, M and R-1 having occupied floors located more than 75 feet (22,860 mm) above the lowest level of fire department vehicle access shall be provided with luminous egress path markings in accordance with Section 1024.

EXCEPTION: Open, unenclosed stairwells in historic buildings designated as historic under a state or local historic preservation program.

SECTION 4605 REQUIREMENTS FOR OUTDOOR OPERATIONS

4605.1 Tire storage yards. Existing tire storage yards shall be provided with fire apparatus access roads in accordance with Sections 4605.1.1 and 4605.1.2.

4605.1.1 Access to piles. Access roadways shall be within 150 feet (45,720 mm) of any point in the storage yard where storage piles are located, at least 20 feet (6096 mm) from any storage pile.

4605.1.2 Location within piles. Fire apparatus access roads shall be located within all pile clearances identified in Section 2505.4 and within all fire breaks required in Section 2505.5.

WSR 12-17-037
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-172—Filed August 7, 2012, 2:20 p.m., effective August 8, 2012, 12:01 a.m.]

Effective Date of Rule: August 8, 2012, 12:01 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100N; and amending WAC 220-52-051.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2012 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) closes Catch Areas 26B-1 and 26C to spot shrimp fishing, as the quotas have been reached; and (2) places a lower weekly spot shrimp limit in SMA 1A. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 7, 2012.

Philip Anderson
Director

NEW SECTION

WAC 220-52-05100P 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 (SMA) 1A, 1C, 2W, 3 and 6 are open to the harvest of all shrimp species, effective immediately until further notice, except as provided for in this section:

i) All waters of the Discovery Bay Shrimp District are closed.

ii) All waters of SMA 1C, SMA 2W, and Catch Areas 23A-E and 25A are closed to the harvest of spot shrimp.

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

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

i) It is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 450 pounds per week in Catch Areas 23A-S and 23D, or to exceed 425 pounds per week in SMA 1A.

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

(e) Only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1 3/4-inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(2) Shrimp beam trawl gear:

(a) SMA 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open, effective 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.

(b) Those portions of Catch Areas 21A and 22A within SMA 1B are open, effective immediately until further notice.

(c) All waters of Catch Area 20A are open, effective immediately until further notice.

(3) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 8, 2012:

WAC 220-52-05100N Puget Sound shrimp beam trawl fishery—Season. (12-160)

**WSR 12-17-044
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-171—Filed August 8, 2012, 3:07 p.m., effective August 9, 2012, 1:00 p.m.]

Effective Date of Rule: August 9, 2012, 1:00 p.m.

Purpose: Amend commercial fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: This regulation provides for Pacific Salmon Commission authorized fisheries in Areas 7 and 7A. These emergency rules are necessary to initiate fisheries targeting a harvestable amount of sockeye salmon available. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 8, 2012.

Philip Anderson
Director

NEW SECTION

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

Areas 7 and 7A:

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

Hours	Dates
8:00 AM - 2:00 PM	8/10

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

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

(c) It is unlawful to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net meeting the specifications in WAC 220-47-325, prior to the seine net being removed from the water. All salmon and rockfish must be immedi-

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

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

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

Hours	Dates
1:00 PM - 11:00 PM	8/9

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

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

Hours	Dates
5:00 AM - 9:00 PM	8/11

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

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

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

(4) "Quick Reporting Fisheries":

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 9:01 p.m. August 11, 2012:

WAC 220-47-50100Q	Puget Sound all-citizen commercial salmon fishery— Open periods.
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**WSR 12-17-045
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-176—Filed August 8, 2012, 5:17 p.m., effective August 8, 2012, 5:17 p.m.]

Effective Date of Rule: Immediately.

Purpose: To amend turkey hunting rules described in WAC 232-28-342.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-342.

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: Game Management Unit (GMU) 145 was inadvertently omitted from the late fall turkey season adopted at the April 13-14, 2012, fish and wildlife commission meeting. All of the surrounding GMUs were included in the late fall turkey season; therefore, this omission would likely cause confusion among hunters. To avoid confusion, it is in the best interest of public service to include this GMU in the season. The small game regulations pamphlet is going to press; immediate rule adoption is necessary to include it in the publication.

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

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

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

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

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

Date Adopted: August 8, 2012.

Philip Anderson
Director

NEW SECTION

WAC 232-28-34200D 2012-13, 2013-14, 2014-15 Small game and other wildlife seasons and regulations. Notwithstanding the provisions of WAC 232-28-342, effective immediately until further notice:

Under the late fall general turkey season, from November 20 - December 15, 2012, add GMU 145 as a designated open area.

WSR 12-17-070
EMERGENCY RULES
HEALTH CARE AUTHORITY
(Medicaid Program)

[Filed August 13, 2012, 3:37 p.m., effective August 13, 2012, 3:37 p.m.]

Effective Date of Rule: Immediately.

Purpose: The agency is implementing a new alternative payment methodology for federally qualified health centers (FQHCs) and rural health clinics (RHCs) for services provided on and after July 1, 2011. The agency received approval of its state plan amendment on January 11, 2012.

Citation of Existing Rules Affected by this Order: Amending WAC 182-548-1400 and 182-549-1400.

Statutory Authority for Adoption: RCW 41.05.021.

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

Reasons for this Finding: This emergency rule is necessary to continue the emergency rule adopted under WSR 12-06-002 until the permanent rules become effective. The implementation of these emergency rules was necessitated by the level of appropriations made by the legislature in 2ESHB 1087, for services provided by FQHCs and RHCs as of July 1, 2011. Delaying this adoption could jeopardize the state's ability to provide mandatory medicaid services to a significant number of medicaid clients. The language within the rule text has not changed since the last emergency filing. The agency filed permanent rules under WSR 12-16-060, effective August 30, 2012.

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 2, 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: August 13, 2012.

August 13, 2012
Kevin M. Sullivan
Rules Coordinator

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

WAC 182-548-1400 Federally qualified health centers—Reimbursement and limitations. (1) ~~((Effective))~~ For services provided during the period beginning January 1, 2001, and ending December 31, 2008, the agency's payment methodology for federally qualified health centers (FQHC) ((conforms to 42 U.S.C. 1396a(bb). As set forth in 42 U.S.C. 1396a (bb)(2) and (3), all FQHCs that provide services on January 1, 2001, and through December 31, 2008, are reimbursed on)) was a prospective payment system (PPS) as authorized by 42 U.S.C. 1396a (bb)(2) and (3).

(2) ~~((Effective))~~ For services provided beginning January 1, 2009, FQHCs have the choice to ((continue being)) be reimbursed under the PPS or to be reimbursed under an alternative payment methodology (APM), as authorized by 42 U.S.C. 1396a (bb)(6). As required by 42 U.S.C. 1396a (bb)(6), payments made under the APM ((must)) will be at least as much as payments that would have been made under the PPS.

(3) The ~~((department))~~ agency calculates the FQHC's PPS encounter rate as follows:

(a) Until the FQHC's first audited medicaid cost report is available, the ~~((department))~~ agency pays an average encounter rate of other similar FQHCs within the state, otherwise known as an interim rate;

(b) Upon availability of the FQHC's first audited medicaid cost report, the ~~((department))~~ agency sets the ~~((clinic's))~~ FQHC's encounter rate at one hundred percent of its total reasonable costs as defined in the cost report. The FQHC receives this rate for the remainder of the calendar year during which the audited cost report became available. Thereafter, the encounter rate is then ~~((inflated))~~ increased each January 1st by the medicare economic index (MEI) for primary care services provided by the FQHC.

(4) For FQHCs in existence during calendar years 1999 and 2000, the ~~((department))~~ agency sets the payment prospectively using a weighted average of one hundred percent of the ~~((center's))~~ FQHC's total reasonable costs for calendar years 1999 and 2000 and adjusted for any increase or decrease in the scope of services furnished during the calendar year 2001 to establish a base encounter rate.

(a) The ~~((department))~~ agency adjusts a PPS base encounter rate to account for an increase or decrease in the scope of services provided during calendar year 2001 in accordance with WAC ~~((388-548-1500))~~ 182-548-1500.

(b) The PPS base encounter rates are determined using audited cost reports, and each year's rate is weighted by the total reported encounters. The ~~((department))~~ agency does not apply a capped amount to these base encounter rates. The formula used to calculate the base encounter rate is as follows:

$\text{Specific FQHC Base Encounter Rate} = \frac{(\text{Year 1999 Rate} \times \text{Year 1999 Encounters}) + (\text{Year 2000 Rate} \times \text{Year 2000 Encounters})}{(\text{Year 1999 Encounters} + \text{Year 2000 Encounters}) \text{ for each FQHC}}$
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(c) Beginning in calendar year 2002 and any year thereafter, the encounter rate is increased by the MEI for primary care services, and adjusted for any increase or decrease within the (~~center's~~) FQHC's scope of services.

(5) The (~~department~~) agency calculates the FQHC's APM encounter rate for services provided during the period beginning January 1, 2009, and ending April 6, 2011, as follows:

(a) (~~Beginning January 1, 2009,~~) The APM utilizes the FQHC base encounter rates, as described in (~~WAC 388-548-1400~~) subsection (4)(b) of this section.

(~~(i)~~) (b) The base rates are adjusted to reflect any valid changes in scope of service between calendar years 2002 and 2009.

(~~(ii)~~) (c) The adjusted base rates are then (~~inflated~~) increased by each annual percentage, from calendar years 2002 through 2009, of the APM index. The result is the year 2009 APM rate for each FQHC that chooses to be reimbursed under the APM.

(~~(b)~~) The ~~department~~ will ensure that the APM pays an amount that is at least equal to the PPS, the annual inflator used to increase the APM rates is the greater of the APM index or the MEI.

(~~e~~) The ~~department~~ will periodically rebase the APM rates. The ~~department~~ will not rebase rates determined under the PPS.)

(6) The agency:

(a) Upon approval from the federal Centers for Medicare and Medicaid Services (CMS) of the agency's state plan amendment, calculates the FQHC's APM encounter rate for services provided during the period beginning April 7, 2011, and ending June 30, 2011, as described in this section.

(b) Pending approval by CMS of the state plan amendment, continued to pay FQHCs at the encounter rate described in subsection (5) of this section.

(c) For all payments made for services provided during the period beginning April 7, 2011, and ending January 11, 2012, (the date CMS approved the state plan amendment), will recoup from FQHCs any amount paid in excess of the encounter rate established in this section. The APM utilizes each FQHC's PPS rate for each calendar year and increases it by five percent.

(7) For services provided on and after July 1, 2011, each FQHC will have the choice of receiving either its PPS rate (as determined under the method described in subsection (3) of this section) or a rate determined under a revised APM. CMS approval of the state plan amendment describing this methodology occurred on January 11, 2012.

(a) For all payments made for services between July 1, 2011, and January 11, 2012, (the date CMS approved the state plan amendment), the agency will recoup from FQHCs any amount in excess of the encounter rate established in this section.

(b) The revised APM will be as follows:

(i) For FQHCs that rebased their rate effective January 1, 2010, their allowed cost per visit during the cost report year

increased by the cumulative percentage increase in the MEI between the cost report year and 2011.

(ii) For FQHCs that did not rebase in 2010, their rate is based on their PPS base rate from 2001 (or subsequent year for FQHCs receiving their initial FQHC designation after 2002) increased by the cumulative percentage increase in the IHS Global Insight index from the base year through calendar year 2008 and the cumulative increase in the MEI from calendar years 2008 through 2011. The rates will be increased by MEI effective January 1, 2012, and each January 1st thereafter.

(c) When the APM methodology is in effect, the state will periodically rebase the FQHC encounter rates using the FQHC cost reports and other relevant data. Rebasing will be done only for FQHCs that are reimbursed under the APM.

(d) The agency will ensure that the payments made under the APM are at least equal to the payments that would be made under the PPS.

(8) The (~~department~~) agency limits encounters to one per client, per day except in the following circumstances:

(a) The visits occur with different healthcare professionals with different specialties; or

(b) There are separate visits with unrelated diagnoses.

(~~(7)~~) (9) FQHC services and supplies incidental to the provider's services are included in the encounter rate payment.

(~~(8)~~) (10) Payments for (~~non-FQHC~~) non-FQHC services provided in an FQHC are made on a fee-for-service basis using the (~~department's~~) agency's published fee schedules. (~~Non-FQHC~~) Non-FQHC services are subject to the coverage guidelines and limitations listed in chapters (~~388-500 through 557~~) 182-500 through 182-557 WAC.

(~~(9)~~) (11) For clients enrolled with a managed care organization (MCO), covered FQHC services are paid for by that plan.

(~~(10)~~) (12) Only clients enrolled in Title XIX (medicaid) or Title XXI (CHIP) are eligible for encounter or enhancement payments. The (~~department~~) agency does not pay the encounter rate or the enhancement rate for clients in state-only medical programs. Services provided to clients in state-only medical programs are considered fee-for-service regardless of the type of service performed.

(~~(11)~~) (13) For clients enrolled with (~~a managed care organization (MCO)~~) an MCO, the (~~department~~) agency pays each FQHC a supplemental payment in addition to the amounts paid by the MCO. The supplemental payments, called enhancements, are paid in amounts necessary to ensure compliance with 42 U.S.C. 1396a (bb)(5)(A).

(a) The FQHCs receive an enhancement payment each month for each managed care client assigned to them by an MCO.

(b) To ensure that the appropriate amounts are paid to each FQHC, the (~~department~~) agency performs an annual reconciliation of the enhancement payments. For each FQHC, the (~~department~~) agency will compare the amount actually paid to the amount determined by the following for-

mula: (Managed care encounters times encounter rate) less ((FFS)) fee-for-service equivalent of MCO services. If the ((center)) FOHC has been overpaid, the ((department)) agency will recoup the appropriate amount. If the ((center)) FOHC has been underpaid, the ((department)) agency will pay the difference.

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

WAC 182-549-1400 Rural health clinics—Reimbursement and limitations. (1) ((Effective)) For services provided during the period beginning January 1, 2001, and ending December 31, 2008, the agency's payment methodology for rural health clinics (RHC) ((conforms to)) was a prospective payment system (PPS) as authorized by 42 U.S.C. 1396a (bb)(2) and (3). ((RHCs that provide services on January 1, 2001 through December 31, 2008 are reimbursed on a prospective payment system (PPS)).

Effective)) (2) For services provided beginning January 1, 2009, RHCs have the choice to ((continue being)) be reimbursed under the PPS or be reimbursed under an alternative payment methodology (APM), as authorized by 42 U.S.C. 1396a (bb)(6). As required by 42((-)) U.S.C. 1396a (bb)(6), payments made under the APM ((must)) will be at least as much as payments that would have been made under the PPS.

((2)) (3) The ((department)) agency calculates the RHC's PPS encounter rate for RHC core services as follows:

(a) Until the RHC's first audited medicare cost report is available, the ((department)) agency pays an average encounter rate of other similar RHCs (whether the RHC is classified

$$\text{Specific RHC Base Encounter Rate} = \frac{(\text{Year 1999 Rate} \times \text{Year 1999 Encounters}) + (\text{Year 2000 Rate} \times \text{Year 2000 Encounters})}{(\text{Year 1999 Encounters} + \text{Year 2000 Encounters}) \text{ for each RHC}}$$

(c) Beginning in calendar year 2002 and any year thereafter, the encounter rate is increased by the MEI and adjusted for any increase or decrease in the ((clinie's)) RHC's scope of services.

((4)) (5) The ((department)) agency calculates the RHC's APM encounter rate for services provided during the period beginning January 1, 2009, and ending April 6, 2011, as follows:

(a) ((Beginning January 1, 2009,)) The APM utilizes the RHC base encounter rates as described in ((WAC 388-549-1400 (3)(b))) subsection (4)(b) of this section.

(b) The base rates are ((inflated)) increased by each annual percentage, from calendar years 2002 through 2009, of the APM index.

(c) The result is the year 2009 APM rate for each RHC that chooses to be reimbursed under the APM.

((b) To ensure that the APM pays an amount that is at least equal to the PPS in accordance with 42 USC 1396a (bb)(6), the annual inflator used to increase the APM rates is the greater of the APM index or the MEI.

(e) ~~The department periodically rebases the APM rates. The department does not rebase rates determined under the PPS.~~

(d) ~~When rebasing the APM encounter rates, the department applies a productivity standard to the number of visits performed by each practitioner group (physicians and mid-~~

as hospital-based or free-standing) within the state, otherwise known as an interim rate.

(b) Upon availability of the RHC's audited medicare cost report, the ((department)) agency sets the ((clinie's)) RHC's encounter rate at one hundred percent of its costs as defined in the cost report divided by the total number of encounters the ((clinie)) RHC has provided during the time period covered in the audited cost report. The RHC will receive this rate for the remainder of the calendar year during which the audited cost report became available. The encounter rate is then ((inflated)) increased each January 1st by the medicare economic index (MEI) for primary care services provided by the RHC.

((3)) (4) For RHCs in existence during calendar years 1999 and 2000, the ((department)) agency sets the payment prospectively using a weighted average of one hundred percent of the ((clinie's)) RHC's total reasonable costs for calendar years 1999 and 2000 and adjusted for any increase or decrease in the scope of services furnished during the calendar year 2001 to establish a base encounter rate.

(a) The ((department)) agency adjusts a PPS base encounter rate to account for an increase or decrease in the scope of services provided during calendar year 2001 in accordance with WAC ((388-549-1500)) 182-549-1500.

(b) The PPS base encounter rates are determined using medicare's audited cost reports, and each year's rate is weighted by the total reported encounters. The ((department)) agency does not apply a capped amount to these base encounter rates. The formula used to calculate the base encounter rate is as follows:

~~levels) to determine the number of encounters to be used in each RHC's rate calculation. The productivity standards are determined by reviewing all available RHC cost reports for the rebasing period and setting the standards at the levels necessary to allow ninety-five percent of the RHCs to meet the standards. The encounter rates of the clinics that meet the standards are calculated using each clinic's actual number of encounters. The encounter rates of the other five percent of clinics are calculated using the productivity standards. This process is applied at each rebasing, so the actual productivity standards may change each time encounter rates are rebased.~~

~~(5)) (6) The agency:~~

(a) Upon approval from the federal Centers for Medicare and Medicaid Services (CMS) of the agency's state plan amendment, calculates the RHC's APM encounter rate for services provided during the period beginning April 7, 2011, and ending June 30, 2011, as described in this section.

(b) Pending approval by CMS of the state plan amendment, continued to pay RHCs at the encounter rate described in subsection (5) of this section.

(c) For all payments made for services provided during the period beginning April 7, 2011, and ending January 11, 2012, (the date CMS approved the state plan amendment), will recoup from RHCs any amount paid in excess of the encounter rate established in this section. The APM utilizes

each RHC's PPS rate for each calendar year and increases it by five percent.

(7) For services provided on and after July 1, 2011, each RHC will have the choice of receiving either its PPS rate (as determined under the method described in subsection (3) of this section), or a rate determined under a revised APM. CMS approval of the state plan amendment describing the methodology occurred on January 11, 2012.

(a) For all payments made for services between July 1, 2011, and January 11, 2012, (the date CMS approved the state plan amendment), the agency will recoup from RHCs any amount paid in excess of the encounter rate established in this section.

(b) The revised APM will be as follows:

(i) For RHCs that rebased their rate effective January 1, 2010, their allowed cost per visit during the cost report year increased by the cumulative percentage increase in the MEI between the cost report year and 2011.

(ii) For RHCs that did not rebase in 2010, their rate is based on their PPS base rate from 2002 (or subsequent year for RHCs receiving their initial RHC designation after 2002) increased by the cumulative percentage increase in the IHS Global Insight index from the base year through calendar year 2008 and the cumulative increase in the MEI from calendar years 2008 through 2011. The rate will be increased by the MEI effective January 1, 2012, and each January 1st thereafter.

(c) When the APM methodology is in effect, the agency will periodically rebase the RHC encounter rate using the RHC cost reports and other relevant data. Rebasing will be done only for RHCs that are reimbursed under the APM.

(d) The agency will ensure that the payments made under the APM are at least equal to the payments that would be made under the PPS.

(8) The ~~((department))~~ agency pays for one encounter, per client, per day except in the following circumstances:

(a) The visits occur with different healthcare professionals with different specialties; or

(b) There are separate visits with unrelated diagnoses.

~~((6))~~ (9) RHC services and supplies incidental to the provider's services are included in the encounter rate payment.

~~((7))~~ (10) Payments for non-RHC services provided in an RHC are made on a fee-for-service basis using the ~~((department's))~~ agency's published fee schedules. Non-RHC services are subject to the coverage guidelines and limitations listed in chapters ~~((388-500 through 388-557))~~ 182-500 through 182-557 WAC.

~~((8))~~ (11) For clients enrolled with a managed care organization (MCO), covered RHC services are paid for by that plan.

~~((9))~~ (12) The ~~((department))~~ agency does not pay the encounter rate or the enhancements for clients in state-only programs. Services provided to clients in state-only programs are considered fee-for-service, regardless of the type of service performed.

~~((10))~~ (13) For clients enrolled with ~~((a managed care organization (MCO)))~~ an MCO, the ~~((department))~~ agency pays each RHC a supplemental payment in addition to the amounts paid by the MCO. The supplemental payments,

called enhancements, are paid in amounts necessary to ensure compliance with 42 U.S.C. 1396a (bb)(5)(A).

(a) The RHCs receive an enhancement payment each month for each managed care client assigned to them by an MCO.

(b) To ensure that the appropriate amounts are paid to each RHC, the ~~((department))~~ agency performs an annual reconciliation of the enhancement payments. For each RHC, the ~~((department))~~ agency will compare the amount actually paid to the amount determined by the following formula: (Managed care encounters times encounter rate) less fee-for-service equivalent of MCO services. If the ~~((clinic))~~ RHC has been overpaid, the ~~((department))~~ agency will recoup the appropriate amount. If the ~~((clinic))~~ RHC has been underpaid, the ~~((department))~~ agency will pay the difference.

WSR 12-17-080

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 12-179—Filed August 14, 2012, 2:41 p.m., effective August 15, 2012, 12:01 a.m.]

Effective Date of Rule: August 15, 2012, 12:01 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100P; and amending WAC 220-52-051.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2012 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) closes Catch Areas 23A-S, 23B and 23D to spot shrimp fishing, as the quotas have been reached; and (2) places a lower weekly spot shrimp limit in Shrimp Management Area 1A. There is insufficient time to adopt permanent rules.

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

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

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

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

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

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

Date Adopted: August 14, 2012.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-52-05100Q 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 (SMA) 1A, 1C, 2W, 3 and 6 are open to the harvest of all shrimp species, effective immediately until further notice, except as provided for in this section:

i) All waters of the Discovery Bay Shrimp District are closed.

ii) All waters of SMA 1C, SMA 2W, and Catch Areas 23A-E, 23A-S, 23B, 23D and 25A are closed to the harvest of spot shrimp.

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

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

i) It is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds per week in SMA 1A.

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

(e) Only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1 3/4-inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(2) Shrimp beam trawl gear:

(a) SMA 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open, effective 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.

(b) Those portions of Catch Areas 21A and 22A within SMA 1B are open, effective immediately until further notice.

(c) All waters of Catch Area 20A are open, effective immediately until further notice.

(3) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 15, 2012:

WAC 220-52-05100P Puget Sound shrimp beam trawl fishery—Season. (12-172)

WSR 12-17-088 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 12-180—Filed August 15, 2012, 4:40 p.m., effective August 15, 2012, 4:40 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the recreational fishing seasons, limits and other regulations. These emergency 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 2.

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

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

Date Adopted: August 15, 2012.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900L Exceptions to statewide rules. Notwithstanding the provisions of WAC 232-28-619, effec-

tive immediately until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

1. Baker Lake (Whatcom Co.): Open to salmon fishing through September 4, 2012, with daily limit three sockeye only. Minimum length 18 inches.

2. Bear River (Pacific Co.):

a. **From mouth (Highway 101 Bridge) to Lime Quarry Road (approximately two river miles):** Effective August 16, 2012, single point barbless hook restriction is rescinded. Open to salmon fishing effective September 1, 2012, with daily limit six fish, of which no more than two may be adult fish, and of these, no more than one may be a wild adult coho. Release chum and wild Chinook.

3. Bogachiel River (Clallam Co.):

a. **From mouth to Highway 101 Bridge:** Open to salmon fishing through August 31, 2012, with daily limit 6 fish, of which no more than 2 may be adult salmon. Release wild adult Chinook and wild adult coho.

b. **From mouth to Highway 101 Bridge:** Open to salmon fishing effective September 1, 2012, with daily limit 6 fish. Up to two adults plus up to two additional adult hatchery coho may be retained.

c. **From Highway 101 Bridge to Olympic National Park Boundary:** Unlawful to fish from a floating device equipped with an internal combustion motor.

4. Calawah River (Clallam Co.):

a. **From mouth to Highway 101 Bridge:** Open to salmon fishing through August 31, 2012, with daily limit 6 fish, of which no more than 2 may be adult salmon. Release wild adult Chinook and wild adult coho.

b. **From mouth to Highway 101 Bridge:** Open to salmon fishing effective September 1, 2012, with daily limit 6 fish. Up to two adults plus up to two additional hatchery coho may be retained.

c. **From Highway 101 Bridge to forks:** Unlawful to fish from a floating device equipped with an internal combustion motor.

5. Camas Slough, waters of the Columbia River downstream from the mouth of the Washougal River, north of Lady Island, and downstream of the Highway 14 Bridge at the upstream end of Lady Island: For all species, anglers in possession of a valid two-pole endorsement may use up to two lines while fishing.

6. Chambers Creek (Pierce Co.):

a. **From Boise-Cascade Dam to Steilacoom Lake:** Anti-snagging rule rescinded. Night closure and selective gear rules apply.

7. Chehalis River (Grays Harbor Co.), including all channels, sloughs, and interconnected waterways:

a. **From Highway 101 Bridge in Aberdeen to high bridge on Weyerhaeuser 1000 line (approximately 400 yards downstream from Roger Creek, south of Pe Ell):** Effective August 16, 2012, single-point barbless hooks required.

b. **From mouth to high bridge on Weyerhaeuser 1000 line (approximately 400 yards downstream from Roger Creek, south of Pe Ell):** Salmon fishing open September 16, 2012, through September 30, 2012, with daily limit 6 fish, of which no more than three may be adult salmon, and of the

three adults, only two may be wild coho. Release chum and Chinook.

c. **From high bridge on Weyerhaeuser 1000 line upstream:** Open until further notice. Selective gear rules apply. All species: Release all fish, except up to two hatchery steelhead may be retained per day. Fishing from a floating device equipped with an internal combustion motor is permissible.

8. Cispus River (Lewis Co.), from mouth to North Fork: release wild coho and wild Chinook.

9. Columbia River, from a true north-south line through Buoy 10, upstream to a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank:

a. Barbed hooks allowed.

b. Through September 3, 2012, daily limit 2 salmon or 2 hatchery steelhead or one of each; only 1 may be a Chinook. Release all salmon except Chinook and hatchery coho.

c. September 4, 2012, through September 30, 2012, daily limit 2 hatchery coho or 2 hatchery steelhead or one of each. Release all salmon other than hatchery coho.

10. Columbia River, from the I-5 Bridge to the Highway 395 Bridge at Pasco:

a. Open to salmon and steelhead fishing, with anti-snagging rule from Bonneville Dam to McNary Dam, and night closure from Bonneville Dam to The Dalles Dam.

b. Closed waters within one-quarter mile of the USFWS Spring Creek Hatchery Grounds between posted markers that are located one-quarter mile on either side of the fish ladder entrance.

11. Columbia River, from the Highway 395 Bridge at Pasco to Priest Rapids Dam: Sockeye retention allowed.

12. Columbia River, from the Highway 395 Bridge at Pasco to the old Hanford townsite (wooden towers) powerline crossing, in Sec. 30, T13N, R28E, except Ringold Area Bank Fishery waters: Closed waters within a 400' radius of the Columbia Irrigation District (CID) fish barrier at the mouth of the CID wasteway at Columbia Park. Release all steelhead with a radio-tag wire protruding from the mouth, or with a disk or floy tag attached near the dorsal fin.

13. Columbia River, from Priest Rapids Dam to Chief Joseph Dam:

a. Anglers may fish with two poles, provided they have a two-pole endorsement, through August 31, 2012.

b. All species, anti-snagging rule and night closure rescinded from Rocky Reach Dam to the most upriver edge of Turtle Rock. Permissible to retain trout.

14. Columbia River, from Priest Rapids Dam to Wanapum Dam: Open to salmon fishing. Through August 31, 2012, daily limit 6 Chinook and six sockeye only, but no more than 3 may be adult Chinook, and of the 3 adult Chinook, only 1 may be wild. Release all trout.

15. Columbia River, from Wanapum Dam to Wells Dam: Open to salmon fishing with daily limit 6 Chinook and six sockeye only. No more than 3 may be adult Chinook, and of the 3 adult Chinook, only 1 may be wild. Release all trout.

16. Columbia River, from Wells Dam to Highway 173 Bridge at Brewster: Open to salmon fishing through August 31, 2012. Daily limit 6 Chinook and six sockeye

only. No more than 3 may be adult Chinook, and of the 3 adult Chinook, only 1 may be wild. Release all trout.

17. Columbia River: The area definition changes for "From Highway 173 Bridge at Brewster to Highway 17 Bridge at Bridgeport" to "From Highway 173 Bridge at Brewster to Chief Joseph Dam."

18. Columbia River, from Highway 173 Bridge at Brewster to Chief Joseph Dam:

a. Open to salmon fishing with daily limit 6 Chinook and six sockeye only. No more than 3 may be adult Chinook, and of the 3 adult Chinook, only 1 may be wild.

b. Closed to fishing from the Douglas County shore from the Chief Joseph Dam downstream 400 feet.

19. Cowlitz Falls Reservoir (Lake Scanewa) (Lewis Co.):

a. Salmon: Release wild coho and wild Chinook.

b. Trout daily limit of 5 fish through August 31, 2012. Effective September 1, 2012, trout daily limit of ten fish.

20. Cowlitz River (Lewis County):

a. **From mouth to Mayfield Dam:** Open for salmon fishing, with daily limit six fish, of which no more than two may be adult Chinook. Release all salmon except hatchery coho and hatchery Chinook.

b. **From posted PUD sign on Peters Road to mouth of Ohanapecosh River and mouth of Muddy Fork:** Open for salmon fishing; release wild coho and wild Chinook.

21. Deschutes River (Thurston Co.):

a. Barbless hooks required.

b. **From the Old Highway 99 Bridge on Capitol Boulevard in Tumwater, upstream to the Henderson Boulevard Bridge near Pioneer Park:** Release all trout. Anti-snagging rule and night closure rescinded. Selective gear rules when fishing for salmon, except bait allowed September 1 through October 15, 2012.

22. Dickey River (Clallam County), from mouth to East Fork Dickey: For salmon fishing, effective September 1, 2012, daily limit 6 fish. Up to two adults plus up to two additional adult hatchery coho may be retained.

23. Green (Duwamish) River (King Co.):

a. **From Tukwila International Boulevard/Old Highway 99 to the Interstate 405 Bridge:** Open for salmon fishing September 1, 2012; release Chinook.

b. **From the Auburn-Black Diamond Road Bridge to the mouth of Cristy Creek at Flaming Geyser State Park:** Closed effective September 16.

24. Hoh River (Jefferson Co.):

a. **From Willoughby Creek to Morgan's Crossing boat launch site:** Closed to salmon fishing. Unlawful to fish from a floating device equipped with an internal combustion motor.

b. **From DNR Oxbow Campground Boat Launch to Olympic National Park boundary below mouth of South Fork Hoh River:** Unlawful to fish from a floating device equipped with an internal combustion motor.

25. Humptulips River (Grays Harbor County):

a. **From Ocean Beach Road (near Copalis Crossing) to Highway 101 Bridge:** Open for salmon fishing effective September 16, 2012, with daily limit of 6 salmon, of which no more than three may be adult salmon, and of the three adult salmon, only one may be a Chinook and only one may

be wild coho. Release chum. The all-species bait-prohibited rule is rescinded effective September 16 through September 30, 2012.

b. **From Highway 101 Bridge to the confluence of the East and West forks:** Open for salmon fishing effective September 16, 2012, with daily limit of 6 salmon, of which no more than three may be adult salmon, and of the three adult salmon, only one may be a Chinook and only one may be a wild coho. Release chum. Unlawful to fish from a floating device equipped with an internal combustion motor. Bait prohibition rescinded from September 16, 2012, through September 30, 2012.

26. Humptulips River, East Fork (Grays Harbor Co.), from concrete bridge on Forest Service Road 220 upstream:

a. Trout minimum length is eight inches.

b. The anti-snagging and night-closure rules are rescinded effective August 16, 2012.

27. Humptulips River, West Fork (Grays Harbor Co.), from Donkey Creek upstream: Open until further notice. Selective gear rules apply.

28. Lewis River, North Fork (Clark/Skamania counties):

a. **From mouth to Colvin Creek:** For salmon fishing through September 14, 2012, daily limit 6 hatchery salmon, of which no more than 2 may be adult hatchery Chinook. Release all salmon except hatchery Chinook and hatchery coho. Effective September 15, 2012, daily limit is 6 salmon, of which no more than 2 adult Chinook may be retained. Release all salmon except Chinook and hatchery coho.

b. **From mouth of Colvin Creek to overhead powerlines at Merwin Dam:** Through September 14, 2012, daily limit 6 hatchery salmon, of which no more than 2 may be adult hatchery Chinook. Release all salmon except hatchery Chinook and hatchery coho. Effective September 15 through September 30, 2012, daily limit 6 salmon, of which no more than 2 may be adult Chinook. Release all salmon except Chinook and hatchery coho.

29. Little White Salmon River, downstream of markers on point of land downstream and across from Little White Salmon National Fish Hatchery and upstream of Hwy 14 Bridge (Drano Lake) (Skamania County):

a. Anglers may fish with two poles, provided they have a two-pole endorsement, effective September 15, 2012.

b. Release-requirement for wild coho and wild Chinook rescinded.

30. Mayfield Lake (Reservoir) (Lewis County): Effective September 1, 2012, release wild coho and wild Chinook.

31. McAllister Creek (Thurston Co.), from the mouth to Olympia-Steilacoom Road Bridge:

a. Barbless hooks required.

b. Open for salmon fishing with a daily limit of six fish and up to two adults may be retained.

32. Naselle River (Pacific/Wahkiakum counties):

a. **From Highway 101 Bridge to the Highway 4 Bridge:** open for salmon fishing with a daily limit of six fish, of which no more than three may be adult salmon, and of these three adult fish, no more than two may be wild adult

coho. Release chum and wild Chinook. Sturgeon fishing open.

b. **From the Highway 4 Bridge to the Crown Mainline (Salme) Bridge:** Barbless hooks required. Open for salmon fishing with a daily limit of six fish, of which no more than three may be adult salmon, and of these three adult fish, no more than two may be wild adult coho. Release chum and wild Chinook.

c. **From the Crown Mainline (Salme) Bridge to the North Fork:** closed to salmon and sturgeon fishing. Night-closure and anti-snagging rules effective August 16, 2012.

33. Naselle River, South Fork (Pacific Co.): Selective Gear Rules required through August 15, 2012, only.

34. Nemah River, Middle Fork (Pacific Co.):

a. Selective gear rules rescinded.

b. It is permissible to fish from a floating device equipped with an internal combustion motor.

c. Night closure and single-point barbless hooks required from the mouth upstream to the Department of Natural Resources Bridge on the Middle Nemah A-line Road.

d. Waters no longer closed from the Nemah Hatchery downstream.

35. Nemah River, North Fork (Pacific Co.), from Highway 101 Bridge upstream to bridge on Nemah Valley Road:

a. Open to fishing.

b. Night closure, single-point barbless hooks required, and stationary gear restrictions in effect.

c. Salmon fishing open with daily limit of 6, of which only 3 may be adult salmon, and of the three adults, only two may be wild coho. Release chum and wild Chinook.

36. Nooksack River (Whatcom Co.): Closed to salmon fishing through August 31, 2012.

37. North River (Grays Harbor/Pacific counties), from Highway 105 Bridge to Salmon Creek (located approximately two miles upstream from Highway 101):

a. Open for salmon fishing September 1, 2012, with daily limit of six fish, of which no more than three may be adult salmon, and only two adults may be wild coho. Release chum and wild Chinook.

b. All species, night closures and single-point barbless hooks required.

c. Sturgeon: Open until further notice. Minimum fork length is 38 inches, and maximum fork length is 54 inches. Daily limit is one fish.

38. Okanogan River (Okanogan County). From the mouth upstream: when open for salmon fishing, daily limit of 6 Chinook and six sockeye only. No more than three adult Chinook, and of the three adult Chinook, only one may be a wild adult Chinook.

39. Puyallup River (Pierce Co.):

a. **From mouth to city of Puyallup outfall structure near junction of Freeman Road and North Levee Road:** Open for salmon fishing effective August 16, 2012. Closed August 26 and September 2, 3, 9, 10, and 11, 2012.

b. **River section "From city of Puyallup outfall structure near junction of Freeman Road and North Levee Road to the Electron power plant outlet"** is redefined as "From city of Puyallup outfall structure near junction of Freeman Road and North Levee Road to Carbon River."

40. Satsop River and East Fork (Grays Harbor Co.):

a. **From mouth to the Bingham Creek Hatchery barrier dam:** Trout minimum length is 14 inches.

b. **From 400 feet downstream of Bingham Creek Hatchery barrier dam upstream to dam:** Night closure. Effective August 16, 2012, single-point barbless hooks required.

c. **From mouth to bridge at Schafer State Park:** Salmon fishing opens September 16, 2012, with daily limit of 6 fish, of which no more than three may be adult salmon, and of the three adult salmon, only two may be wild coho. Release chum and Chinook.

d. **From bridge at Schafer State Park upstream to Bingham Creek Hatchery barrier dam:** Where lawful to fish for salmon, open effective September 16, 2012, with daily limit six fish, of which no more than three may be adult salmon, and of the three adult salmon, only two may be wild coho. Release chum and Chinook.

41. Satsop, Middle Fork (Turnow Branch, Grays Harbor Co.), from Cougar Smith Road upstream: Night-closure and anti-snagging rules for all species, effective August 16, 2012.

42. Satsop River, West Fork (Grays Harbor Co.), from Cougar Smith Road to USFS 2260 Road Bridge at Spoon Creek: Night closure for all species effective August 16, 2012.

43. Similkameen River (Okanogan Co.), from mouth to Enloe Dam: Open for salmon fishing through September 15, 2012. Daily limit 6 Chinook and six sockeye only, of which no more than 3 may be adult Chinook salmon, and of these three adult Chinook salmon, only one may be a wild adult Chinook.

44. Skagit River (Skagit/Whatcom counties):

a. **From mouth to Gilligan Creek:** Open to salmon fishing effective September 1, 2012, with daily limit of two salmon. Release chum and Chinook.

b. **From Gilligan Creek to the Cascade River Road:** Open to salmon fishing effective September 16, 2012, with daily limit two salmon. Release chum and Chinook.

c. **From Memorial Highway Bridge (highway 536 at Mount Vernon), upstream to Gilligan Creek:** Anti-snagging rule and night closure in effect until further notice.

45. Skokomish River (Mason County):

a. **Mouth to Highway 101 Bridge:** Night closure, anti-snagging rule and single point barbless hooks required.

b. **Mouth to Highway 106 Bridge:** Open for salmon fishing through September 5, 2012, with daily limit 2 salmon. Release chum and wild Chinook. Reopens effective September 16, 2012, with a daily limit 6 salmon, of which no more than 4 adult fish may be retained. Release Chinook and chum.

c. **From Highway 106 Bridge to Highway 101 Bridge:** Open for salmon fishing Fridays, Saturdays, Sundays, and Labor Day, through September 3, 2012. Daily limit 2 salmon. Release chum and wild Chinook.

d. **From Highway 101 Bridge to forks:** Unlawful to fish from a floating device equipped with an internal combustion motor.

46. Skykomish River (Snohomish Co.), from mouth to the forks: Closed to salmon fishing until September 1,

2012. Effective September 1, 2012, open to salmon fishing with daily limit three. Release Chinook and pink.

47. Smith Creek (near North River) (Pacific Co.), from mouth to Highway 101 Bridge:

a. Open to salmon fishing effective September 1, 2012, with daily limit of six fish, of which no more than three may be adult salmon, and of those three, only two may be wild coho. Release chum and wild Chinook.

b. Sturgeon: Open until further notice. Minimum fork length is 38 inches and maximum fork length is 54 inches. Daily limit is one fish.

48. Snohomish River (Snohomish Co.), including all channels, sloughs, and interconnected waterways, but excluding all tributaries: Open to salmon fishing effective September 1, 2012, with daily limit three. Release Chinook and pink.

49. Snoqualmie River (King Co.), from mouth to the falls: Open to salmon fishing effective September 1, 2012, with daily limit 3. Release Chinook and pink.

50. Sol Duc River (Clallam County):

a. **From mouth to concrete pump station at the Sol Duc Hatchery:** Effective beginning September 1, 2012, salmon daily limit 6 fish, of which no more than two may be adults, and an additional two adult hatchery coho may also be retained.

b. **From Highway 101 Bridge upstream of Klahowya Camp Ground to Olympic National Park boundary:** Unlawful to fish from a floating device equipped with an internal combustion motor.

51. Tieton River (Yakima Co.): Permissible to fish to base of Tieton (Rimrock) Dam.

52. Tilton River (Lewis Co.), from mouth to West Fork: Release wild coho and wild Chinook.

53. Van Winkle Creek (Grays Harbor Co.):

a. Open to fishing until further notice.

b. All species: Anti-snagging rule and night closure effective August 16, 2012.

c. **From mouth to 400 feet below outlet of Lake Aberdeen Hatchery:** Open to salmon fishing effective September 1, 2012, with a daily limit of 6 fish, of which no more than 2 may be adult fish and only one may be a wild coho. Release chum and Chinook.

54. Wallace River (Snohomish Co.), from its mouth to 200 feet upstream of the water intake of the salmon hatchery: Open for salmon fishing effective September 16, 2012, with daily limit three coho. Night-closure and anti-snagging rules effective September 16, 2012.

55. Willapa River (Pacific Co.):

a. **From mouth (city of South Bend boat launch) to Highway 6 Bridge approximately two miles below mouth of Trap Creek:** Open for salmon fishing with daily limit six fish, of which no more than three may be adult salmon, and of the three adults, only two may be wild coho. Release chum and wild Chinook. Night closure and single point barbless hooks required.

b. **From Highway 6 Bridge to Fork Creek:** Closed to salmon fishing.

c. **From the second bridge on Camp One Road upstream to the mouth of Mill Creek (approximately 0.5 miles):** It is not permissible to fish from a floating device.

d. **From Fork Creek upstream:** Effective August 16, 2012, night closure and single point barbless hooks required. Selective gear rule and anti-snagging rule rescinded.

56. Willapa River, South Fork (Pacific Co.), from Pehl Road upstream: Selective gear rule and internal combustion motor prohibition are rescinded.

57. Wynoochee River (Grays Harbor Co.):

a. **From mouth to WDFW White Bridge Access Site:** Open for salmon fishing effective September 16, 2012, with daily limit six fish, of which no more than two may be adult salmon, and of the two adults, only one may be a wild coho. Release chum and Chinook.

b. **From mouth to 7400 Line Bridge above the mouth of Schafer Creek:** Trout minimum length 14 inches.

c. **From WDFW White Bridge Access Site to 7400 line bridge above mouth of Schafer Creek:** Effective August 16, 2012, single-point barbless hooks required.

d. **From Wynoochee Falls upstream:** All game fish, selective gear rules. Trout: Eastern brook trout are not counted in daily trout limit, and the daily limit for this species is five fish, no minimum size. Once the daily limit of trout other than Eastern Brook Trout is obtained, must stop fishing.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 232-28-61900A	Exceptions to statewide rules. (12-138)
WAC 232-28-61900S	Freshwater exceptions to statewide rules. (12-142)

WSR 12-17-090

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 12-181—Filed August 15, 2012, 4:52 p.m., effective August 21, 2012, 6:00 a.m.]

Effective Date of Rule: August 21, 2012, 6:00 a.m.

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

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100W; and amending WAC 220-32-051.

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

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

mission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River compact).

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

Reasons for this Finding: Sets the first three weeks of the treaty commercial fisheries for the 2012 fall season. Platform hook and line as well as tributary fisheries remain in place. Fisheries are expected to remain within the impact limits set for ESA-listed salmonids. Harvest is expected to remain within the allocation and guidelines of the 2008-2017 management agreement. Rule is consistent with action of the Columbia River compact on July 26 and August 14, 2012. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries. Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allow for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement. Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: August 15, 2012.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-32-05100X Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052, WAC 220-32-055 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas (SMCRA) 1E, 1F, 1G, and 1H, and in the Wind River, White Salmon River, Klickitat River, and Drano Lake and Icicle Creek, except as provided in the following subsections. However, those individuals possessing treaty fishing rights under the Yakama, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

1. Mainstem Columbia River Commercial Gillnet

a. Open Area: SMCRA 1F, 1G, 1H (Zone 6)

b. Season:

6:00 AM Tuesday August 21 through 6:00 PM Thursday August 23, 2012

6:00 AM Monday August 27 through 6:00 PM Thursday August 30, 2012

6:00 AM Tuesday September 4 through 6:00 PM Saturday September 8, 2012

c. Gear: Gillnets only. 8-inch minimum mesh size.

d. Allowable sale: Chinook, coho, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes. Sturgeon retention is not allowed on the Oregon shore between Covington Point and The Dalles Dam. Sales of fish landed during the open period are allowed after the period concludes. No sockeye retention.

e. Standard river mouth sanctuaries in effect for this gear type.

2. Mainstem Columbia River Platform and Hook and Line upstream of Bonneville Dam

a. Open Area: SMCRA 1F, 1G, 1H (Zone 6)

b. Season: Immediately until further notice.

c. Gear: Hoop nets and dip bag nets with a 5-inch minimum mesh, and rod and reel with hook and line.

d. Allowable sale: Chinook, coho, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 38-54 inches in fork length in the Bonneville Pool, and between 43-54 inches in fork length in The Dalles and John Day pools may be retained for subsistence purposes. Sturgeon retention is not allowed on the Oregon shore between

Covington Point and The Dalles Dam. Sales of fish landed during the open period are allowed after the period concludes. No sockeye retention.

e. Standard sanctuaries in effect for this gear type.

3. Mainstem Columbia River Platform and Hook and Line downstream of Bonneville Dam

a. Open Area: SMCRA 1E. Each of the four Columbia River treaty tribes has an MOA or MOU with the Washington Department of Fish and Wildlife regarding tribal fisheries in the area just downstream of Bonneville Dam. Tribal fisheries in this area may only occur in accordance with the appropriate MOA or MOU specific to each tribe.

b. Participants: Tribal members may participate under the conditions described in the 2007 Memorandum of Agreement (MOA) with the Yakama Nation (YN), in the 2010 Memorandum of Understanding (MOU) with the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), in the 2010 MOU with the Confederated Tribes of the Warm Spring Reservation (CTWS), and in the 2011 MOU with the Nez Perce Tribe. Tribal members fishing below Bonneville Dam must carry an official tribal enrollment card.

c. Season: immediately until further notice.

d. Gear: Hoop nets and dip bag nets with a 5-inch minimum mesh, and rod and reel with hook and line, or as defined by each tribe's MOU or MOA.

e. Allowable Sales: Chinook, coho, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. No sockeye retention. Sturgeon retention is prohibited; sturgeon may not be sold or retained for ceremonial or subsistence purposes. Sale of platform or hook-and-line-caught fish is allowed. Sales may not occur on USACE property.

4. Yakama Nation Tributary Fisheries

a. Open Area: Columbia River Tributaries above Bonneville Dam.

b. Season: Immediately until further notice, and only during those days and hours when the tributaries listed below are open under lawfully enacted Yakama Nation tribal subsistence fishery regulations for enrolled Yakama Nation members.

c. Area: Drano Lake, and the Wind, White Salmon, and Klickitat rivers and Icicle Creek.

d. Gear: Hoop nets, dip bag nets, and rod and reel with hook and line. Gillnets may only be used in Drano Lake.

e. Allowable Sales: Chinook, coho, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. No sockeye retention, except that Icicle creek allows sales/retention.

5. 24-hour quick reporting required for Washington wholesale dealers, WAC 220-69-240, for all areas.

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

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.

REPEALER

The following section of the Washington Administrative Code is repealed effective 6:00 a.m. August 21, 2012:

WAC 220-32-05100W Columbia River salmon seasons above Bonneville Dam. (12-153)

WSR 12-17-093 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 12-183—Filed August 16, 2012, 10:28 a.m., effective August 17, 2012, 12:01 a.m.]

Effective Date of Rule: August 17, 2012, 12:01 a.m.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Sufficient quota and guideline remain in ocean areas to allow expanded salmon angling opportunity. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 16, 2012.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-62000Q Coastal salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-620, effective August 17, 2012, until further

notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) Catch Record Card Area 1:

(a) Open until further notice - Daily limit of 2 salmon, of which not more than one may be a Chinook salmon. Release wild coho.

(b) Closed in the Columbia River Mouth Control Zone 1 during all open periods. See WAC 220-56-195.

(2) Catch Record Card Area 2:

(a) Open through September 23 - Open 7 days a week. Daily limit 2 salmon. Release wild coho.

(b) Open through September 23 - Grays Harbor Control Zone, described in WAC 220-56-195(11) - Open concurrent with Area 2 when Area 2 is open for salmon angling. Area 2 rules apply.

(3) Willapa Bay (Catch Record Card Area 2-1):

(a) Open August 1 until further notice - Daily limit of six salmon, not more than three of which may be adult salmon. Release chum and wild Chinook. Anglers in possession of a valid two-pole endorsement may use up to two lines while fishing.

(4) Grays Harbor (Catch Record Card Area 2-2 west of the Buoy 13 line): Immediately through September 23 - Open concurrent with Area 2 when Area 2 is open for salmon angling. Area 2 rules apply.

(5) Grays Harbor (Catch Record Card Area 2-2 east of the Buoy 13 line):

(a) Immediately through September 15 - Closed.

(b) Open September 16 until further notice - Daily limit 3 salmon, of which not more than one may be a Chinook salmon and not more than two may be wild coho salmon. Release chum.

(6) Catch Record Area 3: Open until further notice - Daily limit of 2 salmon. Release wild coho.

(7) Catch Record Card Area 4: Open until further notice - Daily limit of 2 salmon. Release chum and wild coho salmon. Waters east of a true north-south line through Sail Rock closed through July 31. Release Chinook salmon caught east of the Bonilla-Tatoosh line

REPEALER

The following section of the Washington Administrative Code is repealed 12:01 a.m. August 17, 2012:

WAC 232-28-62000P Coastal salmon—Saltwater seasons and daily limits. (12-155)

**WSR 12-17-094
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-184—Filed August 16, 2012, 10:32 a.m., effective August 16, 2012, 10:32 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000M and 220-24-04000N; and amending WAC 220-24-040.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: A harvestable quota of salmon is available for the troll fleet. Chinook catch rates have been lower than expected. An increase in the chinook open period limit is needed to ensure the coastal salmon troll fishery meets the season objectives. These rules are adopted at the recommendation of the Pacific Fisheries Management Council, in accordance with preseason fishing plans and the National Marine Fisheries Service from an in-season call. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 16, 2012.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

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

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

August 17 through August 21, 2012;
August 24 through August 28, 2012;
August 31 through September 4, 2012;
September 7 through September 11, 2012; and
September 14 through September 17, 2012.

(2) Landing and possession limit of 120 Chinook and 40 coho per boat per each entire open period for the entire catch areas 1, 2, 3 and 4.

(3) The Cape Flattery and Columbia River Control Zones are closed. Mandatory Yelloweye Rockfish Conservation Area is closed.

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

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

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

(7) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. Exclusive Economic Zone, and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude, and west of 125°05'00" W longitude.

(8) Columbia Control Zone - This is defined as an area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09" N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line, which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07" W. long, to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°14'48" N. lat., 124°05'20" W. long.), and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(9) Mandatory Yelloweye Rockfish Conservation Area - This is defined as the area in Washington Marine Catch Area 3 from 48°00.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°14.00' W longitude to 48°02.00' N latitude; 125°16.50' W longitude to 48°00.00' N latitude; 125°16.50' W longitude and connecting back to 48°00.00' N latitude; 125°14.00' W longitude.

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

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

ticket numbers, the gear used, the catch area, the species, the total number for each species, and the total weight for each species, including halibut.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-24-04000M All-citizen commercial salmon troll. (12-167)

The following section of the Washington Administrative Code is repealed effective September 19, 2012:

WAC 220-24-04000N All-citizen commercial salmon troll.

WSR 12-17-095

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[12-174—Filed August 16, 2012, 10:49 a.m., effective August 16, 2012, 10:49 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the recreational fishing seasons, limits and other regulations. These emergency 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 3.

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: August 16, 2012.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900A Exceptions to statewide rules.

Notwithstanding the provisions of WAC 232-28-619, effective immediately until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

1. Chaplain Lake (Snohomish Co.): Closed waters.
2. Jolanda Lake (Chelan Co.): Closed waters.
3. Rufus Woods Lake (Douglas Co.): Closed waters from Grand Coulee Dam downstream to SR 155 Bridge.
4. Spokane River (Spokane Co.): Open to fishing for walleye until further notice.
5. Williams Lake (Lewis Co.): Lake name is not spelled correctly. Should be "Willame Lake."

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|-------------------|--|
| WAC 232-28-61900C | Exceptions to statewide rules—Kettle and Spokane rivers. (12-67) |
| WAC 232-28-61900G | Freshwater exceptions to statewide rules. (12-104) |
| WAC 232-28-61900M | Freshwater exceptions to statewide rules—2012 Eastern Washington lakes. (12-104) |

Reasons for this Finding: There is a large run of upriver bright hatchery fall chinook expected to return to the Snake River. Significant steelhead fisheries also occur in the area, and some hatchery fall chinook are expected to be caught during steelhead fishing. Retention of hatchery fall chinook is not expected to increase impacts to Endangered Species Act listed wild fall chinook. Therefore, adipose clipped hatchery fall chinook that are caught can be retained in the Snake River.

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

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

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

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

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

Date Adopted: August 16, 2012.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 232-28-61900C Exceptions to statewide rules—Snake River. Notwithstanding the provisions of WAC 232-28-619, effective September 1 through October 31, 2012, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) A person may fish for salmon upstream from the mouth of the Snake River, beginning at the south bound lanes of the Highway 12 Bridge (near Pasco) to the Oregon State line (located approximately 7 miles upstream of the mouth of the Grande Ronde River).

(a) Daily limit of three hatchery Chinook adults (24 inches in length and larger), and three hatchery jack Chinook (less than 24 inches). Minimum size for Chinook that can be retained is 12 inches.

(b) Barbless hooks required, and anglers must stop fishing for salmon for the day once they have retained 3 hatchery steelhead (regardless of whether the salmon daily limit has been retained).

(c) All Chinook and steelhead with unclipped adipose fins must be immediately released unharmed. Anglers cannot remove any Chinook or steelhead from the water unless it is retained as part of the daily bag limit.

**WSR 12-17-096
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-175—Filed August 16, 2012, 11:13 a.m., effective September 1, 2012]

Effective Date of Rule: September 1, 2012.

Purpose: Amend recreational fishing 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 and 77.04.020.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective November 1, 2012:

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

WSR 12-17-098
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-185—Filed August 16, 2012, 4:11 p.m., effective August 16, 2012, 4:11 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-36-02300K; and amending WAC 220-36-023.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: Mesh size restriction was inadvertently changed to 8 1/2-inch maximum; the intended outcome through the North of Falcon process was to remove the smaller maximum stretch mesh-measure restriction relative to 2011 and maintain the 9-inch maximum. The reason for this was to protect wild coho. However, the forecast abundance of wild coho expected to return in 2012 is significantly high and is well in excess of the minimum escapement need. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 16, 2012.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-36-02300K Grays Harbor fall fishery. Notwithstanding the provisions of WAC 220-36-023, effective immediately through September 30, 2012, in Area 2C, mesh size must not exceed a 9-inch maximum.

REPEALER

The following section of the Washington Administrative Code is repealed effective October 1, 2012:

WAC 220-36-02300K Grays Harbor fall fishery.

WSR 12-17-099

EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed August 16, 2012, 5:30 p.m., effective August 18, 2012]

Effective Date of Rule: August 18, 2012.

Purpose: The department is amending WAC 388-106-0015, 388-106-0020, 388-106-0070, and 388-106-0310 to consolidate the medically needy in-home (MNI) and medically needy residential (MNR) waivers into the COPEs waiver. As a result of this waiver consolidation, the department is repealing WAC 388-106-0400 through 388-106-0535 pertaining to the MNI and MNR waivers.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-106-0400, 388-106-0410, 388-106-0415, 388-106-0420, 388-106-0425, 388-106-0430, 388-106-0435, 388-106-0500, 388-106-0510, 388-106-0515, 388-106-0520, 388-106-0525, 388-106-0530 and 388-106-0535; and amending WAC 388-106-0015, 388-106-0020, 388-106-0070, and 388-106-0310.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

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

Reasons for this Finding: The department is consolidating three waivers into one waiver to improve efficiency. This rule amendment is necessary to manage budget shortfalls and maintain fund solvency. The Centers for Medicare and Medicaid Services (CMS) gave the department approval effective April 1, 2012. This emergency is extending the CR-103E filed on April 19, 2012, as WSR 12-10-009 until the permanent CR-103P filed on July 25, 2012, as WSR 12-16-026 becomes effective on August 25, 2012.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 4, Repealed 14; 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 4, Repealed 14.

Date Adopted: August 16, 2012.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-12-023, filed 5/29/08, effective 7/1/08)

WAC 388-106-0015 What long-term care services does the department provide? The department provides long-term care services through programs that are designed to help you remain in the community. These programs offer an alternative to nursing home care (which is described in WAC 388-106-0350 through 388-106-0360). You may receive services from any of the following:

(1) **Medicaid personal care (MPC)** is a medicaid state plan program authorized under RCW 74.09.520. Clients eligible for this program may receive personal care in their own home or in a residential facility.

(2) **Community options program entry system (COPES)** is a medicaid waiver program authorized under RCW 74.39A.030. Clients eligible for this program may receive personal care in their own home or in a residential facility.

(3) ~~(Medically needy residential waiver (MNRW) is a medicaid waiver program authorized under RCW 74.39.041. Clients eligible for this program may receive personal care in a residential facility.~~

(4) ~~Medically needy in-home waiver (MNIW) is a medicaid waiver program authorized under RCW 74.09.700. Clients eligible for this program may receive personal care in their own home.~~

(5) **Chore** is a state-only funded program authorized under RCW 74.39A.110. Grandfathered clients may receive assistance with personal care in their own home.

(6) **Volunteer chore** is a state-funded program that provides volunteer assistance with household tasks to eligible clients.

(7) **Program of all-inclusive care for the elderly (PACE)** is a medicaid/medicare managed care program authorized under 42 CFR 460.2. Clients eligible for this program may receive personal care and medical services in their own home, in residential facilities, and in adult day health centers.

~~(8)~~ **Adult day health** is a supervised daytime program providing skilled nursing and rehabilitative therapy services in addition to core services outlined in WAC 388-106-0800.

~~(9)~~ **Adult day care** is a supervised daytime program providing core services, as defined under WAC 388-106-0800.

~~(10)~~ **GAU-funded residential care** is a state-funded program authorized under WAC 388-400-0025. Clients eligible for this program may receive personal care services in an adult family home or an adult residential care facility.

~~(11)~~ **Residential care discharge allowance** is a service that helps eligible clients to establish or resume living in their own home.

~~(12)~~ **Private duty nursing** is a medicaid service that provides an alternative to institutionalization in a hospital or nursing facility setting. Clients eligible for this program may receive at least four continuous hours of skilled nursing care on a day to day basis in their own home.

~~(13)~~ **Senior Citizens Services Act (SCSA)** is a program authorized under chapter 74.38 RCW. Clients eligible for this program may receive community-based services as defined in RCW 74.38.040.

~~(14)~~ **Respite program** is a program authorized under RCW 74.41.040 and WAC 388-106-1200. This program provides relief care for unpaid family or other caregivers of adults with a functional disability.

~~(15)~~ **Programs for persons with developmental disabilities** are discussed in chapter 388-823 through 388-853 WAC.

~~(16)~~ **Nursing facility.**

~~(17)~~ **New Freedom consumer directed services (NFCDS)** is a medicaid waiver program authorized under RCW 74.39A.030.

AMENDATORY SECTION (Amending WSR 08-05-026, filed 2/12/08, effective 3/14/08)

WAC 388-106-0020 Under the MPC, COPES, ((MNRW, MNIW,)) and chore programs, what services are not covered? The following types of services are not covered under MPC, COPES, ((MNRW, MNIW,)) and chore:

(1) Child care.

(2) Individual providers must not provide:

(a) Sterile procedures unless the provider is a family member or the client self directs the procedure;

(b) Administration of medications or other tasks requiring a licensed health professional unless these tasks are provided through nurse delegation, self-directed care, or the provider is a family member.

(3) Agency providers ~~(including family members who provide care while working as an agency provider,))~~ must not provide:

(a) Sterile procedures;

(b) Self-directed care;

(c) Administration of medications or other tasks requiring a licensed health care professional unless these tasks are provided through nurse delegation.

- (4) Services provided over the telephone.
- (5) Services to assist other household members not eligible for services.
- (6) Development of social, behavioral, recreational, communication, or other types of community living skills.
- (7) Nursing care.
- (8) Pet care.
- (9) Assistance with managing finances.
- (10) Respite.
- (11) Yard care.

AMENDATORY SECTION (Amending WSR 08-12-023, filed 5/29/08, effective 7/1/08)

WAC 388-106-0070 Will I be assessed in CARE? You will be assessed in CARE if you are applying for or receiving DDD services, COPEs, (~~(MNIW, MNRW)~~) MPC, chore, respite, adult day health, GAU-funded residential care, PACE, private duty nursing, New Freedom or long-term care services within the WMIP program.

If you are under the age of eighteen and within thirty calendar days of your next birthday, CARE determines your assessment age to be that of your next birthday.

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

WAC 388-106-0310 Am I eligible for COPEs-funded services? You are eligible for COPEs-funded services if you meet all of the following criteria. The department must assess your needs in CARE and determine that:

- (1) You are age:
 - (a) Eighteen or older and blind or have a disability, as defined in WAC (~~(388-475-0050)~~) 182-512-0050; or
 - (b) Sixty-five or older.
- (2) You meet financial eligibility requirements. This means the department will assess your finances and determine if your income and resources fall within the limits set in WAC 388-515-1505, community options program entry system (COPEs).
- (3) You:
 - (a) Are not eligible for medicaid personal care services (MPC); or
 - (b) Are eligible for MPC services, but the department determines that the amount, duration, or scope of your needs is beyond what MPC can provide.
- (4) Your CARE assessment shows you need the level of care provided in a nursing facility (or will likely need the level of care within thirty days unless COPEs services are provided) which is defined in WAC 388-106-0355(1).

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-106-0400	What services may I receive under medically needy residential waiver (MNRW)?
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WAC 388-106-0410	Am I eligible for MNRW-funded services?
WAC 388-106-0415	When do MNRW services start?
WAC 388-106-0420	How do I remain eligible for MNRW?
WAC 388-106-0425	How do I pay for MNRW services?
WAC 388-106-0430	Can I be employed and receive MNRW?
WAC 388-106-0435	Are there waiting lists for MNRW?
WAC 388-106-0500	What services may I receive under medically needy in-home waiver (MNIW)?
WAC 388-106-0510	Am I eligible for MNIW-funded services?
WAC 388-106-0515	When do MNIW services start?
WAC 388-106-0520	How do I remain eligible for MNIW?
WAC 388-106-0525	How do I pay for MNIW?
WAC 388-106-0530	Can I be employed and receive MNIW?
WAC 388-106-0535	Are there waiting lists for MNIW?

**WSR 12-17-100
EMERGENCY RULES
HEALTH CARE AUTHORITY
(Medicaid Program)**

[Filed August 17, 2012, 9:31 a.m., effective August 17, 2012, 9:31 a.m.]

Effective Date of Rule: Immediately.

Purpose: Upon order of the governor, the health care authority (HCA) reduced its budget expenditures for fiscal year 2011 and 2012 by eliminating a number of optional medical services from program benefits packages for clients twenty-one years of age and older. These medical services include vision, hearing, and dental care. Sections in chapter 182-501 WAC are being amended to reflect and support these program cuts.

Citation of Existing Rules Affected by this Order: Amending WAC 388-501-0050, 388-501-0060, 388-501-0065, and 388-501-0070.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: Chapter 564, Laws of 2011 (2ESSHB [2E2SHB] 1738).

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

Reasons for this Finding: Governor Gregoire issued Executive Order 10-04 on September 13, 2010, under the authority of RCW 43.88.110(7). In the executive order, the governor required DSHS and all other state agencies to reduce their expenditures in state fiscal year 2011 by approximately 6.3 percent. As a consequence of the executive order, funding for the benefits was eliminated effective January 1, 2011, as part of these regulatory amendments. HCA is proceeding with the permanent rule adoption process initiated by the CR-101 filed under WSR 10-22-12 [10-22-121]. HCA is currently preparing a draft for the permanent rule to share with stakeholders for their input. HCA anticipates filing the CR-102 sometime in Fall 2012.

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 4, 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 4, Repealed 0.

Date Adopted: August 17, 2012.

Kevin M. Sullivan
Rules Coordinator

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

WAC 182-501-0050 Healthcare general coverage. WAC ~~((388-501-0050))~~ 182-501-0050 through ~~((388-501-0065))~~ 182-501-0065 describe the healthcare services available to a client on a fee-for-service basis or to a client enrolled in a managed care organization (MCO) (defined in WAC ~~((388-538-050))~~ 182-538-050). For the purposes of this section, healthcare services includes treatment, equipment, related supplies, and drugs. WAC ~~((388-501-0070))~~ 182-501-0070 describes noncovered services.

(1) Healthcare service categories listed in WAC ~~((388-501-0060))~~ 182-501-0060 do not represent a contract for healthcare services.

(2) For the provider to receive payment, the client must be eligible for the covered healthcare service on the date the healthcare service is performed or provided.

(3) Under the ~~((department's))~~ agency's or the agency designee's fee-for-service programs, providers must be enrolled with the ~~((department))~~ agency or the agency's designee and meet the requirements of chapter ~~((388-502))~~ 182-502 WAC to be paid for furnishing healthcare services to clients.

(4) The ~~((department))~~ agency or the agency's designee pays only for the healthcare services that are:

(a) ~~((Within the scope of))~~ Included in the client's ((medical program)) healthcare benefits package as described in WAC 182-501-0060;

(b) Covered - See subsection (9) of this section;

(c) Ordered or prescribed by a healthcare provider who meets the requirements of chapter ~~((388-502))~~ 182-502 WAC;

(d) Medically necessary as defined in WAC ~~((388-500-0005))~~ 182-500-0070;

(e) Submitted for authorization, when required, in accordance with WAC ~~((388-501-0163))~~ 182-501-0163;

(f) Approved, when required, in accordance with WAC ~~((388-501-0165))~~ 182-501-0165;

(g) Furnished by a provider according to chapter ~~((388-502))~~ 182-502 WAC; and

(h) Billed in accordance with ~~((department))~~ agency or agency's designee program rules and the ~~((department's))~~ agency's current published billing instructions and numbered memoranda.

(5) The ~~((department))~~ agency or the agency's designee does not pay for any healthcare service requiring prior authorization from the ~~((department))~~ agency or the agency's designee, if prior authorization was not obtained before the healthcare service was provided; unless:

(a) The client is determined to be retroactively eligible for medical assistance; and

(b) The request meets the requirements of subsection (4) of this section.

(6) The ~~((department))~~ agency does not reimburse clients for healthcare services purchased out-of-pocket.

(7) The ~~((department))~~ agency does not pay for the replacement of ~~((department-purchased))~~ agency-purchased equipment, devices, or supplies which have been sold, gifted, lost, broken, destroyed, or stolen as a result of the client's carelessness, negligence, recklessness, or misuse unless:

(a) Extenuating circumstances exist that result in a loss or destruction of ~~((department-purchased))~~ agency-purchased equipment, devices, or supplies, through no fault of the client that occurred while the client was exercising reasonable care under the circumstances; or

(b) Otherwise allowed under ~~((chapter 388-500 WAC))~~ specific agency program rules.

(8) The ~~((department's))~~ agency's refusal to pay for replacement of equipment, device, or supplies will not extend beyond the limitations stated in specific ~~((department))~~ agency program rules.

(9) **Covered healthcare services.**

(a) Covered healthcare services are either:

(i) "Federally mandated" - Means the state of Washington is required by federal regulation (42 CFR 440.210 and 220) to cover the healthcare service for medicaid clients; or

(ii) "State-option" - Means the state of Washington is not federally mandated to cover the healthcare service but has chosen to do so at its own discretion.

(b) The ~~((department))~~ agency or the agency's designee may limit the scope, amount, duration, and/or frequency of covered healthcare services. Limitation extensions are authorized according to WAC ~~((388-501-0169))~~ 182-501-0169.

(10) Noncovered healthcare services.

(a) The ~~((department))~~ agency or the agency's designee does not pay for any healthcare service(~~(=~~

~~(i) That federal or state laws or regulations prohibit the department from covering; or~~

~~(ii))~~ listed as noncovered in WAC ~~((388-501-0070))~~ 182-501-0070 or in any other agency program rule. The ~~((department))~~ agency or the agency's designee evaluates a request for a noncovered healthcare service only if an exception to rule is requested according to the provisions in WAC ~~((388-501-0160))~~ 182-501-0160.

(b) When a noncovered healthcare service is recommended during the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) exam and then ordered by a provider, the ~~((department))~~ agency or the agency's designee evaluates the healthcare service according to the process in WAC ~~((388-501-0165))~~ 182-501-0165 to determine if it is medically necessary, safe, effective, and not experimental (see WAC ~~((388-534-0100))~~ 182-534-0100 for EPSDT rules).

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

WAC 182-501-0060 Healthcare coverage—((Scope of covered categories of service)) Program benefits packages—Scope of service categories. ~~((1))~~ This rule provides a list (see subsection (5)) of medical, dental, mental health, and substance abuse categories of service covered by the department under categorically needy (CN) medicaid, medically needy (MN) medicaid, Alien Emergency Medical (AEM), and medical care services (MCS) programs. MCS means the limited scope of care financed by state funds and provided to general assistance and Alcohol and Drug Addiction Treatment and Support Act (ADATSA) program clients.

~~(2) Not all categories of service listed in this section are covered under every medical program, nor do they represent a contract for services. Services are subject to the exclusions, limitations, and eligibility requirements contained in department rules.~~

~~(3) Services covered under each listed category:~~

~~(a) Are determined by the department after considering available evidence relevant to the service or equipment to:~~

~~(i) Determine efficacy, effectiveness, and safety;~~

~~(ii) Determine impact on health outcomes;~~

~~(iii) Identify indications for use;~~

~~(iv) Compare alternative technologies; and~~

~~(v) Identify sources of credible evidence that use and report evidence-based information.~~

~~(b) May require prior authorization (see WAC 388-501-0165), or expedited authorization when allowed by the department.~~

~~(c) Are paid for by the department and subject to review both before and after payment is made. The department or the client's managed care organization may deny or recover payment for such services, equipment, and supplies based on these reviews.~~

~~(4) The department does not pay for covered services, equipment, or supplies that:~~

~~(a) Require prior authorization from the department, if prior authorization was not obtained before the service was provided;~~

~~(b) Are provided by providers who are not contracted with the department as required under chapter 388-502 WAC;~~

~~(c) Are included in a department waiver program identified in chapter 388-515 WAC; or~~

~~(d) Are covered by a third-party payer (see WAC 388-501-0200), including medicare, if the third-party payer has not made a determination on the claim or has not been billed by the provider.~~

~~(5) **Scope of covered service categories.** The following table lists the department's covered categories of healthcare services:~~

~~• Under the four program columns (CN, MN, MCS, and AEM), the letter "C" means a service category is covered for that program, subject to any limitations listed in the specific medical assistance program WAC and department issuances.~~

~~• The letter "N" means a service category is not covered under that program.~~

~~• The letter "E" means the service category is available only if it is necessary to treat the client's emergency medical condition and may require prior authorization from the department.~~

~~• Refer to WAC 388-501-0065 for a description of each service category and for the specific program WAC containing the limitations and exclusions to services.~~

Service Categories	CN*	MN	MCS	AEM
(a) Adult day health	€	€	N	E
(b) Ambulance (ground and air)	€	€	€	E
(c) Blood processing/administration	€	€	€	E
(d) Dental services	€	€	€	E
(e) Detoxification	€	€	€	E
(f) Diagnostic services (lab & x ray)	€	€	€	E
(g) Family planning services	€	€	€	E
(h) Healthcare professional services	€	€	€	E
(i) Hearing care (audiology/hearing exams/aids)	€	€	€	E
(j) Home health services	€	€	€	E
(k) Hospice services	€	€	N	E

Service Categories	CN*	MN	MCS	AEM
(l) Hospital services--inpatient/outpatient	€	€	€	£
(m) Intermediate care facility/services for mentally retarded	€	€	€	£
(n) Maternity care and delivery services	€	€	N	£
(o) Medical equipment, durable (DME)	€	€	€	£
(p) Medical equipment, nondurable (MSE)	€	€	€	£
(q) Medical nutrition services	€	€	€	£
(r) Mental health services	€	€	€	£
(s) Nursing facility services	€	€	€	£
(t) Organ transplants	€	€	€	N
(u) Out-of-state services	€	€	N	£
(v) Oxygen/respiratory services	€	€	€	£
(w) Personal care services	€	€	N	N
(x) Prescription drugs	€	€	€	£
(y) Private duty nursing	€	€	N	£
(z) Prosthetic/orthotic devices	€	€	€	£
(aa) School medical services	€	€	N	N
(bb) Substance abuse services	€	€	€	£
(cc) Therapy--occupational/physical/speech	€	€	€	£
(dd) Vision care--(exams/lenses)	€	€	€	£

*Clients enrolled in the State Children's Health Insurance Program and the Children's Health Program receive CN scope of medical care:)) (1) This rule provides a table that lists:

(a) The categorically needy (CN) medicaid, medically needy (MN) medicaid, and medical care services (MCS) programs; and

(b) The benefits packages showing what service categories are included for each program.

(2) Within a service category included in a benefits package, some services may be covered and others noncovered.

(3) Services covered within each service category included in a benefits package:

(a) Are determined, in accordance with WAC 182-501-0050 and 182-501-0055 when applicable.

(b) May be subject to limitations, restrictions, and eligibility requirements contained in agency rules.

(c) May require prior authorization (see WAC 182-501-0165), or expedited authorization when allowed by the agency or the agency's designee.

(d) Are paid for by the agency or the agency's designee and subject to review both before and after payment is made. The agency or the agency's designee or the client's managed care organization may deny or recover payment for such services, equipment, and supplies based on these reviews.

(4) The agency or the agency's designee does not pay for covered services, equipment, or supplies that:

(a) Require prior authorization from the agency or the agency's designee, if prior authorization was not obtained before the service was provided;

(b) Are provided by providers who are not contracted with the agency or the agency's designee as required under chapter 182-502 WAC;

(c) Are included in an agency or an agency's designee waiver program identified in chapter 388-515 WAC; or

(d) Are covered by a third-party payor (see WAC 182-501-0200), including medicare, if the third-party payor has not made a determination on the claim or has not been billed by the provider.

(5) Other programs:

(a) Early and periodic screening, diagnosis, and treatment (EPSDT) services are not addressed in the table. For EPSDT services, see chapter 182-534 WAC and WAC 182-501-0050(10).

(b) Alien emergency medical (AEM) services are not addressed in the table. For AEM services, see chapter 388-438 WAC.

(6) **Scope of service categories.** The following table lists the agency's categories of healthcare services.

(a) Under the CN and MN headings there are two columns. One addresses clients twenty years of age and younger and the other addresses clients twenty-one years of age and older.

(b) Under the MCS heading, "**DL**" refers to the disability lifeline medical program.

(c) The letter "**Y**" means a service category is included for that program. Services within each service category are subject to limitations and restrictions listed in the specific medical assistance program WAC and agency issuances.

(d) The letter "**N**" means a service category is not included for that program.

(e) Refer to WAC 182-501-0065 for a description of each service category and for the specific program WAC containing the limitations and restrictions to services.

Service Categories	CN ¹ 20-	21+	MN 20-	21+	MCS DL
Adult day health	Y	Y	Y ²	N	N
Ambulance (ground and air)	Y	Y	Y	Y	Y
Blood processing/administration	Y	Y	Y	Y	Y

Service Categories	CN ¹ 20-	21+	MN 20-	21+	MCS DL
<u>Dental services</u>	<u>Y</u>	<u>N</u>	<u>Y</u>	<u>N</u>	<u>N</u>
<u>Detoxification</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Diagnostic services (lab and X ray)</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Healthcare professional services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Hearing evaluations</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Hearing aids</u>	<u>Y</u>	<u>N</u>	<u>Y</u>	<u>N</u>	<u>N</u>
<u>Home health services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Hospice services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Hospital services - Inpatient/outpatient</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Intermediate care facility/services for mentally retarded</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Maternity care and delivery services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>N</u>
<u>Medical equipment, durable (DME)</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Medical equipment, nondurable (MSE)</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Medical nutrition services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Mental health services:</u>					
• <u>Inpatient care</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
• <u>Outpatient community mental health services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u> ³
• <u>Psychiatrist visits</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u> ⁴
• <u>Medication management</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Nursing facility services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Organ transplants</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Out-of-state services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>N</u>
<u>Oxygen/respiratory services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Personal care services</u>	<u>Y</u>	<u>Y</u>	<u>N</u>	<u>N</u>	<u>N</u>
<u>Prescription drugs</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Private duty nursing</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>N</u>
<u>Prosthetic/orthotic devices</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Psychological evaluation</u> ⁵	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>N</u>
<u>Reproductive health services (includes family planning and TAKE CHARGE)</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Substance abuse services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Therapy - Occupational, physical and speech</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Vision care - Exams, refractions, and fittings</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Vision - Frames and lenses</u>	<u>Y</u>	<u>N</u>	<u>Y</u>	<u>N</u>	<u>N</u>

¹ Clients enrolled in the children's health insurance program and the apple health for kids program receive CN-scope of medical care.

² Restricted to 18-20 year olds.

³ Restricted to DL clients enrolled in managed care.

⁴ DL clients can receive one psychiatric diagnostic evaluation per year and eleven monthly visits per year for medication management.

⁵ Only two allowed per lifetime.

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

WAC 182-501-0065 Healthcare coverage—Description of (~~covered~~) categories of service. This rule provides a brief description of the medical, dental, mental health, and substance abuse service categories listed in the table in WAC

((388-501-0060)) 182-501-0060. The description of services under each category is not intended to be all inclusive.

(1) For categorically needy (CN), medically needy (MN), and medical care services (MCS), refer to the WAC citations listed in the following descriptions for specific details regarding each service category. ((For Alien Emer-

gency Medical (AEM) services, refer to WAC 388-438-0110.)

(2) The following service categories are subject to the exclusions, limitations, restrictions, and eligibility requirements contained in ~~((department))~~ agency rules:

(a) **Adult day health**—~~((Skilled nursing services, counseling, therapy (physical, occupational, speech, or audiology), personal care services, social services, general therapeutic activities, health education, nutritional meals and snacks, supervision, and protection. [WAC 388-71-0702 through 388-71-0776]))~~ A supervised daytime program providing skilled nursing and rehabilitative therapy services in addition to the core services of adult day care. Adult day health services are for adults with medical or disabling conditions that require the intervention or services of a registered nurse or licensed rehabilitative therapist acting under the supervision of the client's physician or ARNP. (WAC 388-71-0706, 388-71-0710, 388-71-0712, 388-71-0714, 388-71-0720, 388-71-0722, 388-71-0726, and 388-71-0758)

(b) **Ambulance**—Emergency medical transportation and ambulance transportation for nonemergency medical needs. ~~(([WAC 388-546-0001 through 388-546-4000]))~~ (WAC 182-546-0001 through 182-546-4000)

(c) **Blood processing/administration**—Blood and/or blood derivatives, including synthetic factors, plasma expanders, and their administration. ~~(([WAC 388-550-1400 and 388-550-1500]))~~ (WAC 182-550-1400 and 182-550-1500)

(d) **Dental services**—Diagnosis and treatment of dental problems including emergency treatment and preventive care. ~~(([Chapters 388-535 and 388-535A WAC]))~~ (Chapters 182-535 and 182-535A WAC)

(e) **Detoxification**—Inpatient treatment performed by a certified detoxification center or in an inpatient hospital setting. ~~(([WAC 388-800-0020 through 388-800-0035; and (388-550-1100)]))~~ 182-550-1100)

(f) **Diagnostic services**—Clinical testing and imaging services. ~~(([WAC 388-531-0100; 388-550-1400 and 388-550-1500]))~~ (WAC 182-531-0100; 182-550-1400 and 182-550-1500)

(g) ~~((**Family planning services**—Gynecological exams; contraceptives, drugs, and supplies, including prescriptions; sterilization; screening and treatment of sexually transmitted diseases; and educational services. [WAC 388-532-530]~~

~~((h))~~ **Healthcare professional services**—Office visits, emergency oral health, emergency room, nursing facility, home-based, and hospital-based care; surgery, anesthesia, pathology, radiology, and laboratory services; obstetric services; kidney dialysis and renal disease services; osteopathic care, podiatry services, physiatry, and pulmonary/respiratory services; and allergen immunotherapy. ~~(([Chapter 388-531 WAC]~~

~~((h))~~ (Chapter 182-531 WAC)

(h) **Hearing (care) evaluations**—Audiology; diagnostic evaluations; hearing exams and testing ~~((; and hearing aids. [WAC 388-544-1200 and 388-544-1300; 388-545-700; and 388-531-0100]))~~ (WAC 182-531-0100 and 182-531-0375)

(i) **Hearing aids**—(chapter 182-547 WAC)

(j) **Home health services**—Intermittent, short-term skilled nursing care, physical therapy, speech therapy, home

infusion therapy, and health aide services, provided in the home. ~~(([WAC 388-551-2000 through 388-551-2220]))~~ (WAC 182-551-2000 through 182-551-2220)

(k) **Hospice services**—Physician services, skilled nursing care, medical social services, counseling services for client and family, drugs, medications (including biologicals), medical equipment and supplies needed for palliative care, home health aide, homemaker, personal care services, medical transportation, respite care, and brief inpatient care. This benefit also includes services rendered in a hospice care center and pediatric palliative care services. ~~(([WAC 388-551-1210 through 388-551-1850]))~~ (WAC 182-551-1210 through 182-551-1850)

(l) **Hospital services—Inpatient/outpatient**—Emergency room; hospital room and board (includes nursing care); inpatient services, supplies, equipment, and prescription drugs; surgery, anesthesia; diagnostic testing, laboratory work, blood/blood derivatives; radiation and imaging treatment and diagnostic services; and outpatient or day surgery, and obstetrical services. ~~(([Chapter 388-550 WAC]))~~ (Chapter 182-550 WAC)

(m) **Intermediate care facility/services for mentally retarded**—Habilitative training, health-related care, supervision, and residential care. ~~(([Chapter 388-835 WAC]))~~ (Chapter 182-550 WAC)

(n) **Maternity care and delivery services**—Community health nurse visits, nutrition visits, behavioral health visits, midwife services, maternity and infant case management services, family planning services and community health worker visits. ~~(([WAC 388-533-0330]))~~ (WAC 182-533-0300)

(o) **Medical equipment, durable (DME)**—Wheelchairs, hospital beds, respiratory equipment; prosthetic and orthotic devices; casts, splints, crutches, trusses, and braces. ~~(([WAC 388-543-1100]))~~ (Chapter 182-543 WAC)

(p) **Medical equipment, nondurable (MSE)**—Antiseptics, germicides, bandages, dressings, tape, blood monitoring/testing supplies, braces, belts, supporting devices, decubitus care products, ostomy supplies, pregnancy test kits, syringes, needles, ~~((transcutaneous electrical nerve stimulators (TENS) supplies;))~~ and urological supplies. ~~(([WAC 388-543-2800]))~~ (Chapter 182-543 WAC)

(q) **Medical nutrition services**—Enteral and parenteral nutrition, including supplies. ~~(([Chapters 388-553 and 388-554 WAC]))~~ (Chapters 182-553 and 182-554 WAC)

(r) **Mental health services**—~~((Inpatient and outpatient psychiatric services and community mental health services. [Chapter 388-865 WAC]))~~ Crisis mental health services are available to state residents through the regional support networks (RSNs).

(i) Inpatient care - Voluntary and involuntary admissions for psychiatric services. (WAC 182-550-2600)

(ii) Outpatient (community mental health) services - Nonemergency, nonurgent counseling. (WAC 182-531-1400, 388-865-0215, and 388-865-0230)

(iii) Psychiatric visits. (WAC 182-531-1400 and 388-865-0230)

(iv) Medication management. (WAC 182-531-1400)

(s) **Nursing facility services**—Nursing, therapies, dietary, and daily care services. ~~(([Chapter 388-97 WAC]))~~ (Chapter 182-550 WAC)

(t) **Organ transplants**—Solid organs, e.g., heart, kidney, liver, lung, pancreas, and small bowel; bone marrow and peripheral stem cell; skin grafts; and corneal transplants. (~~([WAC 388-550-1900 and 388-550-2000, and 388-556-0400])~~) (WAC 182-550-1900 and 182-556-0400)

(u) **Out-of-state services**—(~~(Emergency services; prior authorized care. Services provided in bordering cities are treated as if they were provided in state. [WAC 388-501-0175 and 388-501-0180; 388-531-1100; and 388-556-0500])~~) See WAC 182-502-0120 for payment of services out-of-state.

(v) **Oxygen/respiratory services**—Oxygen, oxygen equipment and supplies; oxygen and respiratory therapy, equipment, and supplies. (~~([Chapter 388-552 WAC])~~) (Chapter 182-552 WAC)

(w) **Personal care services**—Assistance with activities of daily living (e.g., bathing, dressing, eating, managing medications) and routine household chores (e.g., meal preparation, housework, essential shopping, transportation to medical services). (~~([WAC 388-106-0010, ([388-106-10300, [388-106-10400, [388-106-10500, [388-106-10600, [388-106-10700, [388-106-10720 and [388-106-10900])~~])) 388-106-0200, 388-106-0300, 388-106-0400, 388-106-0500, 388-106-0700, and 388-106-0745)

(x) **Prescription drugs**—Outpatient drugs (including in nursing facilities), both generic and brand name; drug devices and supplies; some over-the-counter drugs; oral, topical, injectable drugs; vaccines, immunizations, and biologicals; and family planning drugs, devices, and supplies. (~~([WAC 388-530-1100])~~) (WAC 182-530-2000.) Additional coverage for medications and prescriptions is addressed in specific program WAC sections.

(y) **Private duty nursing**—Continuous skilled nursing services provided in the home, including client assessment, administration of treatment, and monitoring of medical equipment and client care for clients seventeen years of age and under. (~~([WAC 388-551-3000])~~) (WAC 182-551-3000.) For benefits for clients eighteen years of age and older, see WAC 388-106-1000 through 388-106-1055.

(z) **Prosthetic/orthotic devices**—Artificial limbs and other external body parts; devices that prevent, support, or correct a physical deformity or malfunction. (~~([WAC 388-543-1100])~~) (WAC 182-543-1100)

(aa) (~~(**School medical services**—Medical services provided in schools to children with disabilities under the Individuals with Disabilities Education Act (IDEA). [Chapter 388-537 WAC]~~)

(~~(bb)~~) **Psychological evaluation**—Complete diagnostic history, examination, and assessment, including the testing of cognitive processes, visual motor responses, and abstract abilities. (WAC 388-865-0610)

(bb) **Reproductive health services**—Gynecological exams; contraceptives, drugs, and supplies, including prescriptions; sterilization; screening and treatment of sexually transmitted diseases; and educational services. (WAC 182-532-530)

(cc) **Substance abuse services**—Chemical dependency assessment, case management services, and treatment services. (~~([WAC 388-533-0701 through 388-533-0730; 388-556-0100 and 388-556-0400])~~) (WAC 182-533-0701 through

182-533-0730; 182-556-0100 and 182-556-0400; and 388-800-0020(~~(j)~~)

(~~(ee)~~) **Therapy—Occupational/physical/speech**—Evaluations, assessments, and treatment. (~~([WAC 388-545-300, 388-545-500, and 388-545-700]~~)

(~~(dd)~~) (Chapter 182-545 WAC)

(~~(ee)~~) **Vision care**—Eye exams, refractions, (~~(frames, lenses;)~~) fittings, visual field testing, vision therapy, ocular prosthetics, and surgery. (~~([WAC 388-544-0250 through 388-544-0550])~~) (WAC 182-531-1000)

(~~(ff)~~) **Vision hardware**—Frames and lenses. (Chapter 182-544 WAC)

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

WAC 182-501-0070 Healthcare coverage—Noncovered services. (1) The (~~(department)~~) agency or the agency's designee does not pay for any healthcare service not listed or referred to as a covered healthcare service under the medical programs described in WAC (~~(388-501-0060)~~) 182-501-0060, regardless of medical necessity. For the purposes of this section, healthcare services includes treatment, equipment, related supplies, and drugs. Circumstances in which clients are responsible for payment of healthcare services are described in WAC (~~(388-502-0160)~~) 182-502-0160.

(2) This section does not apply to healthcare services provided as a result of the early and periodic screening, diagnosis, and treatment (EPSDT) program as described in chapter (~~(388-534)~~) 182-534 WAC.

(3) The (~~(department)~~) agency or the agency's designee does not pay for any ancillary healthcare service(s) provided in association with a noncovered healthcare service.

(4) The following list of noncovered healthcare services is not intended to be exhaustive. Noncovered healthcare services include, but are not limited to:

(a) Any healthcare service specifically excluded by federal or state law;

(b) Acupuncture, Christian Science practice, faith healing, herbal therapy, homeopathy, massage, massage therapy, naturopathy, and sanipractice;

(c) Chiropractic care for adults;

(d) Cosmetic, reconstructive, or plastic surgery, and any related healthcare services, not specifically allowed under WAC 388-531-0100(4)(-);

(e) Discography;

(f) Ear or other body piercing;

(g) Face lifts or other facial cosmetic enhancements;

(h) Fertility, infertility or sexual dysfunction testing, and related care, drugs, and/or treatment including but not limited to:

(i) Artificial insemination;

(ii) Donor ovum, sperm, or surrogate womb;

(iii) In vitro fertilization;

(iv) Penile implants;

(v) Reversal of sterilization; and

(vi) Sex therapy.

(i) Gender reassignment surgery and any surgery related to trans-sexualism, gender identity disorders, and body dysmorphism, and related healthcare services or procedures,

including construction of internal or external genitalia, breast augmentation, or mammoplasty;

(j) Hair transplants, epilation (hair removal), and electrolysis;

(k) Marital counseling;

(l) Motion analysis, athletic training evaluation, work hardening condition, high altitude simulation test, and health and behavior assessment;

(m) Nonmedical equipment;

(n) Penile implants;

(o) Prosthetic testicles;

(p) Psychiatric sleep therapy;

(q) Subcutaneous injection filling;

(r) Tattoo removal;

(s) Transport of Involuntary Treatment Act (ITA) clients to or from out-of-state treatment facilities, including those in bordering cities;

(t) Upright magnetic resonance imaging (MRI); and

(u) Vehicle purchase - new or used vehicle.

(5) For a specific list of noncovered healthcare services in the following service categories, refer to the WAC citation:

(a) Ambulance transportation and nonemergent transportation as described in chapter ~~((388-546))~~ 182-546 WAC;

(b) Dental services for clients twenty years of age and younger as described in chapter ~~((388-535))~~ 182-535 WAC;

(c) ~~((Dental services for clients twenty-one years of age and older as described in chapter 388-535 WAC;~~

~~((d)))~~ Durable medical equipment as described in chapter ~~((388-543))~~ 182-543 WAC;

~~((e)))~~ (d) Hearing ~~((care services))~~ aids for clients twenty years of age and younger as described in chapter ~~((388-547))~~ 182-547 WAC;

~~((f)))~~ (e) Home health services as described in WAC ~~((388-551-2130))~~ 182-551-2130;

~~((g)))~~ (f) Hospital services as described in WAC ~~((388-550-1600))~~ 182-550-1600;

~~((h) Physician-related))~~ (g) Healthcare professional services as described in WAC ~~((388-531-0150))~~ 182-531-0150;

~~((i)))~~ (h) Prescription drugs as described in chapter ~~((388-530))~~ 182-530 WAC; ~~((and~~

~~((j)))~~ (i) Vision care ~~((services))~~ hardware for clients twenty years of age and younger as described in chapter ~~((388-544))~~ 182-544 WAC; and

(j) Vision care exams as described in WAC 182-531-1000.

(6) A client has a right to request an administrative hearing, if one is available under state and federal law. When the ~~((department))~~ agency or the agency's designee denies all or part of a request for a noncovered healthcare service(s), the ~~((department))~~ agency or the agency's designee sends the client and the provider written notice, within ten business days of the date the decision is made, that includes:

(a) A statement of the action the ~~((department))~~ agency or the agency's designee intends to take;

(b) Reference to the specific WAC provision upon which the denial is based;

(c) Sufficient detail to enable the recipient to:

(i) Learn why the ~~((department's))~~ agency's or the agency designee's action was taken; and

(ii) Prepare a response to the ~~((department's))~~ agency's or the agency's designee decision to classify the requested healthcare service as noncovered.

(d) The specific factual basis for the intended action; and

(e) The following information:

(i) Administrative hearing rights;

(ii) Instructions on how to request the hearing;

(iii) ~~((Acknowledgement))~~ Acknowledgment that a client may be represented at the hearing by legal counsel or other representative;

(iv) Instructions on how to request an exception to rule (ETR);

(v) Information regarding ~~((department-covered))~~ agency-covered healthcare services, if any, as an alternative to the requested noncovered healthcare service; and

(vi) Upon the client's request, the name and address of the nearest legal services office.

(7) A client can request an exception to rule (ETR) as described in WAC ~~((388-501-0160))~~ 182-501-0160.

WSR 12-17-103

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 12-186—Filed August 17, 2012, 2:14 p.m., effective August 18, 2012]

Effective Date of Rule: August 18, 2012.

Purpose: Amend recreational fishing rules.

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

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2012 return of sockeye will be sufficient to provide for the Lake Wenatchee spawning escapement goal. This means that additional fish will be present to provide for sport fishing opportunity. There is insufficient time to adopt permanent rules.

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

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

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

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

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

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

Date Adopted: August 17, 2012.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900X Exceptions to statewide rules—Lake Wenatchee. Notwithstanding the provisions of WAC 232-28-619, effective August 18 one hour before official sunrise, through September 3, 2012, a person may fish for salmon in Lake Wenatchee. Daily limit five sockeye, minimum size 12 inches in length. Selective gear rules and night closure in effect for all species. Bull trout, steelhead, and Chinook salmon must be released unharmed without removing the fish from the water. All sockeye with a floy (anchor) tag attached and/or one or more round 1/4 inch in diameter holes punched in the caudal (tail) fin must be released.

REPEALER

The following section of the Washington Administrative Code is repealed effective August 18, 2012:

WAC 232-28-61900W Exceptions to statewide rules—Lake Wenatchee. (12-166)

The following section of the Washington Administrative Code is repealed effective September 4, 2012:

WAC 232-28-61900X Exceptions to statewide rules—Lake Wenatchee.

**WSR 12-17-104
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-182—Filed August 17, 2012, 2:22 p.m., effective August 17, 2012, 2:22 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-10500F, 220-56-12400K, 220-56-28200L and 232-28-62100P; and amending WAC 220-56-105, 220-56-124, 220-56-282, and 232-28-621.

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

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

Reasons for this Finding: The department is in the process of adopting permanent rules that are necessary to implement the personal-use fishing plans agreed to with resource comanagers at the North of Falcon proceedings. These emergency rules are necessary to comply with agreed-to management plans. The Puget Sound sturgeon change was intended as part of the sportfishing rule-making process for 2012-2013 and is consistent with Columbia River compact action.

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 4, Amended 0, Repealed 4.

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

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

Date Adopted: August 17, 2012.

Philip Anderson
Director

NEW SECTION

WAC 220-56-10500G River mouth definitions. Notwithstanding the provisions of WAC 220-56-105, when pertaining to angling for the White Salmon River, any reference to the mouth shall be construed to include those waters upstream and inside of a line projected between the outermost uplands at the mouth. The term "outermost uplands" shall be construed to mean those lands not covered by water during an ordinary high tide.

NEW SECTION

WAC 220-56-12400L Unlawful provisions—Hood-sport Hatchery. Notwithstanding the provisions of WAC 220-56-124, effective immediately until further notice, those waters of Catch Record Card Area 12 within a 2,000-foot arc seaward of yellow buoys at the mouth of Finch Creek at the Hoodsport Salmon Hatchery are regulated as provided for in this section: Special daily limit of four salmon, of which no more than two salmon may be Chinook salmon greater than 24 inches in length. Release chum and wild Chinook.

NEW SECTION

WAC 220-56-28200M Sturgeon—Areas, seasons, limits and unlawful acts—Puget Sound. Notwithstanding the provisions of WAC 220-56-282 and WAC 232-28-619, effective immediately until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) Puget Sound - It is unlawful to catch and release white sturgeon in Puget Sound and all Puget Sound tributary

ies unless the season for those waters is open for salmon or game fish.

NEW SECTION

WAC 232-28-62100Q Puget Sound salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-621, effective immediately until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) **Catch Record Card Area 5:** Effective beginning September 15, lawful to retain wild coho.

(2) **Catch Record Card Area 7:** Waters east of a line from Gooseberry Point to Sandy Point, closed September 4 through October 31.

(3) **Catch Record Card Area 8-2:** Waters west of Tulalip Bay and within 2,000 feet of shore from the pilings at Old Bower's Resort, to a fishing boundary marker approximately 1.4 miles northwest of Hermosa Point - immediately through September 3, open only from Friday through 11:59 a.m. Monday of each week; and September 8 through September 23, open only Saturday and Sunday of each week - Daily limit of 2 salmon. Anglers in possession of a valid two-pole endorsement may use up to two lines while fishing. September 24 through September 30 - Same rules as remainder of Area 8-2.

(4) **Catch Record Card Area 10:** Waters of Elliott Bay east of a line from West Point to Alki Point, closed through August 31.

(5) **Catch Record Card Area 12:** Waters south of Ayock Point - release wild Chinook.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-56-10500F	River mouth definitions. (12-77)
WAC 220-56-12400K	Unlawful provisions—Hood-sport Hatchery. (12-69)
WAC 220-56-28200L	Sturgeon—Areas, seasons, limits and unlawful acts—Puget Sound. (12-69)
WAC 232-28-62100P	Puget Sound salmon—Saltwater seasons and daily limits. (12-69)

**WSR 12-17-105
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-187—Filed August 17, 2012, 4:09 p.m., effective August 20, 2012, 12:01 a.m.]

Effective Date of Rule: August 20, 2012, 12:01 a.m.
Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62100R; and amending WAC 232-28-621.

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

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

Reasons for this Finding: Estimates indicate that the encounters of wild chinook in Areas 9 and 10 have exceeded the preseason expectations. This regulation prohibits the retention of chinook in Areas 9 and 10 in order to minimize encounters with wild chinook and ensure compliance with conservation objectives and agreed-to management plans. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 17, 2012.

Philip Anderson
Director

NEW SECTION

WAC 232-28-62100R Puget Sound salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-621, effective immediately until further notice, it is unlawful to violate the provisions below. Unless otherwise amended, all permanent rules remain in effect:

(1) **Catch Record Card Area 9:**

(a) Edmonds Fishing Pier - Open until further notice - Daily limit 2 salmon, not more than one of which may be a Chinook. Release chum.

(b) South of line from Southweather Bluff to Olele Point - Open until further notice to salmon fishing - Daily limit 2 salmon. Release Chinook and chum.

(b) All other waters of Area 9 - August 20 through August 31 - Daily limit 2 salmon. Release Chinook and chum.

(2) **Catch Record Card Area 10:**

(a) Elliot Bay Fishing Pier at Terminal 86, Seacrest Pier, Waterman Pier, Bremerton Boardwalk, and Illahee State Park Pier - Open until further notice - Daily limit 2, only 1 of which may be a Chinook. Release chum.

(b) Sinclair Inlet Fishery - Open until further notice - Daily limit 2. Release chum and wild Chinook.

(c) Waters of Elliott Bay east of a line from West Point to Alki Point are closed.

(d) Waters of Shilshole Bay east of a line from Meadow Point to West Point are closed.

(e) All other waters of Area 10 - August 20 through August 31 - Daily limit 2 salmon. Release Chinook and chum.

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

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. September 1, 2012:

WAC 232-28-62100R Puget Sound salmon—Salt-water seasons and daily limits.

**WSR 12-17-129
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 12-188—Filed August 21, 2012, 2:12 p.m., effective August 22, 2012, 12:01 a.m.]

Effective Date of Rule: August 22, 2012, 12:01 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-05100Q; and amending WAC 220-52-051.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

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

Reasons for this Finding: The 2012 state/tribal shrimp harvest management plans for the Strait of Juan de Fuca and Puget Sound require adoption of harvest seasons contained in this emergency rule. This emergency rule (1) closes Salmon Management Area (SMA) 1A to spot shrimp fishing, as the quotas have been reached; (2) places a lower weekly spot shrimp limit in (SMA) Area 1A until the closure takes effect; and (3) opens SMA 1B. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: August 21, 2012.

Lori Preuss
for Philip Anderson
Director

NEW SECTION

WAC 220-52-05100R 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 (SMA) 1A, 1B, 1C, 2W, 3 and 6 are open to the harvest of all shrimp species, effective immediately until further notice, except as provided for in this section:

i) All waters of the Discovery Bay Shrimp District are closed.

ii) All waters of SMA 1C, 2W, and Catch Areas 23A-E, 23A-S, 23B, 23D and 25A are closed to the harvest of spot shrimp.

iii) Effective 12:01 a.m. August 24, 2012, all waters of SMA 1A are closed, except that those waters of SMA 1A south of line projected at 48°31.5' N latitude are open to the harvest of all species except spot shrimp.

iv) All waters of SMA 1B are closed until 12:01 a.m. August 24, 2012.

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

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

i) Effective immediately until 12:01 a.m. August 24, 2012, it is unlawful for the total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 150 pounds per week in SMA 1A.

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

(e) Only pots with a minimum mesh size of 1 inch may be pulled on calendar days when fishing for or retaining spot shrimp. Mesh size of 1 inch is defined as a mesh opening that a 7/8-inch square peg will pass through, excluding the entrance tunnels, except for flexible (web) mesh pots, where the mesh must be a minimum of 1 3/4-inch stretch measure. Stretch measure is defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh, when the mesh is stretched vertically.

(2) Shrimp beam trawl gear:

(a) SMA 3 (outside of the Discovery Bay Shrimp District, Sequim Bay and Catch Area 23D) is open, effective 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.

(b) Those portions of Catch Areas 21A and 22A within SMA 1B are open, effective immediately until further notice.

(c) All waters of Catch Area 20A are open, effective immediately until further notice.

(3) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 22, 2012:

WAC 220-52-05100Q Puget Sound shrimp beam trawl fishery—Season. (12-179)

WSR 12-17-155
EMERGENCY RULES
DEPARTMENT OF
EARLY LEARNING

[Filed August 22, 2012, 10:21 a.m., effective August 22, 2012, 10:21 a.m.]

Effective Date of Rule: Immediately.

Purpose: To make technical corrections based on input from the department of health and local health jurisdictions.

Citation of Existing Rules Affected by this Order: Amending WAC 170-296A-0010, 170-296A-2325, 170-296A-3200, 170-296A-3210, 170-296A-3750, 170-296A-3875, 170-296A-3925, 170-296A-4325, 170-296A-4650, 170-296A-4950, 170-296A-5175, 170-296A-7075, 170-296A-7225, 170-296A-7250, 170-296A-7375, 170-296A-7700, and 170-296A-7750.

Statutory Authority for Adoption: Chapter 43.215 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: The changes being made include corrections to bleach mixtures for sanitizing and disinfecting, updating conditions that are notifiable to the health department and required rail height. All of these changes are necessary to protect the health and safety of children in child care.

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 17, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 17, Repealed 0.

Date Adopted: August 21, 2012.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-0010 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates otherwise. Certain definitions appear in the section the term is used if the definition applies only to a specific section or sections:

"Accessible to children" means areas of the facility and materials that the children can easily get to on their own.

"Agency" as used in this chapter, has the same meaning as in RCW 43.215.010 (1) ~~((and (1))~~(c).

"Available" means accessible and ready for use or service.

"Bathroom" means any room containing a built-in flush-type toilet.

"Capacity" means the maximum number of children the licensee is authorized by the department to have in care at any given time.

"Child" means an individual who is younger than age thirteen, including any infant, toddler, preschool-age child, or school-age child as defined in this chapter.

"Child abuse or neglect" has the same meaning as "abuse or neglect" under RCW 26.44.020 and chapter 388-15 WAC.

"Child care" means the developmentally appropriate care, protection, and supervision of children that is designed to promote positive growth and educational experiences for children outside the child's home for periods of less than twenty-four hours a day.

"Clean" or **"cleaning"** means to remove dirt and debris (such as soil, food, blood, urine, or feces) by scrubbing and washing with a soap or detergent solution and rinsing with water. Cleaning is the first step in the process of sanitizing or disinfecting a surface or item.

"Confidential" means the protection of personal information, such as the child's records, from persons who are not authorized to see or hear it.

"Denial of a license" means an action by the department to not issue a child care license to an applicant for an initial license, or to a licensee operating under an initial license seeking a nonexpiring full license, based on the applicant's or initial licensee's inability or failure to meet the requirements of chapter 43.215 RCW or requirements adopted by the department pursuant to chapter 43.215 RCW.

"Department" or **"DEL"** means the Washington state department of early learning.

"Developmentally appropriate" means curriculum, materials or activities provided at a level that is consistent with the abilities or learning skills of the child.

"Discipline" means a method used to redirect a child in order to achieve a desired behavior.

"Disinfect" or **"disinfecting"** means to eliminate virtually all germs on a surface by the process of cleaning and rinsing, followed by:

(a) A chlorine bleach and water solution of ~~((appropriate concentration))~~ one tablespoon of chlorine bleach to one quart of cool water; or

(b) Other disinfectant product if used strictly according to the manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, adequate time to allow the product to dry or rinsing if applicable, and appropriateness for use on the surface to be disinfected. Any disinfectant used on food contact surfaces or toys must be labeled safe for food contact surfaces.

"DOH" means the Washington state department of health.

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

"Enforcement action" means a department issued:

(a) Denial, suspension, revocation or modification of a license;

(b) Probationary license;

(c) Civil monetary penalty (fine); or

(d) Disqualification from having unsupervised access to children in care.

"Family home child care" means a facility licensed by the department where child care is provided for twelve or fewer children in the family living quarters where the licensee resides as provided in RCW 43.215.010 (1)(c).

"Family living quarters" means a licensee's or license applicant's residence and other spaces or buildings on the premises that meet the facility requirements of this chapter and are approved by the department for child care.

"Fine" has the same meaning as "civil monetary penalty," "civil fines," or "monetary penalty" under chapter 43.215 RCW.

"Inaccessible to children" means an effective method or barrier that reasonably prevents a child's ability to reach, enter, or use items or areas.

"Infant" means a child age birth through eleven months of age.

"Licensed space" means the indoor and outdoor space on the premises approved by the department for the purpose of providing licensed child care.

"Licensee" for the purposes of this chapter, means the individual listed on a family home child care license issued by the department of early learning authorizing that individual to provide child care under the requirements of this chapter and chapter 43.215 RCW.

"Licensor" means an individual employed by the department and designated by the director to inspect and monitor an agency or other child care facility for compliance with the requirements of this chapter and chapter 43.215 RCW.

"MERIT" means the managed education registry information tool used to track professional development for early learning professionals. See also "STARS."

"Modification of a license" means department action to change the conditions identified on a current license.

"Nonexpiring full license" or **"nonexpiring license"** means a full license that is issued to a licensee following the initial licensing period as provided in WAC 170-296A-1450.

"Nonprescription medication" means any of the following:

(a) Nonaspirin and aspirin fever reducers or pain relievers;

(b) Nonnarcotic cough suppressants;

(c) Cold or flu medications;

(d) Antihistamines or decongestants;

(e) Teething pain reducers;

(f) Vitamins;

(g) Ointments or lotions specially intended to relieve itching;

(h) Diaper ointments and talc free powders specially used in the diaper area of children;

(i) Sun screen;

(j) Hand sanitizer gels; or

(k) Hand wipes with alcohol.

"One year of experience" means at least twelve months of early learning experience as demonstrated by a resume and references:

(a) In a supervisory role in a child care setting where the individual was responsible for supervising staff and complying with licensing standards; or

(b) As a Washington state:

(i) Child care center or school age center director, program supervisor, or lead teacher as defined in chapters 170-151 and 170-295 WAC; or

(ii) Family home child care licensee or qualified primary staff person.

"Overnight care" means child care provided for a child anytime between the hours of eight o'clock at night and six o'clock in the morning that includes a sleep period for the child.

"Personal needs" means an individual's hygiene, toileting, medication, cleansing, eating or clothing needs. "Personal needs" does not mean smoking or use of tobacco products, illegal drug use or misuse of prescription drugs, conducting business or related activities, sleeping or napping, screen time, or leaving children in care unattended.

"Physical restraint" means the practice of rendering a child helpless or keeping a child in captivity.

"Poison" for the purposes of this chapter includes, but is not limited to, substances, chemicals, chemical compounds (other than naturally occurring compounds such as water or salt), or similar items, that even in small quantities are likely to cause injury or illness if it is swallowed or comes into contact with a child's skin, eyes, mouth, or mucus membranes.

"Premises" means the licensed or unlicensed space at the licensed address including, but not limited to, buildings, land and residences.

"Preschool age child" means a child age thirty months through five years of age who is not attending kindergarten or elementary school.

"Primary staff person" means a staff person other than the licensee who has been authorized by the department to care for and have unsupervised access to children in care.

"RCW" means Revised Code of Washington.

"Revocation" or **"revoke"** means the formal action by the department to close a child care business and take the license due to the licensee's failure to comply with chapter 43.215 RCW or requirements adopted pursuant to chapter 43.215 RCW.

"Sanitize" means to reduce the number of microorganisms on a surface by the process of:

(a) Cleaning and rinsing, followed by using:

(i) A chlorine bleach and water solution of ~~((appropriate concentration))~~ three-quarters teaspoon of chlorine bleach to one quart of cool water; or

(ii) Another sanitizer product if used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry, and appropriateness for use on the surface to be sanitized. If used on food contact surfaces or toys, a sanitizer product must be labeled as safe for food contact surfaces; or

(b) For laundry and dishwasher use only, "sanitize" means use of a bleach and water solution or temperature control.

"School age child" means a child not less than five years of age through twelve years of age who is attending kindergarten or school.

"Screen time" means watching, using or playing television, computers, video games, video or DVD players, mobile communication devices, and similar devices.

"Sleeping equipment" includes a bed, cot, mattress, mat, crib, bassinet, play yard or "pack and play." "Sleeping equipment" does not include any car seat or infant swing.

"Staff" unless referring specifically to a "primary staff person," means any primary staff person, assistant, or volunteer helping to provide child care, or a household member acting in the capacity of a primary staff person, assistant or volunteer, whether compensated or not compensated.

"STARS" means the state training and registry system.

"Suspension of a license" means a formal department action to stop a license pending a department decision regarding further enforcement action.

"Toddler" means a child age twelve months through twenty-nine months of age.

"Unlicensed space" means the indoor and outdoor areas of the premises, not approved as licensed space by DEL, that the licensee must make inaccessible to the children during child care hours.

"Unsupervised access" has the same meaning as "unsupervised access" in WAC 170-06-0020.

"WAC" means the Washington Administrative Code.

"Weapons" means an instrument or device of any kind that is used or designed to be used to inflict harm including, but not limited to, rifles, handguns, shotguns, antique firearms, knives, swords, bows and arrows, BB guns, pellet guns, air rifles, electronic or other stun devices, or fighting implements.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-2325 Reporting notifiable condition to health department. ~~((The))~~ In the event a licensee ~~((must report a)),~~ staff person, volunteer, household member, or child in care is diagnosed with a notifiable condition as defined in chapter 246-101 WAC, the licensee must report the diagnosis to the local health jurisdiction or the state department of health. Contact the local health jurisdiction for the list of notifiable conditions and reporting requirements.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-3200 Health plan. The licensee must have a written health plan. The health plan must include:

(1) Communicable disease procedures and exclusion of ill persons under WAC 170-296A-3210;

(2) Immunization tracking under WAC 170-296A-3250 through 170-296A-3300;

(3) Medication management under WAC 170-296A-3315 through 170-296A-3550;

(4) Injury treatment under WAC 170-296A-3575 through 170-296A-3600;

(5) Handwashing and hand sanitizers under WAC 170-296A-3625 through 170-296A-3675;

(6) Caring for children with special health needs under WAC 170-296A-0050;

(7) Cleaning, sanitizing, and disinfecting procedures;

(8) A bloodborne pathogens plan under WAC 170-296A-1850; and

(9) Notifying the health department when a licensee, staff person, volunteer, household member, or child in care is diagnosed with a notifiable condition as required under WAC 170-296A-2325.

A person excluded from the family home by the health department on the basis of such a diagnosis may not return to the family home until approved to do so by the health department.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-3210 Communicable disease procedure. When the licensee becomes aware that he or she, a household member, staff person or child in care has been diagnosed with any of the following communicable diseases:

Disease:	Also known as:
Chickenpox	Varicella
Conjunctivitis (bacterial)	Pink eye
Diphtheria	
E. coli infection	
Giardiasis	
Hepatitis A virus	

Disease:	Also known as:
Invasive haemophilus influenza disease (except otitis media)	
Measles	
Meningitis (bacterial)	Meningococcal meningitis
Mumps	
Pertussis	Whooping cough
Rubella	German measles
Salmonellosis	Salmonella or "food poisoning"
Shigellosis	Shigella
Tuberculosis (active)	TB

(1) The licensee must, within twenty-four hours notify:

(a) The local health jurisdiction or DOH, except notice is not required for a diagnosis of chickenpox(~~(s)~~) or conjunctivitis(~~(s)~~ or ~~invasive haemophilus influenza~~);

(b) The department; and

(c) Parents or guardians of each of the children in care.

(2) The licensee must follow the health plan before providing care or before readmitting the household member, staff person or child into the child care.

(3) The licensee's health plan must include provisions for excluding or separating a child, staff person, or household member with communicable disease as described in subsection (1) of this section or any of the following:

(a) Fever of one hundred one degrees Fahrenheit or higher measured orally, or one hundred degrees Fahrenheit or higher measured under the armpit (axially), if the individual also has:

- (i) Earache;
- (ii) Headache;
- (iii) Sore throat;
- (iv) Rash; or
- (v) Fatigue that prevents the individual from participating in regular activities.

(b) Vomiting that occurs two or more times in a twenty-four hour period;

(c) Diarrhea with three or more watery stools, or one bloody stool, in a twenty-four hour period;

(d) Rash not associated with heat, diapering, or an allergic reaction; or

(e) Drainage of thick mucus or pus from the eye.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-3750 Mats, cots and other sleeping equipment. (1) The licensee must provide mats, cots, or other approved sleeping equipment that are made of material that can be cleaned and sanitized as provided in WAC 170-296A-0010.

(2) Mats, cots, or other sleeping equipment must be in good repair, not torn or with holes or repaired with tape.

(3) A sleeping mat must be at least one inch thick.

(4) Mats, cots, or other sleeping equipment must be cleaned, sanitized, and air dried:

(a) At least once a week or as needed if used by one child; or

(b) Between each use if used by different children.

~~(5)((a) If a bleach solution is used to sanitize, the solution must be one-quarter teaspoon of bleach to one quart of cool water;~~

~~(b) If another sanitizer product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.~~

~~(6))~~ When in use, mats, cots, or other sleeping equipment must be arranged to allow the licensee or staff to access the children.

~~((7))~~ (6) Mats, cots, and other sleeping equipment must be stored so that the sleeping surfaces are not touching each other, unless they are cleaned and sanitized after each use.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-3875 Cleaning and sanitizing toys.

~~((4))~~ The licensee must clean and sanitize toys as provided in WAC 170-296A-0010:

~~((a))~~ (1) Before a child plays with a toy that has come into contact with another child's mouth or bodily fluids;

~~((b))~~ (2) After being contaminated with bodily fluids or visibly soiled; or

~~((c))~~ (3) Not less than weekly when the toys have been used by the children.

~~((2)(a) If a bleach solution is used to sanitize, the solution must be three-quarter teaspoon of bleach to one quart of cool water;~~

~~(b) If another sanitizer product is used, it must be labeled as approved for food contact surfaces, used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry, and rinsed if required by the product instructions.))~~

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-3925 Cleaning, sanitizing, and disinfecting table. (1) The following table describes the minimum frequency for cleaning, sanitizing, or disinfecting items in the licensed space.

CLEANING, SANITIZING, AND DISINFECTING TABLE			
	"X" means CLEAN	And SANITIZE or DISINFECT	FREQUENCY
((+)) (a) Kitchen countertops/tabletops, floors, doorknobs, and cabinet handles.	X	Sanitize (see subsection (3) of this section)	Daily or more often when soiled.
((+)) (b) Food preparation/surfaces.	X	Sanitize (see subsection (3) of this section)	Before/after contact with food activity; between preparation of raw and cooked foods.
(((+))) (c) Carpets and large area rugs/small rugs.	X		(((+))) (i) Vacuum daily. (((+))) (ii) Installed carpet - Clean yearly or more often when soiled using a carpet shampoo machine, steam cleaner, or dry carpet cleaner. (((+))) (iii) Small rugs - Shake outdoors or vacuum daily. Launder weekly or more often when soiled.
	X	Sanitize (see subsection (3) of this section)	(((+))) (iv) Removable rugs - May be used in the bathroom. They must be easily removable and able to be washed when needed. Launder and sanitize weekly or more often when soiled.
((+)) (d) Utensils, surfaces/toys that go in the mouth or have been in contact with other body fluids.	X	Sanitize (see subsection (3) of this section)	After each child's use; may use disposable, one-time utensils.
((+)) (e) Toys that are not contaminated with body fluids and machine-washable cloth toys. Dress-up clothes (not worn on the head or come into contact with the head while dressing). Combs/hair-brushes, (none of these items should be shared among children).	X	Sanitize (see subsection (3) of this section)	Weekly or more often when visibly soiled.
(((+))) (f) Bedding, blankets, sleeping bags, individual sheets, pillowcases (if used).	X	Sanitize (see subsection (3) of this section)	Weekly or more often when soiled. Items that are put in the washing machine must be cleaned by using laundry detergent and sanitized by temperature (hot or warm water cycle) or chlorine bleach.
((+)) (g) Wash cloths or single use towels.	X	Sanitize (see subsection (3) of this section)	After each use.
(((+))) (h) Hats and helmets.	X		After each child's use or use disposable hats that only one child wears.
(((+))) (i) Cribs and crib mattresses.	X	Sanitize (see subsection (3) of this section)	Weekly, before use by different child, and more often whenever soiled or wet.
(((+))) (j) Handwashing sinks, faucets, surrounding counters, soap dispensers, doorknobs.	X	Disinfect (see subsection (2) of this section)	Daily or more often when soiled.
(((+))) (k) Toilet seats, toilet training rings, toilet handles, doorknobs or cubicle handles, floors.	X	Disinfect (see subsection (2) of this section)	Daily or immediately if visibly soiled.
(((+))) (l) Toilet bowls.	X	Disinfect (see subsection (2) of this section)	Daily or more often as needed (e.g., child vomits or has explosive diarrhea, etc.).
(((+))) (m) Changing tables, potty chairs (use of potty chairs in child care is discouraged because of high risk of contamination).	X	Disinfect (see subsection (2) of this section)	After each child's use.
(((+))) (n) Waste receptacles.	X		Daily or more often as needed.

(2) "Disinfect" or "disinfecting" means to eliminate virtually all germs on a surface by the process of cleaning and rinsing, followed by:

(a) A chlorine bleach and water solution of one tablespoon of chlorine bleach to one quart of cool water; or

(b) Other disinfectant product if used strictly according to the manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, adequate time to allow the product to dry or rinsing if applicable, and appropriateness for use on the surface to be disinfected. Any disinfectant used on food contact surfaces or toys must be labeled safe for food contact surfaces.

(3) "Sanitize" means to reduce the number of microorganisms on a surface by the process of:

(a) Cleaning and rinsing, followed by using:

(i) A chlorine bleach and water solution of three-quarters teaspoon of chlorine bleach to one quart of cool water; or

(ii) Another sanitizer product if used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry, and appropriateness for use on the surface to be sanitized. If used on food contact surfaces or toys, a sanitizer product must be labeled as safe for food contact surfaces; or

(b) For laundry and dishwasher use only, "sanitize" means use of a bleach and water solution or temperature control.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-4325 Stairs. (1) If there are stairs in the licensed space, the licensee must:

(a) Keep the stairway well lit;

(b) Keep the stairway free of clutter; and

(c) Have a handrail not higher than ~~((thirty))~~ thirty-eight inches high or sturdy slats on one side of the stairs.

(2) The licensee must provide a pressure gate, safety gate, or a door to keep the stairs inaccessible to infants and toddlers when not in use.

(3) Openings between slats or on pressure gates or safety gates must not be larger than three and one-half inches wide.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-4650 Bathroom floors. (1) Floors in a bathroom or toileting area must have a washable surface and be resistant to moisture. The floor must be cleaned and disinfected as provided in WAC 170-296A-0010 daily or more often if needed.

~~((a) If a bleach solution is used to disinfect, the solution must be one tablespoon of chlorine bleach to one gallon of cool water;~~

~~(b) If another disinfectant product is used, it must be used strictly according to manufacturer's label instructions, including but not limited to quantity used, time the product must be left in place, and adequate time to allow the product to dry.))~~

(2) Removable rugs may be used in the bathroom. The rugs must be laundered and sanitized as provided in WAC 170-296A-0010 at least weekly or more often if needed.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-4950 Rails on platforms, decks, and stairs. (1) Platforms or decks (not including play equipment) used at any time for child care activities with a drop zone of more than eighteen inches must have guardrails in any area where there are no steps.

(2) Outdoor stairs with four or more steps must have slats (balusters) or a hand rail not higher than ~~((thirty))~~ thirty-eight inches high on at least one side. Openings between the slats must be no wider than three and one-half inches. This requirement does not apply to outdoor play equipment with stairs.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-5175 Wading pools—Defined—Supervision. (1) A wading pool:

(a) Is an enclosed pool with water depth of two feet or less measured without children in the pool; and

(b) Can be emptied and moved.

(2) When a wading pool on the premises is intended for use by the children, the licensee must:

(a) Directly supervise or have a primary staff person directly supervise the children;

(b) Obtain written permission from each child's parent or guardian to allow the child to use a wading pool;

(c) Maintain staff-to-child ratios when children are in a wading pool;

(d) Keep infants or toddlers in the wading pool within reach of the licensee or staff;

(e) Use a door alarm or bell to warn staff that children are entering the outdoor area when pool water could be accessed, or keep the wading pool empty when not in use;

(f) Empty the pool daily; and

(g) Clean and disinfect the pool as provided in WAC 170-296A-0010 daily or immediately if the pool is soiled with urine, feces, vomit, or blood((-

~~(i) If a bleach solution is used to disinfect, the solution must be one tablespoon of chlorine bleach to one gallon of cool water;~~

~~(ii) If another disinfectant product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.))~~

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-7075 Infant and toddler sleeping or napping equipment. (1) The licensee must:

(a) Provide and use a single level crib, toddler bed, playpen or other sleeping equipment for each infant or toddler in care that is safe and not subject to tipping. The equipment

must be of a design approved for infants or toddlers by the U.S. Consumer Product Safety Commission (see WAC 170-296A-7085 regarding approved cribs)(-);

(b) Provide sleeping or napping equipment with clean, firm, and snug-fitting mattresses that do not have tears or holes or is repaired with tape(-);

(c) Provide mattresses covered with waterproof material that is easily cleaned and sanitized(-

~~(i) If a bleach solution is used to sanitize, the solution must be three quarters teaspoon of chlorine bleach to one quart of cool water.~~

~~(ii) If another sanitizer product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.) as provided in WAC 170-296A-0010;~~

(d) Arrange sleeping equipment to allow staff access to children;

(e) Remove sleeping children from car seats, swings or similar equipment; and

(f) Consult with a child's parent or guardian before the child is transitioned from infant sleeping equipment to other approved sleeping equipment.

(2) Children able to climb out of their sleeping equipment must be transitioned to an alternate sleeping surface.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-7225 High chairs. (1) If the licensee uses high chairs in the child care, each high chair must:

(a) Have a base that is wider than the seat;

(b) Have a safety device that prevents the child from climbing or sliding down the chair;

(c) Be free of cracks and tears; and

(d) Have a washable surface.

(2) When a child is seated in a high chair, the chair's safety device must be used to secure the child.

(3) The licensee or staff must clean and sanitize high chairs as provided in WAC 170-296A-0010 after each use.

~~((a) If a bleach solution is used to sanitize, the solution must be one quarter teaspoon of bleach to one quart of cool water.~~

~~(b) If another sanitizer product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.)~~

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-7250 Diapering and toileting. (1) The licensee must provide a diaper changing area that is separate from any area where food is stored, prepared or served.

(2) The diaper changing area must:

(a) Have a sink with hot and cold running water close to the diaper changing area. The sink must not be used for food preparation and clean up;

(b) Have a sturdy surface or mat that is:

(i) Not torn or repaired with tape;

(ii) Easily cleanable;

(iii) Waterproof; and

(iv) Large enough to prevent the area underneath from being contaminated with bodily fluids.

(3) The diapering area must be cleaned and disinfected as provided in WAC 170-296A-0010 between each use.

~~((a) If a bleach solution is used to disinfect, the solution must be one tablespoon of chlorine bleach to one quart of cool water.~~

~~(b) If another disinfectant product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.)~~

(4) A nonabsorbent, disposable covering that is discarded after each use may be used on the diaper changing mat.

(5) The diaper changing surface must be free of all other items not used in diapering the child.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-7375 Potty chairs or modified toilet seats. (1) When potty chairs are used, the licensee or staff must immediately after each use:

(a) Empty the potty chair into the toilet; and

(b) Clean and disinfect the potty chair.

(2) The floor under the potty chairs must be made of a material that is resistant to moisture.

(3) When a modified toilet seat is used, it must be cleaned and disinfected as provided in WAC 170-296A-0010 daily or more often when soiled.

~~(4)((a) If a bleach solution is used to disinfect, the solution must be one tablespoon of chlorine bleach to one quart of cool water;~~

~~(b) If another disinfectant product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.~~

~~(5)) If a sink or basin is used to clean a potty chair or modified toilet seat, the sink or basin must be cleaned and disinfected afterwards.~~

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-7700 Washing dishes. The licensee or staff must wash dishes thoroughly after each use by one of the following methods:

(1) Automatic dishwasher, using the sanitizing cycle if available; or

(2) Handwashing method, by emersion in hot soapy water, rinse, sanitize as provided in WAC 170-296A-0010 and air dry(-

~~(a) If a bleach solution is used to sanitize, the solution must be three quarters teaspoon of chlorine bleach to one gallon of cool water;~~

~~(b) If another sanitizer product is used, it must be labeled as approved for food contact surfaces and be used strictly~~

~~according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry)).~~

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-7750 Food preparation area. (1) The licensee or staff must clean and sanitize food preparation and eating surfaces as provided in WAC 170-296A-0010 before and after use. The licensee's food preparation area must:

(a) Have surfaces that are free of cracks and crevices; and

(b) Have a floor area made of a material that is resistant to moisture.

(2) The licensee must not allow pets in the food preparation area while food is being prepared or served.

(3) The licensee may use the kitchen for other child care activities provided there is continual supervision of the children.

~~((4)(a) If a bleach solution is used to sanitize surfaces, the solution must be one tablespoon of chlorine bleach to one gallon of cool water;~~

~~(b) If another sanitizer product is used, it must be labeled as approved for food contact surfaces and be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.))~~