

WSR 12-17-036
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Division of Developmental Disabilities)

[Filed August 7, 2012, 2:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-11-123.

Title of Rule and Other Identifying Information: The department is proposing the amendment of current sections and adoption of new sections in chapter 388-845 WAC.

The proposed amendments are WAC 388-845-0005 What are home and community based services (HCBS) waivers?, 388-845-0010 What is the purpose of HCBS waivers?, 388-845-0030 Do I meet criteria for HCBS waiver-funded services?, 388-845-0045 When there is capacity to add people to a waiver, how does DDD determine who will be enrolled?, 388-845-0050 How do I request to be enrolled in a waiver?, 388-845-0060 Can my waiver enrollment be terminated?, 388-845-0070 What determines if I need ICF/MR level of care?, 388-845-0105 What criteria determine assignment to the community protection waiver?, 388-845-0110 Are there limitations to the waiver services I can receive?, 388-845-0205 Basic waiver services, 388-845-0210 Basic Plus waiver services, 388-845-0215 CORE waiver services, 388-845-0220 Community protection waiver services, 388-845-0225 Children's intensive in-home behavioral support (CIIBS) waiver services, 388-845-0310 Are there limits to the AFH services I can receive?, 388-845-0400 What are adult residential care (ARC) services?, 388-845-0405 Who is a qualified provider of ARC services?, 388-845-0410 Are there limits to the ARC services I can receive?, 388-845-0500 What is behavior management and consultation?, 388-845-0501 What is included in behavior management and consultation for the children's intensive in-home behavioral support (CIIBS) waiver?, 388-845-0505 Who is a qualified provider of behavior management and consultation?, 388-845-0510 Are there limits to the behavior management and consultation I can receive?, 388-845-0750 What are community transition services?, 388-845-0800 What is emergency assistance?, 388-845-0820 Are there limits to my use of emergency assistance?, 388-845-0900 What are environmental accessibility adaptations?, 388-845-1100 What are mental health crisis diversion bed services?, 388-845-1105 Who is a qualified provider of mental health crisis diversion bed services?, 388-845-1110 What are the limits of mental health crisis diversion bed services?, 388-845-1150 What are mental health stabilization services?, 388-845-1155 Who are qualified providers of mental health stabilization services?, 388-845-1160 Are there limitations to the mental health stabilization services that I can receive?, 388-845-1310 Are there limits to the personal care services I can receive?, 388-845-1600 What is respite care?, 388-845-1605 Who is eligible to receive respite care?, 388-845-1610 Where can respite care be provided?, 388-845-1615 Who are qualified providers of respite care?, 388-845-1620 Are there limits to the respite care I can receive?, 388-845-1710 Are there limitations to the skilled nursing services I can receive?, 388-845-1800 What are specialized medical equipment and supplies?, 388-845-1900

What are specialized psychiatric services?, 388-845-1910 Are there limitations to the specialized psychiatric services I can receive?, 388-845-2000 What is staff/family consultation and training?, 388-845-2200 What are transportation services?, 388-845-3000 What is the process for determining the services I need?, 388-845-3055 What is a waiver individual support plan (ISP)?, 388-845-3056 What if I need assistance to understand my individual support plan?, 388-845-3060 When is my plan of care or individual support plan effective?, 388-845-3061 Can a change in my plan of care or individual support plan be effective before I sign it?, 388-845-3062 Who is required to sign or give verbal consent to the plan of care or individual support plan?, 388-845-3065 How long is my plan effective?, 388-845-3070 What happens if I do not sign or verbally consent to my individual support plan (ISP)?, 388-845-3075 What if my needs change?, 388-845-3080 What if my needs exceed the maximum yearly funding limit or the scope of services under the Basic or Basic Plus waiver?, 388-845-3085 What if my needs exceed what can be provided under the CIIBS, CORE or community protection waiver?, 388-845-4000 What are my appeal rights under the waiver?, and 388-845-4005 Can I appeal a denial of my request to be enrolled in a waiver?

The proposed new sections are WAC 388-845-1607 Can someone who lives with me be my respite provider? and 388-845-3063 Can my individual support plan be effective before the end of the month?

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on October 9, 2012, at 10:00 a.m.

Date of Intended Adoption: Not earlier than October 9, 2012.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on October 9, 2012.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by September 19, 2012, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 388-845 WAC is being amended to comply with federal and state law. Proposed updates include:

- Rename ICF/MR to ICF/ID;
- Rename behavior management and consultation and mental health stabilization;
- Remove duplication of plan of care language;
- Remove obsolete link and rule citations;
- Eliminate skilled nursing services under mental health stabilization services;
- Clarify residential setting to community transition services;
- Clarify when ISP is effective, and
- Clarify intent of respite services.

The changes that are reflected above are required to maintain compliance with the HCBS waiver programs for the

division of developmental disabilities that was approved by the Centers for Medicare and Medicaid Services. This request for rule modification is to address obsolete language that is in conflict in all of the approved HCBS waivers, clarify language to ensure that services are implemented consistent with services contained in the approved HCBS waiver program, or to update language that is no longer in compliance with federal and state law. These changes ensure the division is in compliance with the HCBS waiver program and to ensure the division can continue to collect federal financial match for the receipt of services.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 71A.12.030, 74.08.090.

Statute Being Implemented: RCW 71A.12.030, 74.08.-090.

Rule is necessary because of federal law, [no further information supplied by agency].

Name of Proponent: Department of social and health services.

Name of Agency Personnel Responsible for Drafting and Implementation: Kris Pederson, P.O. Box 45310, Olympia, WA 98504-5310, (360) 725-3445; and Enforcement: Mark Eliason, P.O. Box 45310, Olympia, WA 98504-5310, (360) 725-3452.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business impact statement is not required as no new costs will be imposed on small businesses or nonprofits as a result of this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

July 30, 2012
Katherine J. Vasquez
Rules Coordinator

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

WAC 388-845-0005 What are home and community based services (HCBS) waivers? (1) Home and community based services (HCBS) waivers are services approved by the Centers For Medicare and Medicaid Services (CMS) under section 1915(c) of the Social Security Act as an alternative to intermediate care facility for the (~~mentally retarded~~ ~~(ICF/MR) care~~) individuals with intellectual disabilities (ICF/ID).

(2) Certain federal regulations are "waived" enabling the provision of services in the home and community to individuals who would otherwise require the services provided in an (~~(ICF/MR)~~) ICF/ID as defined in chapters 388-835 and 388-837 WAC.

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

WAC 388-845-0010 What is the purpose of HCBS waivers? The purpose of HCBS waivers is to provide ser-

vices in the community to individuals with (~~(ICF/MR)~~) ICF/ID level of need to prevent their placement in an (~~(ICF/MR)~~) ICF/ID.

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

WAC 388-845-0030 Do I meet criteria for HCBS waiver-funded services? You meet criteria for DDD HCBS waiver-funded services if you meet all of the following:

(1) You have been determined eligible for DDD services per RCW 71A.10.020(3).

(2) You have been determined to meet (~~(ICF/MR)~~) ICF/ID level of care per WAC 388-845-0070, 388-828-3060 and 388-828-3080.

(3) You meet disability criteria established in the Social Security Act.

(4) You meet financial eligibility requirements as defined in WAC 388-515-1510.

(5) You choose to receive services in the community rather than in an (~~(ICF/MR)~~) ICF/ID facility.

(6) You have a need for waiver services as identified in your (~~(plan of care or)~~) individual support plan.

(7) You are not residing in hospital, jail, prison, nursing facility, (~~(ICF/MR)~~) ICF/ID, or other institution.

(8) Additionally, for the Children's Intensive In-Home Behavioral Support (CIIBS) waiver-funded services:

(a) You are age eight or older and under the age of eighteen for initial enrollment and under age twenty-one for continued enrollment;

(b) You have been determined to meet CIIBS program eligibility per chapter 388-828 WAC prior to initial enrollment only;

(c) You live with your family; and

(d) Your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s), have signed the participation agreement.

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

WAC 388-845-0045 When there is capacity to add people to a waiver, how does DDD determine who will be enrolled? When there is capacity on a waiver and available funding for new waiver participants, DDD may enroll people from the statewide data base in a waiver based on the following priority considerations:

(1) First priority will be given to current waiver participants assessed to require a different waiver because their identified health and welfare needs have increased and these needs cannot be met within the scope of their current waiver.

(2) DDD may also consider any of the following populations in any order:

(a) Priority populations as identified and funded by the legislature.

(b) Persons DDD has determined to be in immediate risk of (~~(ICF/MR)~~) ICF/ID admission due to unmet health and welfare needs.

(c) Persons identified as a risk to the safety of the community.

(d) Persons currently receiving services through state-only funds.

(e) Persons on an HCBS waiver that provides services in excess of what is needed to meet their identified health and welfare needs.

(f) Persons who were previously on an HCBS waiver since April 2004 and lost waiver eligibility per WAC 388-845-0060 (1)(i).

(3) For the Basic waiver only, DDD may consider persons who need the waiver services available in the Basic waiver to maintain them in their family's home or in their own home.

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

WAC 388-845-0050 How do I request to be enrolled in a waiver? (1) You can contact DDD and request to be enrolled in a waiver or to enroll in a different waiver at any time.

(2) If you are assessed as meeting ((ICF/MR)) ICF/ID level of care as defined in WAC 388-845-0070 and chapter 388-828 WAC, your request for waiver enrollment will be documented by DDD in a statewide data base.

(3) For the Children's Intensive In-Home Behavioral Support (CIIBS) waiver only, if you are assessed as meeting both ((ICF/MR)) ICF/ID level of care and CIIBS eligibility as defined in WAC 388-845-0030 and chapter 388-828 WAC, your request for waiver enrollment will be documented by DDD in a statewide data base.

AMENDATORY SECTION (Amending WSR 09-10-021, filed 4/28/09, effective 5/29/09)

WAC 388-845-0060 Can my waiver enrollment be terminated? DDD may terminate your waiver enrollment if DDD determines that:

(1) Your health and welfare needs cannot be met in your current waiver or for one of the following reasons:

(a) You no longer meet one or more of the requirements listed in WAC 388-845-0030;

(b) You do not have an identified need for a waiver service at the time of your annual ((~~plan of care or~~)) individual support plan;

(c) You do not use a waiver service at least once in every thirty consecutive days and your health and welfare do not require monthly monitoring;

(d) You are on the community protection waiver and:

(i) You choose not to be served by a certified residential community protection provider-intensive supported living services (CP-ISLS);

(ii) You engage in any behaviors identified in WAC 388-831-0240 (1) through (4); and

(iii) DDD determines that your health and safety needs or the health and safety needs of the community cannot be met in the community protection program.

(e) You choose to disenroll from the waiver;

(f) You reside out-of-state;

(g) You cannot be located or do not make yourself available for the annual waiver reassessment of eligibility;

(h) You refuse to participate with DDD in:

(i) Service planning;

(ii) Required quality assurance and program monitoring activities; or

(iii) Accepting services agreed to in your ((~~plan of care or~~)) individual support plan as necessary to meet your health and welfare needs.

(i) You are residing in a hospital, jail, prison, nursing facility, ((ICF/MR)) ICF/ID, or other institution and remain in residence at least one full calendar month, and are still in residence:

(i) At the end of the twelfth month following the effective date of your current ((~~plan of care or~~)) individual support plan, as described in WAC 388-845-3060; or

(ii) The end of the waiver fiscal year, whichever date occurs first.

(j) Your needs exceed the maximum funding level or scope of services under the Basic or Basic Plus waiver as specified in WAC 388-845-3080; or

(k) Your needs exceed what can be provided under WAC 388-845-3085; or

(2) Services offered on a different waiver can meet your health and welfare needs and DDD enrolls you on a different waiver.

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

WAC 388-845-0070 What determines if I need ((ICF/MR)) ICF/ID level of care? DDD determines if you need ((ICF/MR)) ICF/ID level of care based on your need for waiver services. To reach this decision, DDD uses the DDD assessment as specified in chapter 388-828 WAC.

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

WAC 388-845-0105 What criteria determine assignment to the community protection waiver? DDD may assign you to the community protection waiver only if you are at least eighteen years of age, not currently residing in a hospital, jail or other institution, and meet the following criteria:

(1) You have been identified by DDD as a person who meets one or more of the following:

(a) You have been convicted of or charged with a crime of sexual violence as defined in chapter 71.09 RCW;

(b) You have been convicted of or charged with acts directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or persons of casual acquaintance with whom no substantial personal relationship exists;

(c) You have been convicted of or charged with a sexually violent offense and/or predatory act, and may constitute a future danger as determined by a qualified professional;

(d) You have not been convicted and/or charged, but you have a history of stalking, sexually violent, predatory and/or opportunistic behavior which demonstrates a likelihood to commit a sexually violent and/or predatory act based on current behaviors that may escalate to violence, as determined by a qualified professional; or

(e) You have committed one or more violent offense, as defined in RCW 9.94A.030.

(2) You receive or agree to receive residential services from certified residential community protection provider-intensive supported living services (CP-ISLS); and

(3) You comply with the specialized supports and restrictions in your:

- (a) ~~((Plan of care or))~~ Individual support plan;
- (b) Individual instruction and support plan (IISP); and/or
- (c) Treatment plan provided by DDD approved certified individuals and agencies.

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

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

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

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

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

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

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

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

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

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

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

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

- (b) The only recognized bordering cities are:
 - (i) Coeur d'Alene, Moscow, Sandpoint, Priest River and Lewiston, Idaho; and
 - (ii) Portland, The Dalles, Hermiston, Hood River, Rainier, Milton-Freewater and Astoria, Oregon.

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

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

WAC 388-845-0205 Basic waiver services.

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

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

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

WAC 388-845-0210 Basic Plus waiver services.

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	<p>AGGREGATE SERVICES:</p> <ul style="list-style-type: none"> Behavior management and consultation Community guide Environmental accessibility adaptations Occupational therapy Physical therapy Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation 	May not exceed \$6192 per year on any combination of these services
	<p>EMPLOYMENT/DAY PROGRAM SERVICES:</p> <ul style="list-style-type: none"> Community access Person-to-person Prevocational services Supported employment 	<p>May not exceed \$9944 per year</p> <p>This amount may be increased to a maximum of \$19,888 per year by exception to rule based on client need</p>
	<ul style="list-style-type: none"> Adult foster care (adult family home) Adult residential care ((boarding home)) assisted living) 	Determined per department rate structure
	<p>((MENTAL)) BEHAVIORAL HEALTH STABILIZATION SERVICES:</p> <ul style="list-style-type: none"> Behavior ((management)) support and consultation 	Limits determined by a mental health professional or DDD

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	<p>((Mental)) Behavioral health crisis diversion bed services</p> <ul style="list-style-type: none"> Skilled nursing Specialized psychiatric services 	
	Personal care	Limits determined by the CARE tool used as part of the DDD assessment
	Respite care	Limits are determined by the DDD assessment
	Sexual deviancy evaluation	Limits are determined by DDD
	Emergency assistance is only for aggregate services and/or employment/day program services contained in the Basic Plus waiver	\$6000 per year; Preauthorization required

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

WAC 388-845-0215 CORE waiver services.

CORE WAIVER	SERVICES	YEARLY LIMIT
	<ul style="list-style-type: none"> Behavior ((management)) support and consultation Community guide Community transition Environmental accessibility adaptations 	Determined by the ((plan of care or)) individual support plan, not to exceed the average cost of an ((ICF/MR)) ICF/ID for any combination of services
	<ul style="list-style-type: none"> Occupational therapy Sexual deviancy evaluation Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation 	

CORE WAIVER	SERVICES	YEARLY LIMIT
	Residential habilitation	Limits determined by a mental health professional or DDD
	Community access	
	Person-to-person	
	Prevocational services Supported employment	
	((MENTAL)) <u>BEHAVIORAL HEALTH STABILIZATION SERVICES:</u> Behavior ((management)) <u>support</u> and consultation ((Mental)) <u>Behavioral</u> health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits determined by a mental health professional or DDD
	Personal care	Limits determined by the CARE tool used as part of the DDD assessment
	Respite care	Limits are determined by the DDD assessment

COMMUNITY PROTECTION WAIVER	SERVICES	YEARLY LIMIT
	Specialized psychiatric services	Limits determined by a mental health professional or DDD
	Speech, hearing and language services	
	Staff/family consultation and training	
	Transportation	
	Residential habilitation	Limits determined by a mental health professional or DDD
Person-to-person		
Prevocational services Supported employment		
	((MENTAL)) <u>BEHAVIORAL HEALTH STABILIZATION SERVICES:</u> Behavioral ((management)) <u>support</u> and consultation ((Mental)) <u>Behavioral</u> health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits determined by a mental health professional or DDD

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

WAC 388-845-0220 Community protection waiver services.

COMMUNITY PROTECTION WAIVER	SERVICES	YEARLY LIMIT
	Behavior ((management)) <u>support</u> and consultation	Determined by the ((plan of care or)) individual support plan, not to exceed the average cost of an ((ICF/MR)) <u>ICF/ID</u> for any combination of services
	Community transition	
	Environmental accessibility adaptations	
	Occupational therapy	
	Physical therapy	
	Sexual deviancy evaluation	
	Skilled nursing	
	Specialized medical equipment and supplies	

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

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

CIIBS Waiver	Services	Yearly Limit
	<ul style="list-style-type: none"> Behavior ((management)) <u>support</u> and consultation Staff/family consultation and training Environmental accessibility adaptations Occupational therapy Physical therapy Sexual deviancy evaluation Nurse delegation Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services 	Determined by the individual support plan. Total cost of waiver services cannot exceed the average cost of \$4,000 per month per participant.

CIIBS Waiver	Services	Yearly Limit
	<ul style="list-style-type: none"> • Transportation • Assistive technology • Therapeutic equipment and supplies • Specialized nutrition and clothing • Vehicle modifications 	
	Personal care	Limits determined by the DDD assessment. Costs are included in the total average cost of \$4000 per month per participant for all waiver services.
	Respite care	Limits determined by the DDD assessment. Costs are included in the total average cost of \$4000 per month per participant for all waiver services.

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

WAC 388-845-0310 Are there limits to the AFH services I can receive? Adult family homes services are limited by the following:

- (1) AFH services are defined and limited per chapter 388-106 WAC (~~and chapter 388-71 WAC~~) governing medicaid personal care and the comprehensive assessment and reporting evaluation (CARE).
- (2) Rates are determined by and limited to department published rates for the level of care generated by CARE.
- (3) AFH reimbursement cannot be supplemented by other department funding.

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

WAC 388-845-0400 What are adult residential care (ARC) services? Adult residential care (ARC) facilities may provide residential care to adults. This service is available in the Basic Plus waiver.

- (1) An ARC is a licensed (~~boarding home~~) assisted living facility for seven or more unrelated adults.
- (2) Services include, but are not limited to, individual and group activities; assistance with arranging transportation; assistance with obtaining and maintaining functional aids and equipment; housework; laundry; self-administration of medications and treatments; therapeutic diets; cuing and providing

physical assistance with bathing, eating, dressing, locomotion and toileting; stand-by one person assistance for transferring.

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

WAC 388-845-0405 Who is a qualified provider of ARC services? The provider of ARC services must:

- (1) Be a licensed (~~boarding home~~) assisted living facility;
- (2) Be contracted with ADSA to provide ARC services; and
- (3) Have completed the required and approved DDD specialty training.

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

WAC 388-845-0410 Are there limits to the ARC services I can receive? ARC services are limited by the following:

- (1) ARC services are defined and limited by (~~boarding home~~) assisted living facility licensure and rules in chapter 388-78A WAC, and chapter 388-106 WAC (~~and chapter 388-71 WAC~~) governing medicaid personal care and the comprehensive assessment and reporting evaluation (CARE).
- (2) Rates are determined and limited to department published rates for the level of care generated by CARE.
- (3) ARC reimbursement cannot be supplemented by other department funding.

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

WAC 388-845-0500 What is behavior (~~management~~) support and consultation? (1) Behavior (~~management~~) support and consultation may be provided to persons on any of the DDD HCBS waivers and includes the development and implementation of programs designed to support waiver participants using:

- (a) Individualized strategies for effectively relating to caregivers and other people in the waiver participant's life; and
- (b) Direct interventions with the person to decrease aggressive, destructive, and sexually inappropriate or other behaviors that compromise their ability to remain in the community (i.e., training, specialized cognitive counseling, conducting a functional assessment, development and implementation of a positive behavior support plan).

(2) Behavior (~~management~~) support and consultation may also be provided as a (~~mental~~) behavioral health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.

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

WAC 388-845-0501 What is included in behavior (~~management~~) support and consultation for the child

dren's intensive in-home behavioral support (CIIBS) waiver? (1) In addition to the definition in WAC 388-845-0500, behavior ((~~management~~)) support and consultation in the CIIBS waiver must include the following characteristics:

(a) Treatment must be evidence based, driven by individual outcome data, and consistent with DDD's positive behavior support guidelines as outlined in contract;

(b) The following written components will be developed in partnership with the child and family by a behavior specialist as defined in WAC 388-845-0506:

(i) Functional behavioral assessment; and

(ii) Positive behavior support plan based on functional behavioral assessment.

(c) Treatment goals must be objective and measurable. The goals must relate to an increase in skill development and a resulting decrease in challenging behaviors that impede quality of life for the child and family; and

(d) Behavioral support strategies will be individualized and coordinated across all environments, such as home, school, and community, in order to promote a consistent approach among all involved persons.

(2) Behavior ((~~management~~)) support and consultation in the CIIBS waiver may also include the following components:

(a) Positive behavior support plans may be implemented by a behavioral technician as defined in WAC 388-845-0506 and include 1:1 behavior interventions and skill development activity.

(b) Positive behavior support plans may include recommendations by a music and/or recreation therapist, as defined in WAC 388-845-0506.

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

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

(1) Marriage and family therapist;

(2) Mental health counselor;

(3) Psychologist;

(4) Sex offender treatment provider;

(5) Social worker;

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

(7) Psychiatrist;

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

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

(10) Counselors registered or certified in accordance with the requirements of chapter 18.19 RCW; or

(11) Polygrapher.

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

WAC 388-845-0510 Are there limits to the behavior ((~~management~~)) support and consultation I can receive? The following limits apply to your receipt of behavior ((~~management~~)) support and consultation:

(1) DDD and the treating professional will determine the need and amount of service you will receive, subject to the limitations in subsection (2) below.

(2) The dollar limitations for aggregate services in your Basic and Basic Plus waiver limit the amount of service unless provided as a ((~~mental~~)) behavioral health stabilization service.

(3) DDD reserves the right to require a second opinion from a department-selected provider.

(4) Behavior ((~~management~~)) support and consultation not provided as a ((~~mental~~)) behavioral health stabilization service requires prior approval by the DDD regional administrator or designee.

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

WAC 388-845-0750 What are community transition services? (1) Community transition services are reasonable costs (necessary expenses in the judgment of the state for you to establish your basic living arrangement) associated with moving from:

(a) An institutional setting to a community setting in which you are living in your own home or apartment, responsible for your own living expenses and receiving services from a DDD certified residential habilitation services provider as defined in WAC 388-845-1505 and 388-845-1510; or

(b) A provider operated setting, such as a group home, staffed residential, adult family home or companion home in the community to a community setting in which you are living in your own home or apartment, responsible for your own living expenses, and receiving services from a DDD certified residential habilitation services provider as defined in WAC 388-845-1505 and 388-845-1510.

(2) Community transition services include:

(a) Security deposits (not to exceed the equivalent of two month's rent) that are required to obtain a lease on an apartment or home;

(b) Essential furnishings such as a bed, a table, chairs, window blinds, eating utensils and food preparation items;

(c) Moving expenses required to occupy your own home or apartment;

(d) Set-up fees or deposits for utility or service access (e.g., telephone, electricity, heating); and

(e) Health and safety assurances, such as pest eradication, allergen control or one-time cleaning prior to occupancy.

(3) Community transition services are available in the CORE and community protection waivers.

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

WAC 388-845-0800 What is emergency assistance?

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

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

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

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

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

WAC 388-845-0900 What are environmental accessibility adaptations? (1) Environmental accessibility adaptations are available in all of the DDD HCBS waivers and provide the physical adaptations to the home required by the individual's (~~(plan of care or)~~) individual support plan needed to:

- (a) Ensure the health, welfare and safety of the individual; or
 - (b) Enable the individual who would otherwise require institutionalization to function with greater independence in the home.
- (2) Environmental accessibility adaptations may include the installation of ramps and grab bars, widening of doorways, modification of bathroom facilities, or installing specialized electrical and/or plumbing systems necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual.
- (3) For the CIIBS waiver only, adaptations include repairs to the home necessary due to property destruction caused by the participant's behavior.

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

WAC 388-845-1100 What are ((~~mental~~)) behavioral health crisis diversion bed services? (~~(Mental)~~) Behavioral health crisis diversion bed services are temporary residential and behavioral services that may be provided in a client's home or licensed or certified setting. These services are available to eligible clients who are at risk of serious decline of mental functioning and who have been determined to be at risk of psychiatric hospitalization. These services are available in all four HCBS waivers administered by DDD as (~~(mental)~~) behavioral health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160.

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

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

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

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

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

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

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

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

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

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

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

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

WAC 388-845-1155 Who are qualified providers of ((mental)) behavioral health stabilization services? Providers of these ((mental)) behavioral health stabilization services are listed in the rules in this chapter governing the specific services listed in WAC 388-845-1150.

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

WAC 388-845-1160 Are there limitations to the ((mental)) behavioral health stabilization services that I can receive? (1) ((Mental)) Behavioral health stabilization services are intermittent and temporary. The duration and amount of services you need to stabilize your crisis is determined by a mental health professional and/or DDD.

(2) The costs of ((mental)) behavioral health stabilization services do not count toward the dollar limitations for aggregate services in the Basic and Basic Plus waiver.

(3) ((Mental)) Behavioral health stabilization services require prior approval by DDD or its designee.

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

WAC 388-845-1310 Are there limits to the personal care services I can receive? (1) You must meet the programmatic eligibility for medicaid personal care in chapter((st)) 388-106 ((and 388-71)) WAC governing medicaid personal care (MPC) using the current department approved assessment form: Comprehensive assessment reporting evaluation (CARE).

(2) The maximum hours of personal care you may receive are determined by the CARE tool used as part of the DDD assessment.

(a) Provider rates are limited to the department established hourly rates for in-home medicaid personal care.

(b) Homecare agencies must be licensed through the department of health and contracted with ADSA.

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

WAC 388-845-1600 What is respite care? Respite care is short-term intermittent relief for persons who normally ((providing)) provide care for ((waiver individuals)) and live with you. This service is available in the Basic, Basic Plus, CIIBS, and Core waivers.

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

WAC 388-845-1605 Who is eligible to receive respite care? You are eligible to receive respite care if you are in the Basic, Basic Plus, CIIBS or Core waiver and:

(1) You live in a private home and no ((one)) person living with you is ((paid)) contracted by ADSA to provide ((personal care services to you)) you with a service; or

(2) You are age eighteen or older and:

(a) You live with ((a paid personal care provider who is)) your natural, step or adoptive parent(s) who is also contracted by ADSA to provide you with a service; ((or)) and

(b) No one else living with you is contracted by ADSA to provide you with a service; or

(3) You are under the age of eighteen and:

(a) You live with your natural, step or adoptive parent(s); and ((your paid personal care provider also lives with you; or))

(b) There is a person living with you who is contracted by ADSA to provide you with a service; or

(4) You live with a caregiver who is paid by DDD to provide supports as:

(a) A contracted companion home provider; or

(b) A licensed children's foster home provider.

NEW SECTION

WAC 388-845-1607 Can someone who lives with me be my respite provider? Someone who lives with you may be your respite provider as long as they are not the person who normally provides care for you.

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

WAC 388-845-1610 Where can respite care be provided? (1) Respite care can be provided in the following location(s):

(a) Individual's home or place of residence;

(b) Relative's home;

(c) Licensed children's foster home;

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

(e) Licensed ((boarding home)) assisted living facility contracted as an adult residential center;

(f) Adult residential rehabilitation center;

(g) Licensed and contracted adult family home;

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

(i) Other community settings such as camp, senior center, or adult day care center.

(2) Additionally, your respite care provider may take you into the community while providing respite services.

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

WAC 388-845-1615 Who are qualified providers of respite care? Providers of respite care can be any of the following individuals or agencies contracted with DDD for respite care:

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

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

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

(4) Licensed and contracted adult family home;

(5) Licensed and contracted adult residential care facility;

(6) Licensed and contracted adult residential treatment facility under chapter 246-337 WAC;

(7) Licensed childcare center under chapter 170-295 WAC;

(8) Licensed child daycare center under chapter 170-295 WAC;

(9) Adult daycare (~~centers~~) providers under chapter 388-71 WAC contracted with DDD;

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

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

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

WAC 388-845-1620 Are there limits to the respite care I can receive? The following limitations apply to the respite care you can receive:

(1) The DDD assessment will determine how much respite you can receive per chapter 388-828 WAC.

(2) ~~((Prior approval by the DDD regional administrator or designee is required:~~

~~(a) To exceed fourteen days of respite care per month; or~~

~~(b) To pay for more than eight hours in a twenty-four hour period of time for respite care in any setting other than your home or place of residence. This limitation does not prohibit your respite care provider from taking you into the community, per WAC 388-845-1610(2).~~

~~((3))~~ Respite cannot replace:

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

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

~~((4))~~ (3) Respite providers have the following limitations and requirements:

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

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

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

~~((5))~~ (4) Your caregiver may not provide DDD services for you or other persons during your respite care hours.

~~((6))~~ (5) If your personal care provider is your parent, your parent provider will not be paid to provide respite services to any client in the same month that you receive respite services.

(6) If your personal care provider is your parent and you live in your parent's adult family home you may not receive respite.

(7) DDD may not pay for any fees associated with the respite care; for example, membership fees at a recreational facility, or insurance fees.

(8) If you require respite from a licensed practical nurse (LPN) or a registered nurse (RN), services may be authorized as skilled nursing services per WAC 388-845-1700 using an LPN or RN. If you are in the Basic Plus waiver, skilled nursing services are limited to the dollar limits of your aggregate services per WAC 388-845-0210.

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

WAC 388-845-1710 Are there limitations to the skilled nursing services I can receive? The following limitations apply to your receipt of skilled nursing services:

(1) Skilled nursing services with the exception of nurse delegation and nursing evaluations require prior approval by the DDD regional administrator or designee.

(2) DDD and the treating professional determine the need for and amount of service.

(3) DDD reserves the right to require a second opinion by a department-selected provider.

(4) The dollar limitation for aggregate services in your Basic Plus waiver limit the amount of skilled nursing services unless provided as a ~~((mental))~~ behavioral health stabilization service.

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

WAC 388-845-1800 What are specialized medical equipment and supplies? (1) Specialized medical equipment and supplies are durable and nondurable medical equipment not available through medicaid or the state plan which enables individuals to:

(a) Increase their abilities to perform their activities of daily living; or

(b) Perceive, control or communicate with the environment in which they live.

(2) Durable and nondurable medical equipment are defined in WAC ~~((388-543-1000))~~ 182-543-1000 and ~~((388-543-2800))~~ 182-543-2800 respectively.

(3) Also included are items necessary for life support; and ancillary supplies and equipment necessary to the proper functioning of the equipment and supplies described in subsection (1) above.

(4) Specialized medical equipment and supplies are available in all DDD HCBS waivers.

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

WAC 388-845-1900 What are specialized psychiatric services? (1) Specialized psychiatric services are specific to the individual needs of persons with developmental disabilities who are experiencing mental health symptoms. These services are available in all DDD HCBS waivers.

(2) Service may be any of the following:

(a) Psychiatric evaluation,

(b) Medication evaluation and monitoring,

(c) Psychiatric consultation.

(3) These services are also available as a ~~((mental)) behavioral~~ health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.

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

WAC 388-845-1910 Are there limitations to the specialized psychiatric services I can receive? (1) Specialized psychiatric services are excluded if they are available through other medicaid programs.

(2) The dollar limitations for aggregate service in your Basic and Basic Plus waiver limit the amount of specialized psychiatric services unless provided as a ~~((mental)) behavioral~~ health stabilization service.

(3) Specialized psychiatric services require prior approval by the DDD regional administrator or designee.

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

WAC 388-845-2000 What is staff/family consultation and training? (1) Staff/family consultation and training is professional assistance to families or direct service providers to help them better meet the needs of the waiver person. This service is available in all DDD HCBS waivers.

(2) Consultation and training is provided to families, direct staff, or personal care providers to meet the specific needs of the waiver participant as outlined in the individual's ~~((plan of care or))~~ individual support plan, including:

- (a) Health and medication monitoring;
- (b) Positioning and transfer;
- (c) Basic and advanced instructional techniques;
- (d) Positive behavior support;
- (e) Augmentative communication systems;
- (f) Diet and nutritional guidance;
- (g) Disability information and education;
- (h) Strategies for effectively and therapeutically interacting with the participant;
- (i) Environmental consultation; and
- (j) For the CIIBS waiver only, individual and family counseling.

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

WAC 388-845-2200 What are transportation services? Transportation services provide reimbursement to a provider when the transportation is required and specified in the waiver ~~((plan of care or))~~ individual support plan. This service is available in all DDD HCBS waivers if the cost and responsibility for transportation is not already included in your provider's contract and payment.

(1) Transportation provides you access to waiver services, specified by your ~~((plan of care or))~~ individual support plan.

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

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

WAC 388-845-3000 What is the process for determining the services I need? Your service needs are determined through the DDD assessment and the service planning process as defined in chapter 388-828 WAC. Only identified health and welfare needs will be authorized for payment in the ISP.

(1) You receive an initial and annual assessment of your needs using a department-approved form.

(a) You meet the eligibility requirements for ~~((ICF/MR))~~ ICF/ID level of care.

(b) The "comprehensive assessment reporting evaluation (CARE)" tool will determine your eligibility and amount of personal care services.

(c) If you are in the Basic, Basic Plus, CIIBS, or Core waiver, the DDD assessment will determine the amount of respite care available to you.

(2) From the assessment, DDD develops your waiver ~~((plan of care or))~~ individual support plan (ISP) with you and/or your legal representative and others who are involved in your life such as your parent or guardian, advocate and service providers.

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

WAC 388-845-3055 What is a waiver individual support plan (ISP)? (1) The individual support plan (ISP) ~~((replaces the plan of care and))~~ is the primary tool DDD uses to determine and document your needs and to identify the services to meet those needs. ~~((Your plan of care remains in effect until a new ISP is developed.))~~

(2) Your ISP must include:

- (a) Your identified health and welfare needs;
- (b) Both paid and unpaid services and supports approved to meet your identified health and welfare needs as identified in WAC 388-828-8040 and 388-828-8060; and
- (c) How often you will receive each waiver service; how long you will need it; and who will provide it.

(3) For an initial ISP, you or your legal representative must sign or give verbal consent to the plan indicating your agreement to the receipt of services.

(4) For a reassessment or review of your ISP, you or your legal representative must sign or give verbal consent to the plan indicating your agreement to the receipt of services.

(5) You may choose any qualified provider for the service, who meets all of the following:

- (a) Is able to meet your needs within the scope of their contract, licensure and certification;
- (b) Is reasonably available;
- (c) Meets provider qualifications in chapters 388-845 and 388-825 WAC for contracting; and
- (d) Agrees to provide the service at department rates.

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

WAC 388-845-3056 What if I need assistance to understand my ~~((plan of care or))~~ individual support

plan? If you are unable to understand your ~~((plan of care or))~~ individual support plan and the individual who has agreed to provide assistance to you as your necessary supplemental accommodation representative is unable to assist you with understanding your individual support plan, DDD will take the following steps:

(1) Consult with the office of the attorney general to determine if you require a legal representative or guardian to assist you with your ~~((plan of care or))~~ individual support plan.

(2) Continue your current waiver services.

(3) If the office of the attorney general or a court determines that you do not need a legal representative, DDD will continue to try to provide necessary supplemental accommodations in order to help you understand your ~~((plan of care or))~~ individual support plan.

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

WAC 388-845-3060 When is my ~~((plan of care or))~~ individual support plan effective? ~~((1) For an initial plan of care or individual support plan, the plan is effective the date DDD signs and approves it after a signature or verbal consent is obtained.~~

~~((2) For a reassessment or review of a plan of care or individual support plan, the plan is effective the date DDD signs and approves it after a signature or verbal consent is obtained.))~~ Your individual support plan is effective the last day of the month in which DDD signs it after a signature or consent is obtained.

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

WAC 388-845-3061 Can a change in my ~~((plan of care or))~~ individual support plan be effective before I sign it? If you verbally request a change in service to occur immediately, DDD can sign the ~~((plan of care or))~~ individual support plan and approve it prior to receiving your signature.

(1) Your ~~((plan of care or))~~ individual support plan will be mailed to you for signature.

(2) You retain the same appeal rights as if you had signed the ~~((plan of care or))~~ individual support plan.

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

WAC 388-845-3062 Who is required to sign or give verbal consent to the ~~((plan of care or))~~ individual support plan? (1) If you do not have a legal representative, you must sign or give verbal consent to the ~~((plan of care or))~~ individual support plan.

(2) If you have a legal representative, your legal representative must sign or give verbal consent to the ~~((plan of care or))~~ individual support plan.

(3) If you need assistance to understand your ~~((plan of care or))~~ individual support plan, DDD will follow the steps outlined in WAC 388-845-3056 (1) and (3).

NEW SECTION

WAC 388-845-3063 Can my individual support plan be effective before the end of the month? You may request to DDD to have your individual support plan effective prior to the end of the month. The effective date will be the date DDD signs it after receiving your signature or verbal consent.

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

WAC 388-845-3065 How long is my plan effective? ~~((1) Your plan of care is effective until it is replaced by your individual support plan.~~

~~((2))~~ Your individual support plan is effective through the last day of the twelfth month following the effective date or until another ISP is completed, whichever occurs sooner.

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

WAC 388-845-3070 What happens if I do not sign or verbally consent to my individual support plan (ISP)? If DDD is unable to obtain the necessary signature or verbal consent for an initial, reassessment or review of your individual support plan (ISP), DDD will take one or more of the following actions:

(1) If this individual support plan is an initial plan, DDD will be unable to provide waiver services. DDD will not assume consent for an initial plan and will follow the steps described in WAC 388-845-3056 (1) and (3).

(2) If this individual support plan is a reassessment or review and you are able to understand your ISP:

(a) DDD will continue providing services as identified in your most current ~~((plan of care or))~~ ISP until the end of the ten-day advance notice period as stated in WAC 388-825-105.

(b) At the end of the ten-day advance notice period, unless you file an appeal, DDD will assume consent and implement the new ISP without the required signature or verbal consent as defined in WAC 388-845-3062 above.

(3) If this individual support plan is a reassessment or review and you are not able to understand your ISP, DDD will continue your existing services and take the steps described in WAC 388-845-3056.

(4) You will be provided written notification and appeal rights to this action to implement the new ISP.

(5) Your appeal rights are in WAC 388-845-4000 and 388-825-120 through 388-825-165.

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

WAC 388-845-3075 What if my needs change? You may request a review of your ~~((plan of care or))~~ individual support plan at any time by calling your case manager. If there is a significant change in your condition or circumstances, DDD must reassess your ~~((plan of care or))~~ individual support plan with you and amend the plan to reflect any significant changes. This reassessment does not affect the end

date of your annual ((~~plan of care or~~)) individual support plan.

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

WAC 388-845-3080 What if my needs exceed the maximum yearly funding limit or the scope of services under the Basic or Basic Plus waiver? (1) If you are on the Basic or Basic Plus waiver and your assessed need for services exceeds the maximum permitted, DDD will make the following efforts to meet your health and welfare needs:

- (a) Identify more available natural supports;
 - (b) Initiate an exception to rule to access available non-waiver services not included in the Basic or Basic Plus waiver other than natural supports;
 - (c) Authorize emergency services up to six thousand dollars per year if your needs meet the definition of emergency services in WAC 388-845-0800.
- (2) If emergency services and other efforts are not sufficient to meet your needs, you will be offered:
- (a) An opportunity to apply for an alternate waiver that has the services you need;
 - (b) Priority for placement on the alternative waiver when there is capacity to add people to that waiver;
 - (c) Placement in an ((~~ICF/MR~~)) ICF/ID.
- (3) If none of the options in subsections (1) and (2) above is successful in meeting your health and welfare needs, DDD may terminate your waiver eligibility.
- (4) If you are terminated from a waiver, you will remain eligible for nonwaiver DDD services but access to state-only funded DDD services is limited by availability of funding.

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

WAC 388-845-3085 What if my needs exceed what can be provided under the CIIBS, Core or Community Protection waiver? (1) If you are on the CIIBS, Core or Community Protection waiver and your assessed need for services exceeds the scope of services provided under your waiver, DDD will make the following efforts to meet your health and welfare needs:

- (a) Identify more available natural supports;
 - (b) Initiate an exception to rule to access available non-waiver services not included in the CIIBS, Core or Community Protection waiver other than natural supports;
 - (c) Offer you the opportunity to apply for an alternate waiver that has the services you need, subject to WAC 388-845-0045;
 - (d) Offer you placement in an ((~~ICF/MR~~)) ICF/ID.
- (2) If none of the above options is successful in meeting your health and welfare needs, DDD may terminate your waiver eligibility.
- (3) If you are terminated from a waiver, you will remain eligible for nonwaiver DDD services but access to state-only funded DDD services is limited by availability of funding.

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

WAC 388-845-4000 What are my appeal rights under the waiver? In addition to your appeal rights under WAC 388-825-120, you have the right to appeal the following decisions:

- (1) Disenrollment from a waiver under WAC 388-845-0060, including a disenrollment from a waiver and enrollment in a different waiver.
- (2) A denial of your request to receive ((~~ICF/MR~~)) ICF/ID services instead of waiver services; or
- (3) A denial of your request to be enrolled in a waiver, subject to the limitations described in WAC 388-845-4005.

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

WAC 388-845-4005 Can I appeal a denial of my request to be enrolled in a waiver? (1) If you are not enrolled in a waiver and your request to be enrolled in a waiver is denied, your appeal rights are limited to the decision that you are not eligible to have your request documented in a statewide data base due to the following:

- (a) You do not need ((~~ICF/MR~~)) ICF/ID level of care per WAC 388-845-0070, 388-828-8040 and 388-828-8060; or
 - (b) You requested enrollment in the CIIBS waiver and do not meet CIIBS eligibility per WAC 388-828-8500 through 388-828-8520.
- (2) If you are enrolled in a waiver and your request to be enrolled in a different waiver is denied, your appeal rights are limited to the following:
- (a) DDD's decision that the services contained in a different waiver are not necessary to meet your health and welfare needs and that the services available on your current waiver can meet your health and welfare needs; or
 - (b) DDD's decision that you are not eligible to have your request documented in a statewide database because you requested enrollment in the CIIBS waiver and do not meet CIIBS eligibility per WAC 388-828-8500 through 388-828-8520.
- (3) If DDD determines that the services offered in a different waiver are necessary to meet your health and welfare needs, but there is not capacity on the different waiver, you do not have the right to appeal any denial of enrollment on a different waiver when DDD determines there is not capacity to enroll you on a different waiver.

WSR 12-17-118
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
 [Filed August 21, 2012, 9:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 06-08-085.

Title of Rule and Other Identifying Information: Chapter 296-155 WAC, Safety standards for construction work,

including Part C-1, fall restraint and fall arrest, and Part K, floor openings, wall openings and stairways (also updating references throughout this chapter); chapter 296-36 WAC, Safety standards—Compressed air work; chapter 296-45 WAC, Safety standards for electrical workers; and chapter 296-874 WAC, Scaffolds.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Room S119, Tumwater, WA 98501, on October 16, 2012, at 9:00 a.m.; and at the DoubleTree by Hilton, 322 North Spokane Falls Court, Spokane, WA 99201, on October 17, 2012, at 9:00 a.m.

Date of Intended Adoption: January 22, 2013.

Submit Written Comments to: Cindy Ireland, P.O. Box 44620, Olympia, WA 98504-4620, e-mail cynthia.ireland@lni.wa.gov, fax (360) 902-5619, by 5 p.m. October 24, 2012.

Assistance for Persons with Disabilities: Contact Beverly Clark by 5:00 p.m. October 1, 2012, (360) 902-5516 or beverly.clark@lni.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2007, the division of occupational safety and health (DOSH) began working with a fall protection stakeholder group to consolidate the fall protection requirements located in chapter 296-155 WAC, Safety standards for construction work, into one coherent set of requirements. DOSH is proposing to merge Parts C-1 and K, creating one location where fall protection requirements would be located for construction. In addition, we asked the stakeholder group to help identify any technical changes needed due to industry developments and to ensure that any gap in current fall protection requirements would be addressed and rectified by this proposed rule update. Throughout the process, clear and concise language in the proposal was a focal point.

NEW SECTIONS:

WAC 296-155-24601 Scope and application.

- This section was moved from current WAC 296-155-24501 and was rewritten to cover any activities performed under chapter 296-155 WAC requiring fall protection.

WAC 296-155-24603 Definitions.

- This section was moved from current WAC 296-155-24503 and 296-155-500. Definitions that are not used in the proposed language have been removed; new definitions have been added to clarify new language. The following definitions have been added: Affected area, catch platform, equivalent, fall distance, floor hole, floor opening, handrail, hazardous slope, personal fall arrest system, personal fall restraint system, platform, qualified person, runway, safety net system, safety watch system, self-rescue device, standard guardrail system, standard strength and construction, toeboard, and wall opening.
- The following definitions were removed: Approved, body belt, continuous fall protection, control zone, failure, positioning belt, roll out, strength member, and work area.

WAC 296-155-24605 General requirements.

- This section contains requirements currently located in WAC 296-155-505, to include clarifying language that all walking/working surfaces upon which employees work are to be structurally sound.
- This section contains inspection criteria currently located in WAC 296-155-24510 relating to all components of personal fall arrest systems, personal fall restraint systems, positioning device systems, and safety nets.
- This section contains new exemption language relating to when employees would be exempt from WAC 296-155-24609 and 296-155-24611.

WAC 296-155-24607 Fall protection required regardless of height.

- This section contains requirements currently located in WAC 296-155-505 relating to regardless of height, open sided floors, walkways, platforms or runways must be guarded with a standard guardrail system.
- Language has been amended to "standard guardrail system" throughout the proposal for consistency.
- Add language currently located in WAC 296-155-680 relating to impalement hazards.

WAC 296-155-24609 Fall protection required at four feet or more.

- This section contains requirements currently located in WAC 296-155-505 relating to requiring fall protection at four feet or more and also addresses guardrails, handrails, and covers. These requirements parallel the requirements currently in WAC 296-155-24510.
- Language added relating to hazardous slopes changing from six feet to four feet.
- Language throughout this section has been rewritten to clarify and combine existing standards.
- Language has been rewritten to clarify the relationship between walking/working surfaces and unprotected sides and edges.
- New language clarifying the requirements relating to using stilts behind guardrails has been added.
- A list of options for how to provide fall protection at four feet has been placed in this section.
- New language has been added to explain the requirements of fall protection at four feet.
- Language relating to roofing work has been rewritten to correct an error in the current WAC. This section clarifies that a roof is a walking/working surface and as such, fall protection starts at four feet.

WAC 296-155-24611 Fall protection required at ten feet or more.

- This section contains requirements currently located in WAC 296-155-24505, fall protection work plan, and 296-155-24510, appropriate fall protection systems. This language has been rewritten for clarity and updated to provide consistency with the Occupational Safety and Health Administration (OSHA).

- Language from WISHA Regional Directive (WRD) 30.25 relating to fall protection during excavation and trenching operations has been incorporated into this section.

WAC 296-155-24613 Fall arrest specifications.

- This section contains requirements currently located in WAC 296-155-24510 relating to fall arrest specifications. This language has been rewritten for clarity.

WAC 296-155-24615 Fall restraint specifications.

- This section contains requirements currently located in WAC 296-155-24510 relating to fall restraint. This language has been rewritten for clarity.
- Remove the language relating to body belts since they are no longer allowed as an option for fall restraint. To further clarify, the term "full body harness" is now being used throughout the proposal.
- The section contains requirements currently located in WAC 296-155-505 relating to guardrails.
- This section contains requirements currently located in WAC 296-155-24510, 296-155-24513, and 296-155-24520 relating to warning lines. This language has been rewritten for clarity. Language from WRD 29.50 relating to warning lines used for fall protection in construction has been incorporated into this section.
- This section contains requirements currently located in WAC 296-155-24515 relating to access paths. This language has been rewritten for clarity.
- This section contains requirements currently located in WAC 296-155-24521 relating to a safety monitor system. This language has been rewritten for clarity.
- This section contains requirements currently located in WAC 296-155-505 relating to toeboards.
- Specifications governing safety watch systems have been put into this section. Since using a safety watch system is an option, not a requirement, for employers, this is not considered as an increase in requirements.

WAC 296-155-24617 Positioning device system specifications.

- This section contains requirements currently located in WAC 296-155-24510 relating to positioning device systems. This language has been rewritten for clarity to provide consistency with other requirements in this proposal and with American National Standards Institute (ANSI) 357.3, 2007.

WAC 296-155-24619 Other specifications.

- This section contains miscellaneous requirements currently located in chapter 296-155 WAC, Parts C-1 and K. This language has been rewritten for clarity.
- Add language making it clear that crawling boards and chicken ladders are not considered a fall protection system.

- Language has been added to this section outlining the specifications using a self rescue device system.

WAC 296-155-24621 Training.

- This section contains requirements currently located in WAC 296-155-24505 relating to training. This language has been rewritten for clarity.

WAC 296-155-24623 Appendix A—Determining roof widths—Nonmandatory guidelines for complying with WAC 296-155-24615.

- This section contains information currently located in WAC 296-155-24523. This language was updated with housekeeping changes.

WAC 296-155-24624 Appendix B—Calculating fall clearance distance using a shock-absorbing lanyard and D-ring anchorage connector—Nonmandatory guidelines for complying with WAC 296-155-24613 (1)(d).

- This section was created to assist employers in calculating fall clearance distances.

AMENDED SECTIONS:

WAC 296-36-170 Stairs and ladders, 296-45-25510 Fall protection, 296-155-477 Stairways, 296-155-655 General protection requirements, 296-155-682 Requirements for equipment and tools, 296-155-706 Structural steel assembly, 296-155-716 Fall protection, 296-155-740 Cofferdams, 296-155-745 Compressed air, 296-874-20008 Make sure platforms are properly planked or decked, 296-874-20030 Make sure ramps and walkways used to access scaffolds meet these requirements, 296-874-20052 Provide fall protection for employees on scaffolds, 296-874-20058 Make sure personal fall arrest systems meet these requirements, 296-874-40020 Meet these requirements when using integral prefabricated scaffold access frames, and 296-874-40034 Meet these requirements when using repair bracket scaffolds.

- Updates references.

REPEALED SECTIONS:

The following sections are proposed to be repealed. The requirements in these sections have been moved to WAC 296-155-24601 through 296-155-24624.

WAC 296-155-245 Reserve, 296-155-24501 Scope and application, 296-155-24503 Definitions, 296-155-24505 Fall protection work plan, 296-155-24507 Reserve, 296-155-24510 Fall restraint, fall arrest systems, 296-155-24515 Guarding of low pitched roof perimeters, 296-155-24519 Reserve, 296-155-24520 Leading edge control zone, 296-155-24521 Safety monitor system, 296-155-24522 Reserve, 296-155-24523 Appendix A to Part C-1—Determining roof widths nonmandatory guidelines for complying with WAC 296-155-24515 (2)(b), 296-155-24524 Reserve, 296-155-24525 Appendix B to Part C-1—Fall restraint and fall arrest (employer information only), 296-155-500 Definitions applicable to this part, 296-155-505 Guardrails, handrails and covers, 296-155-50503 Roofing brackets, 296-155-50505 Reserved, 296-155-510 Reserved, and 296-155-515 Ramps, runways, and inclined walkways.

Reasons Supporting Proposal: This proposal was developed with the assistance of a stakeholder group from the industry representing business and labor.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Statute Being Implemented: Chapter 49.17 RCW.

Rule is necessary because of federal law, 29 C.F.R. 1926, Subpart M.

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Margaret Leland, Tumwater, Washington, (360) 902-4504; Implementation and Enforcement: Anne F. Soiza, Tumwater, Washington, (360) 902-5090.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

DOSH of L&I is proposing new rules under chapter 296-155 WAC, Parts C-1 and K, regarding the regulation of fall protection for the construction industry in the state of Washington. The overarching scope and application of the proposed rules is set forth in WAC 296-155-24601, which reads as follows:

Chapter 296-155 WAC, Part C-1 sets forth requirements for employers to provide and enforce the use of fall protection for employees performing activities covered under chapter 296-155 WAC.

The following small business economic impact statement (SBEIS) was prepared in compliance with the Regulatory Fairness Act (RFA), RCW 19.85.040, and provides an analysis of the cost per full-time equivalent (FTE) for small businesses compared to large businesses associated with implementation of chapter 296-155 WAC, Part C-1. In particular, the following provisions of the proposed rules, which have been identified as the components possibly imposing the increased compliance costs on the affected businesses, were analyzed in this report: WAC 296-155-24609(2), guarding of walking/working surfaces with unprotected sides and edges, 296-155-24609(7), fall protection during form and rebar work, 296-155-24609(9), hazardous slopes, 296-155-24613(3), catch platforms, 296-155-24615(1), personal fall restraint systems, and 296-155-24617 Positioning device system specifications.

1. INTRODUCTION TO THE COST SURVEY:

1.1 Survey methodology.

To estimate the probable incurred cost of proposed rule changes to the construction industry for both this report and the cost-benefit analysis (CBA), L&I developed and conducted a survey in May 2010. L&I designed this survey in collaboration with the ad hoc committee established for this rule making. All the survey questions were reviewed by the ad hoc committee and interested stakeholders before being sent out to the businesses. The survey is used to gauge all the probable new compliance costs that businesses would incur if the proposed rules were adopted.

1.1.1 Sampling frame.

The development of the sampling strategy for the fall protection cost survey requires the identification of the set of

businesses in the construction industry that will most likely be impacted by the proposed rule changes. To sample the businesses that best represent the underlying population, L&I extracted the most recent citation data for violations of fall protection rules in construction industry. This data showed that each of the selected seventeen industries (see Table A2) within the construction sector individually accounted for more than 0.5 percent of the total number of citations during 2004-2008. Combined, these industries were responsible for over ninety-one percent of citations issued during this period. A similar distribution was seen in the L&I claim data, which showed that these industries accounted for ninety percent of total fall related claims. Additionally, according to a report released by L&I's SHARP program, thirty-eight out of forty fatal construction falls in Washington state occurred in these industries during 1998-2005. Drawing on all the above factors, we determined these industries to be representative of those that stand to be affected by the proposed rules and selected employers in these industries as the survey respondents.

1.1.2 Sample size.

In determining the appropriate sample size needed to obtain valid estimates of the costs to comply with the proposed fall protection rules, L&I considered several factors including the desired confidence level, uncertainty in the cost estimates, and the expected response rate.

The department first selected the acceptable confidence level and uncertainty in order to ensure the most rigorous and statistically valid estimates of compliance costs. The conventional levels of ninety-five percent confidence with ± 5 percent uncertainty were chosen. The department next considered the size of the business account population from which the sample would be selected. After screening out businesses that had inactive accounts, L&I pulled 21,752 accounts from those seventeen major industries within Washington construction sector from its administrative data warehouse (refreshed as of February, 2010).

In determining the requisite sample size, L&I also took into account the relatively low response rates it has reported for previous surveys to businesses regarding the compliance costs of new rules. Table A1 in the appendix presents a summary of survey results conducted during the rule-making process over the past couple of years, including sample size, sampling methods, number of respondents, and response rate for each survey. Of the nine self-administered, mail-in cost surveys included in this review, sample sizes ranged from three hundred twenty-three to five thousand six hundred forty-four and response rates ranged from eight percent to twenty-five percent.

The final determination of sample size was based on the following factors: (1) The population is twenty-one thousand seven hundred fifty-two active employers, who will most likely be affected by the proposed rules, (2) the desirable confidence level is ninety-five percent (with ± 5 percent uncertainty), and (3) the response rate for similar surveys has been fairly low. The department ultimately chose a sample size of eight thousand because it was sufficient to yield statistically significant cost estimates, assuming a 7.3 percent response rate and conventional levels for statistical validity. That is, if assumptions were to hold, a returned sample size of five hun-

dred eighty-five would allow for statistically valid estimates of the overall compliance costs.

1.1.3 Sampling method.

In conjunction with determining the desired sample size and the appropriate sampling frame, the department also needed to select a sampling method that would yield the most accurate cost estimates. To achieve this goal, employers ought to be randomly selected and their industrial distribution ought to be proportionate to the overall sampling frame. Given this, L&I adopted proportionate stratified random sampling by industry. This method allowed the department to create strata at the industry level that pattern the underlying population, thereby helping to reduce sampling variability (Pedhazur & Schmelkin, 1991: 331). To implement this method, L&I determined the sample size needed for each industry by multiplying that industry's proportion of the sampling frame by the overall desired sample size ($n = 8,000$). The resulting sample sizes by industry are listed in Table A3 in the appendix.

In order to randomly select businesses, the department used SAS software and employed the SURVEYSELECT function and SRS method to "grab" businesses randomly within each industry, up to the total number prescribed by each sample size. In the end, eight thousand employers were selected for the total sample (see Table A3 in the appendix).

1.1.4 Survey development and response rate.

The survey was first reviewed in the ad hoc committee meeting in November 2009. The revised version of the survey was then reviewed and pretested in the survey stakeholder meeting on March 8, 2010. It was finalized based on the inputs from the meeting and sent to randomly selected businesses by mail on May 13, 2010. Given the relatively large sample size, L&I originally suggested the survey end June 13, 2010, but shortened the final deadline for completing the survey to June 1, 2010, due to the change in timeline for this rule making.

Between May 13 and June 1, 2010, L&I received one thousand seventeen completed surveys from businesses out of the eight thousand surveys sent. Seven out of these one thousand seventeen respondents indicated that they had either closed or sold businesses. Five hundred and twenty respondents reported that they did not have employees performing any of the work asked in the survey or their employees were not exposed to a fall hazard of four feet or more. Another two hundred employers indicated none of the rule changes in the survey would apply to them. The remaining two hundred ninety businesses indicated they were subject to at least one rule change described in the survey. All told, the response rate for those presumed to have been contacted was thirteen percent (please see Table A4 in the appendix for details). Given that there may have been some unsuccessful deliveries due to possible errors in the preparation or the delivery process, the actual response rate is likely to be higher. It is important to note that the two hundred ninety "quantitatively useable" surveys represent four percent of the total surveys sent and twenty-nine percent of the one thousand seventeen completed surveys that the department received. These rates are reasonable and acceptable given the fact that the survey was conducted at a time when the nation was struggling with

the toughest economy since the 1930s and the construction industry was taking the hardest hit.

Of the two hundred ninety respondents who were subject to at least one rule change described in the survey, approximately ninety-three percent (two hundred seventy) were small businesses based on the definition under the RFA (chapter 19.85 RCW) as "any business entity that has fifty or fewer employees." This percentage is exact[ly] the same as the one shown in an interagency joint report in the state of Washington (GMAP, 2007) and slightly higher than the nationwide percentage (The Construction Chart Book, 2007). The employment size was determined based on two questions in the survey: (1) The reported total number of FTEs in 2009, and (2) the reported total hours that part-time or seasonal employees, if any, worked in 2009. The part-time or seasonal hours were then converted into FTEs using the formula " $1.0 \text{ FTE} \approx 2000 \text{ hours per year}$."

1.2 Survey contents.

A large proportion of the proposed rules (clarifying the current standards, updating definitions, etc.) are intended to clarify the current rules without introducing any additional costs. In fact, these rule amendments will benefit businesses by helping them avoid noncompliance due to possible confusion over the current requirements. Failure to comply can result in costly fines or penalties. The first section of the survey is designed to obtain the background information of each employer including the number of employees, the primary business operations, and the work activities involved. The second and the last section are designed to estimate the probable new compliance costs. Specifically, these include the following seven subsections:

(1) Identifying and evaluating the cost associated with the trigger height of fall protection for form and rebar work. Under the proposed rules, employers will be required to provide and make sure their employees use fall protection starting at four feet instead of six feet when they are placing or tying reinforcing steels. This increased requirement is expected to reduce fall injuries but may impose additional costs on the affected employers. Question 7b in the survey is designed to obtain the compliance cost of this provision.

(2) Identifying and evaluating the cost associated with the new trigger height for fall protection for working on a hazardous slope. Workers performing tasks on hazardous slopes have greater risk of falling from elevation than the ones working on other surfaces. Therefore, more stringent fall protection appears necessary unless the increased compliance cost is unaffordable to the businesses. Question 8b in the survey is aimed to gather the cost data from the respondents regarding this change.

(3) Identifying and evaluating the cost associated with the requirement of increasing the height of the guardrail if employees are using stilts or working on platforms around the guardrail. This requirement is shown as a note under the current rules but this rule making incorporates it directly into the rule language. Question 9b in the survey is designed to gather the cost data concerning this change.

(4) Identifying and evaluating the cost associated with the height requirement for catch platform installa-

tion. Under the proposed rules, employers are required to install the catch platform within four vertical feet of the work area, instead of ten feet. This new standard provides better protection to the workers but is expected to impose new costs on the employers. Question 11b in the survey is designed to estimate the new compliance costs.

(5) Identifying and evaluating the cost associated with the elimination of the option of using moveable barriers to cover floor openings. The elimination of using moveable barriers is necessary in that this definition is not clear and may create confusion. Question 12c in the survey is expected to provide the cost data related to this rule change.

(6) Identifying and evaluating the cost associated with the elimination of body belts as part of fall restraint systems and positioning device systems. The cost of excluding the use of body belts in a fall protection system is expected to be moderate as L&I believes that most of the businesses in the construction industry have already abandoned the use of body belts due to safety concerns. Question 13a in the survey asks the employers to estimate the cost associated with this rule change.

(7) Identifying and evaluating the cost associated with fall protection while working on a roof, it starts at four feet except for the roofing work or leading edge work on low pitched roofs. Due to the frequency and the severity of fall accidents from roofs, the proposed rules explicitly and clearly set the trigger height for fall protection for work activities on roofs at four feet, except for roofing and leading edge work on low pitched roofs. This actually does not represent an increased requirement because under current WAC 296-155-505 (6)(a), working on a walking working surface requires fall protection starting at four feet and a roof is a type of a walking working surface unless it is under construction and the workers are doing roofing or leading edge work. It is worth noting that the specific exemption of roofing work from this requirement in the proposed rule is intended to correct an error that currently exists in WAC 296-155-24515(1) stating a trigger height of ten feet during the performance of work on low pitched roofs.

While it is difficult to directly monetize the new costs attributable to this rule component, the cost information collected from the survey is indirectly used to estimate these costs.

The remainder of the survey is designed to estimate the reduced compliance cost, or the increased benefit of being allowed to use a safety watch system for any repair or service equipment work on a low pitched roof. The survey also asks the employers what type of protection they are currently using to protect the workers engaged in these work activities.

2. ASSESSING ECONOMIC IMPACT BY EMPLOYMENT SIZE:

The RFA, RCW 19.85.040(1), requires the department to determine whether a proposed rule will have a disproportionate cost impact on small businesses. The act directs the department to compare "the cost of compliance for small businesses with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rule." A convenient and easy way to make this comparison is to compare the compliance cost per employee for these two groups. For each rule component described in the survey, the unit cost for the small businesses

is compared to the unit cost for the largest ten percent of all businesses in the affected group.¹

This SBEIS compares the weighted average cost per FTE for each component that represents increased requirements. This method is selected rather than the median cost we adopted in the CBA because insufficient sample sizes for the group of largest businesses in many cases makes it more practical. As a result, the cost estimates in the following sections may not be comparable to the ones presented in the CBA report. The purpose here is to best estimate the extent to which the disproportionate impact, if any, is on small businesses rather than to estimate the total costs to the affected businesses as a whole.

2.1 Cost per FTE associated with fall protection for form and rebar work.

On the survey sent to employers, Question 7b asked respondents how much the annual cost would be if the proposed new standard regarding fall protection for employees placing or tying reinforcing steel were adopted. Thirty-three respondents indicated this new requirement applied to them and provided their estimates of the cost of compliance. Of these thirty-three respondents, twenty-eight businesses were small businesses and the average annual cost per FTE was \$354. The corresponding cost for the largest ten percent of businesses required to comply with this new standard was \$144. In light of this, the cost per FTE for small businesses is estimated to be approximately 2.5 times the cost for the ten percent of the largest businesses.

2.2 Cost per FTE associated with fall protection for employees working on hazardous slopes.

On the survey sent to employers, Question 8b asked respondents how much the annual cost would be if the proposed new standard regarding fall protection for work on hazardous slopes were adopted. One hundred thirty-seven respondents indicated this new requirement applied to them and provided their estimates of the cost to do so. Of these one hundred thirty-seven respondents, one hundred twenty-three businesses were small businesses and the annual cost per FTE was \$378. The corresponding cost for the largest ten percent of businesses required to comply with this new standard was \$53. In light of this, the cost per FTE for small businesses is estimated to be approximately 7.2 times the cost for the ten percent of the largest businesses.

2.3 Cost per FTE associated with fall protection for employees using stilts or working on platform above the protection of the guardrail system.

On the survey sent to employers, Question 9b asked respondents how much the annual cost would be if the proposed new standard regarding fall protection for employees using stilts or working on platform above the protection of the guardrail system were adopted. Thirty-six respondents indicated this new requirement applied to them and provided their estimates of the cost to do so. Of these thirty-six respondents, thirty businesses were small businesses and the annual cost per FTE was \$310. The corresponding cost for the largest ten percent of businesses required to comply with this new standard was \$33. In light of this, the cost per FTE for small businesses is estimated to be approximately 9.3 times the cost for the ten percent of the largest businesses.

2.4 Cost per FTE associated with the installation of a catch platform within four feet of the work area.

On the survey sent to employers, Question 11b asked respondents how much the annual cost would be if the proposed new standard regarding the installation of a catch platform within four feet of the work area were adopted. Thirty respondents indicated this new requirement applied to them and provided their estimates of the cost to do so. Of these thirty respondents, twenty-eight businesses were small businesses and the annual cost per FTE was \$611. The corresponding cost for the largest ten percent of businesses required to comply with this new standard was \$207. In light of this, the cost per FTE for small businesses is estimated to be approximately 2.9 times the cost for the ten percent of the largest businesses.

2.5 Cost per FTE associated with the exclusion of using a moveable barrier as fall protection around floor openings.

On the survey sent to employers, Question 12c asked respondents how much the annual cost would be if the proposed new standard regarding the elimination of using a moveable barrier as fall protection around floor openings were adopted. Seventy-two respondents indicated this new requirement applied to them and provided their estimates of the cost to do so. Of these seventy-two respondents, sixty-five businesses were small businesses and the annual cost per FTE was \$439. The corresponding cost for the largest ten percent of businesses required to comply with this new standard was \$180. In light of this, the cost per FTE for small businesses is estimated to be approximately 2.4 times the cost for the ten percent of the largest businesses.

2.6 Cost per FTE associated with the exclusion of using body belts as part of fall protection system.

On the survey sent to employers, Question 13a asked respondents how much the annual cost would be if the proposed new standard regarding fall protection for employees placing or tying reinforcing steel were adopted. Fifty-seven respondents indicated this new requirement applied to them and provided their estimates of the cost to do so. In addition, all of these fifty-seven businesses were small businesses and the annual cost per FTE was \$952. The corresponding cost for the largest ten percent of businesses required to comply with this new standard was \$778. In light of this, the cost per FTE for small businesses is estimated to be approximately 1.2 times the cost for the ten percent of the largest businesses.

In summary, the proposed rules will have a disproportionate cost impact on small businesses but the extent of this impact varies among different provisions of the proposed rule (see Table A5 in the appendix). Small businesses could incur approximately the same cost in compliance as larger firms with the standard that eliminates the use of body belts to nine times greater cost in compliance than large firms with the standard that requires the increase of guardrail height on certain conditions. Larger businesses, on the other hand, may be able to spread the costs out among a larger number of employees or more frequent use of the equipment.

2.7 Cost per FTE associated with fall protection for work on a roof.

As stated in the CBA, this rule component essentially does not represent an increased requirement. This rule change is proposed to correct an inconsistency that existed in the current rule language. Therefore, the only possible new costs will be those incurred in training employees and updating relevant materials to be in line with the proposed rules that correctly and clearly set forth the requirement as well as the exemptions from this requirement. Data on the cost of training staff and updating material as a result of this rule change is not directly available to the department. However, the cost information collected from the survey on the hazardous slopes section can serve as a proxy for two reasons. First, both requirements apply to specific work conditions rather than worker activities and both are intended to specify a clear-cut trigger height for fall protection. In light of this fact, the training and material updating costs for these two rule components are expected to be similar. Second, the hazardous slopes section has more responses than any other section in the survey (one hundred forty-seven responses) so the cost data from this section is expected to be more reliable than from other sections. Based on this part of survey data, the annual training and material update costs per FTE for small businesses were \$54. The corresponding costs for the largest ten percent of businesses required to comply with this requirement were \$9. In light of this, the cost per FTE for small businesses is projected to be approximately six times the cost for the ten percent of the largest businesses.

3. ACTIONS TAKEN TO REDUCE THE IMPACT OF THE PROPOSED RULES ON SMALL BUSINESS:

The above analysis indicates that small businesses are likely to bear a disproportionate share of regulatory burden from the proposed rules. This conclusion is consistent with many existing research findings (Crain, 2005; Hopkins, 1995). The law requires L&I to mitigate the cost for small business if it is legal and feasible to do so. In response to this requirement, L&I believes the following rules and practices will help to reduce the impact of the proposed fall protection rules on small businesses.

3.1 Reduced fines for small businesses.

RCW 49.17.180(7) requires the department give consideration in the penalty assessment to factors including the size of the employer's business. Table 5 in WAC 296-900-14015 spells out the specific process for penalty adjustments including employment size. Based on these standards, an employer with twenty-five or fewer employees can request up to sixty percent reduction in a penalty issued against him/her.

3.2 Enhanced training and education opportunities for small businesses.

The department has made a concerted effort to focus its training and education campaign on small businesses. This will include providing employers with materials that will help develop their fall protection work plan (FPWP), free training courses, train-the-trainer meetings and other related services.

3.3 Prioritized consultation services for small businesses.

The department has developed a variety of on-site and off-site consultation services primarily for smaller employers and has prioritized establishments by size when receiving requests for these services. For example, the highest scheduled priority of consultation services will be given to employers who employ less than twenty-five employees at the work-site. Most of these services are provided at no cost through the state and federal funds with primary attention to smaller businesses. These services can include, but are not limited to, opening and closing conferences, a walk-through of employer worksites, identification of hazards, correction assistance, follow-up visits to verify correction of serious hazards, assistance in the development or improvement of the employer's occupational safety and health management system, technical assistance by telephone or letter and client visits to a department office. No penalties will be proposed or citations issued for any safety and health problems identified by the consultants. Hence, these consultation services greatly benefit small businesses in establishing and maintaining a safe and healthful workplace.

3.4 Exempted record-keeping and reporting requirements for small businesses.

According to WAC 296-27-00103, establishments with ten or fewer employees are not required to keep injury or illness records. Based on the survey results, more than half of the affected businesses fall into this category, and therefore are exempt from this record-keeping requirement.

4. SMALL BUSINESS INVOLVEMENT IN THE RULE-MAKING PROCESS:

The department has made a considerable effort to involve small businesses and their representatives at various points in the rule-making process. These efforts include:

(1) Since March 2006, the department has held three series of stakeholder meetings in Tumwater, Tukwila, Spokane, Yakima and Bellevue to hear from the business community, including many small businesses. There was also a stakeholder comment period after each series of meetings.

(2) The department also held several ad hoc committee meetings between March and August 2007, in which small businesses or their representatives addressed their concerns and opinions about this rule making.

(3) Representatives of many business and trade associations such as Associated General Contractors (AGC) of Washington, Independent Business Association (IBA), Association of Washington Business (AWB), and Building Industry Association of Washington (BIAW) were invited and heavily involved in the entire process of developing and conducting the cost survey.

(4) The department finally developed the rule language with the consideration of all the comments and concerns from the interested stakeholders across the state, including the small business community.

5. INDUSTRIES LIKELY TO BE REQUIRED TO COMPLY WITH THE RULE:

All the industries included in the sampling frame for the cost survey are listed in Table A2 in the appendix of this SBEIS. One or more increased requirements in the proposed rules may apply to businesses in these industries, depending

upon the work activities of their employees. The actual compliance cost varies among different businesses. In some cases, employers have indicated there was no cost for them because they have already been in compliance with the proposed requirements thereby incurring no additional cost resulting from these rule amendments.

6. NUMBER OF JOBS CREATED OR LOST:

The department does not anticipate that a significant number of jobs will be created or lost as a result of compliance with the proposed fall protection rules. Normally these requirements are such that employers will be able to meet them using existing staff and without the need for new hires. Similarly, there is no reason to suspect that employers would need to dismiss employees as a result of the draft proposed fall protection rules. Although some employers have indicated in the survey that extra labor is needed to implement the safety watch system, L&I believes this is not necessary [necessarily] the case as the safety watch system is an option for employers in addition to all the other existing approaches available and allowed.

7. CONCLUSIONS:

As we have analyzed above, the proposed fall protection rules are likely to impose disproportionate compliance costs on small businesses. The extent of the disproportion varies among different rule components². On the other hand, current research findings have also indicated that small businesses usually suffer significantly higher rates of injuries and fatalities than large businesses (Kaskutas, et al., 2009; Mendeloff, 2006; Ringen, 1995; Marsh, 1994; Toscano and Windau, 1994). Therefore, small businesses may benefit more in terms of reductions in injuries and deaths if the proposed rules are adopted.

8. REFERENCES:

- Crain, W. M. (2005). "The impact of regulatory costs on small firms." U.S. Small Business Administration. Washington, D.C.
- Division of Occupational Safety and Health (2008). "Heat-related illness small business economic impact statement (SBEIS)." Washington State Department of Labor and Industries, Olympia, WA.
- GMAP. (2007). "Small business survival: A joint report to the governor." Washington State Departments of Commerce, Employment Security Department, Department of Labor and Industries, and Department of Revenue. Olympia, WA.
- Hopkins, T. D. (1995). "A survey of regulatory burdens." U.S. Small Business Administration, Report Number SBA-8029-OA-93. Washington, D.C.
- Kaskutas, V., et al. (2009). "Fall hazard control observed on residential construction sites." *American Journal of Industrial Medicine*, 52, 491-499.
- Marsh, B. (1994). "Workers at risk: chance of getting hurt is generally far higher at small companies." *Wall Street Journal*, February 3rd.
- Mendeloff, J., et al. (2006). "Are small businesses riskier than larger ones?" Kauffman-RAND Center for the Study of Small Business and Regulation, Santa Monica, CA.
- Pedhazuer, E., and Schmelkin, L. P. (1991). *Measurement, design, and analysis: an integrated approach*. Hills-

dale, New Jersey: Lawrence Erlbaum Associates, Publishers, 331-334.

Ringen, K. (1995). "A performance Goal for construction Safety and Health." The Center to Protect Workers' Rights, Washington, D.C.

Safety and Health Assessment and Research for Prevention (SHARP) Program. (2006). "Fall hazards in the con-

9. APPENDIX:

struction industry." Washington Department of Labor & Industries, Olympia, WA.

The Center for Construction Research and Training. (2007). "The construction chart book: The U.S. construction industry and its workers." Silver Spring, MD.

Toscano, G., and Windau, J. (1994). "The changing character of fatal work injuries." Monthly Labor Review, October, 17-28.

Rule-making content area	Year of survey	Survey sample size	Sampling method	Total respondents	Response rate
Heat-related illness	2007	5206	Stratified random sample by industry	804	15%
Lead	2005	492 to construction firms	Random selection	115 for construction	23%
		615 to general industry firms	Random selection	108 for general industry	18%
Self-insurance: Medical care, claims handling, personnel qualifications	2005	391	Surveyed entire population of self-insured employers	36	9%
Ground personnel: Personal protective equipment	2004	849	Randomly selected ten percent of businesses from each of the relevant industries	209	25%
Ground personnel: Motor vehicles	2004	849	Randomly selected ten percent of businesses from each of the relevant industries	197	23%
Machine safety: Chippers and hog mills	2003	1,000	Random selection	248	25%
Agriculture	1998	323	Stratified random sample, weighting small businesses more heavily	30	9%
Health care services	1998	529	Random selection	41	8%
Ergonomics	1998	5,644 (4,425 contacted by phone by Gilmore Research Group)	Stratified random sample, weighting industries with few firms and large businesses more heavily	1,085	19%

NAICS Code	Description
238130	Framing contractors.
238160	Roofing contractors.
236115	New single-family housing construction (except operative builders).
236118	Residential remodelers.
238320	Paint and wall covering contractors.
238170	Siding contractors.

236220	Commercial and institutional building construction.
238220	Plumbing, heating, and air-conditioning contractors.
238310	Drywall and insulation contractors.
238350	Finish carpentry contractors.
238990	All other specialty trade contractors.
238110	Poured concrete foundation and structure contractors.
238120	Structural steel and precast concrete contractors.
238210	Electrical contractors.

238910	Site preparation contractors.
236116	New multifamily housing construction (except operative builders).
238140	Masonry contractors.

Table A3. Stratified random samples for survey by NAICS³

NAICS Code	Total accounts	Percent of all accounts	Proportionate sample size
236115	3562	16.38%	1310
236116	74	0.34%	27
236118	2699	12.41%	993
236220	1090	5.01%	401
238110	977	4.49%	359
238120	111	0.51%	41
238130	2193	10.08%	807
238140	504	2.32%	185
238160	751	3.45%	276
238170	321	1.48%	118
238210	2016	9.27%	742
238220	1950	8.96%	717
238310	857	3.94%	315
238320	1786	8.21%	657
238350	727	3.34%	267
238910	1165	5.36%	429
238990	969	4.45%	356
Total	21752	100.00%	8000

Table A4. Key survey response information

Sampling frame.	21752
Sample size.	8000
Returned total.	1042
Incomplete total.	25
Completed total.	1017
Unaffected by the proposed rules (The answer to Q5 or Q6 is "No").	520
Affected by the proposed rules but unrelated to any section in the survey.	200
Related to one or more sections in the survey.	290
Out of business, closed, sold.	7

Table A5. Comparison of costs to small businesses and ten percent of the largest businesses for each increased requirement under the proposed rules

	Cost per FTE to small businesses(\$)	Cost per FTE to ten percent of largest businesses	Ratio of cost
Fall protection for form and rebar work	354	144	2.5
Fall protection for work on hazardous slopes	378	53	7.2
Height requirement for guardrail system	310	33	9.3
Installation requirement for catch platforms	611	207	2.9

Elimination of the use of moveable barriers	439	180	2.4
Elimination of the use of body belts	952	778	1.2
Fall protection for work on a roof	54	9	6.0

¹ If the number of respondents representing the ten percent of the largest businesses from the survey is less than ten, we select ten respondents with the largest business sizes in order to have enough samples for the purpose of comparison. In addition, we exclude the respondents with no FTEs from the comparison due to large variances of these samples.

² These comparisons were made based on the average costs per FTE estimated in 2010 after the rule language was finalized for public hearings. The department believes that these estimates were still reliable at the time this report was last updated in 2012 as they were not expected to change substantially by changes in economic conditions or other factors during this period.

³ Note: The population of 21,752 businesses is computed from the data warehouse while deleting the duplicates, out-of-state, and the incomplete or inaccurate addresses out of the original 22,395 establishments.

A copy of the statement may be obtained by contacting Cindy Ireland, P.O. Box 44620, Olympia, WA 98504-4620, phone (360) 902-5522, fax (360) 902-5619, e-mail cynthia.ireland@lni.wa.gov.

A cost-benefit analysis is required under RCW 34.05-.328. A preliminary cost-benefit analysis may be obtained by contacting Cindy Ireland, P.O. Box 44620, Olympia, WA 98504-4620, phone (360) 902-5522, fax (360) 902-5619, e-mail cynthia.ireland@lni.wa.gov.

August 21, 2012
 Judy Schurke
 Director

AMENDATORY SECTION (Amending Order 90-10, filed 8/13/90, effective 9/24/90)

WAC 296-36-170 Stairs and ladders. The requirements of chapter 296-155 WAC Parts ((K)) C-1 and J shall apply.

AMENDATORY SECTION (Amending WSR 12-01-086, filed 12/20/11, effective 2/1/12)

WAC 296-45-25510 Fall protection. (1) Personal fall arrest equipment shall meet the requirements of chapter 296-155 WAC ((296-155-245)), Part C-1, Fall protection requirements for construction.

(2) Specific requirements for lineman's belts, safety straps and lanyards.

(a) All fabric used for safety straps must withstand an A.C. dielectric test of not less than 25,000 volts per foot "dry" for 3 minutes, without visible deterioration.

(b) All fabric and leather used must be tested for leakage current and must not exceed 1 milliampere when a potential of 3,000 volts is applied to the electrodes positioned 12 inches apart.

(c) Direct current tests may be permitted in lieu of alternating current tests.

(d) The cushion part of the body belt must:

(i) Contain no exposed rivets on the inside;

(ii) Be at least three (3) inches in width;

(iii) Be at least five thirty-seconds (5/32) inch thick, if made of leather; and

(iv) Have pocket tabs that extended at least 1 1/2 inches down and three (3) inches back of the inside of circle of each D ring for riveting on plier or tool pockets. On shifting D belts, this measurement for pocket tabs must be taken when the D ring section is centered.

(e) A maximum of four (4) tool loops must be so situated on the body belt that four (4) inches of the body belt in the center of the back, measuring from D ring to D ring, must be free of tool loops, and any other attachments.

(f) Suitable copper, steel, or equivalent liners must be used around bar of D rings to prevent wear between these members and the leather or fabric enclosing them.

(g) All stitching must be of a minimum 42-pound weight nylon or equivalent thread and must be lock stitched. Stitching parallel to an edge must not be less than three-sixteenths (3/16) inch from edge of narrowest member caught by the thread. The use of cross stitching on leather is prohibited.

(h) The keeper of snaphooks must have a spring tension that will not allow the keeper to begin to open with a weight of 2 1/2 pounds or less, but the keeper of snaphooks must begin to open with a weight of four (4) pounds, when the weight is supported on the keeper against the end of the nose.

(i) Testing of lineman's safety straps, body belts and lanyards must be in accordance with the following procedure:

(i) Attach one end of the safety strap or lanyard to a rigid support, the other end must be attached to a 250-pound canvas bag of sand;

(ii) Allow the 250-pound canvas bag of sand to free fall 4 feet for (safety strap test) and 6 feet for (lanyard test); in each case stopping the fall of the 250-pound bag;

(iii) Failure of the strap or lanyard must be indicated by any breakage, or slippage sufficient to permit the bag to fall free of the strap or lanyard. The entire "body belt assembly" must be tested using one D ring. A safety strap or lanyard must be used that is capable of passing the "impact loading test" and attached as required in (i)(i) of this subsection. The body belt must be secured to the 250-pound bag of sand at a point to simulate the waist of a man and allowed to drop as stated in (i)(ii) of this subsection. Failure of the body belt must be indicated by any breakage, or slippage sufficient to permit the bag to fall free of the body belt.

(3) Body belts, safety straps, lanyards, lifelines, and body harnesses shall be inspected before use each day to determine that the equipment is in safe working condition. Defective equipment may not be used.

(4) Employees shall not wear climbers while doing work where they are not required. Employees shall not continue to wear their climbers while working on the ground; except for momentary or short periods of time on the ground.

(5) Employees, when working from a hook ladder, must either belt themselves securely to the ladder, attach themselves to the structures by means of a safety line, or belt themselves to ladder safety equipment, which shall consist of a safety rope or belting threaded through the rungs or secured to the ladder at intervals of not more than three feet.

(6) Before an employee throws his/her weight on a belt, the employee shall determine that the snap or fasteners are properly engaged.

(7) Safety straps shall not be placed around poles above the cross-arm except where it is not possible for the strap to slide or be slipped over the top of the pole by inadvertence of the employee. Neither end of the strap shall be allowed to hang loose or dangle while the employee is ascending or descending poles or other structures.

(8) Body belts and safety straps shall not be stored with sharp-edged tools or near sharp objects. When a body belt, safety strap and climbers are kept in the same container, they shall be stored in such a manner as to avoid cutting or puncturing the material of the body belt or safety strap with the gaffs or climbers.

(9) Employees shall not attach metal hooks or other metal devices to body belts. Leather straps or rawhide thongs shall have hardwood or fibre crossbars. Leather straps and rawhide thongs shall not have metal or other conductive crossbars on them.

(10) Climbing gaffs shall be kept properly sharpened and shall be at least 1-1/8 inches in length.

(11) Lifelines shall be protected against being cut or abraded.

(12) Fall arrest equipment, work positioning equipment, or travel restricting equipment shall be used by employees working at elevated locations more than 4 feet (1.2 m) above the ground on poles, towers, or similar structures if other fall protection has not been provided. Fall protection equipment is not required to be used by a qualified employee climbing or changing location on poles, towers, or similar structures, unless conditions, such as, but not limited to, ice, high winds, the design of the structure (for example, no provision for holding on with hands), or the presence of contaminants on the structure, could cause the employee to lose his or her grip or footing.

Note 1: This subsection applies to structures that support overhead electric power generation, transmission, and distribution lines and equipment. It does not apply to portions of buildings, such as loading docks, to electric equipment, such as transformers and capacitors, nor to aerial lifts. Requirements for fall protection associated with walking and working surfaces are contained in [chapter 296-155 WAC](#) ((296-155-245;)), [Part C-1, Fall protection requirements for construction](#) requirements for fall protection associated with aerial lifts are contained in [chapter 296-869 WAC](#), [Elevating work platforms](#).

Note 2: Employees undergoing training are not considered "qualified employees" for the purposes of this provision. Unqualified employees (including trainees) are required to use fall protection any time they are more than 4 feet (1.2 m) above the ground.

(13) The following requirements apply to personal fall arrest systems:

(a) When stopping or arresting a fall, personal fall arrest systems shall limit the maximum arresting force on an employee to 1800 pounds (8 kN) if used with a body harness.

(b) Personal fall arrest systems shall be rigged such that an employee can neither free fall more than 6 feet (1.8 m) nor contact any lower level.

(14) If vertical lifelines or droplines are used, not more than one employee may be attached to any one lifeline.

(15) Snaphooks may not be connected to loops made in webbing-type lanyards.

(16) Snaphooks may not be connected to each other.

NEW SECTION

WAC 296-155-24601 Scope and application. Chapter 296-155 WAC, Part C-1 sets forth requirements for employers to provide and enforce the use of fall protection for employees performing activities covered under this chapter.

- Note: Additional standards requiring fall protection include:
- Chapter 296-869 WAC, vehicle mounted aerial platforms, and boom supported elevating work platforms.
 - Chapter 296-874 WAC, Scaffolds.
 - Chapter 296-876 WAC, Ladders, portable and fixed.
 - Chapter 296-155 WAC, Part J: Stairways; Part L: Cranes, rigging, and personnel lifting; Part M: Pile driving; Part O: Placing and removal of forms, and vertical slip forms; Part P: Steel erection temporary floors.

NEW SECTION

WAC 296-155-24603 Definitions. Affected area means the distance away from the edge of an excavation equal to the depth of the excavation up to a maximum distance of fifteen feet. For example, an excavation ten feet deep has an affected area extending ten feet from the edge of any side of the excavation.

Anchorage means a secure point of attachment for lifelines, lanyards, or deceleration devices which is capable of withstanding the forces specified in this part.

Catch platform means a type of fall arrest system that consists of a platform installed within four vertical feet of the fall hazard, is at least forty-five inches wide and is equipped with a standard guardrail system on all exposed sides.

Catenary line - See horizontal lifeline.

Competent person means an individual knowledgeable of fall protection equipment, including the manufacturer's recommendations and instructions for the proper use, inspection, and maintenance; and who is capable of identifying existing and potential fall hazards; and who has the authority to take prompt corrective action to eliminate those hazards; and who is knowledgeable of the rules contained in this part regarding the installation, use, inspection, and maintenance of fall protection equipment and systems.

Connector means a device which is used to connect parts of the personal fall arrest system and positioning device systems together. It may be an independent component of the system, such as a carabiner, or it may be an integral component of part of the system (such as a buckle or D-ring sewn into a harness, or a snap hook spliced or sewn to a lanyard or self-retracting lanyard).

Deceleration device means any mechanism, such as a rope grab, ripstitch lanyard, specifically woven lanyard, tearing or deforming lanyards, automatic self-retracting lifelines/lanyards, etc., which serves to dissipate a substantial amount of energy during a fall arrest, or otherwise limit the energy imposed on an employee during fall arrest.

Deceleration distance means the additional vertical distance a falling employee travels, excluding lifeline elongation and free fall distance, before stopping, from the point at which the deceleration device begins to operate. It is measured as the distance between the location of an employee's full body harness attachment point at the moment of activation (at the onset of fall arrest forces) of the deceleration

device during a fall, and the location of that attachment point after the employee comes to a full stop.

Dropline means a vertical lifeline secured to an upper anchorage for the purpose of attaching a lanyard or device.

Equivalent means alternative designs, materials, or methods to protect against a hazard which the employer can demonstrate and will provide an equal or greater degree of safety for employees than the methods, materials or designs specified in this standard.

Fall arrest system means a fall protection system that will arrest a fall from elevation. Fall arrest systems include personal fall arrest systems that are worn by the user, catch platforms, and safety nets.

Fall distance means the actual distance from the worker's support to the level where a fall would stop.

Fall protection work plan means a written planning document in which the employer identifies all areas on the job site where a fall hazard of ten feet or more exists. The plan describes the method or methods of fall protection to be used to protect employees, and includes the procedures governing the installation, use, inspection, and removal of the fall protection method or methods which are selected by the employer. See WAC 296-155-24611(2).

Fall restraint system means a system in which all necessary components function together to restrain/prevent an employee from falling to a lower level. Types of fall restraint systems include standard guardrail systems, personal fall restraint systems, warning line systems, or a warning line system and safety monitor.

Floor hole means an opening measuring less than twelve inches but more than one inch in its least dimension in any floor, roof, or platform through which materials but not persons may fall, such as a belt hole, pipe opening, or slot opening.

Floor opening means an opening measuring twelve inches or more in its least dimension in any floor, roof, or platform, through which persons may fall.

Free fall means the act of falling before a personal fall arrest system begins to apply force to arrest the fall.

Free fall distance means the vertical displacement of the fall arrest attachment point on the employee's full body harness between onset of the fall and just before the system begins to apply force to arrest the fall. This distance excludes deceleration distance, and lifeline/lanyard elongation, but includes any deceleration device slide distance or self-retracting lifeline/lanyard extension before they operate and fall arrest forces occur.

Full body harness means a configuration of connected straps that meets the requirements specified in ANSI Z359.1-2007, that may be adjustable to distribute a fall arresting force over at least the thighs, shoulders and pelvis, with provisions for attaching a lanyard, lifeline, or deceleration devices.

Full body harness system means a full body harness and lanyard which is either attached to an anchorage meeting the requirements of this part; or it is attached to a horizontal or vertical lifeline which is properly secured to an anchorage(s) capable of withstanding the forces specified in this part.

Handrail means a rail used to provide employees with a handhold for support.

Hardware means snap hooks, D-rings, bucklers, carabiners, adjusters, O-rings, that are used to attach the components of a fall protection system together.

Hazardous slope means a slope where normal footing cannot be maintained without the use of devices due to the pitch of the surface, weather conditions, or surface material.

Horizontal lifeline means a rail, rope, wire, or synthetic cable that is installed in a horizontal plane between two anchorages and used for attachment of a worker's lanyard or lifeline device while moving horizontally; used to control dangerous pendulum like swing falls.

Lanyard means a flexible line of webbing, rope, or cable used to secure a positioning harness or full body harness to a lifeline or an anchorage point usually two, four, or six feet long.

Leading edge means the advancing edge of a floor, roof, or formwork which changes location as additional floor, roof, or formwork sections are placed, formed, or constructed.

Lifeline means a vertical line from a fixed anchorage or between two horizontal anchorages, independent of walking or working surfaces, to which a lanyard or device is secured. Lifeline as referred to in this text is one which is part of a fall protection system used as back-up safety for an elevated worker or as a restraint for workers on a flat or sloped surface.

Locking snap hook means a connecting snap hook that requires two separate forces to open the gate; one to deactivate the gatekeeper and a second to depress and open the gate which automatically closes when released; used to minimize roll out or accidental disengagement.

Low pitched roof means a roof having a slope equal to or less than four in twelve.

Mechanical equipment means all motor or human propelled wheeled equipment except for wheelbarrows, mop-carts, robotic thermoplastic welders and robotic crimpers.

Personal fall arrest system means a fall arrest system that is worn by the employee to arrest the employee in a fall from elevation. It consists of an anchor point, connectors, a full body harness, and may include a lanyard, deceleration device, lifeline, or suitable combinations of these.

Personal fall restraint system means a fall restraint system that is worn by the employee to keep the employee from reaching a fall point, such as the edge of a roof or elevated work surface. It consists of an anchor point, hardware assemblies, a full body harness and may include a lanyard, restraint lines, or suitable combinations of these.

Platform means a work surface elevated above the surrounding floor or ground.

Positioning device system means a full body harness or positioning harness that is worn by an employee, and is rigged to allow an employee to be supported on an elevated vertical or inclined surface, such as a wall, pole or column and work with both hands free from the body support.

Qualified person means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his/her ability to solve or resolve

problems related to the subject matter, the work, or the project.

Restraint line means a line from a fixed anchorage or between two anchorages to which an employee is secured in such a way as to prevent the worker from falling to a lower level.

Roof means the exterior surface on the top of a building. This does not include floors or formwork which, because a building has not been completed, temporarily become the top surface of a building.

Roofing work means the hoisting, storage, application, and removal of roofing materials and equipment, including related insulation, sheet metal, and vapor barrier work, but not including the construction of the roof deck.

Rope grab means a fall arrester that is designed to move up or down a lifeline suspended from a fixed overhead or horizontal anchorage point, or lifeline, to which the full body harness is attached. In the event of a fall, the rope grab locks onto the lifeline rope through compression to arrest the fall. The use of a rope grab device is restricted for all restraint applications. See WAC 296-155-24615 (1)(f).

Runway means a passageway for persons, elevated above the surrounding floor or ground level, such as a foot-walk along shafting or a walkway between buildings.

Safety line - See lifeline.

Safety monitoring system means a type of fall restraint system in which a competent person whose only job responsibility is to recognize and warn employees of their proximity to fall hazards when working between the warning line and the unprotected sides and edges, including the leading edge of a low pitch roof or other walking/working surface.

Safety net system means a type of fall arrest system, as described in WAC 296-155-24613(2).

Safety watch system means a fall protection system as described in WAC 296-155-24615(6), in which a competent person monitors one worker who is engaged in repair work or servicing equipment on low pitch roofs only.

Self-rescue device means a piece of equipment designed to allow a person, who is suspended in a personal fall arrest system, to independently rescue themselves after the fall by moving the device up or down until they reach a surface and are no longer suspended.

Self-retracting lifeline means a deceleration device which contains a wound line which may be slowly extracted from, or retracted onto, the device under slight tension during normal employee movement, and which after onset of a fall, automatically locks the drum and arrests the fall.

Shock absorbing lanyard means a flexible line of webbing, cable, or rope used to secure a full body harness to a lifeline or anchorage point that has an integral shock absorber.

Snap hook - See "locking snap hook."

Standard guardrail system means a type of fall restraint system that is a vertical barrier consisting of a top rail and mid rail, and toe board when used as falling object protection for persons who may work or pass below, that is erected along all open sides or edges of a walking/working surface, a floor opening, a floor hole, wall opening, ramp, platform, or runway.

Standard strength and construction means any construction of railings, covers, or other guards that meets the requirements of this part.

Static line - See horizontal lifeline.

Steep pitched roof means a roof having a slope greater than four in twelve.

Toe board means a vertical barrier at floor level erected along all open sides or edges of a floor opening, platform, runway, ramp, or other walking/working surface to prevent materials, tools, or debris from falling onto persons passing through or working in the area below.

Unprotected sides and edges means any open side or edge of a floor, roof, balcony/deck, platform, ramp, runway, or walking/working surface where there is no standard guard-rail system, or parapet wall of solid strength and construction that is at least thirty-nine inches in vertical height.

Walking/working surface means any area including, but not limited to, floors, a roof surface, bridge, the ground, and any other surfaces whose dimensions are forty-five inches or more in all directions, through which workers can pass or conduct work.

Wall opening means an opening at least thirty inches high and eighteen inches wide, in any wall or partition, through which persons may fall, such as an opening for a window, a yard arm doorway or chute opening.

Warning line system means a barrier erected on a walking and working surface or a low pitch roof (four in twelve or less), to warn employees that they are approaching an unprotected fall hazard(s).

NEW SECTION

WAC 296-155-24605 General requirements. (1) The employer shall ensure that all surfaces on which employees will be working or walking on are structurally sound and will support them safely prior to allowing employees to work or walk on them.

(2) Inspection criteria.

(a) All components (including hardware, lanyards, and positioning harnesses or full body harnesses depending on which system is used) of personal fall arrest systems, personal fall restraint systems and positioning device systems shall be inspected prior to each use according to manufacturer's specifications for mildew, wear, damage, and other deterioration. Defective components shall be removed from service if their function or strength has been adversely affected.

(b) Safety nets shall be inspected at least once a week according to manufacturer's specifications for wear, damage, and other deterioration. Safety nets shall also be inspected after any occurrence which could affect the integrity of the safety net system. Defective components shall be removed from service. Defective nets shall not be used.

(3) Personal fall arrest systems, personal fall restraint system, positioning device systems, and their components

shall be used only for employee protection and not to hoist materials.

(4) Exemptions. Employees are exempt from WAC 296-155-24609 and 296-155-24611 only under the following conditions:

(a) During initial installation of the fall protection anchor (prior to engaging in any work activity), or the disassembly of the fall protection anchor after the work has been completed.

(b) An employee directly involved with inspecting or estimating roof-level conditions only on low pitched roofs prior to the actual start of construction work or after all construction work has been completed.

Examples of activities the department recognizes as inspecting or estimating include:

- Measuring a roof to determine the amount of materials needed for a project.
- Inspecting the roof for damage without removing equipment or components.
- Assessing the roof to determine what method of fall protection will be provided to employees.

Examples the department does not recognize as inspecting or estimating under this exemption include:

- Delivering, staging or storing materials on a roof.
- Persons estimating or inspecting on roofs that would be considered a "hazardous slope" by definition.

Fall Arrest		Stopped after the fall with a 6 ft. maximum free fall distance	
WAC 296-155-24613			
•Personal fall arrest	WAC 296-155-24613(1)	•Safety nets	WAC 296-155-24613(2)
•Catch platforms	WAC 296-155-24613(3)		
Fall Restraint		Restrained from falling	
WAC 296-155-24615			
•Personal fall restraint	WAC 296-155-24615(1)	•Guardrails	WAC 296-155-24615(2)
•Covers	WAC 296-155-24615(3)	•Warning line system	WAC 296-155-24615(4)
•Safety monitor	WAC 296-155-24615(5)	•Safety watch	WAC 296-155-24615(6)
Positioning Device		WAC 296-155-24617	
•Positioning harness/full body harness with a 2 ft. maximum free fall distance.			
•Vertical walls, columns, poles, hazardous slopes, and steep pitches.			

Examples of what personal fall arrest, personal fall restraint and positioning device systems look like:



Fall Arrest



Fall Restraint



Positioning

NEW SECTION

WAC 296-155-24607 Fall protection required regardless of height. (1) Regardless of height, open sided floors, walkways, platforms, or runways above or adjacent to dangerous equipment, such as rock crushing equipment and material handling equipment, and similar hazards shall be guarded with a standard guardrail system.

(2) Regardless of height employees shall be protected from falling into or onto impalement hazards, such as: Reinforcing steel (rebar), or exposed steel or wood stakes used to set forms.

NEW SECTION

WAC 296-155-24609 Fall protection required at four feet or more. (1) The employer shall ensure that the appropriate fall protection system is provided, installed, and implemented according to the requirements in this part when employees are exposed to fall hazards of four feet or more to the ground or lower level when on a walking/working surface.

(2) Guarding of walking/working surfaces with unprotected sides and edges. Every open sided walking/working surface or platform four feet or more above adjacent floor or ground level shall be guarded by one of the following fall protection systems.

(a) A standard guardrail system, or the equivalent, as specified in WAC 296-155-24615(2), on all open sides, except where there is entrance to a ramp, stairway, or fixed ladder. The railing shall be provided with a standard toe board wherever, beneath the open sides, persons can pass, there is moving machinery, or there is equipment with which falling materials could create a hazard.

(i) When employees are using stilts, the height of the top rail or equivalent member of the standard guardrail system must be increased (or additional railings may be added) an amount equal to the height of the stilts while maintaining the strength specifications of the guardrail system.

(ii) Where employees are working on platforms above the protection of the guardrail system, the employer must either increase the height of the guardrail system as specified in (a)(i) of this subsection, or select and implement another fall protection system as specified in (b), (c), (d), (e), or (f) of this subsection.

(iii) When guardrails must be temporarily removed to perform a specific task, the area shall be constantly attended by a monitor until the guardrail is replaced. The only duty the monitor shall perform is to warn persons entering the area of the fall hazard.

- (b) A fall restraint system;
- (c) A personal fall arrest system;
- (d) A safety net system;
- (e) A catch platform; and
- (f) A warning line.

(3) Guarding of ramps, runways, and inclined walkways.

(a) Ramps, runways, and inclined walkways that are four feet or more above the ground or lower level shall be equipped with a standard guardrail system or the equivalent, as specified in WAC 296-155-24615(2), along each open side. Wherever tools, machine parts, or materials are likely to be used on the runway, a toe board shall also be installed on each open side to protect persons working or passing below.

(b) Runways used exclusively for special purposes may have the railing on one side omitted where operating conditions necessitate such omission, provided the falling hazard is minimized by using a runway not less than eighteen inches wide.

Note: See WAC 296-155-24619(1) for other specific criteria for ramps, runways, and inclined walkways.

(4) Guarding of floor holes. Floor holes, into which persons can accidentally walk, shall be guarded by either a standard guardrail system with standard toe board along all open sides, or a floor hole cover of standard strength and construction that is secured against accidental displacement. While the cover is not in place, the floor hole shall be protected by a standard guardrail system.

(5) Guarding of floor openings.

(a) Floor openings shall be guarded by one of the following fall restraint systems.

(i) A standard guardrail system, or the equivalent, as specified in WAC 296-155-24615(2), on all open sides, except where there is entrance to a ramp, stairway, or fixed ladder. The railing shall be provided with a standard toe board wherever, beneath the open sides, persons can pass, or there is moving machinery, or there is equipment with which falling materials could create a hazard.

(ii) A cover, as specified in WAC 296-155-24615(3).

(iii) A warning line system erected at least fifteen feet from all unprotected sides or edges of the floor opening and meets the requirements of WAC 296-155-24615(4).

(iv) If it becomes necessary to remove the cover, the guardrail system, or the warning line system, then an employee shall remain at the opening until the cover, guardrail system, or warning line system is replaced. The only duty the employee shall perform is to prevent exposure to the fall hazard by warning persons entering the area of the fall hazard.

(b) Ladderway floor openings or platforms shall be guarded by standard guardrail system with standard toe boards on all exposed sides, except at entrance to opening, with the passage through the railing either provided with a swinging gate or so offset that a person cannot walk directly into the opening.

(c) Hatchways and chute floor openings shall be guarded by one of the following:

(i) Hinged covers of standard strength and construction and a standard guardrail system with only one exposed side. When the opening is not in use, the cover shall be closed or the exposed side shall be guarded at both top and intermediate positions by removable standard guardrail systems.

(ii) A removable standard guardrail system with toe board on not more than two sides of the opening and fixed standard guardrail system with toe boards on all other exposed sides. The removable railing shall be kept in place when the opening is not in use and shall be hinged or otherwise mounted so as to be conveniently replaceable.

(d) Wherever there is a danger of falling through an unprotected skylight opening, or the skylight has been installed and is not capable of sustaining the weight of a two hundred pound person with a safety factor of four, standard guardrails shall be provided on all exposed sides in accordance with WAC 296-155-24615(2) or the skylight shall be covered in accordance with WAC 296-155-24615(3). Personal fall arrest equipment may be used as an equivalent means of fall protection when worn by all employees exposed to the fall hazard.

(e) Pits and trap door floor openings shall be guarded by floor opening covers of standard strength and construction. While the cover is not in place, the pit or trap openings shall be protected on all exposed sides by removable standard guardrail system.

(f) Manhole floor openings shall be guarded by standard covers which need not be hinged in place. While the cover is not in place, the manhole opening shall be protected by standard guardrail system.

(6) Guarding of wall openings.

(a) Wall openings, from which there is a fall hazard of four feet or more, and the bottom of the opening is less than thirty-nine inches above the working surface, shall be guarded as follows:

(i) When the height and placement of the opening in relation to the working surface is such that either a standard rail or intermediate rail will effectively reduce the danger of falling, one or both shall be provided;

(ii) The bottom of a wall opening, which is less than four inches above the working surface, regardless of width, shall be protected by a standard toe board or an enclosing screen

either of solid construction or as specified in WAC 296-155-24615 (2)(c).

(b) An extension platform, outside a wall opening, onto which materials can be hoisted for handling shall have standard guardrails on all exposed sides or equivalent. One side of an extension platform may have removable railings in order to facilitate handling materials.

(c) When a chute is attached to an opening, the provisions of subsection (5)(c) of this section shall apply, except that a toe board is not required.

(7) Fall protection during form and rebar work. When exposed to a fall height of four feet or more, employees placing or tying reinforcing steel on a vertical face are required to be protected by personal fall arrest systems, safety net systems, or positioning device systems.

(8) Fall protection on steep pitched and low pitched roofs.

(a) Steep pitched roofs. Regardless of the work activity, employers shall ensure that employees exposed to fall hazards of four feet or more while working on a roof with a pitch greater than four in twelve use one of the following:

(i) Fall restraint system. Safety monitors and warning line systems are prohibited on steep pitched roofs;

(ii) Fall arrest system; or

(iii) Positioning device system.

(b) Low pitched roofs. Employers shall ensure that employees exposed to fall hazards of four feet or more while engaged in work, other than roofing work or leading edge work, on low pitched roofs use one of the following:

(i) Fall restraint system;

(ii) Fall arrest system;

(iii) Positioning device system;

(iv) Safety monitor and warning line system; or

(v) Safety watch system.

(9) Hazardous slopes. Employees exposed to falls of four feet or more while working on a hazardous slope shall use personal fall restraint systems or positioning device systems.

NEW SECTION

WAC 296-155-24611 Fall protection required at ten feet or more. (1) The employer shall ensure that the appropriate fall protection system is provided, installed, and implemented according to the requirements in this part when employees are exposed to fall hazards of ten feet or more to the ground or lower level, while:

(a) Engaged in roofing work on a low pitched roof;

(b) Constructing a leading edge on low pitched surfaces;

Note: Employees not directly involved with constructing the leading edge, or are not performing roofing work must comply with WAC 296-155-24609, Fall protection required at four feet or more.

(c) Working on any surface that does not meet the definition of a walking/working surface not already covered in WAC 296-155-24609;

(d) Engaged in excavation and trenching operations.

(i) Exceptions. Fall protection is not required at excavations when employees are:

(A) Directly involved with the excavation process and on the ground at the top edge of the excavation; or

(B) Working at an excavation site where appropriate sloping of side walls has been implemented as the excavation protective system.

(ii) Fall protection is required for employees standing in or working in the affected area of a trench or excavation exposed to a fall hazard of ten feet or more and:

(A) The employees are not directly involved with the excavation process; or

(B) The employees are on the protective system or any other structure in the excavation.

Note: Persons considered directly involved in the excavation process include:

- Foreman of the crew.
- Signal person.
- Employee hooking on pipe or other materials.
- Grade person.
- State, county, or city inspectors inspecting the excavation or trench.
- An engineer or other professional conducting a quality-assurance inspection.

(2) Fall protection work plan. The employer shall develop and implement a written fall protection work plan including each area of the work place where the employees are assigned and where fall hazards of ten feet or more exist.

(a) The fall protection work plan shall:

(i) Identify all fall hazards in the work area;

(ii) Describe the method of fall arrest or fall restraint to be provided;

(iii) Describe the proper procedures for the assembly, maintenance, inspection, and disassembly of the fall protection system to be used;

(iv) Describe the proper procedures for the handling, storage, and securing of tools and materials;

(v) Describe the method of providing overhead protection for workers who may be in, or pass through the area below the worksite;

(vi) Describe the method for prompt, safe removal of injured workers; and

(vii) Be available on the job site for inspection by the department.

(b) Prior to permitting employees into areas where fall hazards exist the employer shall ensure employees are trained and instructed in the items described in (a)(i) through (vii) of this subsection.

NEW SECTION

WAC 296-155-24613 Fall arrest specifications. Fall arrest protection shall conform to the following provisions:

(1) Personal fall arrest system shall consist of:

(a) A full body harness shall be used.

(b) Full body harness systems or components subject to impact loading shall be immediately removed from service and shall not be used again for employee protection unless inspected and determined by a competent person to be undamaged and suitable for reuse.

(c) Anchorages for full body harness systems shall be capable of supporting (per employee):

(i) Three thousand pounds when used in conjunction with:

(A) A self-retracting lifeline that limits the maximum free fall distances to two feet or less; or

(B) A shock absorbing lanyard that restricts the forces on the body to nine hundred pounds or less.

(ii) Five thousand pounds for all other personal fall arrest system applications, or they shall be designed, installed, and used:

(A) As a part of a complete personal fall arrest system which maintains a safety factor of at least two; and

(B) Under the supervision of a qualified person.

(d) When stopping a fall, personal fall arrest systems must:

(i) Be rigged to allow a maximum free fall distance of six feet so an employee will not contact any lower level;

(ii) Limit maximum arresting force on an employee to one thousand eight hundred pounds (8 kN);

(iii) Bring an employee to a complete stop and limit maximum deceleration distance an employee travels to three and one-half feet (1.07 m); and

(iv) Have sufficient strength to withstand twice the potential impact energy of an employee free falling a maximum distance of six feet (1.8 m).

Notes:

- Shock absorbers that meet the requirements of ANSI Z359.1-2007 that are used as a part of a personal fall arrest system in accordance with manufacturer's recommendations and instructions for use and installation will limit the maximum arresting forces on an employee's body to one thousand eight hundred pounds or less.
- To calculate fall clearance distance using a shock absorbing lanyard and D-ring anchorage connector, see WAC 296-155-24624, Appendix B.

(e) All safety lines and lanyards shall be protected against being cut or abraded.

(f) The attachment point of the full body harness shall be located in the center of the wearer's back near shoulder level, or above the wearer's head.

(g) Hardware shall be drop forged, pressed or formed steel, or made of materials equivalent in strength.

(h) Hardware shall have a corrosion resistant finish, and all surfaces and edges shall be smooth to prevent damage to the attached full body harness or lanyard.

(i) When vertical lifelines (droplines) are used, not more than one employee shall be attached to any one lifeline.

Note: The system strength needs in the following items are based on a total combined weight of employee and tools of no more than three hundred and ten pounds. If combined weight is more than three hundred and ten pounds, appropriate allowances must be made or the system will not be in compliance. For more information on system testing see WAC 296-24-88050, Appendix C, Part II.

(j) Vertical lifelines (droplines) shall have a minimum breaking strength of five thousand pounds (22.2 kN), except that self-retracting lifelines and lanyards which automatically limit free fall distance to two feet (.61 m) or less shall have a minimum breaking strength of three thousand pounds (13.3 kN).

(k) Horizontal lifelines shall be designed, installed, and used, under the supervision of a qualified person, as part of a

complete personal fall arrest system, which maintains a safety factor of at least two.

(l) Droplines or lifelines used on rock scaling operations, or in areas where the lifeline may be subjected to cutting or abrasion, shall be a minimum of seven-eighths inch wire core manila rope. For all other lifeline applications, a minimum of three-fourths inch manila or equivalent, with a minimum breaking strength of five thousand pounds, shall be used.

(m) Lanyards shall have a minimum breaking strength of five thousand pounds (22.2 kN).

(n) All components of full body harness systems whose strength is not otherwise specified in this subsection shall be capable of supporting a minimum fall impact load of five thousand pounds (22.2 kN) applied at the lanyard point of connection.

(o) D-rings and snap hooks shall be proof-tested to a minimum tensile load of three thousand six hundred pounds (16 kN) without cracking, breaking, or taking permanent deformation.

(p) Snap hooks shall be a locking type snap hook designed and used to prevent disengagement of the snap hook by the contact of the snap hook keeper by the connected member.

(q) Unless the snap hook is designed for the following connections, snap hooks shall not be engaged:

- (i) Directly to the webbing, rope or wire rope;
- (ii) To each other;
- (iii) To a D-ring to which another snap hook or other connector is attached;
- (iv) To a horizontal lifeline; or
- (v) To any object which is incompatibly shaped or dimensioned in relation to the snap hook such that unintentional disengagement could occur by the connected object being able to depress the snap hook keeper and release itself.

(2) Safety net systems. Safety net systems and their use shall comply with the following provisions:

(a) Safety nets shall be installed as close as practicable under the surface on which employees are working, but in no case more than thirty feet (9.1 m) below such level unless specifically approved in writing by the manufacturer. The potential fall area to the net shall be unobstructed.

(b) Safety nets shall extend outward from the outermost projection of the work surface as follows:

(c) Safety nets shall be installed with sufficient clearance under them to prevent contact with the surface or structures below when subjected to an impact force equal to the drop test specified in (d) of this subsection.

(d) Safety nets and their installations shall be capable of absorbing an impact force equal to that produced by the drop test.

Vertical distance from working levels to horizontal plane of net	Minimum required horizontal distance of outer edge of net from the edge of the working surface
Up to 5 feet	8 feet
More than 5 feet up to 10 feet	10 feet
More than 10 feet	13 feet

(e) Safety nets shall be installed with sufficient clearance under them to prevent contact with the surface or structures below when subjected to an impact force equal to the drop test specified in (d) of this subsection.

(f) Safety nets and their installations shall be capable of absorbing an impact force equal to that produced by the drop test.

(i) Except as provided in (d)(ii) of this subsection, safety nets and safety net installations shall be drop-tested at the job site after initial installation and before being used as a fall protection system, whenever relocated, after major repair, and at six-month intervals if left in one place. The drop-test shall consist of a four hundred pound (180 kg) bag of sand 30 ± 2 inches (76 ± 5 cm) in diameter dropped into the net from the highest walking/working surface at which employees are exposed to fall hazards, but not from less than forty-two inches (1.1 m) above that level.

(ii) When the employer can demonstrate that it is unreasonable to perform the drop-test required by (d)(i) of this subsection, the employer (or a designated competent person) shall certify that the net and net installation is in compliance with (c) and (d)(i) of this subsection by preparing a certification record prior to the net being used as a fall protection system. The certification record must include an identification of the net and net installation for which the certification record is being prepared; the date that it was determined that the identified net and net installation were in compliance with (c) of this subsection and the signature of the person making the determination and certification. The most recent certification record for each net and net installation shall be available at the job site for inspection.

(e) Materials, scrap pieces, equipment, and tools which have fallen into the safety net shall be removed as soon as possible from the net and at least before the next work shift.

(f) The maximum size of each safety net mesh opening shall not exceed thirty-six square inches (230 cm²) nor be longer than six inches (15 cm) on any side, and the opening, measured center-to-center of mesh ropes or webbing, shall not be longer than six inches (15 cm). All mesh crossings shall be secured to prevent enlargement of the mesh opening.

(g) Each safety net (or section of it) shall have a border rope or webbing with a minimum breaking strength of five thousand pounds (22.2 kN).

(h) Connections between safety net panels shall be as strong as integral net components and shall be spaced not more than six inches (15 cm) apart.

(3) Catch platforms.

(a) A catch platform shall be installed within four vertical feet of the work area.

(b) The catch platform's width shall be a minimum of forty-five inches wide and shall be equipped with standard guardrails and toe boards on all open sides.

NEW SECTION

WAC 296-155-24615 Fall restraint specifications.

Fall restraint protection shall conform to the following provisions:

(1) Personal fall restraint systems shall be rigged to allow the movement of employees only as far as the unprotected sides and edges of the walking/working surface, and shall consist of:

- (a) A full body harness shall be used.
- (b) The full body harness must be attached to securely rigged restraint lines.

(c) All hardware assemblies for full body harness shall be capable of withstanding a tension loading of four thousand

pounds without cracking, breaking, or taking a permanent deformation.

(d) The employer shall ensure component compatibility.

(e) Anchorage points used for fall restraint shall be capable of supporting four times the intended load.

(f) Rope grab devices are prohibited for fall restraint applications unless they are part of a fall restraint system designed specifically for the purpose by the manufacturer, and used in strict accordance with the manufacturer's recommendations and instructions.

(2) Guardrail specifications.

(a) A standard guardrail system shall consist of top rail, intermediate rail, and posts, and shall have a vertical height of thirty-nine to forty-five inches from upper surface of top rail to floor, platform, runway, or ramp level. When conditions warrant, the height of the top edge may exceed the forty-five inch height, provided the guardrail system meets all other criteria of this subsection. The intermediate rail shall be halfway between the top rail and the floor, platform, runway, or ramp. The ends of the rails shall not overhang the terminal posts except where such overhang does not constitute a projection hazard.

(b) Minimum requirements for standard guardrail systems under various types of construction are specified in the following items:

(i) For wood railings, the posts shall be of at least two-inch by four-inch stock spaced not to exceed eight feet; the top rail shall be of at least two-inch by four-inch stock and each length of lumber shall be smooth surfaced throughout the length of the railing. The intermediate rail shall be of at least one-inch by six-inch stock. Other configurations may be used for the top rail when the configuration meets the requirements of (b)(vii) of this subsection.

(ii) For pipe railings, posts and top and intermediate railings shall be at least one and one-half inches nominal OD diameter with posts spaced not more than eight feet on centers. Other configurations may be used for the top rail when the configuration meets the requirements of (b)(vii) of this subsection.

(iii) For structural steel railings, posts and top and intermediate rails shall be of two-inch by two-inch by three-eighths inch angles or other metal shapes of equivalent bending strength, with posts spaced not more than eight feet on centers. Other configurations may be used for the top rail when the configuration meets the requirements of (b)(vii) of this subsection.

(iv) For wire rope railings, the top and intermediate railings shall meet the strength factor and deflection of (b)(v) of this subsection. The top railing shall be flagged at not more than six foot intervals with high-visibility material. Posts shall be spaced not more than eight feet on centers. The rope shall be stretched taut and shall be between thirty-nine and forty-five inches in height at all points. Other configurations may be used for the top rail when the configuration meets the requirements of (b)(vii) of this subsection.

(v) The anchoring of posts and framing of members for railings of all types shall be of such construction that the completed structure shall be capable of withstanding a load of at least two hundred pounds applied in any direction at any point on the top rail. The top rail shall be between thirty-nine

and forty-five inches in height at all points when this force is applied.

(vi) Railings receiving heavy stresses from employees trucking or handling materials shall be provided additional strength by the use of heavier stock, closer spacing of posts, bracing, or by other means.

(vii) Other types, sizes, and arrangements of railing construction are acceptable, provided they meet the following conditions:

(A) A smooth surfaced top rail at a height above floor, platform, runway, or ramp level between thirty-nine and forty-five inches;

(B) When the two hundred pound (890 N) load specified in (b)(v) of this subsection is applied in a downward direction, the top edge of the guardrail shall not deflect to a height less than thirty-nine inches (1.0 m) above the walking/working level. Guardrail system components selected and constructed in accordance with this part will be deemed to meet this requirement;

(C) Protection between top rail and floor, platform, runway, ramp, or stair treads, equivalent at least to that afforded by a standard intermediate rail;

(D) Elimination of overhang of rail ends unless such overhang does not constitute a hazard.

(c) Toe board specifications.

(i) A standard toe board shall be a minimum of four inches nominal in vertical height from its top edge to the level of the floor, platform, runway, or ramp. It shall be securely fastened in place with not more than one-quarter inch clearance above floor level. It may be made of any substantial material, either solid, or with openings not over one inch in greatest dimension.

(ii) Where material is piled to such height that a standard toe board does not provide protection, paneling, or screening from floor to intermediate rail or to top rail shall be provided.

(3) Cover specifications.

(a) Floor opening or floor hole covers shall be of any material that meets the following strength requirements:

(i) Conduits, trenches, and manhole covers and their supports, when located in roadways, and vehicular aisles shall be designed to carry a truck rear axle load of at least two times the maximum intended load;

(ii) All floor opening and floor hole covers shall be capable of supporting the maximum potential load but never less than two hundred pounds (with a safety factor of four).

(A) All covers shall be secured when installed so as to prevent accidental displacement by the wind, equipment, or employees.

(B) All covers shall be color coded or they shall be marked with the word "hole" or "cover" to provide warning of the hazard.

(b) Barriers and screens used to cover wall openings shall meet the following requirements:

(i) Barriers shall be of such construction and mounting that, when in place at the opening, the barrier is capable of withstanding a load of at least two hundred pounds applied in any direction (except upward), with a minimum of deflection at any point on the top rail or corresponding member.

(ii) Screens shall be of such construction and mounting that they are capable of withstanding a load of at least two

hundred pounds applied horizontally at any point on the near side of the screen. They may be of solid construction of either grill work with openings not more than eight inches long, or of slat work with openings not more than four inches wide with length unrestricted.

(4) Warning line system specifications on pitches four in twelve or less for roofing work, leading edge work, and on low pitched open sided surfaces for work activities other than roofing work or leading edge work. The employer shall ensure the following:

(a) Warning lines shall be erected around all unprotected sides and edges of the work area.

(i) Warning lines used during roofing work.

(A) When roofing work is taking place or when mechanical equipment is not being used, the warning line shall be erected not less than six feet (1.8 m) from the edge of the roof.

(B) When mechanical equipment is being used, the warning line shall be erected not less than six feet (1.8 m) from the roof edge which is parallel to the direction of mechanical equipment operation, and not less than ten feet (3.1 m) from the roof edge which is perpendicular to the direction of mechanical equipment operation.

(ii) Warning lines erected for leading edge work.

Warning lines shall be erected to separate employees who are engaged in leading edge work (between the forward edge of the warning line and the leading edge), from other work areas on the low pitched surface. The employer shall ensure:

(A) The warning line is erected not less than six feet nor more than twenty-five feet from the leading edge; and

(B) When fall arrest systems as described in WAC 296-155-24613, or fall restraint systems as described in subsections (1) and (2) of this section are not used, a safety monitor system as described in subsection (5) of this section shall be implemented to protect employees engaged in constructing the leading edge who are working between the forward edge of the warning line and the leading edge.

(iii) Warning lines erected on low pitched open sided surfaces for work activities other than roofing work or leading edge work, shall be erected not less than fifteen feet from the unprotected sides or edges of the open sided surface.

(b) The warning line shall consist of a rope, wire, or chain and supporting stanchions erected as follows:

(i) The rope, wire, or chain shall be flagged at not more than six foot (1.8 m) intervals with high visibility material. Highly visible caution or danger tape as described in (b)(iv) of this subsection, does not need to be flagged.

(ii) The rope, wire, or chain shall be rigged and supported in such a way that its lowest point (including sag) is no less than thirty-six inches from the surface and its highest point is no more than forty-five inches from the surface.

(iii) After being erected, with the rope, wire or chain attached, stanchions shall be capable of resisting, without tipping over, a force of at least sixteen pounds (71 N) applied horizontally against the stanchion, thirty inches (0.76 m) above the surface, perpendicular to the warning line, and in the direction of the unprotected sides or edges of the surface.

(iv) The rope, wire, or chain shall have a minimum tensile strength of two hundred pounds (90 k), and after being

attached to the stanchions, shall be capable of supporting, without breaking, the loads applied to the stanchions.

Highly visible caution or danger tape may be used in lieu of rope, wire, or chain as long as it is at least three inches wide and three mils thick, and has a tensile strength of at least two hundred pounds.

(v) The line shall be attached at each stanchion in such a way that pulling on one section of the line between stanchions will not result in slack being taken up in adjacent sections before the stanchion tips over.

(c) Access paths shall be erected as follows:

(i) Points of access, materials handling areas, and storage areas shall be connected to the work area by a clear access path formed by two warning lines.

(ii) When the path to a point of access is not in use, a rope, wire, or chain, equal in strength and height to the warning line, shall be placed across the path at the point where the path intersects the warning line erected around the work area.

(5) Safety monitor system specifications.

(a) A safety monitor system may be used in conjunction with a warning line system as a method of fall protection during roofing work on low pitched roofs or leading edge work on low pitched surfaces.

Note: The warning line is not required when performing roofing work on low pitched roofs less than fifty feet wide. For information on determining roof widths, see WAC 296-155-24623, Appendix A, determining roof widths.

(b) When selected, the employer shall ensure that the safety monitor system is addressed in the fall protection work plan, including the name of the safety monitor(s) and the extent of their training in both the safety monitor and warning line systems. The employer shall ensure that the following requirements are met:

(i) The safety monitor system shall not be used when adverse weather conditions create additional hazards.

(ii) Employees working outside of the warning line system, (between the forward edge of the warning line and the unprotected sides or edges of a low pitched surface), shall be readily distinguishable from other members of the crew that are working inside the warning line system by wearing highly visible, distinctive, and uniform apparel.

(iii) Employees must promptly comply with fall hazard warnings from the safety monitor.

(iv) A person acting in the capacity of safety monitor(s) shall be trained in the function of both the safety monitor and warning line systems, and shall:

(A) Be a competent person as defined in WAC 296-155-24603.

(B) Have control authority over the work as it relates to fall protection.

(C) Be instantly distinguishable over members of the work crew.

(D) Perform no other duties while acting as safety monitor.

(E) Be positioned in relation to the workers under their protection, so as to have a clear, unobstructed view and be able to maintain normal voice communication.

(F) Not supervise more than eight exposed workers at one time.

(G) Warn the employee when it appears that the employee is unaware of a fall hazard or is acting in an unsafe manner.

(6) Safety watch system specifications.

(a) When one employee is conducting any repair work or servicing equipment on a roof that has a pitch no greater than four in twelve, employers are allowed to use a safety watch system.

(b) Ensure the safety watch system meets the following requirements:

(i) There can only be two people on the roof while the safety watch system is being used: The one employee acting as the safety watch and the one employee engaged in the repair work or servicing equipment;

(ii) The employee performing the task must comply promptly with fall hazard warnings from the safety watch;

(iii) Mechanical equipment is not used; and

(iv) The safety watch system is not used when weather conditions create additional hazards.

(c) Ensure the employee acting as the safety watch meets all of the following:

(i) Is a competent person as defined in WAC 296-155-24603;

(ii) Has full control over the work as it relates to fall protection;

(iii) Has a clear, unobstructed view of the worker;

(iv) Is able to maintain normal voice communication; and

(v) Performs no other duties while acting as the safety watch.

NEW SECTION

WAC 296-155-24617 Positioning device system specifications. Positioning device systems and their use shall conform to the following provisions:

(1) Positioning harnesses or full body harnesses shall be used.

(2) Positioning devices shall be rigged to prevent an employee from a free fall greater than two feet.

(3) Positioning devices shall be secured to an anchorage capable of supporting at least twice the potential impact load of an employee's fall or three thousand pounds (13.3 kN), whichever is greater.

(4) Connectors shall be drop forged, pressed or formed steel, or made of equivalent materials.

(5) Connectors shall have a corrosion-resistant finish, and all surfaces and edges shall be smooth to prevent damage to interfacing parts of this system.

(6) Connecting assemblies shall have a minimum breaking strength of five thousand pounds (22.2 kN).

(7) D-rings and snap hooks shall be proof-tested to a minimum tensile load of three thousand six hundred pounds (16 kN) without cracking, breaking, or taking permanent deformation.

(8) Snap hooks shall be a locking type snap hook designed and used to prevent disengagement of the snap hook by the contact of the snap hook keeper by the connected member.

(9) Unless the snap hook is designed for the following connections, snap hooks shall not be engaged:

(a) Directly to webbing, rope or wire rope;

(b) To each other;

(c) To a D-ring to which another snap hook or other connector is attached;

(d) To a horizontal lifeline; or

(e) To any object which is incompatibly shaped or dimensioned in relation to the snap hook such that unintentional disengagement could occur by the connected object being able to depress the snap hook keeper and release itself.

NEW SECTION

WAC 296-155-24619 Other specifications. (1) Ramps, runways and inclined walkways shall:

(a) Be at least eighteen inches wide; and

(b) Not be inclined more than twenty degrees from horizontal and when inclined, they shall be cleated or otherwise treated to prevent a slipping hazard on the walking surface.

Note: See WAC 296-155-24609(3) for guarding ramps, runways, and inclined walkways that are four feet or more above the ground or lower level.

(2) Self-rescue devices. Self-rescue devices are not a fall protection system. Self-rescue devices used to self-rescue after a fall shall meet the following requirements:

(a) Use self-rescue devices according to the manufacturer's instructions; and

(b) Self-rescue devices must be addressed by the fall protection work plan.

(3) Canopy. Canopies, when used as falling object protection, shall be strong enough to prevent collapse and to prevent penetration by any objects which may fall onto the canopy.

(4) Roofing bracket specifications. Roofing brackets are not a fall protection system.

(a) Roofing brackets shall be constructed to fit the pitch of the roof.

(b) In addition to securing brackets using the pointed metal projections, brackets shall also be secured in place by nailing. When it is impractical to nail brackets, rope supports shall be used. When rope supports are used, they shall consist of first grade manila of at least three-quarters inch diameter, or equivalent.

(5) Crawling board and chicken ladder specifications. Crawling boards and chicken ladders are not fall protection systems.

(a) Crawling boards shall be not less than ten inches wide and one inch thick, having cleats one by one and one-half inches.

(i) The cleats shall be equal in length to the width of the board and spaced at equal intervals not to exceed twenty-four inches.

(ii) Nails shall be driven through and clinched on the underside.

(iii) The crawling board shall extend from the ridge pole to the eaves when used in connection with roof construction, repair, or maintenance.

(b) Crawling boards shall be secured to the roof using ridge hooks or other equivalent means.

(6) Roof edge materials handling areas and materials storage specifications.

(a) When guardrails are used at hoisting areas, a minimum of four feet of guardrail shall be erected along each side of the access point through which materials are hoisted.

(b) A chain or gate shall be placed across the opening between the guardrail sections when hoisting operations are not taking place.

(c) When guardrails are used at bitumen pipe outlet, a minimum of four feet of guardrail shall be erected along each side of the pipe.

(d) Mechanical equipment shall be used or stored only in areas where employees are protected using a fall arrest system as described in WAC 296-155-24613, or a fall restraint system as described in WAC 296-155-24615 (1), (2), or (4). Mechanical equipment may not be used or stored where the only protection is provided by the use of a safety monitor.

(e) The hoist shall not be used as an attachment/anchor-age point for fall arrest or fall restraint systems.

(f) Materials shall not be stored within six feet of the roof edge unless guardrails are erected at the roof edge. Guardrails shall include a toe board if employees could be working or passing below.

the two primary dimensions of the area, as viewed from above. Example A shows a simple rectangular roof. The width is the lesser of the two primary overall dimensions, which is also the case with roofs sloped toward or away from the roof center, as shown in Example B.

(2) Many roofs are not simple rectangles. Such roofs may be broken down into subareas as shown in Example C. The process of dividing a roof area can produce many different configurations. Example C gives the general rule of using dividing lines of minimum length to minimize the size and number of the areas which are potentially less than fifty feet (15.25 m) wide. The intent is to minimize the number of roof areas where safety monitoring systems alone are sufficient protection.

(3) Roofs which are comprised of several separate, non-contiguous roof areas, as in Example D, may be considered as a series of individual roofs. Some roofs have penthouses, additional floors, courtyard openings, or similar architectural features; Example E shows how the rule for dividing roofs into subareas is applied to such configurations. Irregular, nonrectangular roofs must be considered on an individual basis, as shown in Example F.

NEW SECTION

WAC 296-155-24621 Training. (1) All training required by this part, must be documented and documentation kept on file.

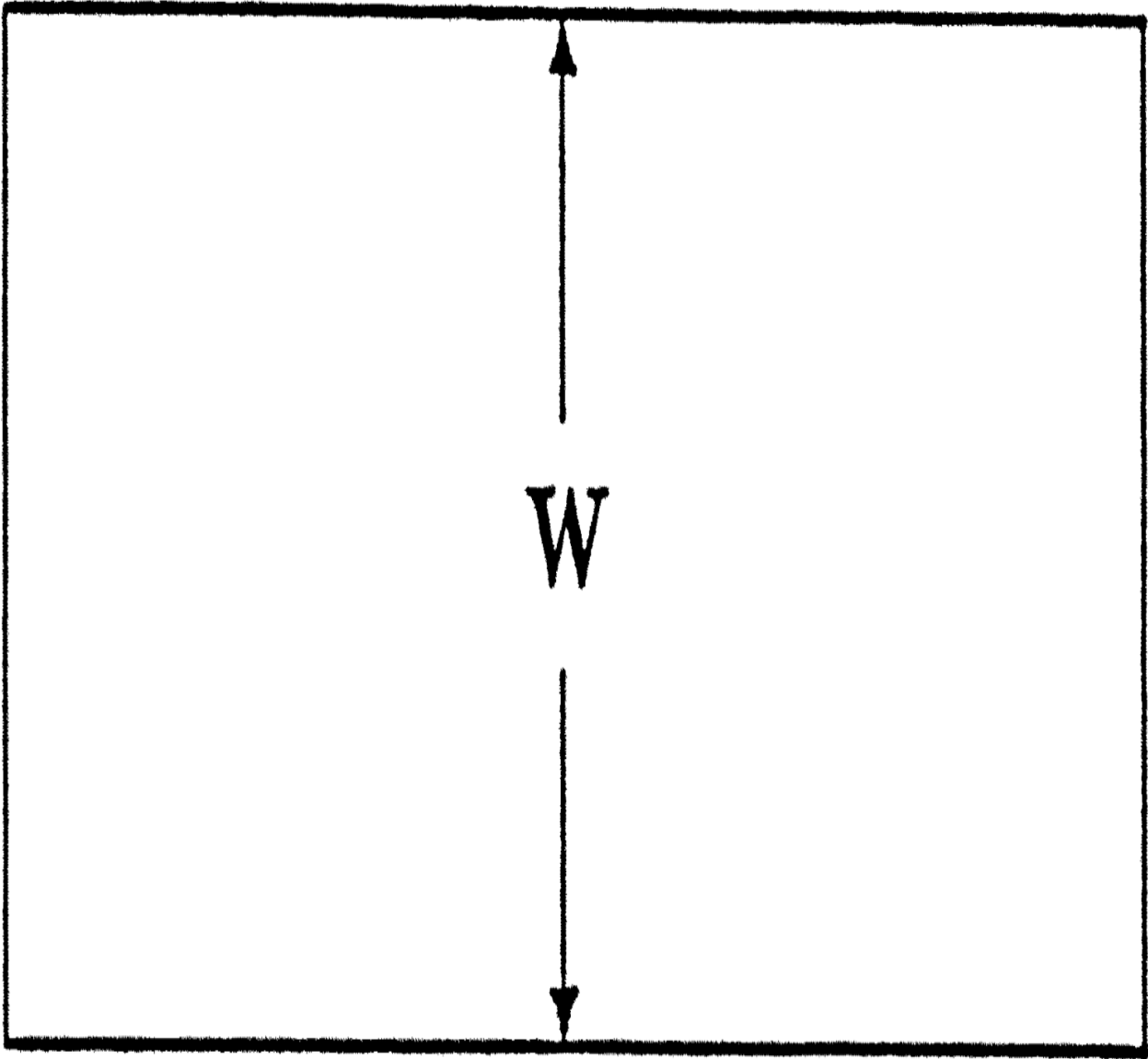
(2) "Retraining." When the employer has reason to believe that any affected employee who has already been trained does not have the understanding and skill required by subsection (1) of this section, the employer shall retrain each such employee. Circumstances where retraining is required include, but are not limited to, situations where:

- Changes in the workplace render previous training obsolete; or
- Changes in the types of fall protection systems or equipment to be used render previous training obsolete; or
- Inadequacies in an affected employee's knowledge or use of fall protection systems or equipment indicate that the employee has not retained the requisite understanding or skill.

NEW SECTION

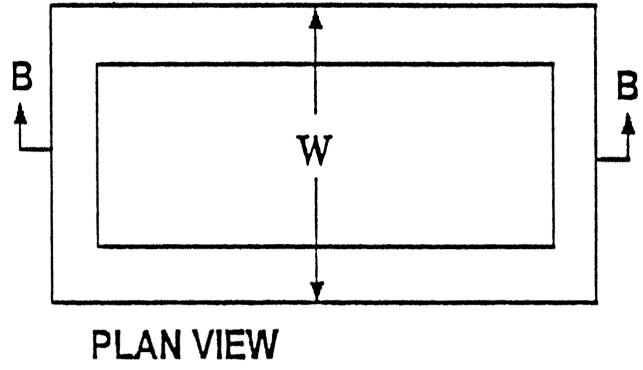
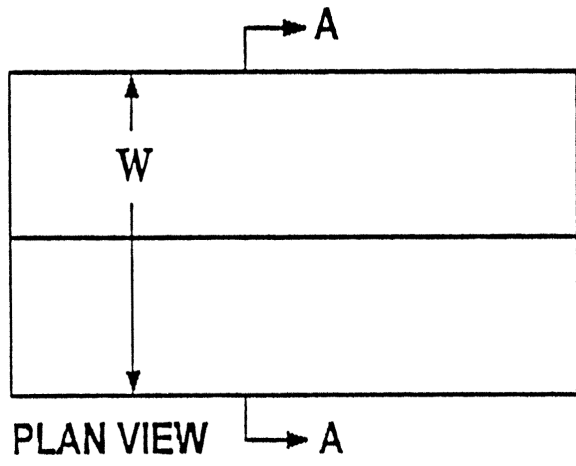
WAC 296-155-24623 Appendix A—Determining roof widths—Nonmandatory guidelines for complying with WAC 296-155-24615. (1) This appendix serves as a guideline to assist employers complying with the requirements of WAC 296-155-24615 which allows the use of a safety monitoring system alone as a means of providing fall protection during the performance of roofing operations on low-sloped roofs fifty feet (15.25 m) or less in width. Each example in the appendix shows a roof plan or plans and indicates where each roof or roof area is to be measured to determine its width. Section views or elevation views are shown where appropriate. Some examples show "correct" and "incorrect" subdivisions of irregularly shaped roofs divided into smaller, regularly shaped areas. In all examples, the dimension selected to be the width of an area is the lesser of

Example A
Rectangular Shaped Roof



PLAN VIEW

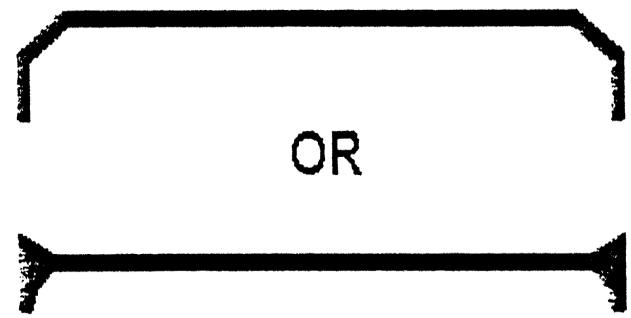
Example B
Sloped Rectangular Shaped Roofs



OR

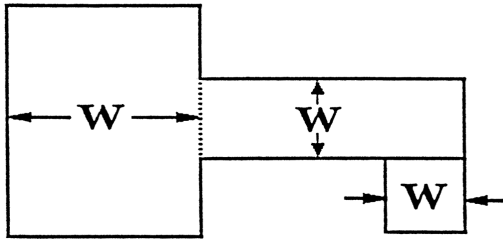


SECTION A-A

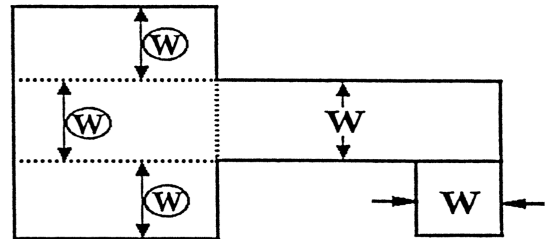


SECTION B-B

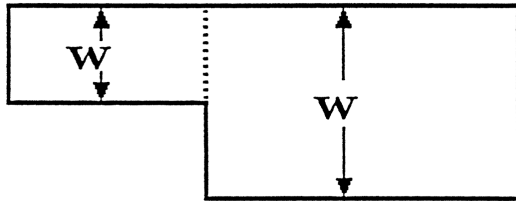
Example C
Irregularly Shaped Roofs With Rectangular Shaped Sections



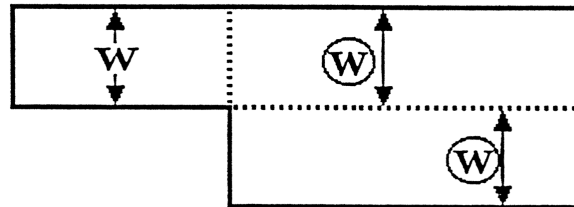
Correct



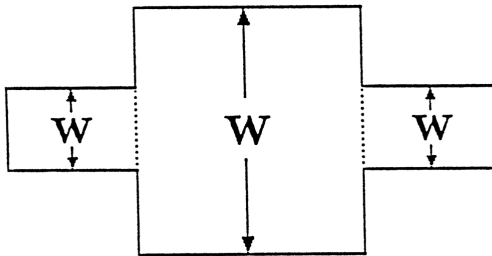
Incorrect



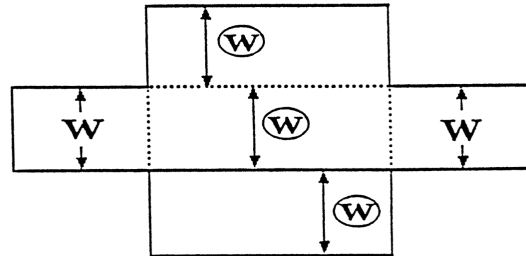
Correct



Incorrect



Correct



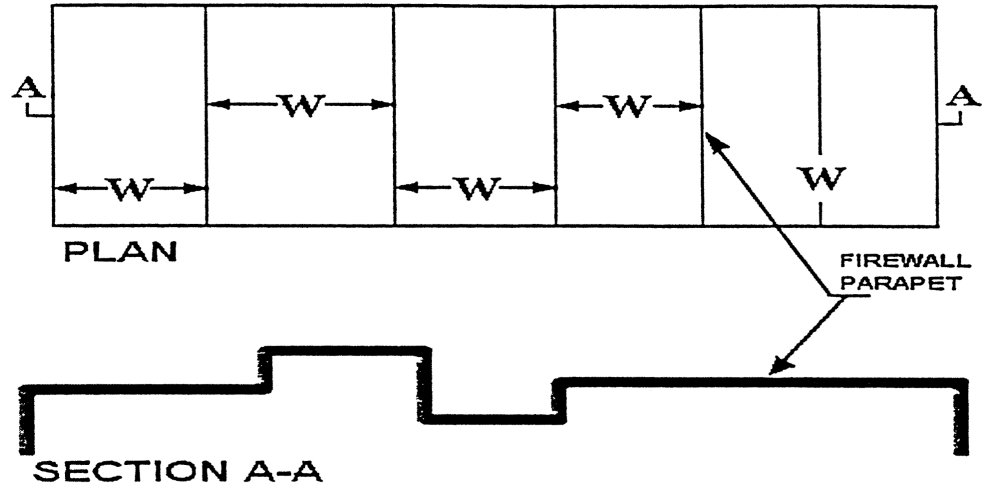
Incorrect

Such roofs are to be divided into subareas by using dividing lines of minimum length to minimize the size and number of the areas which are potentially less than or equal to fifty feet (15.25 m) in width, in order to limit the size of roof areas where the safety monitoring system alone can be used (WAC 296-155-24615 (2)(b)). Dotted lines are used in the examples to show the location of dividing lines.

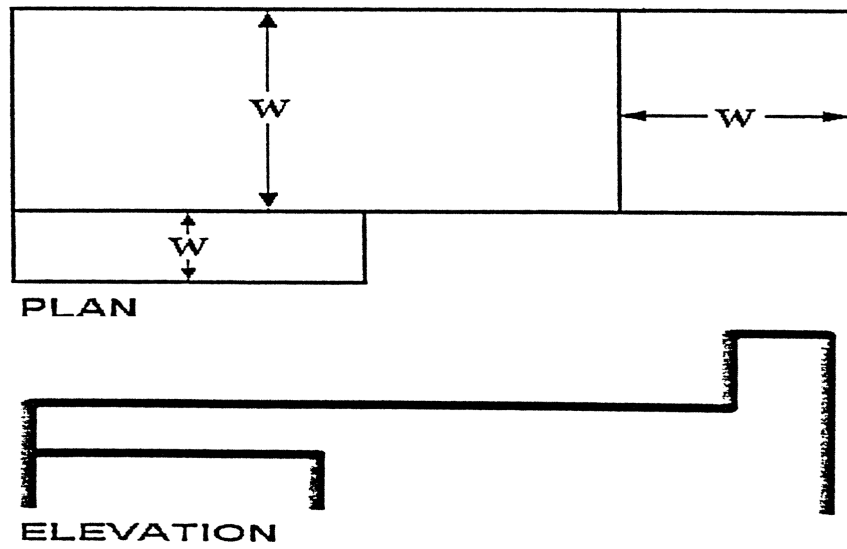
Ⓜ denotes incorrect measurements of width.

Example D
Separate, Noncontiguous Roof Areas

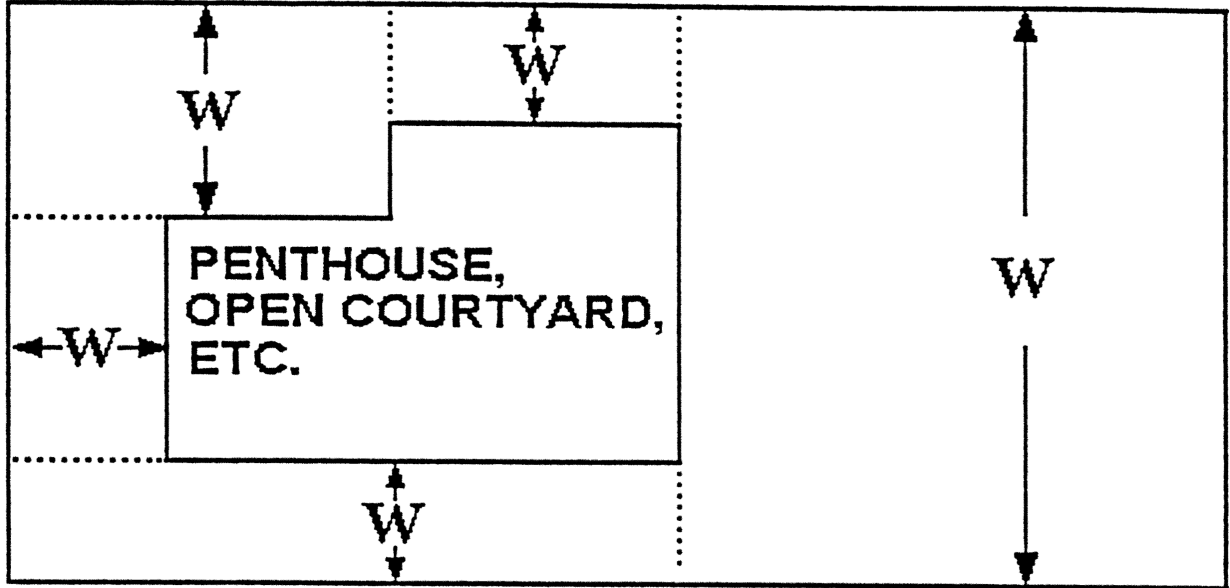
1.



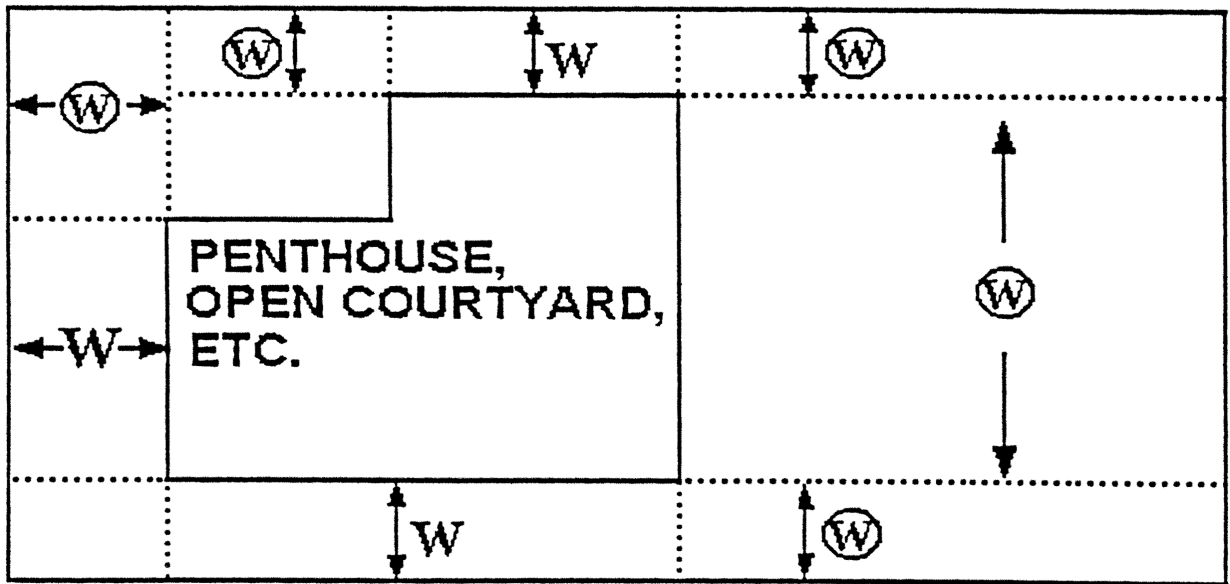
2.



Example E
Roofs with Penthouses, Open Courtyards, Additional Floors, etc.



CORRECT

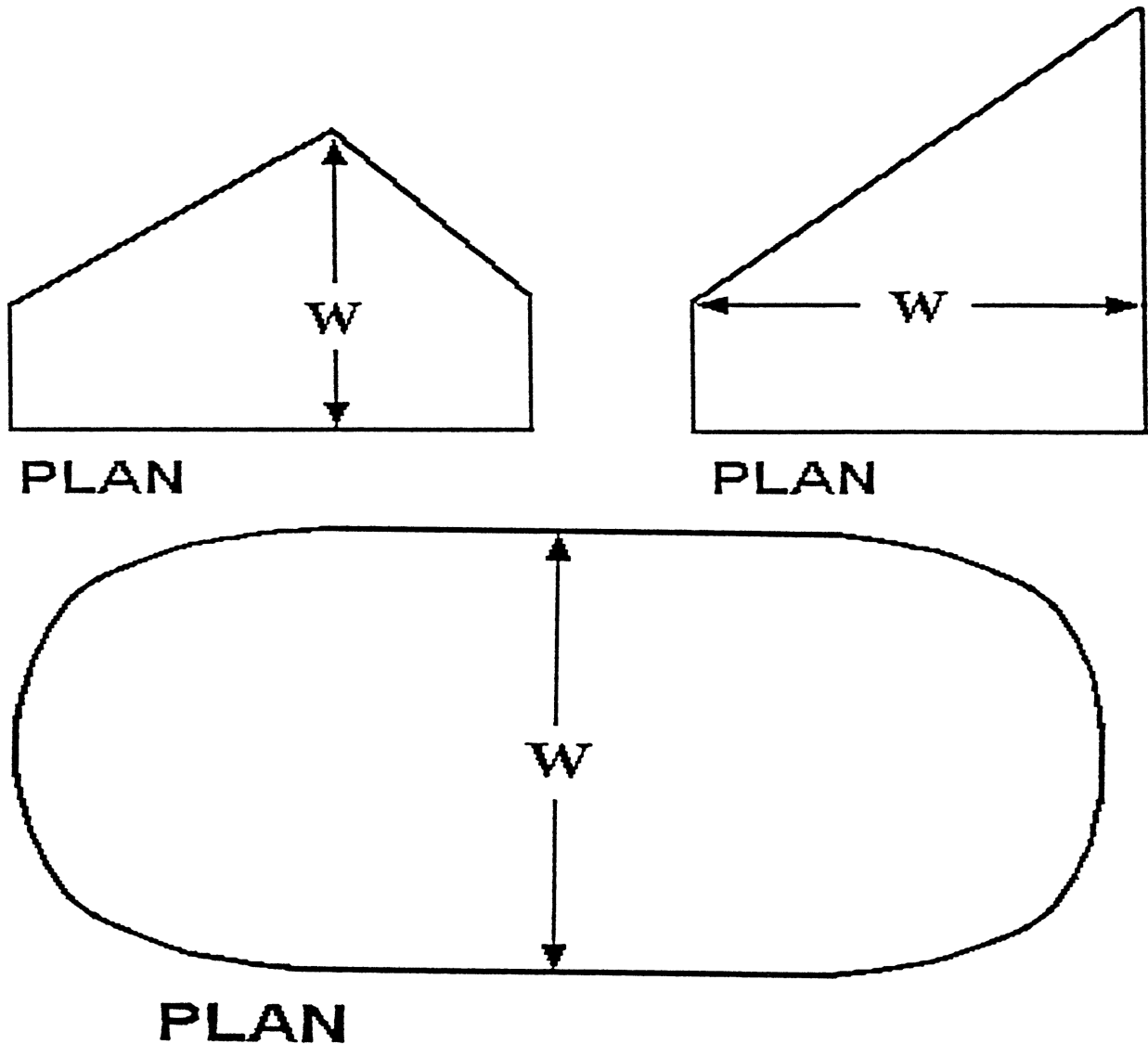


INCORRECT

Such roofs are to be divided into subareas by using dividing lines of minimum length to minimize the size and number of the areas which are potentially less than or equal to fifty feet (15.25 m) in width in order to limit the size of roof areas where the safety monitoring system alone can be used. Dotted lines are used in the examples to show the location of dividing lines.

Ⓜ denotes incorrect measurements of width.

Example F
Irregular, Nonrectangular Shaped Roofs



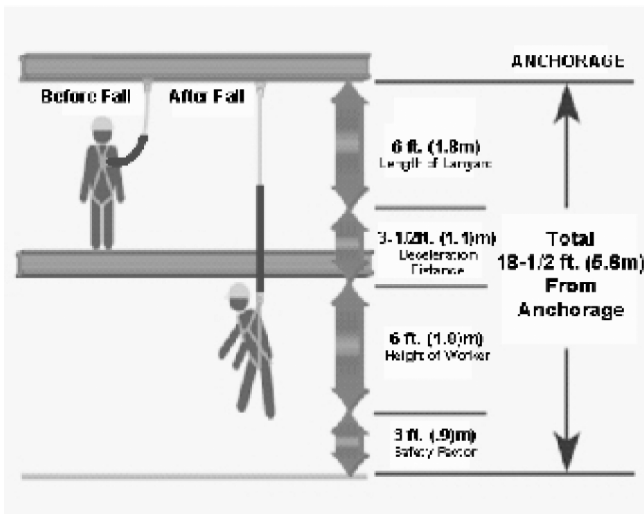
NEW SECTION

WAC 296-155-24624 Appendix B—Calculating fall clearance distance using a shock-absorbing lanyard and D-ring anchorage connector—Nonmandatory guidelines for complying with WAC 296-155-24613 (1)(d). Do the following to calculate the fall clearance distance using a shock-absorbing lanyard and D-ring anchorage connector:

- First, add the length of the shock-absorbing lanyard (six feet) to the maximum elongation of the shock absorber during deceleration (three and one-half feet) to the average height of a worker (six feet).

- Then, add a safety factor of three feet to allow for the possibility of an improperly fit full body harness, a taller than average worker and/or a miscalculation of distance.

- The suggested safe fall clearance distance for this example is eighteen and one-half feet.



PART C-1

FALL ((RESTRAINT AND FALL ARREST)) PROTECTION REQUIREMENTS FOR CONSTRUCTION

AMENDATORY SECTION (Amending WSR 96-24-051, filed 11/27/96, effective 2/1/97)

WAC 296-155-477 Stairways. (1) General. The following requirements apply to all stairways as indicated:

(a) Stairways that will not be a permanent part of the structure on which construction work is being performed shall have landings of not less than thirty inches (76 cm) in the direction of travel and extend at least twenty-two inches (56 cm) in width at every twelve feet (3.7 m) or less of vertical rise.

(b) Stairs shall be installed between 30 deg. and 50 deg. from horizontal.

(c) In all buildings or structures two or more stories or twenty-four feet or more in height or depth, suitable permanent or temporary stairways shall be installed.

(d) Stairways, ramps or ladders shall be provided at all points where a break in elevation of eighteen inches or more occurs in a frequently traveled passageway, entry or exit.

(e) A minimum of one stairway shall be provided for access and exit for buildings and structures to three stories or thirty-six feet; if more than three stories or thirty-six feet, two or more stairways shall be provided. Where two stairways are provided and work is being performed in the stairways, one shall be maintained clear for access between levels at all times.

(f) Wood frame buildings.

(i) The stairway to a second or higher floor shall be completed before studs are raised to support the next higher floor.

(ii) Roof and attic work areas of all buildings shall be provided with a safe means of access and egress, such as stairways, ramps or ladders.

(iii) Cleats shall not be nailed to studs to provide access to and egress from roof or other work areas.

(g) Steel frame buildings. Stairways shall extend to the uppermost floor that has been planked or decked. Ladders may be used above that point.

(h) Reinforced concrete or composite steel—Concrete buildings. Stairways shall extend to the lowermost floor upon which a complete vertical shoring system is in place. A minimum of two ladders at different locations for each floor may be used above this floor but not to exceed three floors.

(i) Riser height and tread depth shall be uniform within each flight of stairs, including any foundation structure used as one or more treads of the stairs. Variations in riser height or tread depth shall not be over 1/4-inch (0.6 cm) in any stairway system.

(j) Where doors or gates open directly on a stairway, a platform shall be provided, and the swing of the door shall not reduce the effective width of the platform to less than twenty inches (51 cm).

(k) Metal pan landings and metal pan treads, when used, shall be secured in place before filling with concrete or other material.

(l) All parts of stairways shall be free of hazardous projections, such as protruding nails.

(m) Slippery conditions on stairways shall be eliminated before the stairways are used to reach other levels.

(n) Employers are permitted to use alternating tread type stairs as long as they install, use, and maintain the stairs in accordance with manufacturer's recommendations and the following:

(i) The stair must be installed at an angle of seventy degrees or less.

(ii) The stair must be capable of withstanding a minimum uniform load of one hundred pounds per square foot with a design factor of 1.7, and the treads must be capable of carrying a minimum concentrated load of three hundred pounds at the center of any treadspan or exterior arc with a design factor of 1.7. If the stair is intended for greater loading, construction must allow for that loading.

(iii) The stair must be equipped with a handrail on each side to assist the user in climbing or descending.

(o) Due to space limitations, when a permanent stairway must be installed at an angle above fifty degrees, such an installation (commonly called an inclined or ship's ladder) shall have treads, open risers and handrails on both sides.

(p) Where ladders are permitted for access under subsection (1) of this section, means shall be provided for employee hoisting of tools and material, such as a well wheel and hoisting line or the equivalent, so employees will have both hands free for ascending and descending ladders.

(2) Temporary service. The following requirements apply to all stairways as indicated:

(a) Except during stairway construction, foot traffic is prohibited on stairways with pan stairs where the treads and/or landings are to be filled in with concrete or other material at a later date, unless the stairs are temporarily fitted with wood or other solid material at least to the top edge of each pan. Such temporary treads and landings shall be replaced when worn below the level of the top edge of the pan.

(b) Except during stairway construction, foot traffic is prohibited on skeleton metal stairs where permanent treads

and/or landings are to be installed at a later date, unless the stairs are fitted with secured temporary treads and landings long enough to cover the entire tread and/or landing area.

(c) Treads for temporary service shall be made of wood or other solid material, and shall be installed the full width and depth of the stair.

(3) Stairrails and handrails. The following requirements apply to all stairways as indicated:

(a) Stairways having four or more risers or rising more than thirty inches (76 cm), whichever is less, shall be equipped with:

(i) At least one handrail; and

(ii) One stairrail system along each unprotected side or edge.

Note: When the top edge of a stairrail system also serves as a handrail, subdivision (g) of this subsection applies.

(b) Winding and spiral stairways shall be equipped with a handrail offset sufficiently to prevent walking on those portions of the stairways where the tread width is less than six inches (15 cm).

(c) The height of stairrails shall be as follows:

(i) Stairrails installed after the effective date of this standard, shall be not less than thirty-six inches (91.5 cm) from the upper surface of the stairrail system to the surface of the tread, in line with the face of the riser at the forward edge of the tread.

(ii) Stairrails installed before the effective date of this standard, shall be not less than thirty inches (76 cm) nor more than thirty-four inches (86 cm) from the upper surface of the stairrail system to the surface of the tread, in line with the face of the riser at the forward edge of the tread.

(d) Midrails, screens, mesh, intermediate vertical members, or equivalent intermediate structural members, shall be provided between the top rail of the stairrail system and the stairway steps.

(i) Midrails, when used, shall be located at a height midway between the top edge of the stairrail system and the stairway steps.

(ii) Screens or mesh, when used, shall extend from the top rail to the stairway step, and along the entire opening between top rail supports.

(iii) When intermediate vertical members, such as balusters, are used between posts, they shall be not more than ~~(nineteen)~~ nineteen inches (48 cm) apart.

(iv) Other structural members, when used, shall be installed such that there are no openings in the stairrail system that are more than nineteen inches (48 cm) wide.

(e) Handrails and the top rails of stairrail systems shall be capable of withstanding, without failure, a force of at least 200 pounds (890 n) applied within two inches (5 cm) of the top edge, in any downward or outward direction, at any point along the top edge.

(f) The height of handrails shall be not more than thirty-seven inches (94 cm) nor less than thirty inches (76 cm) from the upper surface of the handrail to the surface of the tread, in line with the face of the riser at the forward edge of the tread.

(g) When the top edge of a stairrail system also serves as a handrail, the height of the top edge shall be not more than thirty-seven inches (94 cm) nor less than thirty-six inches (91.5 cm) from the upper surface of the stairrail system to the

surface of the tread, in line with the face of the riser at the forward edge of the tread.

(h) Stairrail systems and handrails shall be so surfaced as to prevent injury to employees from punctures or lacerations, and to prevent snagging of clothing.

(i) Handrails shall provide an adequate handhold for employees grasping them to avoid falling.

(j) The ends of stairrail systems and handrails shall be constructed so as not to constitute a projection hazard.

(k) Handrails that will not be a permanent part of the structure being built shall have a minimum clearance of three inches (8 cm) between the handrail and walls, stairrail systems, and other objects.

(l) Unprotected sides and edges of stairway landings shall be provided with guardrail systems. Guardrail system criteria are contained in chapter 296-155 WAC, Part ~~(K)~~ C-1, Fall protection requirements for construction.

AMENDATORY SECTION (Amending WSR 05-20-055, filed 10/3/05, effective 12/1/05)

WAC 296-155-655 General protection requirements.

(1) Surface encumbrances. All surface encumbrances that are located so as to create a hazard to employees shall be removed or supported, as necessary, to safeguard employees.

(2) Underground installations.

(a) The location of utility installations, such as sewer, telephone, fuel, electric, water lines, or any other underground installations that reasonably may be expected to be encountered during excavation work, shall be located prior to opening an excavation.

(b) Utility companies or owners shall be contacted within established or customary local response times, advised of the proposed work, and asked to locate the underground utility installation prior to the start of actual excavation.

(c) When excavation operations approach the location of underground installations, the exact location of the installations shall be determined by safe and acceptable means.

(d) While the excavation is open, underground installations shall be protected, supported, or removed as necessary to safeguard employees.

(3) Access and egress.

(a) Structural ramps.

(i) Structural ramps that are used solely by employees as a means of access or egress from excavations shall be designed by a competent person. Structural ramps used for access or egress of equipment shall be designed by a competent person qualified in structural design, and shall be constructed in accordance with the design.

(ii) Ramps and runways constructed of two or more structural members shall have the structural members connected together to prevent displacement.

(iii) Structural members used for ramps and runways shall be of uniform thickness.

(iv) Cleats or other appropriate means used to connect runway structural members shall be attached to the bottom of the runway or shall be attached in a manner to prevent tripping.

(v) Structural ramps used in lieu of steps shall be provided with cleats or other surface treatments on the top surface to prevent slipping.

(b) Means of egress from trench excavations. A stairway, ladder, ramp or other safe means of egress shall be located in trench excavations that are 4 feet (1.22 m) or more in depth so as to require no more than 25 feet (7.62 m) of lateral travel for employees.

(4) Exposure to vehicular traffic. Employees exposed to vehicular traffic shall be provided with and shall wear high-visibility garments meeting the requirements of WAC 296-155-200, General requirements for personal protective equipment (PPE).

(5) Exposure to falling loads. No employee shall be permitted underneath loads handled by lifting or digging equipment. Employees shall be required to stand away from any vehicle being loaded or unloaded to avoid being struck by any spillage or falling materials. Operators may remain in the cabs of vehicles being loaded or unloaded when the vehicles are equipped, in accordance with WAC 296-155-610 (2)(g), to provide adequate protection for the operator during loading and unloading operations.

(6) Warning system for mobile equipment. When mobile equipment is operated adjacent to an excavation, or when such equipment is required to approach the edge of an excavation, and the operator does not have a clear and direct view of the edge of the excavation, a warning system shall be utilized such as barricades, hand or mechanical signals, or stop logs. If possible, the grade should be away from the excavation.

(7) Hazardous atmospheres.

(a) Testing and controls. In addition to the requirements set forth in parts B-1, C, and C-1 of this chapter (296-155 WAC) to prevent exposure to harmful levels of atmospheric contaminants and to assure acceptable atmospheric conditions, the following requirements shall apply:

(i) Where oxygen deficiency (atmospheres containing less than 19.5 percent oxygen) or a hazardous atmosphere exists or could reasonably be expected to exist, such as in excavations in landfill areas or excavations in areas where hazardous substances are stored nearby, the atmospheres in the excavation shall be tested before employees enter excavations greater than 4 feet (1.22 m) in depth.

(ii) Adequate precautions shall be taken to prevent employee exposure to atmospheres containing less than 19.5 percent oxygen and other hazardous atmospheres. These precautions include providing proper respiratory protection or ventilation in accordance with chapter 296-842 WAC.

(iii) Adequate precaution shall be taken such as providing ventilation, to prevent employee exposure to an atmosphere containing a concentration of a flammable gas in excess of 10 percent of the lower flammable limit of the gas.

(iv) When controls are used that are intended to reduce the level of atmospheric contaminants to acceptable levels, testing shall be conducted as often as necessary to ensure that the atmosphere remains safe.

(b) Emergency rescue equipment.

(i) Emergency rescue equipment, such as breathing apparatus, a safety harness and line, or a basket stretcher, shall be readily available where hazardous atmospheric con-

ditions exist or may reasonably be expected to develop during work in an excavation. This equipment shall be attended when in use.

(ii) Employees entering bell-bottom pier holes, or other similar deep and confined footing excavations, shall wear a harness with a lifeline securely attached to it. The lifeline shall be separate from any line used to handle materials, and shall be individually attended at all times while the employee wearing the lifeline is in the excavation.

Note: See chapter 296-62 WAC, Part M for additional requirements applicable to confined space operations.

(8) Protection from hazards associated with water accumulation.

(a) Employees shall not work in excavations in which there is accumulated water, or in excavations in which water is accumulating, unless adequate precautions have been taken to protect employees against the hazards posed by water accumulation. The precautions necessary to protect employees adequately vary with each situation, but could include special support or shield systems to protect from cave-ins, water removal to control the level of accumulating water, or use of a safety harness and lifeline.

(b) If water is controlled or prevented from accumulating by the use of water removal equipment, the water removal equipment and operations shall be monitored by a competent person to ensure proper operation.

(c) If excavation work interrupts the natural drainage of surface water (such as streams), diversion ditches, dikes, or other suitable means shall be used to prevent surface water from entering the excavation and to provide adequate drainage of the area adjacent to the excavation. Excavations subject to runoff from heavy rains will require an inspection by a competent person and compliance with subdivisions (a) and (b) of this subsection.

(9) Stability of adjacent structures.

(a) Where the stability of adjoining buildings, walls, or other structures is endangered by excavation operations, support systems such as shoring, bracing, or underpinning shall be provided to ensure the stability of such structures for the protection of employees.

(b) Excavation below the level of the base or footing of any foundation or retaining wall that could be reasonably expected to pose a hazard to employees shall not be permitted except when:

(i) A support system, such as underpinning, is provided to ensure the safety of employees and the stability of the structure; or

(ii) The excavation is in stable rock; or

(iii) A registered professional engineer has approved the determination that the structure is sufficiently removed from the excavation so as to be unaffected by the excavation activity; or

(iv) A registered professional engineer has approved the determination that such excavation work will not pose a hazard to employees.

(c) Sidewalks, pavements, and appurtenant structure shall not be undermined unless a support system or another method of protection is provided to protect employees from the possible collapse of such structures.

(10) Protection of employees from loose rock or soil.

(a) Adequate protection shall be provided to protect employees from loose rock or soil that could pose a hazard by falling or rolling from an excavation face. Such protection shall consist of scaling to remove loose material; installation of protective barricades at intervals as necessary on the face to stop and contain falling material; or other means that provide equivalent protection.

(b) Employees shall be protected from excavated or other materials or equipment that could pose a hazard by falling or rolling into excavations. Protection shall be provided by placing and keeping such materials or equipment at least 2 feet (.61 m) from the edge of excavations, or by the use of retaining devices that are sufficient to prevent materials or equipment from falling or rolling into excavations, or by a combination of both if necessary.

(11) Inspections.

(a) Daily inspections of excavations, the adjacent areas, and protective systems shall be made by a competent person for evidence of a situation that could result in possible cave-ins, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions. An inspection shall be conducted by the competent person prior to the start of work and as needed throughout the shift. Inspections shall also be made after every rainstorm or other hazard increasing occurrence. These inspections are only required when employee exposure can be reasonably anticipated.

(b) Where the competent person finds evidence of a situation that could result in a possible cave-in, indications of failure of protective systems, hazardous atmospheres, or other hazardous conditions, exposed employees shall be removed from the hazardous area until the necessary precautions have been taken to ensure their safety.

(12) Fall protection.

(a) Walkways shall be provided where employees or equipment are required or permitted to cross over excavations. Guardrails which comply with chapter 296-155 WAC, Part ((K)) C-1 shall be provided where walkways are 4 feet or more above lower levels.

(b) Adequate barrier physical protection shall be provided at all remotely located excavations. All wells, pits, shafts, etc., shall be barricaded or covered. Upon completion of exploration and similar operations, temporary wells, pits, shafts, etc., shall be backfilled.

AMENDATORY SECTION (Amending WSR 04-14-028, filed 6/29/04, effective 1/1/05)

WAC 296-155-682 Requirements for equipment and tools. (1) Bulk cement storage. Bulk storage bins, containers, and silos shall be equipped with the following:

(a) Conical or tapered bottoms; and

(b) Mechanical or pneumatic means of starting the flow of material.

(2) No employee shall be permitted to enter storage facilities unless the ejection system has been shut down and locked out in accordance with WAC 296-155-429.

(3) ((Safety belts;)) Harnesses, lanyards, lifelines or droplines, independently attached or attended, shall be used as prescribed in chapter 296-155 WAC, Part C-1, Fall protection requirements for construction.

(4) Concrete mixers. Concrete mixers with one cubic yard (.8 m³) or larger loading skips shall be equipped with the following:

(a) A mechanical device to clear the skip of materials; and

(b) Guardrails installed on each side of the skip.

(5) Power concrete trowels. Powered and rotating type concrete troweling machines that are manually guided shall be equipped with a control switch that will automatically shut off the power whenever the hands of the operator are removed from the equipment handles.

(6) Concrete buggies. Concrete buggy handles shall not extend beyond the wheels on either side of the buggy.

Note: Installation of knuckle guards on buggy handles is recommended.

(7) Runways.

(a) Runways shall be constructed to carry the maximum contemplated load with a safety factor of four, have a smooth running surface, and be of sufficient width for two buggies to pass. Single runs to have a minimum width of forty-two inches with turnouts. Runways to have standard railings. Where motor driven concrete buggies are used, a minimum four-inches by four-inches wheel guard shall be securely fastened to outside edge of runways.

(b) All concrete buggy runways which are 12 inches or more above a work surface or floor, or ramps with more than 4 percent incline shall be considered "elevated" runways.

Exception: Small jobs utilizing only one concrete buggy, or larger jobs utilizing a "one-way traffic pattern" may be exempt from the requirements for "turnouts" or for "sufficient width for two buggies to pass."

Exemption: Runways less than 12 inches above the floor or ground which are utilized by hard-powered buggies only, may be exempt from the requirements for guardrails and wheelguards.

(8) Concrete pumps and placing booms.

(a) Definitions.

"Concrete delivery hose" means a flexible concrete delivery hose which has two end couplings.

"Concrete pump" means a construction machine that pumps concrete.

"Controls" means the devices used to operate a machine.

"Delivery systems" means the pipe, hoses and components, through which the concrete is pumped.

"Grooved end" means a pipe clamp pipe connection where a groove is machined or rolled directly into the outside of the pipe wall (for example: Victualic).

"Material pressure" means the pressure exerted on the concrete inside the delivery system.

"Placing boom and placing unit" means a manual or power driven, slewable working device which:

- Consists of one or more extendable or folding parts for supporting the concrete delivery system, and directs the discharge into the desired location; and

- May be mounted on trucks, trailers, or special vehicles.

"Qualified person" means someone who:

- Possesses a recognized degree or certificate of professional standing; or

- Has extensive knowledge, training, and experience; or

- Successfully demonstrated the ability to resolve problems relating to the work.

"Restraining devices" means a sling, cable, or equivalent device used to minimize excess movement of a delivery system in case of separation.

"Whip hoses" means a suspended hose that has only one coupling and is used to direct the delivery of concrete.

(b) Equipment requirements.

(i) Equipment identification tag.

The employer must ensure the following identification is furnished if originally identified by the manufacturer and on all pumps manufactured after January 1, 1998:

- The manufacturer's name;
- The year of manufacture;
- The model and serial number;
- The maximum material pressure;
- The maximum allowable pressure in the hydraulic system; and

- The maximum weight per foot of delivery system including concrete.

(ii) Manufacturer's manual.

The employer must have the manufacturer's operation/safety manual or equivalent available for each concrete pump or placing boom.

(iii) Unsafe condition of equipment.

If during an equipment inspection a condition is revealed that might endanger workers, the equipment must not be returned to service until the condition is corrected.

(iv) Controls.

Controls must have their function clearly marked.

(v) Hydraulic systems.

(A) Concrete pumps and placing booms hydraulic systems must have pressure relief valves to prevent cylinder and boom damage.

(B) Hydraulic systems must have hydraulic holding valves if hose or coupling failure could result in uncontrolled vertical movement.

(vi) Certification.

In the event of failure of a structural member, overloading, or contact with energized electric power lines and before return to service, the equipment must be certified safe by:

- The manufacturer; or
- An agent of the manufacturer; or
- A professional engineer.

(vii) Marking weight. A permanent, legible notice stating the total weight of the unit must be marked on:

- Trailer or skid mounted concrete pumps;
- Placing booms; and
- All major detachable components over five hundred pounds.

(viii) Lifting a pump.

A concrete pump must be lifted using the lift points specified by the manufacturer or a professional engineer.

(ix) Emergency shutoff.

A concrete pump must have a clearly labeled emergency stop switch that stops the pumping action.

(x) Inlet and outlet guarding.

(A) The waterbox must have a fixed guard to prevent unintentional access to the moving parts.

(B) The agitator must be guarded with a point of operation guard in accordance with chapter 296-806 WAC, Machine safety, and the guard must be:

- Hinged or bolted in place;
- At least three inches distance from the agitator;
- Be capable of supporting a load of two hundred fifty pounds.

(C) A person must not stand on the guard when the pump or agitator is running.

(xi) Outriggers.

(A) Outriggers must be used in accordance with the manufacturer's specifications.

(B) Concrete pump trucks manufactured after January 1, 1998, must have outriggers or jacks permanently marked to indicate the maximum loading they transmit to the ground.

(xii) Load on a placing boom.

(A) The manufacturer's or a licensed, registered, structural engineer's specifications for the placing boom must not be exceeded by:

- The weight of the load;
- The length and diameter of suspended hose;
- The diameter and weight of mounted pipe.

(B) A concrete placing boom must not be used to drag hoses or lift other loads.

(C) All engineering calculations regarding modifications must be:

- Documented;
- Recorded; and
- Available upon request.

(xiii) Pipe diameter thickness. The pipe wall thickness must be measured in accordance with the manufacturer's instruction, and:

- Be sufficient to maintain a burst pressure greater than the maximum pressure the pump can produce;
- The pipe sections must be replaced when measurements indicate wall thickness has been reduced to the limits specified by the manufacturer.

(xiv) Pipe clamps.

(A) Concrete must not be pumped through a delivery system with grooved ends, such as those for Victualic-type couplers.

(B) Pipe clamps must have a pressure rating at least equal to the pump pressure rating.

(C) Pipe clamps contact surfaces must be free of concrete and other foreign matter.

(D) If quick connect clamps are used, they must be pinned or secured to keep them from opening when used in a vertical application.

(xv) Delivery pipe.

(A) Delivery pipe between the concrete pump and the placing system must be supported and anchored to prevent movement and excessive loading on clamps.

(B) Double ended hoses must not be used as whip hoses.

(C) Attachments must not be placed on whip hoses (i.e., "S" hooks, valves, etc.).

Table 1, Nonmandatory
Recommended maximum yards per hour through hose

Hose Diameter	Hose Length (12' and less) Max. yards per hour	Hose Length (12' and longer) Max. yards per hour
2"	30	30
3"	90	50
4"	160	110
5"	See manufacturer specs	See manufacturer specs

- The above figures are based on a minimum of a 4" slump and a 5 sack mix.

- Variables in mix design can have an effect on these ratings.

- Aggregate should not exceed 1/3 the diameter of the delivery system.

(xvi) Restraining. A restraining device must:

- Be used on attachments suspended from the boom tips; and

- Have a load rating not less than one-fifth of its ultimate breaking strength.

(xvii) Equipment inspection.

(A) An inspection must be conducted annually for the first five years and semiannually thereafter and must include the following:

- Nondestructive testing of all sections of the boom by a method capable of ensuring the structural integrity of the boom;

- Be conducted by a qualified person or by a private agency.

(B) The inspection report must be documented and a copy maintained by the employer and in each unit inspected. It must contain the following:

- The identification, including the serial numbers and manufacturer's name, of the components and parts inspected and tested;

- A description of the test methods and results;

- The names and qualifications of the people performing the inspection;

- A listing of necessary repairs; and

- The signature of the manufacturer, an agent of the manufacturer, or a qualified person.

Note: See WAC 296-155-628 (8)(d) for the inspection worksheet criteria.

(xviii) Equipment repair.

(A) Replacement parts must meet or exceed the original manufacturer's specifications or be certified by a registered professional structural engineer.

(B) A properly certified welder must perform any welding on the boom, outrigger, or structural component.

(xix) Compressed air cleaning of the piping system. To clean the piping system:

(A) The pipe system must be securely anchored before it is cleaned out.

(B) The flexible discharge hose must be removed.

(C) Workers not essential to the cleaning process must leave the vicinity.

(D) The compressed air system must have a shutoff valve.

(E) Blow out caps must have a bleeder valve to relieve air pressure.

(F) A trap basket or containment device (i.e., concrete truck, concrete bucket) must be available and secured to receive the clean out device.

(G) Delivery pipes must be depressurized before clamps and fittings are released.

(c) Qualification and training requirements.

(i) Operator trainee—Qualification requirements. To be qualified to become a concrete pump operator, the trainee must meet the following requirements unless it can be shown that failure to meet the requirements will not affect the operation of the concrete pump boom.

(A) Vision requirements:

- At least 20/30 Snellen in one eye and 20/50 in the other.

Corrective lenses may be used to fulfill this requirement;

- Ability to distinguish colors, regardless of position, if color differentiation is required;

- Normal depth perception and field of vision.

(B) Hearing requirements: Hearing adequate to meet operational demands. Corrective devices may be used to fulfill this requirement.

(ii) Operator trainee—Training requirements. Operator trainee training requirements include, but are not limited to, the following:

(A) Demonstrated their ability to read and comprehend the pump manufacturer's operation and safety manual.

(B) Be of legal age to perform the duties required.

(C) Received documented classroom training and testing (as applicable) on these recommended subjects:

- Driving, operating, cleaning and maintaining concrete pumps, placing booms, and related equipment;

- Jib/boom extensions;

- Boom length/angle;

- Manufacturer's variances;

- Radii;

- Range diagram, stability, tipping axis; and

- Structural/tipping determinations.

(D) Maintain and have available upon request a copy of all training materials and a record of training.

(E) Satisfactorily completed a written examination for the concrete pump boom for which they are becoming qualified. It will cover:

- Safety;

- Operational characteristics and limitations; and

- Controls.

(iii) Operator—Qualification requirements. Operators will be considered qualified when they have:

(A) Completed the operator trainee requirements listed in (c)(i) and (ii) of this subsection.

(B) Completed a program of training conducted by a qualified person, including practical experience under the direct supervision of a qualified person.

(C) Passed a practical operating examination of their ability to operate a specific model and type of equipment. Possess the knowledge and the ability to implement emergency procedures.

(D) Possess the knowledge regarding the restart procedure after emergency stop has been activated.

(E) Possess the proper class of driver's license to drive the concrete pump truck.

(F) Demonstrate the ability to comprehend and interpret all labels, safety decals, operator's manuals, and other information required to safely operate the concrete pump.

(G) Be familiar with the applicable safety requirements.

(H) Understand the responsibility for equipment maintenance.

(d) Concrete pump inspection worksheet criteria. Concrete pump trucks will be inspected using the following criteria: The manufacturer's required inspection criteria will be followed in all instances.

Note: DOT requirements for inspections - Ref. 49.C.F.R.396.11, Driver Vehicle Inspections and 396.13, Driver Pre-Trip Inspections; and WAC 296-155-610.

(i) Hydraulic systems.

(A) Oil level;

(B) Hoses;

(C) Fittings;

(D) Holding valves;

(E) Pressure settings;

(F) Hydraulic cylinders;

(G) Ensure that the emergency stop system is functioning properly;

(H) All controls clearly marked.

(ii) Electrical.

(A) All systems functioning properly.

(B) All remote control functions are operating properly.

Ensure that the emergency stop system is functioning properly.

(C) All controls clearly marked.

(iii) Structural.

(A) Visual inspection for cracks, corrosion, and deformations of the concrete pump with placing boom structure, and all load carrying components such as outriggers, cross frames, torsion box beams, and delivery line support structures that may lead to nondestructive testing.

(B) Visual examination of all links, pivots, pins, and bolts.

(C) Vertical and horizontal movement at the turret, turntable, rotation gear lash, bearing tolerances, not to exceed manufacturer's specifications.

(iv) Piping systems.

(A) Wall thickness must not exceed original manufacturer's specifications.

(B) Mounting hardware for attaching delivery system.

(C) Correct clamps and safety pins.

(v) Safety decals.

All safety decals shall be in place as required by the manufacturer.

(9) Concrete buckets.

(a) Concrete buckets equipped with hydraulic or pneumatic gates shall have positive safety latches or similar safety devices installed to prevent premature or accidental dumping.

(b) Concrete buckets shall be designed to prevent concrete from hanging up on top and the sides.

(c) Riding of concrete buckets for any purpose shall be prohibited, and vibrator crews shall be kept out from under concrete buckets suspended from cranes or cableways.

(d) When discharging on a slope, the wheels of ready-mix trucks shall be blocked and the brakes set to prevent movement.

(10) Tremies. Sections of tremies and similar concrete conveyances shall be secured with wire rope (or equivalent materials in addition to the regular couplings or connections).

(11) Bull floats. Bull float handles, used where they might contact energized electrical conductors, shall be constructed of nonconductive material or insulated with a nonconductive sheath whose electrical and mechanical characteristics provide the equivalent protection of a handle constructed of nonconductive material.

(12) Masonry saws shall be constructed, guarded, and operated in accordance with WAC 296-155-367 (1) through (4).

(13) Lockout/tagout procedures. No employee shall be permitted to perform maintenance or repair activity on equipment (such as compressors, mixers, screens, or pumps used for concrete and masonry construction activities) where the inadvertent operation of the equipment could occur and cause injury, unless all potentially hazardous energy sources have been locked out and tagged in accordance with chapter 296-155 WAC, Part I.

AMENDATORY SECTION (Amending WSR 10-22-105, filed 11/2/10, effective 1/1/11)

WAC 296-155-706 Structural steel assembly. (1) Structural stability must be maintained at all times during the erection process.

Note: Federal Highway Administration (FHWA) regulations incorporate by reference a number of standards, policies, and standard specifications published by the American Association of State Highway and Transportation Officials (AASHTO) and other organizations. (See 23 C.F.R. 625.4.) Many of these incorporated provisions may be relevant to maintaining structural stability during the erection process. For instance, as of May 17, 2010, in many cases FHWA requires a registered engineer to prepare and seal working drawings for falsework used in highway bridge construction. (See *AASHTO Specifications for Highway Bridges, Div. II, Sec. 3.2.1, 15th edition, 1992*, which FHWA incorporates by reference in 23 C.F.R. 625.4.) FHWA also encourages compliance with AASHTO Specifications that the FHWA regulations do not currently incorporate by reference. (See <http://www.fhwa.dot.gov/bridge/lrfd/index.htm>.)

• Make sure that multistory structures have the following:

– Permanent floors installed as the erection of structural members progress;

– No more than eight stories between the erection floor and the upper-most permanent floor; and

– No more than four floors or forty-eight feet (14.6 m), whichever is less, of unfinished bolting or welding above the foundation or uppermost permanent secured floor.

Exception: The above applies except where the structural integrity is maintained as a result of design.

(2) Walking/working surfaces.

(a) Shear connectors and other similar devices.

(i) Shear connectors, reinforcing bars, deformed anchors or threaded studs must not be attached to the top flanges of beams, joists or beam attachments so they project vertically from or horizontally across the top flange of the member until after the metal decking, or other walking/working surface has been installed. This becomes a tripping hazard. Examples of shear connectors are headed steel studs, steel bars or steel lugs.

(ii) Installation of shear connectors on composite floors. When shear connectors are used in construction of composite floors, roofs and bridge decks, employees must lay out and install the shear connectors after the metal decking has been installed, using the metal decking as a working platform.

(b) Slip resistance of metal decking.

(c) Safe access must be provided to the working level. Employees must not slide down ropes, columns, or ladders.

(3) Plumbing-up.

(a) When deemed necessary by a competent person, plumbing-up equipment must be installed in conjunction with the steel erection process to ensure the stability of the structure.

(b) When used, plumbing-up equipment must be in place and properly installed before the structure is loaded with construction material such as loads of joists, bundles of decking or bundles of bridging.

(c) Plumbing-up equipment must be removed only with the approval of a competent person.

(4) Metal decking.

(a) Hoisting, landing and placing of metal decking bundles.

(i) Bundle packaging and strapping must not be used for hoisting unless specifically designed for that purpose.

(ii) If loose items such as dunnage, flashing, or other materials are placed on the top of metal decking bundles to be hoisted, such items must be secured to the bundles.

(iii) Bundles of metal decking on joists must be landed in accordance with WAC 296-155-709 (5)(d).

(iv) Metal decking bundles must be landed on framing members so that enough support is provided to allow the bundles to be unbanded without dislodging the bundles from the supports.

(v) At the end of the shift or when environmental or job site conditions require, metal decking must be secured against displacement.

(b) Roof and floor holes and openings. Metal decking at roof and floor holes and openings must be installed as follows:

(i) Framed metal deck openings must have structural members turned down to allow continuous deck installation except where not allowed by structural design constraints or constructibility.

(ii) Roof and floor holes and openings must be decked over. Where large size, configuration or other structural design does not allow openings to be decked over (such as elevator shafts, stair wells, etc.) employees must be protected in accordance with chapter 296-155 WAC, Part C-1 (~~(or Part K)~~), Fall protection requirements for construction.

(iii) Metal decking holes and openings must not be cut until immediately prior to being permanently filled with the equipment or structure needed or intended to fulfill its specific use and which meets the strength requirements of (c) of this subsection, or must be immediately covered.

(c) **Covering roof and floor openings.** Smoke dome or skylight fixtures that have been installed are not considered covers for the purpose of this section unless they meet the strength requirements of ~~((WAC 296-155-505 (4)(g) (Part K)))~~ chapter 296-155 WAC, Part C-1, Fall protection requirements for construction.

(d) **Decking gaps around columns.** Wire mesh, exterior plywood, or equivalent, must be installed around columns where planks or metal decking do not fit tightly. The materials used must be of sufficient strength to provide fall protection for personnel and prevent objects from falling through.

(e) Installation of metal decking.

(i) Metal decking must be laid tightly and immediately secured upon placement to prevent accidental movement or displacement.

(ii) During initial placement, metal decking panels must be placed to ensure full support by structural members.

(f) Derrick floors.

(i) A derrick floor must be fully decked and or planked and the steel member connections completed to support the intended floor loading.

(ii) Temporary loads placed on a derrick floor must be distributed over the underlying support members so as to prevent local overloading of the deck material.

AMENDATORY SECTION (Amending WSR 02-13-115, filed 6/19/02, effective 9/1/02)

WAC 296-155-716 Fall protection. (1) General requirements.

(a) Fall protection will be in accordance with chapter 296-155 WAC, Part ~~((s))~~ C-1 (~~(and K)~~), Fall protection requirements for construction.

(b) During steel erection activities, fall protection must be as required by chapter 296-155 WAC, Part ~~((s))~~ C-1 (~~(and K)~~). Additionally, on multistory structures, perimeter safety cables must be installed at the final interior and exterior perimeters of the floors as soon as metal decking has been installed. See Appendix D.

(2) **Connectors.** Each connector must: Have completed connector training in accordance with WAC 296-155-717.

(3) **Custody of fall protection.** Fall protection provided by the steel erector must remain in the area where steel erection activity has been completed, to be used by other trades, only if the controlling contractor or its authorized representative:

(a) Has directed the steel erector to leave the fall protection in place; and

(b) Has inspected and accepted control and responsibility of the fall protection prior to authorizing persons other than steel erectors to work in the area.

AMENDATORY SECTION (Amending WSR 96-24-051, filed 11/27/96, effective 2/1/97)

WAC 296-155-740 Cofferdams. (1) If overtopping of the cofferdam by high waters is possible, means shall be provided for controlled flooding of the work area.

(2) Warning signals for evacuation of employees in case of emergency shall be developed and posted.

(3) Cofferdam walkways, bridges, or ramps with at least two means of rapid exit, shall be provided with guardrails as specified in Part ((K)) C-1 of this chapter.

(4) Manways and ladderways shall be installed separately from the hoistways and partitioned off to prevent hoisted materials from protruding into or falling into manways and/or ladderways.

(5) Pumping equipment shall be located on substantially constructed platforms and where installed in such a position that persons must work below, toe boards shall be installed on the platform.

(6) Cofferdams located close to navigable shipping channels shall be protected from vessels in transit, where possible.

AMENDATORY SECTION (Amending WSR 01-17-033, filed 8/8/01, effective 9/1/01)

WAC 296-155-745 Compressed air. (1) General provisions.

(a) There shall be present, at all times, at least one competent person designated by and representing the employer, who shall be familiar with this part in all respects and responsible for full compliance with these and other applicable parts.

(b) Every employee shall be instructed in the rules and regulations which concern their safety or the safety of others.

(2) Medical attendance, examination, and regulations.

(a) There shall be retained one or more licensed physicians familiar with and experienced in the physical requirements and the medical aspects of compressed air work and the treatment of decompression illness. They shall be available at all times while work is in progress in order to provide medical supervision of employees employed in compressed air work. They shall be physically qualified and be willing to enter a pressurized environment.

(b) No employee shall be permitted to enter a compressed air environment until they have been examined by the physician and reported to be physically qualified to engage in such work.

(c) In the event an employee is absent from work for 10 days, or is absent due to sickness or injury, they shall not resume work until they are reexamined by the physician, and their physical condition reported, as provided in this subsection, to be such as to permit them to work in compressed air.

(d) After an employee has been employed continuously in compressed air for a period designated by the physician, but not to exceed 1 year, the employee shall be reexamined by the physician to determine if they are still physically qualified to engage in compressed air work.

(e) Such physician shall at all times keep a complete and full record of examinations made by themselves. The physician shall also keep an accurate record of any decompression

illness or other illness or injury incapacitating any employee for work, and of all loss of life that occurs in the operation of a tunnel, caisson, or other compartment in which compressed air is used.

(f) Records shall be available for the inspection by the director or his/her representatives, and a copy thereof shall be forwarded to the department within 48 hours following the occurrence of the accident, death, injury, or decompression illness. It shall state as fully as possible the cause of said death or decompression illness, and the place where the injured or sick employee was taken, and such other relative information as may be required by the director.

(g) A fully equipped first-aid station shall be provided at each tunnel project regardless of the number of persons employed. An ambulance or transportation suitable for a litter case shall be at each project.

(h) Where tunnels are being excavated from portals more than 5 road miles apart, a first-aid station and transportation facilities shall be provided at each portal.

(i) A medical lock shall be established and maintained in immediate working order whenever air pressure in the working chamber is increased above the normal atmosphere.

(j) The medical lock shall:

(i) Have at least 6 feet of clear headroom at the center, and be subdivided into not less than two compartments;

(ii) Be readily accessible to employees working under compressed air;

(iii) Be kept ready for immediate use for at least 5 hours subsequent to the emergence of any employee from the working chamber;

(iv) Be properly heated, lighted and ventilated;

(v) Be maintained in a sanitary condition;

(vi) Have a nonshatterable port through which the occupant(s) may be kept under constant observation;

(vii) Be designed for a working pressure of 75 p.s.i.g.;

(viii) Be equipped with internal controls which may be overridden by external controls;

(ix) Be provided with air pressure gauges to show the air pressure within each compartment to observers inside and outside the medical lock;

(x) Be equipped with a manual type sprinkler system that can be activated inside the lock or by the outside lock tender;

(xi) Be provided with oxygen lines and fittings leading into external tanks. The lines shall be fitted with check valves to prevent reverse flow. The oxygen system inside the chamber shall be of a closed circuit design and be so designed as to automatically shut off the oxygen supply whenever the fire system is activated.

(xii) Be in constant charge of an attendant under the direct control of the retained physician. The attendant shall be trained in the use of the lock and suitably instructed regarding steps to be taken in the treatment of employee exhibiting symptoms compatible with a diagnosis of decompression illness;

(xiii) Be adjacent to an adequate emergency medical facility;

(xiv) The medical facility shall be equipped with demand-type oxygen inhalation equipment approved by the U.S. Bureau of Mines or Mine Safety and Health Administra-

tion (MSHA) and the National Institute for Occupational Safety and Health (NIOSH);

(xv) Be capable of being maintained at a temperature, in use, not to exceed 90°F. nor be less than 70°F.; and

(xvi) Be provided with sources of air, free of oil and carbon monoxide, for normal and emergency use, which are capable of raising the air pressure in the lock from 0 to 75 p.s.i.g. in 5 minutes.

(k) Identification badges shall be furnished to all employees, indicating that the wearer is a compressed air worker. A permanent record shall be kept of all identification badges issued. The badge shall give the employee's name, address of the medical lock, the telephone number of the licensed physician for the compressed air project, and contain instructions that in case of emergency of unknown or doubtful cause or illness, the wearer shall be rushed to the medical lock. The badge shall be worn at all times—off the job, as well as on the job.

(3) Telephone and signal communication. Effective and reliable means of communication, such as bells, whistles, or telephones, shall be maintained at all times between all the following locations;

- (a) The working chamber face;
- (b) The working chamber side of the man lock near the door;
- (c) The interior of the man lock;
- (d) Lock attendant's station;
- (e) The compressor plant;
- (f) The first-aid station;
- (g) The emergency lock (if one is required); and
- (h) The special decompression chamber (if one is required).

(4) Signs and records.

(a) The time of decompression shall be posted in each man lock as follows:

TIME OF DECOMPRESSION FOR THIS LOCK

..... pounds to pounds in minutes.
..... pounds to pounds in minutes.

(Signed by)

(Superintendent)

This form shall be posted in the man lock at all times.

(b) Any code of signals used shall be conspicuously posted near workplace entrances and such other locations as may be necessary to bring them to the attention of all employees concerned.

(c) For each 8-hour shift, a record of employees employed under air pressure shall be kept by an employee who shall remain outside the lock near the entrance. This record shall show the period each employee spends in the air chamber and the time taken from decompression. A copy shall be submitted to the appointed physician after each shift.

(5) Compression.

(a) Every employee going under air pressure for the first time shall be instructed on how to avoid excessive discomfort.

(b) During the compression of employees, the pressure shall not be increased to more than 3 p.s.i.g. within the first

minute. The pressure shall be held at 3 p.s.i.g. and again at 7 p.s.i.g. sufficiently long to determine if any employees are experiencing discomfort.

(c) After the first minute the pressure shall be raised uniformly and at a rate not to exceed 10 p.s.i. per minute.

(d) If any employee complains of discomfort, the pressure shall be held to determine if the symptoms are relieved. If, after 5 minutes the discomfort does not disappear, the lock attendant shall gradually reduce the pressure until the employee signals that the discomfort has ceased. If the employee does not indicate that the discomfort has disappeared, the lock attendant shall reduce the pressure to atmospheric and the employee shall be released from the lock.

(e) No employee shall be subjected to pressure exceeding 50 pounds per square inch except in an emergency.

(6) Decompression.

(a) Decompression to normal condition shall be in accordance with the decompression tables in Appendix A of this part.

(b) In the event it is necessary for an employee to be in compressed air more than once in a 24-hour period, the appointed physician shall be responsible for the establishment of methods and procedures of decompression applicable to repetitive exposures.

(c) If decanting is necessary, the appointed physician shall establish procedures before any employee is permitted to be decompressed by decanting methods. The period of time that the employees spend at atmospheric pressure between the decompression following the shift and recompression shall not exceed 5 minutes.

(7) Man locks and special decompression chambers.

(a) Man locks.

(i) Except in emergency, no employees employed in compressed air shall be permitted to pass from the working chamber to atmospheric pressure until after decompression, in accordance with the procedures in this part.

(ii) The lock attendant in charge of a man lock shall be under the direct supervision of the appointed physician. The lock attendant shall be stationed at the lock controls on the free air side during the period of compression and decompression and shall remain at the lock control station whenever there are persons in the working chamber or in the man lock.

(iii) Except where air pressure in the working chamber is below 12 p.s.i.g., each man lock shall be equipped with automatic controls which, through taped programs, cams, or similar apparatus, shall automatically regulate decompressions. It shall also be equipped with manual controls to permit the lock attendant to override the automatic mechanism in the event of an emergency, as provided in item (viii) of this subdivision.

(iv) A manual control, which can be used in the event of an emergency, shall be placed inside the man lock.

(v) A clock, thermometer, and continuous recording pressure gauge with a 4-hour graph shall be installed outside of each man lock and shall be changed prior to each shift's decompression. The chart shall be of sufficient size to register a legible record of variations in pressure within the man lock and shall be visible to the lock attendant. A copy of each graph shall be submitted to the appointed physician after each shift. In addition, a pressure gauge, clock, and thermometer

shall also be installed in each man lock. Additional fittings shall be provided so that the test gauges may be attached whenever necessary

(vi) Except where air pressure is below 12 p.s.i.g. and there is no danger of rapid flooding, all caissons having a working area greater than 150 square feet, and each bulkhead in tunnels of 14 feet or more in diameter, or equivalent area, shall have at least two locks in perfect working condition, one of which shall be used exclusively as a man lock, the other, as a materials lock.

(vii) Where only a combination man-and-materials lock is required, this single lock shall be of sufficient capacity to hold the employees constituting two successive shifts.

(viii) Emergency locks shall be large enough to hold an entire heading shift and a limit maintained of 12 p.s.i.g. There shall be a chamber available for oxygen decompression therapy to 28 p.s.i.g.

(ix) The man lock shall be large enough so that those using it are not compelled to be in a cramped position and shall not have less than 5 feet clear head room at the center and a minimum of 30 cubic feet of air space per occupant.

(x) Locks on caissons shall be so located that the bottom door shall be not less than 3 feet above the water level surrounding the caisson on the outside. (The water level, where it is affected by tides, is construed to mean high tide.)

(xi) In addition to the pressure gauge in the locks, an accurate pressure gauge shall be maintained on the outer and inner side of each bulkhead. These gauges shall be accessible at all times and shall be kept in accurate working order.

(xii) Man locks shall have an observation port at least 4 inches in diameter located in such a position that all occupants of the man lock may be observed from the working chamber and from the free air side of the lock.

(xiii) Adequate ventilation in the lock shall be provided.

(xiv) Man locks shall be maintained at a minimum temperature of 70°F.

(xv) When locks are not in use and employees are in the working chamber, lock doors shall be kept open to the working chamber, where practicable.

(xvi) Provision shall be made to allow for rescue parties to enter the tunnel if the working force is disabled.

(xvii) A special decompression chamber of sufficient size to accommodate the entire force of employees being decompressed at the end of a shift shall be provided whenever the regularly established working period requires total time of decompression exceeding 75 minutes.

(b) Special decompression chamber.

(i) The headroom in the special decompression chamber shall be not less than a minimum 7 feet and the cubical content shall provide at least 50 cubic feet of airspace for each employee. For each occupant, there shall be provided 4 square feet of free walking area and 3 square feet of seating space, exclusive of area required for lavatory and toilet facilities. The rated capacity shall be based on the stated minimum space per employee and shall be posted at the chamber entrance. The posted capacity shall not be exceeded, except in case of emergency.

(ii) Each special decompression chamber shall be equipped with the following:

(A) A clock or clocks suitably placed so that the attendant and the chamber occupants can readily ascertain the time;

(B) Pressure gauges which will indicate to the attendants and to the chamber occupants the pressure in the chamber;

(C) Valves to enable the attendant to control the supply and discharge of compressed air into and from the chamber.

(D) Valves and pipes, in connection with the air supply and exhaust, arranged so that the chamber pressure can be controlled from within and without;

(E) Effective means of oral intercommunication between the attendant, occupants of the chamber, and the air compressor plant; and

(F) An observation port at the entrance to permit observation of the chamber occupants.

(ii) Seating facilities in special decompression chambers shall be so arranged as to permit a normal sitting posture without cramping. Seating space, not less than 18 inches by 24 inches wide, shall be provided per occupant.

(iv) Adequate toilet and washing facilities, in a screened or enclosed recess, shall be provided. Toilet bowls shall have a built-in protector on the rim so that an air space is created when the seat lid is closed.

(v) Fresh and pure drinking water shall be available. This may be accomplished by either piping water into the special decompression chamber and providing drinking fountains, or by providing individual canteens, or by some other sanitary means. Community drinking vessels are prohibited.

(vi) No refuse or discarded material of any kind shall be permitted to accumulate, and the chamber shall be kept clean.

(vii) Unless the special decompression chamber is serving as the man lock to atmospheric pressure, the special decompression chamber shall be situated, where practicable, adjacent to the man lock on the atmospheric pressure side of the bulkhead. A passageway shall be provided, connecting the special chamber with the man lock, to permit employees in the process of decompression to move from the man lock to the special chamber without a reduction in the ambient pressure from that designated for the next stage of decompression. The passageway shall be so arranged as to not interfere with the normal operation of the man lock, nor with the release of the occupants of the special chamber to atmospheric pressure upon the completion of the decompression procedure.

(8) Compressor plant and air supply.

(a) At all times there shall be a thoroughly experienced, competent, and reliable person on duty at the air control valves as a gauge tender who shall regulate the pressure in the working areas. During tunneling operations, one gauge tender may regulate the pressure in not more than two headings: Provided; That the gauges and controls are all in one location. In caisson work, there shall be a gauge tender for each caisson.

(b) The low air compressor plant shall be of sufficient capacity to not only permit the work to be done safely, but shall also provide a margin to meet emergencies and repairs.

(c) Low air compressor units shall have at least two independent and separate sources of power supply and each shall be capable of operating the entire low air plant and its accessory systems.

(d) The capacity, arrangement, and number of compressors shall be sufficient to maintain the necessary pressure without overloading the equipment and to assure maintenance of such pressure in the working chamber during periods of breakdown, repair, or emergency.

(e) Switching from one independent source of power supply to the other shall be done periodically to ensure that workability of the apparatus in an emergency.

(f) Duplicate low-pressure air feedlines and regulating valves shall be provided between the source of air supply and a point beyond the locks with one of the lines extending to within 100 feet of the working face.

(g) All high-pressure and low-pressure air supply lines shall be equipped with check valves.

(h) Low-pressure air shall be regulated automatically. In addition, manually operated valves shall be provided for emergency conditions.

(i) The air intakes for all air compressors shall be located at a place where fumes, exhaust gases, and other air contaminants will be at a minimum.

(j) Gauges indicating the pressure in the working chamber shall be installed in the compressor building, the lock attendant's station, and at the employer's field office.

(9) Ventilation and air quality.

(a) Exhaust valves and exhaust pipes shall be provided and operated so that the working chamber shall be well ventilated, and there shall be no pockets of dead air. Outlets may be required at intermediate points along the main low-pressure air supply line to the heading to eliminate such pockets of dead air. The quantity of ventilation air shall be not less than 30 cubic feet per minute.

(b) The air in the workplace shall be analyzed by the employer not less than once each shift, and records of such tests shall be kept on file at the place where the work is in progress. The test results shall be within the threshold limit values specified in part B of this chapter, for hazardous gases, and within 10 percent of the lower explosive limit of flammable gases. If these limits are not met, immediate action to correct the situation shall be taken by the employer.

(c) The temperature of all working chambers which are subjected to air pressure shall, by means of after-coolers or other suitable devices, be maintained at a temperature not to exceed 85°F.

(d) Forced ventilation shall be provided during decompression. During the entire decompression period, forced ventilation through chemical or mechanical air purifying devices that will ensure a source of fresh air shall be provided.

(e) Whenever heat-producing machines (moles, shields) are used in compressed air tunnel operations, a positive means of removing the heat build-up at the heading shall be provided.

(10) Electricity.

(a) All lighting in compressed-air chambers shall be by electricity exclusively, and two independent electric-lighting systems with independent sources of supply shall be used. The emergency source shall be arranged to become automatically operative in the event of failure of the regularly used source.

(b) The minimum intensity of light on any walkway, ladder, stairway, or working level shall be not less than 10 foot-candles, and in all workplaces the lighting shall at all times be such as to enable employees to see clearly.

(c) All electrical equipment, and wiring for light and power circuits, shall comply with requirements of Part I, of this standard, for use in damp, hazardous, high temperature, and compressed air environments.

(d) External parts of lighting fixtures and all other electrical equipment, when within 8 feet of the floor, shall be constructed of noncombustible, nonabsorptive, insulating materials, except that metal may be used if it is effectively grounded.

(e) Portable lamps shall be equipped with noncombustible, nonabsorptive, insulating sockets, approved handles, basket guards, and approved cords.

(f) The use of worn or defective portable and pendant conductors is prohibited.

(11) Sanitation.

(a) Sanitary, heated, lighted, and ventilated dressing rooms and drying rooms shall be provided for all employees engaged in compressed air work. Such rooms shall contain suitable benches and lockers. Bathing accommodations (showers at the ratio of one to 10 employees per shift), equipped with running hot and cold water, and suitable and adequate toilet accommodations, shall be provided. One toilet for each 15 employees, or fractional part thereof, shall be provided.

(b) When the toilet bowl is shut by a cover, there should be an air space so that the bowl or bucket does not implode when pressure is increased.

(c) All parts of caissons and other working compartments shall be kept in a sanitary condition.

(12) Fire prevention and protection.

(a) Firefighting equipment shall be available at all times and shall be maintained in working condition.

(b) While welding or flame-cutting is being done in compressed air, a firewatch with a fire hose or approved extinguisher shall stand by until such operation is completed.

(c) Shafts and caissons containing flammable material of any kind, either above or below ground, shall be provided with a waterline and a fire hose connected thereto, so arranged that all points of the shaft or caisson are within reach of the hose stream.

(d) Fire hose shall be at least 1 1/2 inches in nominal diameter; the water pressure shall at all times be adequate for efficient operation of the type of nozzle used; and the water supply shall be such as to ensure an uninterrupted flow. Fire hose, when not in use, shall be located or guarded to prevent injury thereto.

(e) The power house, compressor house, and all buildings housing ventilating equipment, shall be provided with at least one hose connection in the waterline, with a fire hose connected thereto. A fire hose shall be maintained within reach of structures of wood over or near shafts.

(f) Tunnels shall be provided with a 2-inch minimum diameter waterline extending into the working chamber and to within 100 feet of the working face. Such line shall have hose outlets with 100 feet of fire hose attached and maintained as follows: One at the working face; one immediately

inside of the bulkhead of the working chamber; and one immediately outside such bulkhead. In addition, hose outlets shall be provided at 200-foot intervals throughout the length of the tunnel, and 100 feet of fire hose shall be attached to the outlet nearest to any location where flammable material is being kept or stored or where any flame is being used.

(g) In addition to fire hose protection required by this part, on every floor of every building not under compressed air, but used in connection with the compressed air work, there shall be provided at least one approved fire extinguisher of the proper type for the hazards involved. At least two approved fire extinguishers shall be provided in the working chamber as follows: One at the working face and one immediately inside the bulkhead (pressure side). Extinguishers in the working chamber shall use water as the primary extinguishing agent and shall not use any extinguishing agent which could be harmful to the employees in the working chamber. The fire extinguisher shall be protected from damage.

(h) Highly combustible materials shall not be used or stored in the working chamber. Wood, paper, and similar combustible material shall not be used in the working chamber in quantities which could cause a fire hazard. The compressor building shall be constructed of noncombustible material.

(i) Man locks shall be equipped with a manual type fire extinguisher system that can be activated inside the man lock and also by the outside lock attendant. In addition, a fire hose and portable fire extinguisher shall be provided inside and outside the man lock. The portable fire extinguisher shall be the dry chemical type.

Note: For additional requirements relating to portable fire extinguishers see WAC 296-800-300.

(j) Equipment, fixtures, and furniture in man locks and special decompression chambers shall be constructed of noncombustible materials. Bedding, etc., shall be chemically treated so as to be fire resistant.

(k) Head frames shall be constructed of structural steel or open frame-work fireproofed timber. Head houses and other temporary surface buildings or structures within 100 feet of the shaft, caisson, or tunnel opening shall be built of fire-resistant materials.

(l) No oil, gasoline, or other combustible materials shall be stored within 100 feet of any shaft, caisson, or tunnel opening, except that oils may be stored in suitable tanks in isolated fireproof buildings, provided such buildings are not less than 50 feet from any shaft, caisson, or tunnel opening, or any building directly connected thereto.

(m) Positive means shall be taken to prevent leaking flammable liquids from flowing into the areas specifically mentioned in the preceding subdivision.

(n) All explosives used in connection with compressed air work shall be selected, stored, transported, and used as specified in part T of this chapter.

(13) Bulkheads and safety screens.

(a) Intermediate bulkheads with locks, or intermediate safety screens or both, are required where there is danger of rapid flooding.

(b) In tunnels 16 feet or more in diameter, hanging walkways shall be provided from the face to the man lock as high

in the tunnel as practicable, with at least 6 feet of head room. Walkways shall be constructed of noncombustible material. Standard railings shall be securely installed throughout the length of all walkways on open sides in accordance with Part ((K)) C-1 of this chapter. Where walkways are ramped under safety screens, the walkway surface shall be skidproofed by cleats or by equivalent means.

(c) Bulkheads used to contain compressed air shall be tested, where practicable, to prove their ability to resist the highest air pressure which may be expected to be used.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-155-245	Reserve.
WAC 296-155-24501	Scope and application.
WAC 296-155-24503	Definitions.
WAC 296-155-24505	Fall protection work plan.
WAC 296-155-24507	Reserve.
WAC 296-155-24510	Fall restraint, fall arrest systems.
WAC 296-155-24515	Guarding of low pitched roof perimeters.
WAC 296-155-24519	Reserve.
WAC 296-155-24520	Leading edge control zone.
WAC 296-155-24521	Safety monitor system.
WAC 296-155-24522	Reserve.
WAC 296-155-24523	Appendix A to Part C-1—Determining roof widths nonmandatory guidelines for complying with WAC 296-155-24515 (2)(b).
WAC 296-155-24524	Reserve.
WAC 296-155-24525	Appendix B to Part C-1—Fall restraint and fall arrest (employer information only).
WAC 296-155-500	Definitions applicable to this part.
WAC 296-155-505	Guardrails, handrails and covers.
WAC 296-155-50503	Roofing brackets.
WAC 296-155-50505	Reserved.
WAC 296-155-510	Reserved.
WAC 296-155-515	Ramps, runways, and inclined walkways.

AMENDATORY SECTION (Amending WSR 05-01-054, filed 12/7/04, effective 3/1/05)

WAC 296-874-20008 Make sure platforms are properly planked or decked.

You must:

- Fully plank or deck each platform between the front uprights and the guardrail supports on all working levels of a scaffold so that there is no more than one inch (2.5 cm):
 - Between adjacent units;

AND

- Between the platform and the uprights.

- Exemption:**
- There may be more than one inch between platform units if all of the following are met:
 - You can demonstrate that a wider space is necessary, such as to fit around uprights when side brackets are used to extend the platform width;
 - The platform is planked or decked as fully as possible;
 - The open space between the platform and the guardrail supports is nine and one-half inches (24.1 cm) or less.
 - Platforms used solely as walkways or only by employees erecting or dismantling scaffolds do not have to be fully decked or planked if:
 - The planking provided makes for safe working conditions;
- AND**
- Employees on those platforms are protected from falling.

REFERENCE		
Fall protection requirements for employees:	Are located in the following chapters:	In the following sections:
On walkways within scaffolds	Chapter 296-874 WAC, Scaffolds	WAC 296-874-20056
Erecting or dismantling supported scaffolds	Chapter 296-874 WAC, Scaffolds	WAC 296-874-40010
Erecting or dismantling suspended scaffolds in general industry	Chapter 296-24 WAC, General safety and health standards	Part J-1 Working surfaces, guarding floors and wall openings, ladders AND Part J-3 Powered platforms
Erecting or dismantling suspended scaffolds in construction work	Chapter 296-155 WAC, Safety standards for construction work	Part C-1 Fall (restraint and fall arrest AND Part K Floor openings, wall openings, and stairways)) <u>protection requirements for construction</u>

You must:

- Make sure wood platforms are not covered with an opaque finish.

Exemption: Platform edges may be covered or marked for identification.

Note: Platforms may be coated periodically with wood preservatives, fire-retardant finishes, or slip-resistant finishes if the coating does not obscure the top or bottom wood surfaces.

AMENDATORY SECTION (Amending WSR 07-17-026, filed 8/7/07, effective 10/6/07)

WAC 296-874-20030 Make sure ramps and walkways used to access scaffolds meet these requirements.

You must:

- Make sure ramps and walkways are not inclined at a slope steeper than one vertical in three horizontal (1:3 or twenty degrees from the horizontal).
- Make sure ramps and walkways that are inclined at a slope steeper than one vertical in eight horizontal (1:8) have cleats to provide footing which are:
 - Securely fastened to the planks;

AND

- Spaced not more than fourteen inches (35 cm) apart.

Reference: Ramps and walkways that are four feet (1.2 m) or more above a lower level need to have a guardrail system. Those requirements are found in other chapters.

- For general industry activities, go to:
 - Working surfaces, guarding floors and wall openings, Part J-1, in the general safety and health standards, chapter 296-24 WAC;
- For construction activities, go to:
 - Floor openings, wall openings, and stairways, Parts ((K)) C-1 and J, in the safety standards for construction work, chapter 296-155 WAC.

AMENDATORY SECTION (Amending WSR 07-17-026, filed 8/7/07, effective 10/6/07)

WAC 296-874-20052 Provide fall protection for employees on scaffolds.

You must:

- Protect each employee on a scaffold more than ten feet (3.1 m) above a lower level, from falling to the lower level, by providing either:
 - A personal fall arrest system;
- OR**
- Guardrails.

REFERENCE		
Fall protection requirements for employees:	Are located in the following chapters:	In the following sections:
On walkways within scaffolds	Chapter 296-874 WAC, Scaffolds	WAC 296-874-20056
Erecting or dismantling supported scaffolds	Chapter 296-874 WAC, Scaffolds	WAC 296-874-40010
Erecting or dismantling suspended scaffolds in general industry	Chapter 296-24 WAC, General safety and health standards	Part J-1 Working surfaces, guarding floors and wall openings, ladders AND Part J-3 Powered platforms
Erecting or dismantling suspended scaffolds in construction work	Chapter 296-155 WAC, Safety standards for construction work	Part C-1 Fall (restraint and fall arrest AND Part K Floor openings, wall openings, and stairways)) <u>protection requirements for construction</u>

You must:

- Make sure employees erecting the scaffold install the guardrail system, if required, before the scaffold is used by any other employees.

AMENDATORY SECTION (Amending WSR 05-01-054, filed 12/7/04, effective 3/1/05)

WAC 296-874-20058 Make sure personal fall arrest systems meet these requirements.**You must:**

- Make sure personal fall arrest systems used on scaffolds for general industry activities, meet the requirements of personal fall arrest system, Appendix C, Part 1, WAC 296-24-88050, in powered platforms, Part J-3, found in the general safety and health standards, chapter 296-24 WAC.

- Make sure personal fall arrest systems are attached by a lanyard to one of the following:

- Vertical lifeline;
- Horizontal lifeline;
- Appropriate structural member of the scaffold.

Reference: Requirements for personal fall arrest systems used on scaffolds for construction activities are in ~~((fall restraint and fall arrest,))~~ Part C-1, found in the safety standards for construction work, chapter 296-155 WAC.

AMENDATORY SECTION (Amending WSR 05-01-054, filed 12/7/04, effective 3/1/05)

WAC 296-874-40020 Meet these requirements when using integral prefabricated scaffold access frames.**You must:**

- Make sure integral prefabricated scaffold access frames meet all of the following:

- Have been specifically designed and constructed to be used as ladder rungs;
- Have a rung length of at least eight inches (20 cm);
- Have a maximum spacing between rungs of sixteen and three quarters inches (43 cm);
- Are uniformly spaced within each frame section;
- Have rest platforms at least every twenty feet (6.1 m) on all supported scaffolds more than twenty-four feet (7.3 m) high.

Note: Nonuniform rung spacing caused by joining end frames together is allowed, provided the resulting spacing does not exceed sixteen and three quarters inches (43 cm).

You must:

- Make sure, when panels with rungs that are less than eleven and one-half inches long are used as work platforms, that employees use either:

- A positioning device;

OR

- A personal fall arrest system.

Reference:

- For personal fall arrest system requirements in this chapter, go to WAC 296-874-20058.
- For construction activities, go to ~~((fall restraint and fall arrest,))~~ Part C-1, in safety standards for construction work, chapter 296-155 WAC.

AMENDATORY SECTION (Amending WSR 05-01-054, filed 12/7/04, effective 3/1/05)

WAC 296-874-40034 Meet these requirements when using repair bracket scaffolds.**You must:**

- Make sure brackets are all of the following:
 - Secured in place by at least one wire rope that's at least one-half inch (1.27 cm) in diameter;
 - Attached to the securing wire rope by a positive locking device, or equivalent, that will prevent the bracket from being unintentionally detached from the rope;
 - Provided with a shoe, heel block, foot, or a combination that:
 - Is located at the contact point between the supporting structure and the bottom of the bracket;

AND

- Will prevent lateral movement of the bracket.
- Secure the platforms to the brackets in a way that prevents:
 - The platforms from separating from the brackets;

AND

- The platforms or brackets from moving on a completed scaffold.

- Make sure wire rope placed around the structure to provide a safe anchorage for personal fall arrest systems used by employees erecting or dismantling scaffolds:

- Is at least five-sixteenths inch (0.8 cm) in diameter;
- Provides an anchorage that meets the requirements of WAC 296-874-20058.

- For construction activities, go to ~~((fall restraint and fall arrest,))~~ Part C-1, in the safety standards for construction work, chapter 296-155 WAC.

- Make sure each wire rope used for securing brackets in place or as an anchorage for personal fall arrest systems is all of the following:

- Protected from damage due to contact with edges, corners, protrusions, or other parts of the supporting structure or scaffold components;

- Tensioned by a turnbuckle or equivalent means. Turnbuckles must be:

- At least one inch (2.54 cm) in diameter;

AND

- Connected to the other end of its rope by an eye splice thimble that's sized appropriate to the turnbuckle.

- **Not** used with U-bolt wire rope clips.

- Make sure materials are not dropped to the outside of the supporting structure.

- Erect the scaffold by progressing around the structure in only one direction.

WSR 12-18-018**PROPOSED RULES****UTILITIES AND TRANSPORTATION
COMMISSION**

[Docket UT-120451—Filed August 24, 2012, 2:18 p.m.]

Continuance of WSR 12-15-070.

Preproposal statement of inquiry was filed as WSR 12-09-084.

Title of Rule and Other Identifying Information: WAC 480-120-251 Directory service, this rule making proposes modifications to, or the elimination of, the requirement that local exchange companies provide each customer a copy of a telephone directory for the customer's exchange area.

Hearing Location(s): Richard Hemstad Building, Commission Hearing Room 206, Second Floor, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, on October 18, 2012, at 9:30 a.m.

Date of Intended Adoption: October 18, 2012.

Submit Written Comments to: Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., P.O. Box 47250, Olympia, WA 98504-7250, e-mail records@utc.wa.gov, fax (360) 586-8203, by August 20, 2012. Please include "Docket UT-120451" in your comments.

Assistance for Persons with Disabilities: Contact Debbie Aguilar by October 4, 2012, TTY (360) 586-8203 or (360) 664-1132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal revises the existing rule to require local exchange carriers to distribute white pages telephone directories only to customers who request them. The proposal would minimize the burden on regulated carriers to print and distribute directories and would substantially reduce the amount of waste resulting from disposal of unwanted printed directories.

The purpose of the continuance of WSR 12-15-070 is to provide notice of a change in the date of the hearing regarding adoption of the rule proposal in this docket. The date of the hearing has been changed from Wednesday, September 12, 2012, at 9:30 a.m. to Thursday, October 18, 2012, at 9:30 a.m.

Reasons Supporting Proposal: Consumers primarily rely on the internet as a resource for telephone number listings, rendering unnecessary a requirement that companies distribute printed white pages directories except to those customers who request them. Eliminating distribution of unwanted directories also enhances environmental stewardship in cooperation with cities and municipalities by reducing the volume of paper waste that must be processed and disposed of.

Statutory Authority for Adoption: RCW 80.01.040 and 80.04.160.

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

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: John Cupp, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1113; Implementation and Enforcement: David W. Danner, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1208.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not result in or impose more than minor costs. Because there will not be more than minor increase in costs resulting from the proposed rule changes, a small business economic impact statement is not required under RCW 19.85.030(1).

A cost-benefit analysis is not required under RCW 34.05.328. The commission is not an agency to which RCW 34.05.328 applies. The proposed rule is not a significant legislative rule of the sort referenced in RCW 34.05.328(5).

August 24, 2012
David W. Danner
Executive Director
and Secretary

WSR 12-18-037
PROPOSED RULES
HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed August 29, 2012, 9:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-14-029.

Title of Rule and Other Identifying Information: WAC 182-534-0100 EPSDT.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at <http://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf> or directions can be obtained by calling (360) 725-1000), on October 9, 2012, at 10:00 a.m.

Date of Intended Adoption: Not sooner than October 10, 2012.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on October 9, 2012.

Assistance for Persons with Disabilities: Contact Kelly Richters by October 1, 2012, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules are necessary to clarify that persons nineteen and twenty years of age who are eligible for any of the following programs that receive medicaid funding under the Transitional Bridge 1115 Demonstration Waiver allowed under section 1115 (a)(2) of the Social Security Act are not eligible for EPSDT services:

- (a) Basic health;
- (b) Medical care services; or
- (c) Alcohol and Drug Addiction Treatment and Support Act (ADATSA).

Statutory Authority for Adoption: RCW 41.05.021, 1115 (a)(2) of the Social Security Act.

Statute Being Implemented: RCW 41.05.021.

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

Name of Proponent: HCA - medicaid, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, HCA, P.O. Box 45504, Olympia, WA 98504, (360) 725-1306; Implementation and Enforcement: Sharon Reddick, HCA, P.O. Box 45530, Olympia, WA 98504, (360) 725-1656.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes that they do not impose more than minor costs for affected small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules [review] committee or applied voluntarily.

August 29, 2012
Kevin M. Sullivan
Rules Coordinator

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

WAC 182-534-0100 EPSDT. (1) Persons who are eligible for medicaid, except those identified in subsection (4) of this section, are eligible for coverage through the early and periodic screening, diagnosis, and treatment (EPSDT) program up through the day before their twenty-first birthday.

(2) Access and services for EPSDT are governed by federal rules at 42 C.F.R., Part 441, Subpart B which were in effect as of January 1, 1998.

(a) The standard for coverage for EPSDT is that the services, treatment or other measures are:

- (i) Medically necessary;
- (ii) Safe and effective; and
- (iii) Not experimental.

(b) EPSDT services are exempt from specific coverage or service limitations which are imposed on the rest of the CN and MN program. Examples of service limits which do not apply to the EPSDT program are the specific numerical limits in WAC 388-545-300, 388-545-500, and 388-545-700.

(c) Services not otherwise covered under the medicaid program are available to children under EPSDT. The services, treatments and other measures which are available include but are not limited to:

- (i) Nutritional counseling;
- (ii) Chiropractic care;
- (iii) Orthodontics; and
- (iv) Occupational therapy (not otherwise covered under the MN program).

(d) Prior authorization and referral requirements are imposed on medical service providers under EPSDT. Such requirements are designed as tools for determining that a service, treatment or other measure meets the standards in subsection (2)(a) of this section.

(3) Transportation requirements of 42 C.F.R. 441, Subpart B are met through a contract with transportation brokers throughout the state.

(4) Persons who are nineteen through twenty years of age who are eligible for any of the following programs that receive medicaid funding under the transitional bridge demonstration waiver allowed under section 1115 (a)(2) of the Social Security Act are not eligible for EPSDT services:

- (a) Basic health;
- (b) Medical care services; or
- (c) Alcohol and Drug Addiction Treatment and Support Act (ADATSA).

WSR 12-18-038
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed August 29, 2012, 1:15 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 246-12-051, adding a new section to provide for temporary practice permits to be issued to certain military spouse or state-registered domestic partner applicants; and WAC 246-12-050, amending the title only to clarify the temporary practice permit is related to completion of the national background check. These sections apply to health professions under the secretary's licensing authority in RCW 18.130.040 (2)(a).

Hearing Location(s): Department of Health (DOH), Town Center 2, Room 145, 111 Israel Road S.E., Tumwater, WA 98504, on October 12, 2012, at 10:00 a.m.

Date of Intended Adoption: October 16, 2012.

Submit Written Comments to: Andy Fernando, Department of Health, Health Systems Quality Assurance, P.O. Box 47860, Olympia, WA 98504-7860, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4626, by October 12, 2012.

Assistance for Persons with Disabilities: Contact Andy Fernando by October 5, 2012, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules describe the procedure to issue a temporary practice permit to a military spouse or state-registered domestic partner applicant who is subject to a transfer to Washington state by the military person and he or she must complete specific additional licensing requirements in Washington state. The applicant must be licensed in another state with substantially equivalent standards and meet specific criteria. The proposed rules also clarify that WAC 246-12-050 is related to completion of a national background check. The rules apply to health professions under the secretary's authority.

Reasons Supporting Proposal: ESSB 5969 (chapter 5, Laws of 2011 2nd sp. sess.) provides that certain military spouses may receive a temporary permit while completing any specific additional requirements in Washington that are not related to a profession's training or practice standards. The proposed rules describe the requirements to obtain the temporary practice permit. The permit allows the person to work in the full scope of the profession for up to one hundred eighty days. The department is including state registered domestic partners because RCW 1.12.080 requires that the term "spouse" is applied equally to these persons.

Statutory Authority for Adoption: RCW 43.70.040, 18.130.040; ESSB 5969 (chapter 5, Laws of 2011 2nd sp. sess.).

Statute Being Implemented: RCW 43.70.040, ESSB 5969 (chapter 5, Laws of 2011 2nd sp. sess.).

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

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting: Dianna Staley, DOH, P.O. Box 47860, Olympia, WA 98504-

7860, (360) 236-4607; Implementation and Enforcement: Robert Nicoloff, DOH, P.O. Box 47852, Olympia, WA 98504-7852, (360) 236-4924.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(g)(ii), a small business economic impact statement is not required for proposed rules that adopt, amend, or repeal a filing or related process requirement for applying to an agency for a license or permit.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis. The rule is [a] procedural rule, under RCW 34.05.328 (5)(c)(i), that adopts, amends or repeals a filing or related process requirement for making application to an agency for a license or permit.

August 29, 2012
Mary C. Selecky
Secretary

NEW SECTION

WAC 246-12-051 How to obtain a temporary practice permit—Military spouse. A military spouse or state registered domestic partner of a military person may receive a temporary practice permit while completing any specific additional requirements that are not related to training or practice standards for the profession. This section applies to any profession listed in RCW 18.130.040 (2)(a).

(1) A temporary practice permit may be issued to an applicant who is a military spouse or state registered domestic partner of a military person and:

- (a) Is moving to Washington as a result of the military person's transfer to Washington;
- (b) Left employment in another state to accompany the military person to Washington;
- (c) Holds an unrestricted, active license in another state that has substantially equivalent licensing standards for the same profession to those in Washington; and
- (d) Is not subject to any pending investigation, charges, or disciplinary action by the regulatory body of the other state or states.

(2) A temporary practice permit grants the individual the full scope of practice for the profession.

(3) A temporary practice permit expires when any one of the following occurs:

- (a) The license is granted;
- (b) A notice of decision on the application is mailed to the applicant, unless the notice of decision on the application specifically extends the duration of the temporary practice permit; or
- (c) One hundred eighty days after the temporary practice permit is issued.

(4) To receive a temporary practice permit, the applicant must:

- (a) Submit the necessary application, fee(s), fingerprint card if required, and documentation for the license;
- (b) Attest on the application that he/she left employment in another state to accompany the military person;

(c) Meet all requirements and qualifications for the license that are specific to the training, education, and practice standards for the profession;

(d) Provide verification of having an active unrestricted license in the same profession from another state that has substantially equivalent licensing standards for the profession in Washington;

(e) Submit a copy of the military person's orders and a copy of:

(i) The military-issued identification card showing the military person's information and the applicant's relationship to the military person;

(ii) A marriage license; or

(iii) A state registered domestic partnership; and

(f) Submit a written request for a temporary practice permit.

(5) For the purposes of this section:

(a) "Military spouse" means the husband, wife, or registered domestic partner of a military person.

(b) "Military person" means a person serving in the United States armed forces, the United States public health service commissioned corps, or the merchant marine of the United States.

WSR 12-18-060

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed August 30, 2012, 3:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-19-067.

Title of Rule and Other Identifying Information: Implementing section 3 of the Accessible Communities Act. Enacted as chapter 215, Laws of 2010, (RCW 50.40.073) on the use of funds available from the accessible communities account.

Hearing Location(s): 670 Woodland Square Loop, San Juan Room, Lacey, WA 98503, on October 10, 2012, at 1:00 p.m.

Date of Intended Adoption: October 17, 2012.

Submit Written Comments to: Toby Olson, P.O. Box 9046, Olympia, WA 98507-9046, e-mail tolson2@esd.wa.gov, fax (360) 407-2647, by October 8, 2012.

Assistance for Persons with Disabilities: Contact Amanda Collins by September 25, 2012, relay 711 or (360) 486-5892.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules are needed to establish the criteria and procedures applicable to the following: Submission and review of assurances by counties establishing accessible community advisory committees; reimbursement of travel and per diem expenses incurred by accessible community advisory committee members; solicitation, selection, oversight and evaluation of grants for locally initiated projects to improve awareness, inclusion and access for people who have disabilities.

Reasons Supporting Proposal: The proposal offers the minimum administrative process for counties that elect to

form and maintain accessible community advisory committees, while still allowing the department the ability to manage the demands placed on the small and unpredictable accessible communities fund.

Statutory Authority for Adoption: Section 3, chapter 215, Laws of 2010, "(2) The commissioner shall adopt rules to administer this section."

Statute Being Implemented: RCW 50.40.073.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Toby Olson, 670 Woodland Square Loop, Lacey, WA 98503, (360) 468-5891.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Neither this rule nor the statute it implements place any obligations upon businesses of any size or upon school districts.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is exempted under RCW 34.05.328 (5)(b)(ii). "(ii) Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party."

August 28, 2012
Paul Trause
Commissioner

Chapter 192-50 WAC

ACCESSIBLE COMMUNITY ADVISORY COMMITTEES REIMBURSEMENT AND GRANT APPLICATION PROCEDURES

NEW SECTION

WAC 192-50-010 Who qualifies to apply for the accessible communities grants and for reimbursement of travel, per diem and reasonable accommodation for county accessible community advisory committee meetings and committee sponsored activities? (RCW 50.40.-073) (1) For purposes of RCW 50.40.073, a county establishes that it has an active accessible community advisory committee by submitting a letter of assurance to the governor's committee on disability issues and employment containing the following:

(a) Submittal by the county legislative authority or an agent or officer acting under that authority;

(b) For a voting access advisory committee expansion, signature of the county auditor, or proof of approval by the county auditor;

(c) Description of how the county will ensure that the membership of the committee includes individuals with a diverse range of disabilities, and who are knowledgeable in identifying and eliminating attitudinal, programmatic, communication, and physical barriers encountered by persons with disabilities;

(d) Description of how the county will ensure that the committee is actively involved in the following activities: Advising on addressing the needs of persons with disabilities in emergency plans; advising the county and other local governments within the county on access to programs, services,

and activities, new construction or renovation projects, sidewalks, other pedestrian routes of travel, and disability parking enforcement; and developing local initiatives and activities to promote greater awareness of disability issues, and acceptance, and involvement, and access for persons with disabilities within the community; and

(e) If the committee will serve more than one county, proof of approval by the authorities for each participating county and a recent population count for each participating county including the source of the data. Counties may form joint accessible community advisory committees, as long as no more than one of the participating counties has a population greater than seventy thousand.

(2) The letter of assurance must be renewed at two-year intervals.

NEW SECTION

WAC 192-50-020 What are the criteria for an accessible community advisory committee to be reimbursed for travel, per diem and accommodation expenses for committee members? (1) For travel, per diem, and accommodation expenses to be eligible for reimbursement from this fund, the accessible community advisory committee meeting or sponsored activity must be approved in advance by the governor's committee on disability issues and employment. A form will be available on the accessible communities web site for this purpose, and will require an estimate of the projected travel, per diem, and accommodation expenses for that advisory committee meeting or sponsored activity. Prior approval of an accessible community advisory committee meeting or sponsored activity as eligible for reimbursement of travel, per diem, and accommodation expenses for the participation of committee members will be based on the following:

(a) Availability of funds;

(b) Active committee status;

(c) Elimination of the more significant travel, communication, or physical barriers to participation by people with disabilities in committee meetings or committee sponsored activities; and

(d) Support of opportunities for diverse participation on accessible community advisory committees.

(2) Travel and per diem for preapproved meetings and activities will be reimbursed following receipt, review, and approval of completed travel vouchers. The reimbursement will be at the same rates as those adopted for state employees by the office of financial management.

NEW SECTION

WAC 192-50-030 How does an accessible community advisory committee apply for a grant under the accessible communities act? (1) To the extent money is available, the governor's committee on disability issues and employment will publish on the accessible communities web site any grant opportunities and forms for applying for accessible community grants.

(2) The grant opportunities will be based on emerging issues and opportunities within the state. All evaluation and selection criteria will be included in the opportunity notification.

tion. Grant proposals will be required to include a plan for tracking, reporting and evaluating outcomes.

WSR 12-18-068
WITHDRAWAL OF PROPOSED RULES
SEATTLE COMMUNITY COLLEGES

(By the Code Reviser's Office)

[Filed September 4, 2012, 10:55 a.m.]

WAC 132F-142-010, 132F-142-020, 132F-142-030, 132F-142-040, 132F-142-050, 132F-142-070, and 132F-142-080, proposed by the Seattle Community Colleges in WSR 12-05-109 appearing in issue 12-05 of the State Register, which was distributed on March 7, 2012, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 12-18-069
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed September 4, 2012, 11:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-01-117.

Title of Rule and Other Identifying Information: The division of developmental disabilities (DDD) is proposing to adopt the following new sections to chapter 388-828 WAC: WAC 388-828-9325 How does DDD determine the number of hours you may receive for employment support services?, 388-828-9330 How does DDD determine your employment status?, 388-828-9335 How does DDD determine your employment service level?, 388-828-9340 How does your employment service type affect how your employment service hours are used?, 388-828-9345 Can you receive fewer than the number of hours allocated to you in your employment service level?, 388-828-9350 Are there conditions when DDD will authorize additional hours to your monthly employment service base hours?, 388-828-9355 How many add-on hours are you eligible to receive?, and 388-828-9360 What are short-term employment supports?

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/tpau/RPAU-OB-2directions.html>), on October 9, 2012, at 10:00 a.m.

Date of Intended Adoption: Not earlier than October 10, 2012.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on October 9, 2012.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by September 25, 2012, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DDD is proposing to adopt new sections for chapter 388-828 WAC, attached as Addendum 1 [no further information supplied by agency], to comply with SSB 6384 as passed by the legislature during the 2012 regular session, attached as Addendum 2 [no further information supplied by agency].

These changes will determine how DDD will determine the number of hours a DDD client may receive for employment support services.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.040, 74.08.090, 34.05.100.

Statute Being Implemented: RCW 71A.12.030, 71A.12.040, 34.05.100.

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

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

Name of Agency Personnel Responsible for Drafting and Implementation: Branda Matson, P.O. Box 45310, Olympia, WA 98504-5310, (360) 725-3405; and Enforce-ment: Mark Eliason, P.O. Box 45310, Olympia, WA 98504-5310, (360) 725-3452.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business impact statement is not required as no new costs will be imposed on small businesses or nonprofits as a result of this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

August 28, 2012
Katherine I. Vasquez
Rules Coordinator

DDD EMPLOYMENT ACUITY SCALE

NEW SECTION

WAC 388-828-9325 How does DDD determine the number of hours you may receive for employment support services? DDD determines the number of hours you may receive for employment services using information from the following:

- (1) Your employment support level determined as described in WAC 388-828-9205;
- (2) Your employment status determined as described in WAC 388-828-9330;
- (3) Your employment service level and employment service hours determined as described in WAC 388-828-9335;
- (4) Your employment service type;
- (5) You meet one of the conditions identified as described in WAC 388-828-9345 and require add-on hours identified in WAC 388-828-9350.

NEW SECTION

WAC 388-828-9330 How does DDD determine your employment status? DDD determines your employment status to be:

- (1) **"Working"** when you meet one of the following conditions:
 - (a) In the twelve months prior to your assessment:
 - (i) You have been employed for nine consecutive months; and
 - (ii) You have earned at least minimum wage.

- (b) You are currently self-employed and meet one of the following:
 - (i) The activities of your employment meet the Internal Revenue Service (IRS) rules for a business;
 - (ii) You have a business plan demonstrating feasibility as determined by the division of vocational rehabilitation or an impartial, agreed upon, third party business expert; or
 - (iii) You are licensed, if required, and follow all local, state, and federal regulations and rules.
- (2) **"Not working"** when you do not meet either of the conditions for "working."

NEW SECTION

WAC 388-828-9335 How does DDD determine your employment service level? DDD determines your employment service level using the following table:

If your employment support level in WAC 388-828-9205 is:	And you employment status in WAC 388-828-9330 is:	Then your employment service level is:	And your employment service hours per month are:
None	Working	A	0
	Not Working	B	0
Low	Working	C	4
	Not Working	D	7
Medium	Working	E	7
	Not Working	F	9
High	Working	G	11
	Not Working	H	12

NEW SECTION

WAC 388-828-9340 How does your employment service type affect how your employment service hours are used? Your employment service type determines where and how your service hours are provided.

- (1) Individual supported employment:
 - (a) Your employment services are provided in typical community-based settings;
 - (b) The focus of employment services is on obtaining and/or maintaining integrated employment at or above the state's minimum wage in the general workforce; and
 - (c) Your employment services are not shared with others.
- (2) Group supported employment:
 - (a) Your employment services are provided in typical community-based settings;
 - (b) The focus of employment services is on providing ongoing supervised employment that will lead to greater opportunities for competitive and integrated employment and career advancement at or above minimum wage; and
 - (c) Your employment service provider works with you and others in a group setting.
- (3) Prevocational services:
 - (a) Your employment services are:
 - (i) Provided in specialized or segregated settings for individuals with developmental disabilities; and
 - (ii) Include monthly employment related activities in the community.

- (b) Service and supports are designed to further habilitation goals that will lead to greater opportunities for competitive and integrated employment and career advancement at or above the state's minimum wage; and
- (c) Your employment service provider works with you and others in a group setting.

NEW SECTION

WAC 388-828-9345 Can you receive fewer than the number of hours allocated to you in your employment service level? Yes. You may be authorized to receive fewer than the number of hours allocated if one or more of the following factors is detailed on your employment plan:

- (1) You can independently find and maintain employment.
- (2) Your employment is stable and you need few support hours to maintain it.
- (3) You have natural supports from co-workers, family, friends, or others who support you in finding and maintaining a job.
- (4) Your job schedule does not require the full amount of supports allocated to your supported employment service level.
- (5) You choose to receive fewer hours of support than are allocated for your supported employment service level.
- (6) There are other factors in your employment plan which indicate you can find and maintain a job with fewer support hours.

NEW SECTION

WAC 388-828-9350 Are there conditions when DDD will authorize additional hours to your monthly employment service hours? DDD may authorize the use of add-on hours in addition to your monthly employment service hours when your employment support plan identifies a need for additional service hours related to:

- (1) Your work schedule;
- (2) The number of jobs you have;
- (3) The appropriateness of job match;
- (4) Natural supports available to you on the job;
- (5) Health limitations;
- (6) Provider travel time and distance;
- (7) Behavioral or physical needs that may affect the safety of you and others while at work;
- (8) Other factors detailed in your employment plan which indicate a need for add-on hours to help you find or maintain a job.

NEW SECTION

WAC 388-828-9355 How many add-on hours are you eligible to receive? DDD uses the following table to determine the maximum number of add-on hours you are eligible to receive.

If you meet one of the conditions in WAC 388-828-9350 and your employment level is:	You are eligible to receive up to the following amount of add-on hours:
A	0
B	0
C	5
D	7
E	5
F	7
G	12
H	14

NEW SECTION

WAC 388-828-9360 What are short-term employment supports? (1) Short-term employment supports is a service that allows DDD to approve additional service hours in addition to the amount of your employment service base hours (see WAC 388-828-9335) and add-on hours (see WAC 388-828-9345) when:

- (a) You are beginning a new job;
- (b) There is a planned or unexpected change in your job or job duties;
- (c) Your current employment is at risk and short-term supports are needed to assist you in maintaining your current job; or
- (d) You are stuck on your pathway to employment and need individualized technical assistance.

(2) Short-term employment supports may be authorized for a maximum of three months at a time and may be re-authorized when:

(a) The circumstances identified in section WAC 388-828-9360(1) continue, evidenced by, receipt of a current employment work plan or review describing the need; and

(b) Both your employment provider and county recommend continuing the use of short-term employment supports.

WSR 12-18-070

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed September 4, 2012, 11:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-14-027.

Title of Rule and Other Identifying Information: Amending WAC 388-865-0430 Clinical record and 388-865-0575 Special considerations for serving children; and new WAC 388-865-0576 Minor children ages thirteen through seventeen—Admission, treatment, and discharge without parental consent—Evaluation and treatment facility and 388-865-0578 Minor children seventeen years of age and younger—Admission, evaluation, and treatment without the minor’s consent—Evaluation and treatment facility.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on October 9, 2012, at 10:00 a.m.

Date of Intended Adoption: Not earlier than October 10, 2012.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHS RPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m., October 9, 2012.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by September 25, 2012, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rules meet the requirements of SSB 5187, chapter 302, Laws of 2011, that requires, in part, an inpatient psychiatric facility that provides services to minors to inform, both verbally and in writing, a parent or guardian of a minor who is seeking treatment for that minor, of all statutorily available treatment options, including the option for parent-initiated treatment.

Reasons Supporting Proposal: These rules allow the department to be in compliance with SSB 5187 by requiring facilities to adopt policies and protocols regarding mental health treatment for minors.

Statutory Authority for Adoption: RCW 71.05.560, 71.24.035, 71.34.375, 71.34.500, 71.34.510, 71.34.520, 71.34.610, 71.34.620, 71.34.630, 71.34.640, 71.34.650, 71.34.750, and SSB 5187.

Statute Being Implemented: RCW 71.05.560, 71.24.-035, 71.34.375, 71.34.500, 71.34.510, 71.34.520, 71.34.610, 71.34.620, 71.34.630, 71.34.640, 71.34.650, and 71.34.750.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The department is developing these rules in collaboration with the department of health.

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

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-1342; Implementation and Enforcement: Pete Marburger, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-1513.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or nonprofits.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are exempt under RCW 34.05.328 (5)(b)(v) as they are explicitly and specifically dictated by statute.

August 28, 2012
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-09-061, filed 4/19/10, effective 5/20/10)

WAC 388-865-0430 Clinical record. (~~The~~) A licensed community mental health agency must have and maintain a clinical record for each individual served in a manner consistent with WAC 388-865-0435, 388-865-0436, or any successors. The clinical record must contain:

- (1) An intake evaluation~~(;)~~.
- (2) Evidence that the consumer rights statement was provided to the individual, or their parent or other legal representative ~~(;)~~ when applicable~~(;)~~.
- (3) Documentation that the provider requested a copy of and inserted into the clinical record if provided, any of the following:
 - (a) Mental health advance directives;
 - (b) Medical advance directives;
 - (c) Powers of attorney;
 - (d) Letters of guardianship, parenting plans and/or court order for custody;
 - (e) Least restrictive alternative order(s);
 - (f) Discharge summaries and/or evaluations stemming from outpatient or inpatient mental health services received within the last five years, when available.
- (4) Any crisis plan that has been developed~~(;)~~.
- (5) The individual service plan and all revisions to the plan~~(;)~~.
- (6) Documentation that services are provided by or under the clinical supervision of a mental health professional~~(;)~~.
- (7) Documentation of any clinical consultation or oversight provided by a mental health specialist~~(;)~~.

- (8) Documentation of:
 - (a) All service encounters;
 - (b) Objective progress toward established goals as outlined in the treatment plan; and
 - (c) How any major changes in the individual's circumstances were addressed.
- (9) Documentation that any mandatory reporting of abuse, neglect, or exploitation consistent with chapters 26.44 and 74.34 RCW has occurred~~(;)~~.
- (10) Documentation that the department of corrections was notified by the provider when an individual on a less restrictive alternative or department of corrections order for mental health treatment informs the provider that the individual is under supervision by the department of corrections. Notification can be either written or oral. If oral notification, it must be confirmed by a written notice, including e-mail and fax. The disclosure to department of corrections does not require the person's consent.
 - (a) If the individual has been given relief from disclosure by the committing court, the individual must provide a copy of the court order to the treating community mental health agency (CMHA).
 - (b) There must be documentation that an evaluation by a designated mental health professional (DMHP) was requested in the following circumstance:
 - (i) The mental health provider becomes aware of a violation of the court-ordered treatment of an individual when the violation concerns public safety; and
 - (ii) The individual's treatment is a less restrictive alternative and the individual is being supervised by the department of corrections.
- (11) Either documentation of informed consent to treatment by the individual or parent or other legal representative or if treatment is court ordered, a copy of the detention or involuntary treatment order~~(;)~~.
- (12) Documentation that the individual, or their parent or other legal representative if applicable, are informed about the benefits and possible side effects of any medications prescribed for the individual in language that is understandable~~(;)~~.
- (13) Documentation of confidential information that has been released without the consent of the individual under the provisions in RCW 70.02.050, 71.05.390, 71.05.630, and the Health Insurance Portability and Accountability Act (HIPAA)~~(;)~~.
- (14) For individuals receiving community support services, the following information must be requested from the individual and the responses documented:
 - (a) The name of any current primary medical care provider;
 - (b) Any current physical health concerns;
 - (c) Current medications and any related concerns;
 - (d) History of any substance use/abuse and treatment;
 - (e) Any disabilities or special needs;
 - (f) Any previously accessed inpatient or outpatient services and/or medications to treat a mental health condition; and
 - (g) Information about past or current trauma and abuse.
- (15) A description of the individual's strengths and resources~~(; and)~~.

(16) A description of the individual's self-identified culture.

(17) If the individual is a minor and, if applicable:

(a) Documentation that the minor's parent(s) brought the minor to the agency to be evaluated by a mental health specialist.

(b) Written authorization that allows the bringing of the minor to the agency to be evaluated by a mental health specialist.

(c) Documentation that the minor was evaluated by a mental health specialist and a determination of whether or not the minor has a mental disorder that requires outpatient treatment.

AMENDATORY SECTION (Amending WSR 06-17-114, filed 8/18/06, effective 9/18/06)

WAC 388-865-0575 Special considerations for serving minor children. Inpatient evaluation and treatment facilities serving minor children seventeen years of age and younger must develop and implement policies and procedures to address special considerations for serving children(, including). These special considerations must include:

(1) Procedures to ensure that adults ((must be)) are separated from ((children)) minors who are not yet thirteen years of age(,).

(2) ((Children)) Procedures to ensure that a minor who ((have had their thirteenth birthday, but are under the age of eighteen, may be)) is at least age thirteen but not yet age eighteen is served with adults only if the ((child's)) minor's clinical record contains ((a professional judgment saying that placement in an adult facility will not be harmful to the child or adult)):

(a) Documentation that justifies such placement; and

(b) A professional judgment that placement in an inpatient evaluation and treatment facility that serves adults will not be harmful to the minor or to the adult.

(3) Procedures to ensure examination and evaluation of a minor by a children's mental health specialist occurs within twenty-four hours of admission.

(4) Procedures to ensure a facility that operates inpatient psychiatric beds for minors and is licensed by the department of health under chapter 71.12 RCW, meets the following notification requirements if a minor's parent(s) brings the child to the facility for the purpose of mental health treatment or evaluation. The facility must:

(a) Provide a written and verbal notice to the minor's parent(s) of:

(i) All current statutorily available treatment options available to the minor including, but not limited to, those provided in chapter 71.34 RCW; and

(ii) A description of the procedures the facility will follow to utilize the treatment options.

(b) Obtain and place in the clinical file, a signed acknowledgment from the minor's parent(s) that the notice required under (a) of this subsection was received.

(5) Procedures that address provisions for ((evaluation of children)) evaluating a minor brought to the facility for evaluation by ((their parents)) a parent(s).

~~((5))~~ (6) Procedures to notify child protective services any time the facility has reasonable cause to believe that abuse, neglect, financial exploitation or abandonment of a ((child)) minor has occurred.

~~((6) For a child)~~ (7) Procedures to ensure a minor thirteen years or older who is brought to an inpatient evaluation and treatment facility or hospital for immediate mental health services(,) is evaluated by the professional person in charge of the facility. The professional person must evaluate the ((child's)) minor's mental condition(,) and determine a mental disorder, the need for inpatient treatment, and the minor's willingness to obtain voluntary treatment. The facility may detain or arrange for the detention of the ((child)) minor up to twelve hours for evaluation by a designated mental health professional to commence detention proceedings.

~~((7) Admission of children)~~ (8) Procedures to ensure that the admission of a minor thirteen years of age or older admitted without parental consent ((must have)) has the concurrence of the professional person in charge of the facility and written review and documentation no less than every one hundred eighty days.

~~((8) Notice must be)~~ (9) Procedures to ensure that notice is provided to the parent(s) when a minor child is voluntarily admitted to inpatient treatment without parental consent within twenty-four hours of admission in accordance with the requirements of RCW 71.34.510.

~~((9) Children)~~ (10) Procedures to ensure a minor who ((have)) has been admitted on the basis of a designated mental health professional petition for detention ((must be)) is evaluated by the facility providing seventy-two hour evaluation and treatment to determine the ((child's)) minor's condition and either admit or release the ((child)) minor. If the ((child)) minor is not approved for admission, the facility must make recommendations and referral for further care and treatment as necessary.

~~((10))~~ (11) Procedures for the examination and evaluation of a ((child)) minor approved for inpatient admission to include:

(a) The needs to be served by placement in a chemical dependency facility;

(b) Restricting the right to associate or communicate with a parent(s); and

(c) Advising the ((child)) minor of rights in accordance with chapter 71.34 RCW.

~~((11))~~ (12) Procedures to petition for fourteen-day commitment that are in accordance with ((the requirements of)) RCW 71.34.730.

~~((12))~~ (13) Procedures for commitment hearing requirements and release from further inpatient treatment which may be subject to reasonable conditions, if appropriate, that are in accordance with RCW 71.34.740.

~~((13))~~ (14) Procedures for discharge and conditional release of a ((child)) minor in accordance with RCW 71.34.-770, provided that the professional person in charge gives the court written notice of the release within three days of the release. If the ((child)) minor is on a one hundred eighty-day commitment, the children's long-term inpatient program (CLIP) administrator must also be notified.

~~((14))~~ (15) Procedures to ensure rights of ((children)) a minor undergoing treatment and posting of such rights ((must

be)) are in accordance with RCW 71.34.355, 71.34.620, and 71.34.370.

~~((15))~~ (16) Procedures for the release of a ~~((child))~~ minor who is not accepted for admission or who is released by an inpatient evaluation and treatment facility that are in accordance with RCW 71.34.365.

~~((16) Information concerning))~~ (17) Procedures to ensure treatment of ~~((children))~~ a minor and all information obtained through treatment under this chapter ~~((may be))~~ are disclosed only in accordance with RCW 71.34.340.

~~((17) Availability of))~~ (18) Procedures to make court records and files available that are in accordance with RCW 71.34.335.

~~((18))~~ Procedures to release mental health services information ~~((must))~~ only ~~((be released))~~ in accordance with RCW 71.34.345 and other applicable state and federal statutes.

NEW SECTION

WAC 388-865-0576 Minor children ages thirteen through seventeen—Admission, treatment, and discharge without parental consent—Evaluation and treatment facility. (1) Under RCW 71.34.500, an evaluation and treatment facility may admit a minor child who is at least thirteen years of age and not older than seventeen years of age without the consent of the minor's parent(s) when:

(a) In the judgment of the professional person in charge of the facility, there is reason to believe that the minor is in need of inpatient treatment because of a mental disorder;

(b) The facility provides the type of evaluation and treatment needed by the minor;

(c) It is not feasible to treat the minor in a less restrictive setting or in the minor's home; and

(d) The minor gives written consent for the voluntary inpatient treatment.

(2) The evaluation and treatment facility must provide notice to the minor's parent(s) when the minor is voluntarily admitted. The notice must be in a form most likely to reach the minor's parent(s) within twenty-four hours of the minor's voluntary admission and advise the parent(s):

(a) That the minor has been admitted to inpatient treatment;

(b) Of the location and telephone number of the facility;

(c) Of the name of the professional staff member designated to provide the minor's treatment and discuss the minor's need for inpatient treatment; and

(d) Of the medical necessity for the minor's admission.

(3) The evaluation and treatment facility must:

(a) Review and document the minor's need for continued inpatient treatment at least every one hundred eighty days; and

(b) Obtain a renewal of the minor's written consent for the voluntary inpatient treatment at least every twelve calendar months.

(4) A minor admitted to an evaluation and treatment facility under RCW 71.34.500 may give notice of intent to leave at any time. The notice must be in writing, signed by the minor, and clearly state the minor intends to leave the facility.

(a) The facility staff member receiving the notice must:

(i) Immediately date it;

(ii) Record its existence in the minor's clinical record; and

(iii) Send a copy to the:

(A) Minor's attorney, if the minor has one;

(B) County-designated mental health professional; and

(C) Minor's parent(s).

(b) The facility must ensure a facility professional staff member discharges the minor from the facility by the second judicial day following receipt of the minor's notice of intent to leave.

(5) The evaluation and treatment facility must obtain parental consent, or authorization from a person who may consent on behalf of the minor under RCW 7.70.065, before admitting a minor child twelve years of age or younger.

NEW SECTION

WAC 388-865-0578 Minor children seventeen years of age and younger—Admission, evaluation, and treatment without the minor's consent—Evaluation and treatment facility. (1) Under RCW 71.34.600, an evaluation and treatment facility may admit, evaluate, and treat a minor child seventeen years of age or younger without the consent of the minor if the minor's parent(s) brings the minor to the facility.

(2) The evaluation and treatment facility must ensure a trained professional person (defined in RCW 71.05.020) evaluates the minor within twenty-four hours of the time the minor was brought to the facility.

(3) If the professional person determines the condition of the minor requires additional time for evaluation, the additional time must not be longer than seventy-two hours.

(4) If the evaluation and treatment facility holds the minor for treatment, the treatment must be limited to medically necessary treatment that the professional person has determined is needed to stabilize the minor's condition in order to complete the evaluation.

(5) The evaluation and treatment facility must:

(a) Notify the department within twenty-four hours of completing the minor's evaluation if the minor is held for inpatient treatment.

(b) Notify the minor being held for inpatient treatment of the right under RCW 71.34.620 to petition the superior court for release from the facility. The minor must be informed of this right before the department completes a review of the minor's admission and inpatient treatment (see subsection (7) of this section). If the minor is not released as a result of a petition for judicial review, the facility must release the minor no later than thirty days following the later of:

(i) The date of the department's determination under RCW 71.34.610; or

(ii) The date the petition is filed, unless a mental health professional initiates proceedings under Title 71 RCW.

(6) The minor's clinical record must show documentation that the department and the minor were notified as required under (a) and (b) of this subsection.

(7) One of the following must occur when the department conducts a review under RCW 71.34.610.

(a) If the department determines it is no longer medically necessary for the minor to receive inpatient treatment, the department notifies the minor's parent(s) and the facility. The facility must release the minor to the minor's parent(s) within twenty-four hours of receiving notice from the department.

(b) If the professional person in charge of the facility and the minor's parent(s) believe that it is medically necessary for the minor to remain in inpatient treatment, the facility must release the minor to the parent(s) on the second judicial day following the department's determination in order to allow the parent(s) time to file an at-risk youth petition under chapter 13.21A RCW.

(c) If the department determines it is medically necessary for the minor to receive outpatient treatment and if the minor declines to obtain such treatment, the refusal is grounds for the minor's parent(s) to file an at-risk youth petition under chapter 13.21A RCW.

(8) The evaluation and treatment facility must not discharge a minor admitted under RCW 71.34.600 based solely on the minor's request.

Rule is necessary because of federal law, 26 U.S.C. § 415 for WAC 415-02-740; and 26 U.S.C. § 401 for WAC 415-02-751.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: These changes will codify practices that are already in effect in compliance with IRC.

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Drafting: Jilene Siegel, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7291; Implementation: Shawn Merchant, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7303; and Enforcement: Jennifer Dahl, P.O. Box 48380, Olympia, WA 98504-8380, (360) 664-7219.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable. These rules do not impact small businesses and are not being submitted by the state board of education.

A cost-benefit analysis is not required under RCW 34.05.328. DRS is not one of the departments named in RCW 34.05.328.

August 30, 2012

Jilene A. Siegel

Rules Coordinator

WSR 12-18-073

PROPOSED RULES

DEPARTMENT OF RETIREMENT SYSTEMS

[Filed September 5, 2012, 8:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-06-014.

Title of Rule and Other Identifying Information: WAC 415-02-740 What are the IRS limitations on maximum benefits and maximum contributions? and 415-02-751 How does the department comply with Internal Revenue Code rollover rules?

Hearing Location(s): Department of Retirement Systems (DRS), 6835 Capitol Boulevard, Conference Room 115, Tumwater, WA, on October 9, 2012, at 9:00 a.m.

Date of Intended Adoption: October 9, 2012.

Submit Written Comments to: Jilene Siegel, Rules Coordinator, DRS, P.O. Box 48380, Olympia, WA 98504-8380, e-mail rules@drs.wa.gov, fax (360) 753-3166, by 12:00 p.m. on October 9, 2012.

Assistance for Persons with Disabilities: Contact Jilene Siegel, rules coordinator, by October 2, 2012, TTY (360) 586-5450 or (866) 377-8895.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department, with assistance from the office of the attorney general, is amending rules that define limitations on maximum benefits and contributions, and compliance with Internal Revenue Code (IRC) rollover rules.

Reasons Supporting Proposal: These changes are necessary to ensure the department's continued compliance with Internal Revenue Service requirements for plan qualification.

Statutory Authority for Adoption: RCW 41.50.050(5).

AMENDATORY SECTION (Amending WSR 10-24-099, filed 12/1/10, effective 1/1/11)

WAC 415-02-740 What are the IRS limitations on maximum benefits and maximum contributions? (1) Basic Internal Revenue Code (IRC) section 415 limitations. Subject to the provisions of this section, benefits paid from, and employee contributions made to, the plan shall not exceed the maximum benefits and the maximum annual addition, respectively, as applicable under IRC section 415. This rule applies retroactively beginning on January 1, 2009, except as otherwise stated.

(2) **Definitions.** As used in this section:

(a) "IRC section 415(b) limit" refers to the limitation on benefits established by IRC section 415(b);

(b) "IRC section 415(c) limit" refers to the limitation on annual additions established by IRC section 415(c); and

(c) Limitation year is the calendar year.

(3) **Basic IRC section 415(b) limitation.** Before January 1, 1995, a member may not receive an annual benefit that exceeds the limits specified in IRC section 415(b), subject to the applicable adjustments in that section. On and after January 1, 1995, a member may not receive an annual benefit that exceeds the dollar amount specified in IRC section 415(b)(1)(A), subject to the applicable adjustments in IRC section 415(b) and subject to any additional limits that may be specified in this section. In no event shall a member's annual benefit payable in any limitation year from this plan be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to IRC section 415(d) and the regulations thereunder.

(4) **Annual benefit definition.** For purposes of IRC section 415(b), the "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) without regard to the benefit attributable to the

after-tax employee contributions (except pursuant to IRC section 415(n)) and to all rollover contributions as defined in IRC section 415 (b)(2)(A). The "benefit attributable" shall be determined in accordance with treasury regulations.

(5) **Adjustments to basic IRC section 415(b) limitation for form of benefit.** If the benefit under this plan is other than a straight life annuity with no ancillary benefit, then the benefit shall be adjusted so that it is the equivalent of the straight life annuity, using factors prescribed in treasury regulations.

If the form of benefit without regard to the automatic benefit increase feature is not a straight life annuity or a qualified joint and survivor annuity, then the preceding sentence is applied by either reducing the IRC section 415(b) limit applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent amount (determined using the assumptions specified in Treasury Regulation section 1.415 (b)-1(c)(2)(ii)) that takes into account the additional benefits under the form of benefits as follows:

(a) For a benefit paid in a form to which IRC section 417 (e)(3) does not apply (generally, a monthly benefit), the actuarially equivalent straight life annuity benefit that is the greater of (or the reduced IRC section 415(b) limit applicable at the annuity starting date which is the "lesser of" when adjusted in accordance with the following assumptions):

(i) The annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the form of benefit to the member; or

(ii) The annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a five percent interest assumption (or the applicable statutory interest assumption); and

(A) For years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation section 1.417 (e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent revenue ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

(B) For years after December 31, 2008, the applicable mortality tables described in section 417 (e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417 (e)(3)(B) of the Internal Revenue Code).

(b) For a benefit paid in a form to which IRC section 417 (e)(3) applies (generally, a lump sum benefit), the actuarially equivalent straight life annuity benefit that is the greatest of (or the reduced IRC section 415(b) limit applicable at the annuity starting date which is the "least of" when adjusted in accordance with the following assumptions):

(i) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using the interest rate and mortality table, or tabular factor, specified in the plan for actuarial experience;

(ii) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a five and one-half percent interest assumption (or the applicable statutory interest assumption); and

(A) For years prior to January 1, 2009, the applicable mortality tables described in Treasury Regulation section 1.417 (e)-1(d)(2) (Revenue Ruling 2001-62 or any subsequent revenue ruling modifying the applicable provisions of Revenue Ruling 2001-62); or

(B) For years after December 31, 2008, the applicable mortality tables described in section 417 (e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417 (e)(3)(B) of the Internal Revenue Code).

(iii) The annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable (computed using the applicable interest rate for the distribution under Treasury Regulation section 1.417 (e)-1(d)(3) (the thirty-year treasury rate (prior to January 1, 2007, using the rate in effect for the month prior to retirement, and on and after January 1, 2007, using the rate in effect for the first day of the plan year with a one-year stabilization period)); and

(A) For years prior to January 1, 2009, the applicable mortality rate for the distribution under Treasury Regulation section 1.417 (e)-1(d)(2) (the mortality table specified in Revenue Ruling 2001-62 or any subsequent revenue ruling modifying the applicable provisions of Revenue Ruling 2001-62), divided by 1.05; or

(B) For years after December 31, 2008, the applicable mortality tables described in section 417 (e)(3)(B) of the Internal Revenue Code (Notice 2008-85 or any subsequent Internal Revenue Service guidance implementing section 417 (e)(3)(B) of the Internal Revenue Code), divided by 1.05.

(6) **Benefits not taken into account for IRC section 415(b) limit.** For purposes of this section, the following benefits shall not be taken into account in applying these limits:

(a) Any ancillary benefit which is not directly related to retirement income benefits;

(b) That portion of any joint and survivor annuity that constitutes a qualified joint and survivor annuity; and

(c) Any other benefit not required under IRC section 415 (b)(2) and treasury regulations thereunder to be taken into account for purposes of the limitation of IRC section 415 (b)(1).

(7) **Other adjustments in IRC section 415(b) limitation.**

(a) In the event the member's retirement benefits become payable before age sixty-two, the limit prescribed by this section shall be reduced in accordance with regulations issued by the Secretary of the Treasury pursuant to the provisions of IRC section 415(b), so that such limit (as so reduced) equals an annual straight life benefit (when such retirement income benefit begins) which is equivalent to a one hundred sixty thousand dollar (as adjusted) annual benefit beginning at age sixty-two.

(b) In the event the member's benefit is based on at least fifteen years of service as a full-time employee of any police or fire department or on fifteen years of military service, the adjustments provided for in (a) of this subsection shall not apply.

(c) The reductions provided for in (a) of this subsection shall not be applicable to preretirement disability benefits or preretirement death benefits.

(8) **Less than ten years of ((service)) participation adjustment for IRC section 415(b) limitation.** The maximum retirement benefits payable to any member who has completed less than ten years of ((service)) participation shall be the amount determined under subsection ((+)) (3) of this section multiplied by a fraction, the numerator of which is the ((number of the)) member's years of ((service)) participation and the denominator of which is ten.

(a) The reduction provided by this subsection cannot reduce the maximum benefit below ten percent.

(b) The reduction provided by this subsection shall not be applicable to preretirement disability benefits or preretirement death benefits.

(c) For purposes of this subsection, a member's "years of participation" equal the amount of service credit used in the computation of the member's retirement allowance, except as follows. Service credit purchased pursuant to RCW 41.26.199 (LEOFF Plan 1), RCW 41.26.432 (LEOFF Plan 2), RCW 41.32.066 (TRS), RCW 41.35.183 (SERS), RCW 41.37.265 (PSERS), RCW 41.40.034 (PERS), and RCW 43.43.233 (WSPRS) is **not** included in a member's "years of participation."

(9) **Effect of cost-of-living adjustment (COLA) without a lump sum component on IRC section 415(b) testing.** Effective on and after January 1, 2009, for purposes of applying the IRC section 415(b) limit to a member with no lump sum benefit, the following will apply:

(a) A member's applicable IRC section 415(b) limit will be applied to the member's annual benefit in the member's first limitation year without regard to any automatic COLAs;

(b) To the extent that the member's annual benefit equals or exceeds the limit, the member will no longer be eligible for COLA increases until such time as the benefit plus the accumulated increases are less than the IRC section 415(b) limit; and

(c) Thereafter, in any subsequent limitation year, a member's annual benefit, including any automatic COLA increases, shall be tested under the then applicable IRC section 415(b) limit including any adjustment to the IRC section 415 (b)(1)(A) dollar limit under IRC section 415(d), and the treasury regulations thereunder.

(10) **Effect of COLA with a lump sum component on IRC section 415(b) testing.** On and after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable limit will be applied taking into consideration COLA increases as required by IRC section 415(b) and applicable treasury regulations.

(11) **IRC section 415(c) limit.** After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of forty thousand dollars, as adjusted pursuant to IRC section 415(d), or one hundred percent of the member's compensation.

(a) Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

(b) For purposes of applying the IRC section 415(c) limits only and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation section 1.415 (c)-2, or successor regulation; provided; however, that member contributions picked up under IRC section 414(h) shall not be treated as compensation.

(c) Unless another definition of compensation that is permitted by Treasury Regulation section 1.415 (c)-2, or successor regulation, is specified by the plan, compensation will be defined as wages within the meaning of IRC section 3401(a) and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under IRC sections 6041(d), 6051 (a)(3), and 6052 and will be determined without regard to any rules under IRC section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in IRC section 3401 (a)(2)).

(i) However, for limitation years beginning on and after January 1, 1998, compensation will also include amounts that would otherwise be included in compensation but for an election under IRC sections 125(a), 402 (e)(3), 402 (h)(1)(B), 402(k), or 457(b). For limitation years beginning on and after January 1, 2001, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of IRC section 132 (f)(4).

(ii) For limitation years beginning on and after January 1, 2009, compensation for the limitation year will also include compensation paid by the later of two and one-half months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if:

(A) The payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the employee while the employee continued in employment with the employer; or

(B) The payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued.

Any payments not described in (c)(ii) of this subsection are not considered compensation if paid after severance from employment, even if they are paid within two and one-half months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason of qualified military service (within the meaning of IRC section 414 (u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

(iii) Back pay, within the meaning of Treasury Regulation section 1.415 (c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the

extent the back pay represents wages and compensation that would otherwise be included under this definition.

(iv) Beginning January 1, 2009, to the extent required by IRC sections 3401(h) and (~~414(u)(2))~~ 414 (u)(12), an individual receiving a differential wage payment (as defined in section 3401 (h)(2) of the Internal Revenue Code) from an employer shall be treated as employed by that employer, and the differential wage payment shall be treated as compensation for purposes of applying the limits on annual additions under section 415(c) of the Internal Revenue Code. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

(v) An employee who is in qualified military service (within the meaning of IRC section 414 (u)(1)) shall be treated as receiving compensation from the employer during such period of qualified military service equal to:

(A) The compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service; or

(B) If the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the twelve month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(vi) If the annual additions for any member for a plan year exceed the limitation under IRC section 415(c), the excess annual addition will be corrected as permitted under the Employee Plans Compliance Resolution System (or similar IRS correction program).

(vii) For limitation years beginning on or after January 1, 2009, a member's compensation for purposes of this subsection shall not exceed the annual limit under IRC section 401 (a)(17).

(12) Service purchases under IRC section 415(n). Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under the plan, then the requirements of IRC section 415(n) will be treated as met only if:

(a) The requirements of IRC section 415(b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of IRC section 415(b); or

(b) The requirements of IRC section 415(c) are met, determined by treating all such contributions as annual additions for purposes of IRC section 415(c).

(c) For purposes of applying this subsection, the plan will not fail to meet the reduced limit under IRC section 415 (b)(2)(C) solely by reason of this subsection and will not fail to meet the percentage limitation under IRC section 415 (c)(1)(B) solely by reason of this subsection.

(d) For purposes of this subsection the term "permissive service credit" means service credit:

(i) Recognized by the plan for purposes of calculating a member's benefit under the plan;

(ii) Which such member has not received under the plan; and

(iii) Which such member may receive only by making a voluntary additional contribution, in an amount determined under the plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, such term may include service credit for periods for which there is no performance of service, and, notwithstanding (d)(ii) of this subsection, may include service credited in order to provide an increased benefit for service credit which a member is receiving under the plan.

(e) The plan will fail to meet the requirements of this section if:

(i) More than five years of nonqualified service credit are taken into account for purposes of this subsection; or

(ii) Any nonqualified service credit is taken into account under this subsection before the member has at least five years of participation under the plan.

(f) For purposes of (e) of this subsection, effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:

(i) Service (including parental, medical, sabbatical, and similar leave) as an employee of the government of the United States, any state or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in IRC section 415 (k)(3));

(ii) Service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in (f)(i) of this subsection) of an education organization described in IRC section 170 (b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education through grade twelve, or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

(iii) Service as an employee of an association of employees who are described in (f)(i) of this subsection; or

(iv) Military service, other than qualified military service under section 414(u), recognized by the plan.

(g) In the case of service described in (f)(i), (ii), or (iii) of this subsection, such service will be nonqualified service if recognition of such service would cause a member to receive a retirement benefit for the same service under more than one plan.

(h) In the case of a trustee-to-trustee transfer after December 31, 2001, to which IRC section 403 (b)(13)(A) or 457 (e)(17)(A) applies, without regard to whether the transfer is made between plans maintained by the same employer:

(i) The limitations of (e) of this subsection will not apply in determining whether the transfer is for the purchase of permissive service credit; and

(ii) The distribution rules applicable under federal law to the plan will apply to such amounts and any benefits attributable to such amounts.

(i) For an eligible member, the limitation of IRC section 415 (c)(1) shall not be applied to reduce the amount of per-

missive service credit which may be purchased to an amount less than the amount which was allowed to be purchased under the terms of the plan as in effect on August 5, 1997. For purposes of this subsection (12)(i), an eligible member is an individual who first became a member in the plan before January 1, 1998.

(13) **Modification of contributions for IRC sections 415(c) and 415(n) purposes.** Notwithstanding any other provision of law to the contrary, the department may modify a request by a member to make a contribution to the plan if the amount of the contribution would exceed the limits provided in IRC section 415 by using the following methods:

(a) If the law allows, the department may establish either a lump sum or a periodic payment plan for the member to avoid a contribution in excess of the limits under IRC sections 415(c) or 415(n).

(b) If payment pursuant to (a) of this subsection will not avoid a contribution in excess of the limits imposed by IRC sections 415(c) or 415(n), the department may either reduce the member's contribution to an amount within the limits of those sections or refuse the member's contribution.

(14) **Repayments of cash outs.** Any repayment of contributions, including interest thereon, to the plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or another governmental plan maintained by the state or a local government within the state shall not be taken into account for purposes of IRC section 415, in accordance with applicable treasury regulations.

(15) **Participation in other qualified plans: Aggregation of limits.**

(a) The IRC section 415(b) limit with respect to any member who at any time has been a member in any other defined benefit plan as defined in IRC section 414(j) maintained by the member's employer shall apply as if the total benefits payable under all such defined benefit plans in which the member has been a member were payable from one plan.

(b) The IRC section 415(c) limit with respect to any member who at any time has been a member in any other defined contribution plan as defined in IRC section 414(i) maintained by the member's employer shall apply as if the total annual additions under all such defined contribution plans in which the member has been a member were payable from one plan.

(16) **Reduction of benefits priority.** Reduction of benefits and/or contributions to all plans, where required, shall be accomplished by first reducing the member's defined benefit component under any defined benefit plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be determined by the plan and the plan administrator of such other plans; and next, by reducing the member's defined contribution component benefit under any defined benefit plans; and next by reducing or allocating excess forfeitures for defined contribution plans in which the member participated, such reduction to be made first with respect to the plan in which the member most recently accrued benefits and thereafter in such priority as shall be established by the plan and the plan administrator for such other plans provided; however, that necessary reductions may be made in a different

manner and priority pursuant to the agreement of the plan and the plan administrator of all other plans covering such member.

(17) Technical and Miscellaneous Revenue Act of 1988 (TAMRA) election. This subsection applies only to those plans for which it has been approved by the IRS. This subsection applies retroactively beginning on January 1, 1990, only to participants who first became participants in the system before January 1, 1990. For purposes of this subsection, these participants are referred to as "qualified participants." For a qualified participant, the 415(b) limit shall not be less than the accrued benefit of the participant under the plan determined without regard to any amendment of the plan made after October 14, 1987.

(18) Ten thousand dollar limit; less than ten years of service. Notwithstanding anything in this section to the contrary, the retirement benefit payable with respect to a member shall be deemed not to exceed the limit set forth in this subsection if the benefits payable, with respect to such member under this plan and under all other qualified defined benefit pension plans to which the member's employer contributes, do not exceed ten thousand dollars for the applicable limitation year and for any prior limitation year and the employer has not at any time maintained a qualified defined contribution plan in which the member participated, provided, however, that if the member has completed less than ten years of service with the employer, the limit under this section shall be a reduced limit equal to ten thousand dollars multiplied by a fraction, the numerator of which is the number of the member's years of service and the denominator of which is ten, and such that the fraction so calculated may not be less than one-tenth.

AMENDATORY SECTION (Amending WSR 10-24-099, filed 12/1/10, effective 1/1/11)

WAC 415-02-751 How does the department comply with Internal Revenue Code rollover rules? (1) A distributee may elect to have eligible rollover distributions paid in a direct rollover to an eligible retirement plan the distributee specifies, pursuant to section 401 (a)(31) of the federal Internal Revenue Code.

(2) "Eligible rollover distribution" means any distribution of all or any portion of the balance to the distributee with the following exceptions:

(a) Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or the life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more;

(b) Any distribution to the extent such distribution is required under section 401 (a)(9) of the Internal Revenue Code;

(c) The portion of any distribution that is not includible in gross income; and

(d) Any other distribution that is reasonably expected to total less than two hundred dollars during the year.

Effective January 1, 2002, a portion of a distribution will not fail to be an eligible rollover distribution merely because

the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408 (a) or (b) of the Internal Revenue Code, or to a qualified defined contribution plan described in section 401(a) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible, or on or after January 1, 2007, to a qualified defined benefit plan described in section 401(a) of the Internal Revenue Code or to an annuity contract described in section 403(b) of the Internal Revenue Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includible in gross income and the portion of the distribution that is not so includible.

Effective January 1, 2002, the definition of eligible rollover distribution also includes a distribution to a surviving spouse, or to a spouse or former spouse who is an alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code.

(3) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

(a) An individual retirement account described in section 408(a) of the Internal Revenue Code;

(b) An individual retirement annuity described in section 408(b) of the Internal Revenue Code;

(c) An annuity plan described in section 403(a) of the Internal Revenue Code;

(d) A qualified trust described in section 401(a) of the Internal Revenue Code;

(e) Effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue Code;

(f) Effective January 1, 2002, a plan eligible under section 457(b) of the Internal Revenue Code that is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into such 457(b) plan from this plan; or

(g) Effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code.

(4) "Distributee" means an employee or former employee. It also includes the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Internal Revenue Code. Effective January 1, 2007, a distributee further includes a nonspouse beneficiary who is a designated beneficiary as defined by section 401 (a)(9)(E) of the Internal Revenue Code. However, a nonspouse beneficiary may rollover the distribution only to an individual retirement account or individual retirement annuity established for the purpose of receiving the distribution, and the account or annuity will be treated as an "inherited" individual retirement account or annuity.

(5) "Direct rollover" means a payment by the plan to the eligible retirement plan specified by the distributee.

WSR 12-18-075

PROPOSED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2011-11—Filed September 5, 2012, 10:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-14-113.

Title of Rule and Other Identifying Information: Grievance and appeal process requirements for health carriers and health plans.

Hearing Location(s): Office of the Insurance Commissioner, Training Room, 5000 Capitol Way South, Tumwater, WA, on October 10, 2012, at 10:00 a.m.

Date of Intended Adoption: October 19, 2012.

Submit Written Comments to: Meg L. Jones, P.O. Box 40258, Olympia, WA 98504, e-mail rulescoordinator@oic.wa.gov, fax (360) 586-3109, by October 10, 2012.

Assistance for Persons with Disabilities: Contact Lorrie [Lorie] Villaflores by October 8, 2012, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules set out the requirements for enrollee appeals of adverse benefit determinations by carriers for grandfathered and non-grandfathered plans. The proposed rules also explain the difference between a grievance and an appeal, and establish different requirements for carrier response to grievances. The proposed rules align Washington's required processes with those required under the Affordable Care Act (P.L. 111-148, as amended) (2010).

Reasons Supporting Proposal: Without these rules, the United States Department of Health and Human Services will require a different process for external independent review than has been in place in Washington state prior to the Affordable Care Act. In addition, the amended rule sections are clarified to distinguish between appeals and grievances, and to omit typographical errors.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.525, 48.43.530, 48.43.535.

Statute Being Implemented: RCW 48.43.525, 48.43-530, 48.43.535.

Rule is necessary because of federal law, [S]ections 2701 through 2763, 2791 and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg-63, and 300gg-92, as amended; 45 C.F.R. Subtitle A, part 147.136.

Name of Proponent: Office of the insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Meg L. Jones, 5000 Capitol Way South, Tumwater, WA, (360) 725-7170; Implementation: Beth Berendt, 5000 Capitol Way South, Tumwater, WA, (360) 725-7117; and Enforcement: Carol Sureau, 5000 Capitol Way South, Tumwater, WA, (360) 725-7150.

No small business economic impact statement has been prepared under chapter 19.85 RCW. None of the affected entities are small business[es] as defined under chapter 19.85 RCW.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Meg Jones, P.O. Box 40258, Olympia, WA 98502, phone (360) 725-7170, fax (360) 586-3109, e-mail rulescoordinator@oic.wa.gov.

September 5, 2012
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2000-02, filed 1/9/01, effective 7/1/01)

WAC 284-43-130 Definitions. Except as defined in other subchapters and unless the context requires otherwise, the following definitions shall apply throughout this chapter.

(1) "Adverse determination" ((and ~~nonecertification~~ means a decision by a health carrier to deny, modify, reduce, or terminate payment, coverage, authorization, or provision of health care services or benefits including the admission to or continued stay in a facility)) has the same meaning as the definition of adverse benefit determination in RCW 48.43.-005, and includes:

(a) The determination includes any decision by a health carrier's designee utilization review organization that a request for a benefit under the health carrier's health benefit plan does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness or is determined to be experimental or investigational and the requested benefit is therefore denied, reduced, or terminated or payment is not provided or made, in whole or in part for the benefit;

(b) The denial, reduction, termination, or failure to provide or make payment, in whole or in part, for a benefit based on a determination by a health carrier or its designee utilization review organization of a covered person's eligibility to participate in the health carrier's health benefit plan;

(c) Any prospective review or retrospective review determination that denies, reduces, or terminates or fails to provide or make payment in whole or in part for a benefit;

(d) A rescission of coverage determination; or

(e) A carrier's denial of an application for coverage.

(2) "Authorization" or "certification" means a determination by the carrier that an admission, extension of stay, or other health care service has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness in relation to the applicable health plan.

(3) "Clinical review criteria" means the written screens, decision rules, medical protocols, or guidelines used by the carrier as an element in the evaluation of medical necessity and appropriateness of requested admissions, procedures, and services under the auspices of the applicable health plan.

(4) "Covered health condition" means any disease, illness, injury or condition of health risk covered according to the terms of any health plan.

(5) "Covered person" means an individual covered by a health plan including an enrollee, subscriber, policyholder, or beneficiary of a group plan.

(6) "Emergency medical condition" means the emergent and acute onset of a symptom or symptoms, including severe

pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, if failure to provide medical attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy.

(7) "Emergency services" ((~~means otherwise covered health care services medically necessary to evaluate and treat an emergency medical condition, provided in a hospital emergency department~~)) has the meaning set forth in RCW 48.43.005.

(8) "Enrollee point-of-service cost-sharing" or "cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

(9) "Facility" means an institution providing health care services, including but not limited to hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory, and imaging centers, and rehabilitation and other therapeutic settings, and as defined in RCW 48.43.005.

(10) "Formulary" means a listing of drugs used within a health plan.

(11) "Grievance" ((~~means a written or an oral complaint submitted by or on behalf of a covered person regarding:~~

(a) Denial of health care services or payment for health care services; or

(b) Issues other than health care services or payment for health care services including dissatisfaction with health care services, delays in obtaining health care services, conflicts with carrier staff or providers, and dissatisfaction with carrier practices or actions unrelated to health care services)) has the meaning set forth in RCW 48.43.005.

(12) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 RCW or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(13) "Health care service" or "health service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(14) "Health carrier" or "carrier" means a disability insurance company regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, and a health maintenance organization as defined in RCW 48.46.020, and includes "issuers" as that term is used in the Patient Protection and Affordable Care Act (P.L. 111-148, as amended (2010)).

(15) "Health plan" or "plan" means any individual or group policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care service except the following:

(a) Long-term care insurance governed by chapter 48.84 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Limited health care service offered by limited health care service contractors in accordance with RCW 48.44.035;

(d) Disability income;

(e) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

(f) Workers' compensation coverage;

(g) Accident only coverage;

(h) Specified disease and hospital confinement indemnity when marketed solely as a supplement to a health plan;

(i) Employer-sponsored self-funded health plans;

(j) Dental only and vision only coverage; and

(k) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

(16) "Managed care plan" means a health plan that coordinates the provision of covered health care services to a covered person through the use of a primary care provider and a network.

(17) "Medically necessary" or "medical necessity" in regard to mental health services and pharmacy services is a carrier determination as to whether a health service is a covered benefit ~~(if)~~ because the service is consistent with generally recognized standards within a relevant health profession.

(18) "Mental health provider" means a health care provider or a health care facility authorized by state law to provide mental health services.

(19) "Mental health services" means in-patient or out-patient treatment, partial hospitalization or out-patient treatment to manage or ameliorate the effects of a mental disorder listed in the *Diagnostic and Statistical Manual (DSM) IV* published by the American Psychiatric Association, excluding diagnoses and treatments for substance abuse, 291.0 through 292.9 and 303.0 through 305.9.

(20) "Network" means the group of participating providers and facilities providing health care services to a particular health plan. A health plan network for carriers offering more than one health plan may be smaller in number than the total number of participating providers and facilities for all plans offered by the carrier.

(21) "Out-patient therapeutic visit" or "out-patient visit" means a clinical treatment session with a mental health provider of a duration consistent with relevant professional standards used by the carrier to determine medical necessity for the particular service being rendered, as defined in *Physicians Current Procedural Terminology*, published by the American Medical Association.

(22) "Participating provider" and "participating facility" means a facility or provider who, under a contract with the health carrier or with the carrier's contractor or subcontractor, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsur-

ance, copayments, or deductibles, from the health carrier rather than from the covered person.

(23) "Person" means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing.

(24) "Pharmacy services" means the practice of pharmacy as defined in chapter 18.64 RCW and includes any drugs or devices as defined in chapter 18.64 RCW.

(25) "Primary care provider" means a participating provider who supervises, coordinates, or provides initial care or continuing care to a covered person, and who may be required by the health carrier to initiate a referral for specialty care and maintain supervision of health care services rendered to the covered person.

(26) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

(27) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

(28) "Small group plan" means a health plan issued to a small employer as defined under RCW 48.43.005~~((24))~~ (33) comprising from one to fifty eligible employees.

(29) "Substitute drug" means a therapeutically equivalent substance as defined in chapter 69.41 RCW.

(30) "Supplementary pharmacy services" or "other pharmacy services" means pharmacy services involving the provision of drug therapy management and other services not required under state and federal law but that may be rendered in connection with dispensing, or that may be used in disease prevention or disease management.

SUBCHAPTER E

ADVERSE BENEFIT DETERMINATION PROCESS REQUIREMENTS

FOR NONGRANDFATHERED PLANS

NEW SECTION

WAC 284-43-500 Scope and intent. Carriers and not grandfathered plans must follow the rules in this subchapter in order to comply with the adverse benefit determination process required by RCW 48.43.530 and 48.43.535. These rules apply to any request for a review of an adverse benefit determination made by a carrier or its designee on or after January 1, 2012.

NEW SECTION

WAC 284-43-505 Definitions. These definitions apply to the sections in this subchapter, WAC 284-43-510 through 284-43-550:

"Adverse benefit determination" has the same meaning as defined in RCW 48.43.005 and WAC 284-43-130.

"Appellant" means an applicant or a person covered as an enrollee, subscriber, policy holder, participant, or beneficiary of an individual or group health plan, and when designated, their representative. Consistent with the requirements of WAC 284-43-410, providers seeking expedited review of an adverse benefit determination on behalf of an appellant may act as the appellant's representative even if the appellant has not formally notified the health plan or carrier of the designation.

"Internal appeal or review" means an appellant's request for a carrier or health plan to review and reconsider an adverse benefit determination.

"External appeal or review" means the request by an appellant for an independent review organization to determine whether the carrier or health plan's internal appeal decisions are correct.

NEW SECTION

WAC 284-43-510 Review of adverse benefit determinations—Generally. (1) Each carrier must establish and implement a comprehensive process for the review of adverse benefit determinations. The process must offer an appellant the opportunity for both internal review and external review of an adverse benefit determination. The process must meet accepted national certification standards such as those used by the National Committee for Quality Assurance, except as otherwise required by this chapter.

(2) Neither a carrier nor a health plan may take or threaten to take any punitive action against a provider acting on behalf of or in support of an appellant.

(3) When the appeal is related to services the appellant is currently receiving as an inpatient, or for which a continuous course of treatment is medically necessary, coverage for those services must be continued while an adverse benefit determination is reviewed. Appellants must be notified that they may be responsible for the cost of services if the adverse benefit determination is upheld.

(4) A carrier must accept a request for internal review of an adverse benefit determination if the request is received within one hundred eighty days of the appellant's receipt of a determination under the plan. A carrier must notify an appellant of its receipt of the request within seventy-two hours of receiving the request.

(5) Each carrier and health plan must maintain a log of each adverse benefit determination review, its resolution, and the dates of receipt, notification, and determination.

(a) The carrier must make its review log available to the commissioner upon request in a form accessible by the commissioner. The log must be maintained by the carrier for a six-year period.

(b) Each carrier must identify, evaluate, and make available to the commissioner data and reports on trends in reviews for at least a six-year time frame, including the data on the number of adverse benefit determination reviews, the subject matter of the reviews and their outcome.

(c) When a carrier resolves issues related to an adverse benefit determination over the phone, without receiving a for-

mal request for review, the carrier must include in these resolutions in its review log. A carrier's actions that are not in response to a member's call regarding an adverse benefit determination do not need to be included in the adverse benefit determination review log.

NEW SECTION

WAC 284-43-511 Explanation of right to review. A carrier must clearly communicate in writing the right to request a review of an adverse benefit determination.

(1) At a minimum, the notice must be sent at the following times:

- (a) Upon request;
- (b) As part of the notice of adverse benefit determination;
- (c) To new enrollees at the time of enrollment; and
- (d) Annually thereafter to enrollees, group administrators, and subcontractors of the carrier.

(e) The notice requirement is satisfied if the description of the internal and external review process is included in or attached to the summary health plan descriptions, policy, certificate, membership booklet, outline of coverage or other evidence of coverage provided to participants, beneficiaries, or enrollees.

(2) Each carrier and health plan must ensure that its network providers receive a written explanation of the manner in which adverse benefit determinations may be reviewed on both an expedited and nonexpedited basis.

(3) Any written explanation of the review process must include information about the availability of Washington's designated ombudsman's office, the services it offers, and contact information. A carrier's notice must also specifically direct appellants to the office of the insurance commissioner's consumer protection division for assistance with questions and complaints.

(4) The review process must be accessible to persons who are limited-English speakers, who have literacy problems, or who have physical or mental disabilities that impede their ability to request review or participate in the review process.

(a) Carriers must conform to federal requirements to provide notice of the process in a culturally and linguistically appropriate manner to those seeking review.

(b) In counties where ten percent or more of the population is literate in a specific non-English language, carriers must include in notices a prominently displayed statement in the relevant language or languages, explaining that oral assistance and a written notice in the non-English language are available upon request. Carriers may rely on the most recent data published by the U.S. Department of Health and Human Services Office of Minority Health to determine which counties and which languages require such notices.

(c) This requirement is satisfied if the National Commission on Quality Assurance certifies the carrier is in compliance with this standard as part of the accreditation process.

(5) Each carrier must consistently assist appellants with understanding the review process. Carriers may not use and health plans may not contain procedures or practices that the

commissioner determines discourage an appellant from any type of adverse benefit determination review.

(6) If a carrier reverses its initial adverse benefit determination, which it may at any time during the review process, the carrier or health plan must provide appellant with written or electronic notification of the decision immediately, but in no event more than two business days of making the decision.

NEW SECTION

WAC 284-43-515 Notice and explanation of adverse benefit determination—General requirements. (1) A carrier must notify enrollees of an adverse benefit determination either electronically or by U.S. mail. The notification must be provided:

(a) To an appellant or their authorized representative; and

(b) To the provider if the adverse benefit determination involves the preservice denial of treatment or procedure prescribed by the provider.

(2) A carrier or health plan's notice must include the following information, worded in plain language:

(a) The specific reasons for the adverse benefit determination;

(b) The specific health plan policy or contract sections on which the determination is based, including references to the provisions;

(c) The plan's review procedures, including the appellant's right to a copy of the carrier and health plan's records related to the adverse benefit determination;

(d) The time limits applicable to the review; and

(e) The right of appellants and their providers to present evidence as part of a review of an adverse benefit determination.

(3) If an adverse benefit determination is based on medical necessity, decisions related to experimental treatment, or a similar exclusion or limit involving the exercise of professional judgment, the notification must contain either an explanation of the scientific or clinical basis for the determination, the manner in which the terms of the health plan were applied to the appellant's medical circumstances, or a statement that such explanation is available free of charge upon request.

(4) If an internal rule, guideline, protocol, or other similar criterion was relied on in making the adverse benefit determination, the notice must contain either the specific rule, guideline, protocol, or other similar criterion; or a statement that a copy of the rule, guideline, protocol, or other criterion will be provided free of charge to the appellant on request.

(5) The notice of an adverse benefit determination must include an explanation of the right to review the records of relevant information, including evidence used by the carrier or the carrier's representative that influenced or supported the decision to make the adverse benefit determination.

(a) For purposes of this subsection, "relevant information" means information relied on in making the determination, or that was submitted, considered, or generated in the course of making the determination, regardless of whether

the document, record, or information was relied on in making the determination.

(b) Relevant information includes any statement of policy, procedure, or administrative process concerning the denied treatment or benefit, regardless of whether it was relied on in making the determination.

(6) If the carrier and health plan determine that additional information is necessary to perfect the denied claim, the carrier and health plan must provide a description of the additional material or information that they require, with an explanation of why it is necessary, as soon as the need is identified.

(7) An enrollee or covered person may request that a carrier identify the medical, vocational, or other experts whose advice was obtained in connection with the adverse benefit determination, even if the advice was not relied on in making the determination. The carrier may satisfy this requirement by providing the job title, a statement as to whether the expert is affiliated with the carrier as an employee, and the expert's specialty, board certification status, or other criteria related to the expert's qualification without providing the expert's name or address. The carrier must be able to identify for the commissioner upon request the name of each expert whose advice was obtained in connection with the adverse benefit determination.

(8) The notice must include language substantially similar to the following:

"If you request a review of this adverse benefit determination, (Company name) will continue to provide coverage for the disputed benefit pending outcome of the review if you are currently receiving services or supplies under the disputed benefit. If (Company name) prevails in the appeal, you may be responsible for the cost of coverage received during the review period. The decision at the external review level is binding unless other remedies are available under state or federal law."

NEW SECTION

WAC 284-43-520 Electronic disclosure and communication by carriers. (1) Except as otherwise provided by applicable law, rule, or regulation, a carrier furnishing documents through electronic media is deemed to satisfy the notice and disclosure requirements regarding adverse benefit determinations with respect to applicants, covered persons, and appellants or their representative, if the carrier takes appropriate and necessary measures reasonably calculated to ensure that the system for furnishing documents, including ensuring that its measures:

(a) Result in actual receipt of transmitted information (e.g., using return-receipt or notice of undelivered electronic mail features, conducting periodic reviews or surveys to confirm receipt of the transmitted information);

(b) Protect the confidentiality of personal information relating to the individual's accounts and benefits (e.g., incorporating into the system measures designed to preclude unauthorized receipt of or access to such information by individuals other than the individual for whom the information is intended);

(c) Provide notice in electronic or nonelectronic form, at the time a document is furnished electronically, that apprises the recipient of the significance of the document when it is not otherwise reasonably evident as transmitted (e.g., the attached document describes the internal review process used by your plan) and of the right to request and obtain a paper version of such document; and

(d) Furnish the appellant or their representative with a paper version of the electronically furnished documents if requested.

(2) Subsection (1) of this section only applies to the following individuals:

(a) An appellant who affirmatively consents, in electronic or nonelectronic form, to receiving documents through electronic media and has not withdrawn such consent.

(b) In the case of documents to be furnished through the internet or other electronic communication network, one that has affirmatively consented or confirmed consent electronically, in a manner that reasonably demonstrates the individual's ability to access information in the electronic form that will be used to provide the information that is the subject of the consent, and has provided an address for the receipt of electronically furnished documents;

(c) Prior to consenting, is provided, in electronic or non-electronic form, a clear and conspicuous statement indicating:

(i) The types of documents to which the consent would apply;

(ii) That consent can be withdrawn at any time without charge;

(iii) The procedures for withdrawing consent and for updating the individual's electronic address for receipt of electronically furnished documents or other information;

(iv) The right to request and obtain a paper version of an electronically furnished document, including whether the paper version will be provided free of charge; and

(v) Any hardware and software requirements for accessing and retaining the documents.

(3) Following consent, if a change in hardware or software requirements needed to access or retain electronic documents creates a material risk that the individual will be unable to access or retain electronically furnished documents, the carrier must provide:

(a) A statement of the revised hardware or software requirements for access to and retention of electronically furnished documents;

(b) The individual receiving electronic communications with the right to withdraw consent without charge and without the imposition of any condition or consequence that was not disclosed at the time of the initial consent.

(c) The carrier must request and receive a new consent to the receipt of documents through electronic media, following a hardware or software requirement change as described in this subsection.

NEW SECTION

WAC 284-43-525 Internal review of adverse benefit determinations. An appellant seeking review of an adverse benefit determination must use the carrier's review process.

Each carrier must include the opportunity for internal review of an adverse benefit determination in its review process. Treating providers may seek expedited review on a patient's behalf, regardless of whether the provider is affiliated with the carrier on a contracted basis.

(1) When a carrier receives a written request for review, the carrier must reconsider the adverse benefit determination. The carrier must notify the appellant of the review decision within fourteen days of receipt of the request for review, unless the adverse benefit determination involves an experimental or investigational treatment. The carrier must notify the appellant of the review decision within twenty days of receipt of the request for review when the adverse benefit determination involves an experimental or investigational treatment.

(2) For good cause, a carrier may extend the time it takes to make a review determination by up to sixteen additional days without the appellant's written consent, and must notify appellant of the extension and the reason for the extension. The carrier may request further extension of its response time only if the appellant consents to a specific request for a further extension, the consent is reduced to writing, and includes a specific agreed-upon date for determination. In its request for the appellant's consent, the carrier must explain that waiver of the response time is not compulsory.

(3) The carrier must provide the appellant with any new or additional evidence or rationale considered, whether relied upon, generated by, or at the direction of the carrier in connection with the claim. The evidence or rationale must be provided free of charge to the appellant and sufficiently in advance of the date the notice of final internal review must be provided. The purpose of this requirement is to ensure the appellant has a reasonable opportunity to respond prior to that date. If the appellant requests an extension in order to respond to any new or additional rationale or evidence, the carrier and health plan must extend the determination date for a reasonable amount of time, which may not be less than two days.

(4) A carrier's review process must provide the appellant with the opportunity to submit information, documents, written comments, records, evidence, and testimony, including information and records obtained through a second opinion. An appellant has the right to review the carrier and health plan's file and obtain a free copy of all documents, records, and information relevant to any claim that is the subject of the determination being appealed.

(5) The internal review process must include the requirement that the carrier affirmatively review and investigate the appealed determination, and consider all information submitted by the appellant prior to issuing a determination.

(6) Review of adverse determinations must be performed by health care providers or staff who were not involved in the initial decision, and who are not subordinates of the persons involved in the initial decision. If the determination involves, even in part, medical judgment, the reviewer must be or must consult with a health care professional who has appropriate training and experience in the field of medicine encompassing the appellant's condition or disease and make a determination that is within the clinical standard of care for an appellant's disease or condition.

(7) The internal review process for group health plans may be administered so that an appellant must file two internal requests for review prior to bringing a civil action. For individual health plans, a carrier must provide for only one level of internal review before issuing a final determination, and may not require two levels of internal review.

(8) A rescission of coverage is an adverse benefit determination for which review may be requested.

NEW SECTION

WAC 284-43-530 Exhaustion of internal review remedies. (1) If a carrier fails to strictly adhere to its requirements with respect to the internal review, the internal review process is deemed exhausted, and the appellant may request external review without receiving an internal review determination from the carrier or the health plan.

(2) A carrier may challenge external review requested under this section on the basis that its violations are de minimis, and do not cause and are not likely to cause, prejudice or harm to the appellant. The carrier or health plan may challenge external review on this basis either in court or to the independent review organization.

(a) This exception applies only if the external reviewer or court determines that the carrier has demonstrated that the violation was for good cause or was due to matters beyond the control of the carrier, and that the violation occurred in the context of an ongoing, good faith exchange of information between the carrier or health plan and the appellant.

(b) This exception is not available, and the challenge may not be sustained, if the violation is part of a pattern or practice of violations by the carrier or health plan.

(3) The appellant may request a written explanation of the violation from the carrier and the carrier must provide such explanation within ten calendar days, including a specific description of its basis, if any, for asserting that the violation should not cause the internal claims and appeals process to be deemed exhausted.

(4) If the independent review organization or court determines that the internal review process is not exhausted, based on a carrier or health plan's challenge under this section, the carrier or health plan must provide the appellant with notice that they may resubmit and pursue the internal appeal within a reasonable time, not to exceed ten days, of receiving the independent review organization's determination, or of the entry of the court's final order.

NEW SECTION

WAC 284-43-535 Notice of internal review determination. Each carrier's review process must require delivery of written notification of the internal review determination to the appellant. In addition to the requirements of WAC 284-43-515, the written determination must include:

(1) The actual reasons for the determination;

(2) If applicable, instructions for obtaining further review of the determination, either through a second level of internal review, if applicable, or using the external review process;

(3) The clinical rationale for the decision, which may be in summary form; and

(4) Instructions on obtaining the clinical review criteria used to make the determination;

(5) A statement that the appellant has up to one hundred eighty days to file a request for external review, and that if review is not requested, the internal review decision is final and binding.

NEW SECTION

WAC 284-43-540 Expedited review. (1) A carrier's internal and external review processes must permit an expedited review of an adverse benefit determination at any time in the review process, if:

(a) The appellant is currently receiving or is prescribed treatment or benefits that would end because of the adverse benefit determination; or

(b) The ordering provider for the appellant, regardless of their affiliation with the carrier or health plan, believes that a delay in treatment based on the standard review time may seriously jeopardize the appellant's life, overall health or ability to regain maximum function, or would subject the appellant to severe and intolerable pain; or

(c) The determination is related to an issue related to admission, availability of care, continued stay, or emergency health care services where the appellant has not been discharged from the emergency room or transport service.

(2) An appellant is not entitled to expedited review if the treatment has already been delivered and the review involves payment for the delivered treatment, if the situation is not urgent, or if the situation does not involve the delivery of services for an existing condition, illness, or disease.

(3) An expedited review may be filed by an appellant, the appellant's authorized representative, or the appellant's provider orally, or in writing.

(4) The carrier must respond as expeditiously as possible to an expedited review request, preferably within twenty-four hours, but in no case longer than seventy-two hours.

(a) The carrier's response to an expedited review request may be delivered orally, and must be reduced to and issued in writing not later than seventy-two hours after the date of the decision. Regardless of who makes the carrier's determination, the time frame for providing a response to an expedited review request begins when the carrier first receives the request.

(b) If the carrier requires additional information to determine whether the service or treatment determination being reviewed is covered under the health plan, or eligible for benefits, they must request such information as soon as possible after receiving the request for expedited review.

(5) If the treating health care provider determines that a delay could jeopardize the covered person's health or ability to regain maximum function, the carrier must presume the need for expedited review, and treat the review request as such, including the need for an expedited determination of an external review under RCW 48.43.535.

(6) A carrier may require exhaustion of the internal appeal process before an appellant may request an external review in urgent care situations that justify expedited review as set forth in this section.

(7) An expedited review must be conducted by an appropriate clinical peer or peers in the same or similar specialty as would typically manage the case being reviewed. The clinical peer or peers must not have been involved in making the initial adverse determination.

(8) These requirements do not replace the requirements related to utilization review for the initial authorization of coverage for services set forth in WAC 284-43-410. These requirements apply when the utilization review decision results in an adverse benefit determination. In some circumstances, an urgent care review under WAC 284-43-410 may apply in an identical manner to an expedited review under this section.

NEW SECTION

WAC 284-43-545 Concurrent expedited review of adverse benefit determinations. (1) "Concurrent expedited review" means initiation of both the internal and external expedited review simultaneously to:

(a) Review of a decision made under WAC 284-43-410;
or

(b) Review conducted during a patient's stay or course of treatment in a facility, the office of a health care professional or other inpatient or outpatient health care setting so that the final adverse benefit determination is reached as expeditiously as possible.

(2) A carrier must offer the right to request concurrent expedited internal and external review of adverse benefit determinations. When a concurrent expedited review is requested, a carrier may not extend the timelines by making the determinations consecutively. The requisite timelines must be applied concurrently.

(3) A carrier may deny a request for concurrent expedited review only if the conditions for expedited review in WAC 284-43-540 are not met. A carrier may not require exhaustion of internal review if an appellant requests concurrent expedited review.

NEW SECTION

WAC 284-43-550 External review of adverse benefit determinations. When the internal review of an adverse benefit determination is final, or is deemed exhausted, the appellant may request an external independent review of the final internal adverse benefit determination. Carriers and health plans must inform appellants of their right to external independent review, and explain the process to exercise that right. If the appellant requests an external independent review of a final internal adverse determination, the carrier or health plan must cooperatively participate in that review.

(1) Appellants must be provided the right to external review of adverse benefit determinations based on medical necessity, appropriateness, health care setting, level of care, or that the requested service or supply is not efficacious or otherwise unjustified under evidence-based medical criteria. The carrier may not establish a minimum dollar amount restriction as a predicate for an appellant to seek external independent review.

(2) Carriers must use the rotational registry system of certified independent review organizations (IRO) established

by the commissioner, and must select reviewing IROs in the rotational manner described in the rotational registry system. A carrier may not make an assignment to an IRO out of sequence for any reason other than the existence of a conflict of interest, as set forth in WAC 246-305-030.

(3) The rotational registry system, a current list of certified IROs, IRO assignment instructions, and an IRO assignment form to be used by carriers, are available on the insurance commissioner's web site (www.insurance.wa.gov).

(4) In addition to the requirements set forth in RCW 48.43.535, the carrier and health plan must:

(a) Make available to the appellant and to any provider acting on behalf of the appellant all materials provided to an IRO reviewing the carrier's determination;

(b) Provide IRO review without imposing any cost to the appellant or their provider;

(c) Provide IROs with:

(i) All relevant clinical review criteria used by the carrier and other relevant medical, scientific, and cost-effectiveness evidence;

(ii) The attending or ordering provider's recommendations; and

(iii) A copy of the terms and conditions of coverage under the relevant health plan; and

(d) Within one day of selecting the IRO, notify the appellant of the name of the IRO and its contact information. This requirement is intended to comply with the federal standard that appellants receive notice of the IRO's identity and contact information within one day of assignment. The notice from the carrier must explain that the IRO will accept additional information in writing from the appellant for up to five business days after it receives the assignment. The IRO must consider this information when conducting its review.

(5) A carrier may waive a requirement that internal appeals must be exhausted before an appellant may proceed to an independent review of an adverse determination.

(6) Upon receipt of the information provided by the appellant to the IRO pursuant to RCW 48.43.535 and this section, a carrier may reverse its final internal adverse determination. If it does so, it must immediately notify the IRO and the appellant.

(7) Carriers must report to the commissioner each assignment made to an IRO not later than one business day after an assignment is made. Information regarding the enrollee's personal health may not be provided with the report.

(8) The requirements of this section are in addition to the requirements set forth in RCW 48.43.535 and 43.70.235, and rules adopted by the department of health in chapter 246-305 WAC.

SUBCHAPTER F ((GRIEVANCE AND COMPLAINT PROCEDURES)) GRANDFATHERED HEALTH PLAN APPEAL PROCEDURES

NEW SECTION

WAC 284-43-611 Application of subchapter F. Subchapter F applies to grandfathered health plans. For any

grandfathered health plan as defined in RCW 48.43.005, a carrier may comply with RCW 48.43.530 and 48.43.535 by using an appeal process that conforms to the procedures and standards set forth in WAC 284-43-615 through 284-43-630.

AMENDATORY SECTION (Amending Matter No. R 2000-02, filed 1/9/01, effective 7/1/01)

WAC 284-43-615 Grievance and complaint procedures—Generally. (1) Each carrier must adopt and implement a comprehensive process for the resolution of ~~((covered persons' grievances and))~~ appeals of adverse determinations. This process shall meet accepted national certification standards such as those used by the National Committee for Quality Assurance except as otherwise required by this chapter.

(2) This process must conform to the provisions of this chapter and each carrier must:

(a) Provide a clear explanation of the ~~((grievance))~~ appeal process upon request, upon enrollment to new ~~((covered persons))~~ enrollees, and annually to ~~((covered person))~~ enrollees and subcontractors of the carrier.

(b) Ensure that the ~~((grievance))~~ appeal process is accessible to enrollees who are limited-English speakers, who have literacy problems, or who have physical or mental disabilities that impede their ability to file ~~((a grievance))~~ an appeal.

~~((c))~~ ~~((Process as a grievance a covered person's expression of dissatisfaction about customer service or the quality or availability of a health service.~~

~~((d))~~ Implement procedures for registering and responding to oral and written ~~((grievances))~~ appeals in a timely and thorough manner including the notification of ~~((a covered person))~~ an enrollee that ~~((a grievance or))~~ an appeal has been received.

~~((e))~~ ~~((d))~~ Assist the ~~((covered person))~~ enrollee with all ~~((grievance and))~~ appeal processes.

~~((f))~~ ~~((e))~~ Cooperate with any representative authorized in writing by the ~~((covered person))~~ enrollee.

~~((g))~~ ~~((f))~~ Consider all information submitted by the ~~((covered person))~~ enrollee or representative.

~~((h))~~ ~~((g))~~ Investigate and resolve all ~~((grievances and))~~ appeals.

~~((i))~~ ~~((h))~~ Provide information on the ~~((covered person's))~~ enrollee's right to obtain second opinions.

~~((j))~~ ~~((i))~~ Track each appeal until final resolution; maintain, and make accessible to the commissioner for a period of three years, a written log of all appeals; and identify and evaluate trends in appeals. The written log may be maintained electronically.

AMENDATORY SECTION (Amending Matter No. R 2000-02, filed 1/9/01, effective 7/1/01)

WAC 284-43-620 Procedures for review and appeal of adverse determinations. (1) ~~((A covered person))~~ An enrollee or the ~~((covered person's))~~ enrollee's representative, including the treating provider (regardless of whether the provider is affiliated with the carrier) acting on behalf of the ~~((covered person))~~ enrollee may appeal an adverse determination in writing. The carrier must reconsider the adverse determination and notify the ~~((covered person))~~ enrollee of its decision within fourteen days of receipt of the appeal

unless the carrier notifies the ~~((covered person))~~ enrollee that an extension is necessary to complete the appeal; however, the extension cannot delay the decision beyond thirty days of the request for appeal, without the informed, written consent of the ~~((covered person))~~ enrollee.

(2) Whenever a health carrier makes an adverse determination and delay would jeopardize the ~~((covered person's))~~ enrollee's life or materially jeopardize the ~~((covered person's))~~ enrollee's health, the carrier shall expedite and process either a written or an oral appeal and issue a decision no later than seventy-two hours after receipt of the appeal. If the treating health care provider determines that delay could jeopardize the ~~((covered person's))~~ enrollee's health or ability to regain maximum function, the carrier shall presume the need for expeditious review, including the need for an expeditious determination in any independent review under WAC 284-43-630.

(3) A carrier may not take or threaten to take any punitive action against a provider acting on behalf or in support of ~~((a covered person))~~ an enrollee appealing an adverse determination.

(4) Appeals of adverse determinations shall be evaluated by health care providers who were not involved in the initial decision and who have appropriate expertise in the field of medicine that encompasses the ~~((covered person's))~~ enrollee's condition or disease.

(5) All appeals must include a review of all relevant information submitted by the ~~((covered person))~~ enrollee or a provider acting on behalf of the ~~((covered person))~~ enrollee.

(6) The carrier shall issue to affected parties and to any provider acting on behalf of the ~~((covered person))~~ enrollee a written notification of the adverse determination that includes the actual reasons for the determination, the instructions for obtaining an appeal of the carrier's decision, a written statement of the clinical rationale for the decision, and instructions for obtaining the clinical review criteria used to make the determination.

SUBCHAPTER G GRIEVANCES

NEW SECTION

WAC 284-43-711 Definition. This definition applies to subchapter G. "Grievant" means a person filing a grievance as defined in WAC 284-43-130, and who is not an appellant under either subchapter E or F of this chapter.

NEW SECTION

WAC 284-43-721 Grievance process—Generally. This section applies to a health benefit plan regardless of its status as grandfathered or nongrandfathered.

(1) Each carrier and health plan must offer applicants, covered persons, and providers a way to resolve grievances.

(2) Each carrier must maintain a log or otherwise register grievances, and retain the log or record for three years. It must be available for review by the commissioner upon request. The log must provide sufficient detail to permit the commissioner to determine whether the carrier is administer-

ing its grievance process in accordance with the law, and in good faith, and to identify whether and in what manner the carrier adjusted practices or requirements in response to a grievance.

(3) Grievances are not adverse benefit determinations and do not establish the right to internal or external review of a carrier or health plan's resolution of the grievance.

(4) Nothing in this section prohibits a carrier from creating or using its own system to categorize the nature of grievances in order to collect data, if the system permits reporting of the data specified in subsection (2) of this section.

WSR 12-18-077

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed September 5, 2012, 10:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-11-052.

Title of Rule and Other Identifying Information: The department is proposing to revise WAC 16-228-1540 to establish a \$25 fee to take pesticide and structural pest inspector license exams.

Hearing Location(s): Washington State Department of Agriculture (WSDA), 2nd Floor, Conference Room 238-B, 21 North 1st Avenue, Yakima, WA 98902, on Tuesday, October 9, 2012, at 1:00 p.m.; and at the Natural Resources Building, 2nd Floor, Conference Room 259, 1111 Washington Street S.E., Olympia, WA 98504, on Thursday, October 11, 2012, at 1:00 p.m.

Date of Intended Adoption: October 25, 2012.

Submit Written Comments to: Margaret Tucker, Program Manager, WSDA, P.O. Box 42560, Olympia, WA 98504-2560, e-mail mtucker@agr.wa.gov, fax (360) 902-2093, by October 11, 2012, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Margaret Tucker by October 1, 2012, TTY (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal would revise WAC 16-228-1540 to establish a \$25 testing fee when taking WSDA pesticide and structural pest inspector exams. The fee would be charged each time exams are administered and is the same for each test taker regardless of the number of exams taken. The fee will assist the program in recovering costs to administer exams to approximately four thousand prospective licensees each year. Exams are offered in all pesticide management division (PMD) offices, following large WSU prelicense shortcourses and upon request whenever fifteen or more testers can be guaranteed.

Reasons Supporting Proposal: WSDA estimates that it costs from \$19 - \$31/tester to administer exams yet does not currently collect a fee for this activity. The fee will raise approximately \$100,000 and will partially offset the \$616,000 in general fund dollars lost by the PMD during the last biennium.

Statutory Authority for Adoption: RCW 17.21.030, 15.58.040, and chapter 34.05 RCW; also 3ESHB 2127.

Statute Being Implemented: Chapters 15.58, 17.21, and 34.05 RCW.

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

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Margaret Tucker, NRB, 2nd Floor, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2015.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

SUMMARY OF PROPOSED RULES: WSDA certification and training program is proposing to amend chapter 16-228 WAC. The purpose of this chapter is to regulate the registration, sale and use of pesticides. The proposed amendment to this chapter involves implementing a \$25 fee to take pesticide and Structural Pest Inspector (SPI) exams.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT (SBEIS): Chapter 19.85 RCW, the Regulatory Fairness Act, requires an analysis of the economic impact proposed rules will have on regulated businesses. Preparation of an SBEIS is required when proposed rules will impose more than minor costs on businesses.

"Minor cost" means a cost that is less than one percent of annual payroll or the greater of either .3 percent of annual revenue or \$100.

"Small business" means any business entity that is owned and operated independently from all other businesses and has fifty or fewer employees.

INDUSTRY ANALYSIS: The proposed rule impacts businesses that commercially apply pesticides (commercial applicators), perform wood destroying organism inspections (structural pest inspectors) and/or distribute pesticides (pesticide dealers). The department has analyzed the proposed rule amendment and has determined that costs are not more than minor on regulated businesses.

INVOLVEMENT OF SMALL BUSINESSES: Small businesses have been involved in writing the proposed rules and in providing the department with the expected costs associated with the changes. The fee proposal was presented to the pesticide advisory board and other groups on multiple occasions. The 2012 legislature gave approval for the fee proposal to move forward. An electronic survey on the economic impact of the proposed fee was issued to all commercial applicators and structural pest inspectors for which WSDA had an e-mail address. In addition, pesticide dealers were sent a letter requesting that they complete the on-line survey.

COST OF COMPLIANCE: Under this proposed rule, individuals who take pesticide or SPI license exams will pay \$25/testing session regardless of the number of exams taken. While it is possible to pass all exams in just one testing session, many individuals must retake failed exams. Some businesses responded that they will pay this fee for their employees while others will require the employee to pay the fee. A majority of survey respondents (sixty-five percent) said they will only pay the fee one time.

There were one hundred forty-six responses to the on-line survey with ninety percent identifying as a small business (less than fifty employees) and ten percent as a large business (fifty or greater employees). There was a distinct difference in the responses by small vs. large businesses. Those identifying as a large business responded that they would be more affected by the change than those identifying as a small business. The low number of large business responders (fourteen) may be somewhat of a factor.

A majority of survey respondents (seventy-six percent) said they would not lose sales, revenue or have a decrease in profit as a result of this new fee (seventy-nine percent of small businesses and thirty-six percent of large businesses).

Almost fifty-five percent responded that they would not incur additional costs to comply with this fee (fifty-nine percent of small businesses and fifteen percent of large businesses).

JOBS CREATED OR LOST: Under RCW 19.85.040, agencies must provide an estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rules. In collecting information from representative small businesses through an on-line survey, seventy-six percent estimated no gain and eighty-eight percent estimated no loss of employees. Of those that estimate a loss of employees (eight), the average loss was 2.75 employees. Of the few large business[es] that responded, eighty-eight percent estimated no gain and fifty percent estimated no loss.

DISPROPORTIONATE IMPACT TO SMALL BUSINESSES: A majority of survey respondents (seventy-six percent) said they would not lose sales, revenue or have a decrease in profit as a result of this new fee (seventy-nine percent of small businesses and thirty-six percent of large businesses). Of the twenty-one small businesses that responded to the question of their cost per one hundred dollars of sales, the results were as follows:

Unknown or did not calculate	12
Less than \$1	5
\$1	1
\$5	1
\$10	2

The costs small businesses will incur to comply with the proposed rule are not disproportionate to those incurred by large businesses.

CONCLUSION: To comply with chapter 19.85 RCW, the Regulatory Fairness Act, the certification and training program has analyzed the economic impact of the proposed rules on small businesses and determined that there is no more than a minor impact. In addition, the program determined that there is not a disproportionate [impact] on small vs. large businesses.

Please contact Margaret Tucker if you have any questions at (360) 902-2015 or mtucker@agr.wa.gov.

A copy of the statement may be obtained by contacting Margaret Tucker, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-2015, fax (360) 902-2093, e-mail mtucker@agr.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

September 5, 2012

Ted Maxwell

Acting Assistant Director

Pesticide Management Division

AMENDATORY SECTION (Amending WSR 03-22-029, filed 10/28/03, effective 11/28/03)

WAC 16-228-1540 What are the requirements for pesticide examinations? (1) An examination fee of ~~((ten))~~ twenty-five dollars shall be paid prior to administration of any pesticide or structural pest inspector license examinations ~~((at other than a regularly scheduled examination session. Scheduled exam sessions occur every Tuesday at the Olympia and Yakima pesticide management division offices and at other offices as scheduled))~~. The department reserves the right to restrict the number of applicants examining at any given time.

(2) Any individual who fails any pesticide licensing examination twice shall be required to wait at least fourteen days before retaking that examination a third time. Subsequent testing shall be at the director's discretion.

(3) An applicant shall complete the application form for a pesticide or structural pest inspector license and pay the required license application fee ~~((prior to being given))~~ and testing fee at the time pesticide or structural pest inspector examinations are given, unless prior arrangements have been made.

(4) Pesticide and structural pest inspector examination scores shall not be released by the department until the license application fee ~~((has))~~ and testing fee have been paid.

WSR 12-18-078

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed September 5, 2012, 10:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-13-070.

Title of Rule and Other Identifying Information: Chapter 16-611 WAC, Nutrient management.

Hearing Location(s): Washington State Department of Agriculture (WSDA), 2nd Floor, Conference Room 238-B, 21 North 1st Avenue, Yakima, WA 98902, on Tuesday, October 9, 2012, at 2:00 p.m.; and at the Natural Resources Building, 2nd Floor, Conference Room 259, 1111 Washington Street S.E., Olympia, WA 98504, on Thursday, October 11, 2012, at 2:00 p.m.

Date of Intended Adoption: October 25, 2012.

Submit Written Comments to: Teresa Norman, WSDA, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDA RulesComments@agr.wa.gov, fax (360) 902-2092, by October 11, 2012, 5:00 p.m.

Assistance for Persons with Disabilities: Contact WSDA receptionist, TTY (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2009, the legislature established a requirement to chapter 90.64 RCW that dairy producers must maintain records to demonstrate that applications of nutrients to crop land are within acceptable agronomic rates (RCW 90.64.010 (17)(c)). In 2010, the legislature established a new penalty under the Dairy Nutrient Management Act for lack of recordkeeping, with criteria for the level of penalty to be adopted in rule (RCW 90.64.102). The department is proposing a rule to establish a penalty matrix for discharge violations and recordkeeping violations (chapter 16-611 WAC).

Reasons Supporting Proposal: The department is drafting a rule to provide clarity of when and how penalties will be used by the department for discharge violations and recordkeeping violations.

Statutory Authority for Adoption: RCW 90.64.110 and chapter 34.05 RCW.

Statute Being Implemented: Chapter 90.64 RCW.

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

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nora Mena, 2nd Floor, 1111 Washington Street S.E., Olympia, 98504, (360) 902-1928.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Overview: The division of pesticide management within WSDA is proposing a new rule under the authorization of chapter 90.64 RCW. This proposal will provide fair and uniform determination of civil penalties issued under the Dairy Nutrient Management Act, chapter 90.64 RCW, passed by the 1998 legislature. RCW 90.64.102 and 90.64.110 authorize the director of agriculture to adopt by rule, a graduated civil penalty schedule and rules necessary to implement chapter 90.64 RCW. The proposed rule includes:

- Recordkeeping requirements:
 - o For manure applications,
 - o For manure transfers,
 - o For irrigation water management.
- Soil testing requirements.
- Nutrient analysis requirements.
- Cropping information requirements.
- Field identification.
- Penalty schedule.

The provisions of this proposed rule would apply to all four hundred sixty licensed cow dairy farm operations defined under chapter 15.36 RCW. The rule provides clear guidelines for issuance of penalties, and recordkeeping practices to be implemented by cow dairy farm operations.

The following small business economic impact statement (SBEIS) was prepared in compliance with the Regulatory Fairness Act, RCW 19.85.040, and provides an analysis of the proposed rule impact on small businesses compared to

large businesses. The intent of the proposed rule is to provide clarity to business owners from a regulatory perspective.

Citizens Affected by This Proposal: Legislation passed in 1998 created the Dairy Nutrient Management Act with the intent to establish an enforcement program along with technical assistance for dairy farms to address and prevent discharges of pollution to surface and ground waters of the state. Current[ly] there are just over four hundred sixty licensed dairy cow operations in Washington state that would fall under this rule. Over ninety percent of the licensed cow dairy farms impacted under this proposed rule would be considered small businesses (employing fifty or fewer employees).

Stakeholder Involvement and Cost Survey Examination: As the rule proposal was being drafted, the agency held at least four stakeholder meetings between September 2010 and December 2011 to gather information and input in development of the proposed rule. Participants in these stakeholder meetings included members of the Washington State Dairy Federation, private consultants to the dairy industry, conservation district staff, natural resource conservation service staff, conservation commission staff, partner state agencies and WSDA staff. From these meetings, the final proposed rule was developed. Costs, concerns and impacts to cow dairy operations as related to implementation of this proposal were discussed during the stakeholder meetings. Assumptions on impacts to these small businesses are based on discussions during the four stakeholder meetings.

Costs of Complying with This Proposed Rule: This rule proposal provides clarity for recordkeeping requirements and a penalty structure to be utilized when enforcement actions are taken. All requirements and regulations provided in this proposal should not require licensed cow dairy operations to need the assistance of professional services to comply with the proposal. This proposed rule should not create any additional cost for cow dairy operations to implement as all requirements and regulations under this proposed rule are already defined in chapter 90.64 RCW and currently required of all licensed cow dairy operations in our state. The proposed rule is designed to provide regulatory clarity and not create a reduction or loss of sales, and will not require the addition or loss of jobs in order to be in compliance.

Considerations to Reduce Impact to Small Business: The agency reviewed the following potential impacts to small businesses and identified where possible reductions in impacts could be found.

- Reducing, modifying, or eliminating regulatory requirements.
 - o The proposed rule provides clarity of current regulations required of cow dairy operations.
- Simplifying, reducing or eliminating recordkeeping and reporting requirements.
 - o The proposed rule clearly defines a minimal amount of recordkeeping and management needed to be in compliance with chapter 90.64 RCW.
- Reducing the frequency of inspections.
 - o Inspections will be conducted only on a routine bases [basis] unless a discharge from the operation has been noted or reported.

- Delaying compliance timelines.
 - o The agency will follow all provisions of chapter 43.05 RCW in providing technical assistance and clear timelines for compliance to the business owner.
- Reducing or modifying fine schedules for compliance.
 - o The proposed rule provides a clear penalty schedule to be implemented when compliance actions are taken.

With stakeholder input, the agency has provided in the proposal, clear guidelines and definitions for compliance with the key objective to provide clarity and to limit costs to the business associated with regulatory compliance.

Conclusion: The intent of legislation passed in 1998 and 2008 was to establish a clear and understandable process providing for proper and effective management of dairy nutrients. The proposed rule was drafted with input from stakeholders to provide regulatory clarity and guidelines for the implementation of chapter 90.64 RCW, Dairy Nutrient Management Act. The goal of this proposed rule is to provide small businesses with a stable and predictable business climate and to prevent pollution discharges to surface and ground waters of the state. The agency concludes that costs to comply with the proposed rules are not more than minor, will not create a reduction or loss of sales, and will not require the addition or loss of jobs in order to be in compliance.

For more information, please contact Nora Mena at (360) 902-2894.

A copy of the statement may be obtained by contacting Nora Mena, Dairy Nutrient Management Program, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-1928, fax (360) 902-2093, e-mail nmena@agr.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

September 5, 2012

Ted Maxwell
Acting Assistant Director

Chapter 16-611 WAC

NUTRIENT MANAGEMENT

NEW SECTION

WAC 16-611-005 Purpose. The purpose of this chapter is to provide for fair and uniform determination of civil penalties issued for violations of chapter 90.64 RCW.

NEW SECTION

WAC 16-611-010 Definitions. "Agronomic rate" means the application of nutrients to supply crop or plant nutrient needs to achieve realistic yields and minimize the movements of nutrients to surface and ground waters.

"Dairy nutrient management plan" means a plan meeting the requirements established under RCW 90.64.026.

"Dairy producer" means a person who owns or operates a licensed dairy farm.

"Department" means the Washington state department of agriculture.

"Nutrient," for purposes of this rule, means any product or combination of products used to supply crops with plant nutrients including, but not limited to, manure or commercial fertilizer.

"Transfer of manure" means the transfer of manure, litter or process waste water to other persons when the receiving facility is in direct control of:

- (a) Application acreage;
- (b) Application rate;
- (c) Application times; and
- (d) Transfer rate and time.

NEW SECTION

WAC 16-611-020 Recordkeeping requirements. (1) In accordance with RCW 90.64.010 (17)(c) and 90.64.102, dairy producers must maintain records to demonstrate that applications of nutrients to crop land are within acceptable agronomic rates.

(2) Dairy producers must maintain the following records to demonstrate that applications of nutrients to the land were within acceptable agronomic rates:

- (a) Soil analysis.
 - (i) Annual post-harvest soil nitrate nitrogen analysis;
 - (ii) Every three years, a current soil analysis that includes:
 - (A) Organic matter;
 - (B) pH;
 - (C) Ammonium nitrogen;
 - (D) Phosphorus (the Bray-1 method must be used to determine soil phosphorus for soils below pH 7 and the Olsen bicarbonate method must be used for soils at or above pH 7);
 - (E) Potassium; and
 - (F) A measure of electrical conductivity.
 - (b) Nutrient analysis for all sources of organic and inorganic nutrients including, but not limited to, manure and commercial fertilizer supplied for crop uptake. Manure and other organic sources of nutrients must be analyzed annually for organic nitrogen, ammonia nitrogen, and phosphorus.
 - (c) Application records must include:
 - (i) Field identification and year of application;
 - (ii) Crop grown in each field where the application occurred;
 - (iii) Crop nutrient needs based on expected crop yield;
 - (iv) Nutrient sources available from residual soil nitrogen including contributions from soil organic matter, previous legume crop, and previous organic nutrients applied;
 - (v) Date of applications, method of application, nutrient sources, nutrient analysis, amount of nitrogen and phosphorus applied and available for each source;
 - (vi) Total amount of nitrogen and phosphorus applied to each field each year; and
 - (vii) Weather conditions twenty-four hours prior to and at time of application.
 - (d) Manure transfer records, including imports or exports. Records must include:

- (i) Date of manure transfer;
 - (ii) Amount of nutrients transferred;
 - (iii) The name of the person supplying and receiving the nutrients; and
 - (iv) Nutrient analysis of manure transferred.
- (e) Irrigation water management records. Records must include:
- (i) Field identification;
 - (ii) Total amount of irrigation water applied to each field each year.

NEW SECTION

WAC 16-611-100 Assessing civil penalties. The department may assess civil penalties.

- (1) Nothing in this chapter shall prevent the department from:
- (a) Choosing not to pursue a civil penalty;
 - (b) Issuing a notice of correction in lieu of pursuing a civil penalty;
 - (c) Negotiating a settlement of cases of such terms and for reasons as it deems necessary; or
 - (d) Referring a violation to any federal or state agency with jurisdiction over the activities in question.
- (2) Prior violations may be used by the department for the purpose of determining the appropriate penalty for current violations.
- (3) Responses and mitigating actions taken by the dairy and responsible party may be used by the department for the purpose of determining the appropriate penalty for current violations.
- (4) Civil penalties under this rule are imposed pursuant to the procedures set forth in RCW 43.21B.300 and may be appealed to the pollution control hearings board in accordance with chapter 43.21B RCW.

NEW SECTION

WAC 16-611-110 Issuing a civil penalty without first issuing a notice of correction. (1) Pursuant to RCW 43.05.-100, the department may issue a notice of correction when the department becomes aware of conditions that are not in compliance with the applicable laws and rules enforced by the department.

- (2) The department may assess a civil penalty without first issuing a notice of correction in accordance with RCW 43.05.110 and 34.05.110.

NEW SECTION

WAC 16-611-200 Penalty for lack of recordkeeping. (1) In accordance with RCW 90.64.010 (17)(c) and 90.64.102, failure to maintain all records necessary to show that applications of nutrient to the land were within acceptable agronomic rates may be subject to a civil penalty. The aggregate amount of civil penalties issued to a dairy producer under this section shall not exceed five thousand dollars per calendar year. Each violation is a separate and distinct offense.

- (2) The median penalty shall be assessed unless an adjustment is warranted due to the presence of aggravating or mitigating factors.

(3) **Aggravating factors.** The department may consider aggravating circumstances and enhance the penalty based on the seriousness of the violation. When the department determines that one or more aggravating factors are present, the department may assess the maximum penalty as listed within the penalty schedule table in subsection (5) of this section or may, in its discretion, assess a civil penalty in an amount between the median and maximum amount or increase the penalty above the maximum penalty listed for the violation in subsection (5) of this section. Aggravating factors include, but are not limited to, the following:

- (a) The gravity and magnitude of the violation;
- (b) Whether the violation was repeated or is continuous;
- (c) Whether the cause of the violation was due to negligence, or an intentional act; and
- (d) The immediacy and extent to which the violation threatens the public health or safety or harms the environment.

(4) **Mitigating factors.** The department may consider mitigating circumstances and reduce the penalty. When the department determines that one or more mitigating factors are present, the department may assess the minimum penalty for the violation within the penalty schedule table in subsection (5) of this section or may, in its discretion, assess a civil penalty in an amount between the minimum and median amount listed for the violation in WAC 16-611-300(5). Mitigating factors include, but are not limited to, the following:

- (a) Whether the cause of the violation was an unavoidable accident;
- (b) The violator's efforts to correct the violation.
- (5) Penalty schedule for recordkeeping violations.

Penalties	Recordkeeping Violations		
	Minimum	Median	Maximum
First	\$100.00	\$250.00	\$2500.00
Second	\$200.00	\$500.00	\$3000.00
Third or subsequent	\$400.00	\$1000.00	\$5000.00

NEW SECTION

WAC 16-611-300 Penalty for discharge of pollutants.

(1) In accordance with RCW 90.64.010 (17)(a), 90.48.080, and 90.48.144, a discharge of pollutants into the waters of the state may be subject to a civil penalty in the amount of up to ten thousand dollars a day for each violation. Each violation is a separate and distinct offense and, in case of a continuing violation, every day's continuance is a separate and distinct violation.

- (2) The median penalty shall be assessed unless an adjustment is warranted due to the presence of aggravating or mitigating factors.

(3) **Aggravating factors.** The department may consider aggravating circumstances and enhance the penalty based on the seriousness of the violation. When the department determines that one or more aggravating factors are present, the department may assess the maximum penalty as listed within the penalty schedule table in subsection (5) of this section or

may, in its discretion, assess a civil penalty in an amount between the median and maximum amount. Aggravating factors include, but are not limited to, the following:

- (a) The magnitude of harm or potential harm to:
 - (i) Waters of the state;
 - (ii) Humans, animals, plants, property, the environment;
- or
- (iii) Species listed as threatened or endangered caused by the violation(s).

(b) The similarity of the current alleged violation to previous history of the dairy, or the extent to which the alleged violation is part of a pattern of the same or substantially similar conduct.

(c) Economic value derived from noncompliance.

(4) **Mitigating factors.** The department may consider mitigating circumstances and reduce the penalty. When the department determines that one or more mitigating factors are present, the department may assess the minimum penalty for the violation within the penalty schedule table in subsection (5) of this section or may, in its discretion, assess a civil penalty in an amount between the minimum and median amount listed for the violation in subsection (3) of this section. Mitigating factors include, but are not limited to, the following:

- (a) Voluntary disclosure of a violation;
 - (b) Speed and effectiveness of actions taken to correct the violation or stop a discharge to waters of the state;
 - (c) Remedial actions taken to repair or compensate for impacts or that will result in increased public protection or that will permanently result in a decreased likelihood that the violation will be repeated.
- (5) Penalty schedule for discharges to waters of the state.

Violation	Discharge to Waters of the State		
	Minimum	Median	Maximum
First	\$1000.00	\$4000.00	\$10,000.00
Second	\$2000.00	\$6000.00	\$10,000.00
Third or subsequent	\$4000.00	\$8000.00	\$10,000.00 ¹

¹Statutory authority RCW 90.48.144.

WSR 12-18-079
PROPOSED RULES
DEPARTMENT OF
EARLY LEARNING

[Filed September 5, 2012, 10:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-10-009.

Title of Rule and Other Identifying Information: Proposing new chapter 170-297 WAC, School-age child care standards, and repealing all sections of current chapter 170-151 WAC.

Hearing Location(s): Department of Early Learning (DEL), Seattle Office, Graham Room, 3600 South Graham Street, Seattle, WA 98118, on Tuesday, October 9, 2012, at 3 p.m. to 5 p.m.; and at DEL, Yakima Office, 111 South 2nd

Avenue, Yakima, WA 98902, on Wednesday, October 10, at 5 p.m. to 7 p.m.

Individuals may arrive after the posted start time and still participate in these hearing[s]. However, the presiding officer may close the hearing if there are no public participants in attendance, or after all persons who indicated they wish to testify have done so. The public is encouraged to give input in writing.

The deadline for sending written comments on the proposed rules is midnight on Wednesday, October 10, 2012. See the "Submit Written Comments to" section of this notice about how to submit written input on this proposed rule.

Everyone who comments on the proposed rules either in writing or at a public hearing will receive the department's combined written response, called a concise explanatory statement (CES). This statement is also available to anyone who requests it, by contacting the DEL rules coordinator, or by e-mailing Rules@del.wa.gov.

DEL encourages the public to use of the department Facebook and DEL blog pages on the internet to post input about DEL programs and initiatives. However, for a written comment to be considered part of the official record for this proposal, and for the sender to receive the department's CES, the comment must be received at the on-line, e-mail, fax or postal mail locations as described in this notice under "Submit Written Comments to."

Date of Intended Adoption: November 19, 2012.

Submit Written Comments to: DEL Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970, DEL on-line comment web site <https://apps.del.wa.gov/PolicyProposalComment/Detail.aspx>, e-mail Rules@del.wa.gov, fax (360) 586-0533, by midnight on October 10, 2012.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by 5:00 p.m. on October 5, 2012, (360) 725-4421.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to adopt a new WAC chapter setting requirements for obtaining and maintaining a DEL school-age child care (SACC) license. The rules set the health, safety and early learning standards for school-age child care facilities.

Reasons Supporting Proposal: The current chapter 170-151 WAC was adopted when child care licensing was under the department of social and health services (DSHS). In 2006, DEL was created as a separate state agency, and the legislature transferred child care licensing authority from DSHS to DEL (see chapter 265, Laws of 2006). Child care licensing rules were transferred from DSHS to DEL in July 2006, including the rules that became DEL chapter 170-151 WAC, School-age child care center minimum licensing requirements (see WSR 06-15-075).

SACC licensing standards have not been updated since before child care licensing duties were transferred to DEL. The proposed rules update the health, safety and environmental requirements based on current research and best practices.

Statutory Authority for Adoption: RCW 43.215.060, 43.215.070, chapter 43.215 RCW.

Statute Being Implemented: Chapter 43.215 RCW.

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

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Lynne Shanafelt, state office, Olympia, (360) 725-2829; Implementation and Enforcement: Licensing offices, state-wide.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

DEL is proposing a complete revision of the current SACC licensing rules in chapter 170-151 WAC. The proposed new rules are chapter 170-297 WAC, Licensed school age child care standards. Current chapter 170-151 WAC would be repealed. DEL has determined that the proposed rules are likely to impose "more than minor" costs on small businesses that must comply, and a small business economic impact statement (SBEIS) is required.¹

Rule Development Process:

Rule Making. DEL contracted with school's out Washington to submit recommendations for proposed rule changes. The committee contained SACC providers, directors, public health staff and other child care advocates. During this period the committee reviewed current chapter 170-151 WAC, child care research, best practice and other states' child care laws and rules to make evidence-based preliminary recommendations to the department. The department took the recommendations and used them as a basis to create a rough draft of new chapter 170-297 WAC. This rough draft was circulated and four public forums were held, two on the eastern and two on the western sides of the state to gather feedback. The feedback gathered was taken into consideration and the department used additional research to draft proposed chapter 170-297 WAC.

Proposed Rule Changes That May Impose New Costs on Affected Small Businesses

1. Private Septic System Inspection: Proposed WAC 170-297-1375 requires that if the licensee has an on-site septic system and the local public health jurisdiction does not require periodic septic system inspection, the licensee must have the system inspected before applying for a license and every three years after licensure. This proposed rule would:

- Apply only to a SACC with a single-family home septic system;
- Apply in counties where the local health jurisdiction does not require periodic septic system inspection;
- Not apply to facilities connected to a municipal sewer system or community septic system.

Why the rule is needed. Septic systems are a source of coliform bacteria, nitrates and other sewage contaminants. A failing or malfunctioning septic system may threaten groundwater quality, children may be exposed to harmful above-ground discharges, or a failing system may cause toilets or sinks to back up into the facility.

Cost: In counties where the rule applies, the license applicant or licensee must have a qualified septic system inspector inspect the system, and complete system maintenance

or pumping as the inspection requires. Usually the local health jurisdiction certifies professional septic inspectors. Some counties will certify the homeowner to self-inspect after he or she completes a septic system inspection class. A professional septic system inspection typically costs \$250 to \$500, the higher cost applying if the septic tank needs to be pumped for the inspection.

2. Lifeguard or Staff with Lifeguard Training Required and Increases Staff to Child Ratios During Swimming or Other Water Activities: Proposed WAC 170-297-5150 would require that when the children in care are involved in swimming or other water activities, a minimum staff to child ratio of 1:10 must be maintained and one person with lifeguard training must be present, who is not included in the ratio.

Why the rule is needed. The number one cause of death for children ages five to fourteen is unintentional injury, which includes drowning.² During the year 2009, the second leading cause of unintentional death between five and nine year olds and the fourth cause of unintentional death for children age ten to fourteen was drowning.³ The United States Centers for Disease Control and Prevention also notes that for every child age fourteen years and younger who dies from drowning, another five children receive ER care for nonfatal drowning injuries. Nonfatal drowning can cause brain damage with long-term disabilities.

Cost. To meet the requirement in the proposed rule, the licensee may hire a trained lifeguard for an estimated \$15 to \$20 per hour through the local American Red Cross chapter or through some city or county parks and recreation departments. The program staff could obtain lifeguard training classes and certification from most Red Cross chapters for about \$150. An alternative to the cost of having or hiring a lifeguard is not allowing children in care to attend swimming activities. To meet the minimum staffing requirements under this rule, an additional staff member would need to be present for each thirty children who are involved in swimming activities. The average child care worker wage is \$11.73 per hour.⁴

3. Ground Cover Under Outdoor Climbing/Play Equipment: Proposed WAC 170-297-5075 would require ground cover under outdoor climbing/play equipment and swing sets to help reduce injury from children falling. Typical types of ground cover include pea gravel, engineered playground wood chips or ground/shredded rubber mulch.

Why the rule is needed. According to the Center for Disease Control, seventy-five percent of nonfatal injuries related to playground equipment occur on public playgrounds (Tinsworth 2001). Most occur at schools and daycare centers (Phelan 2001). Children ages five to nine have higher rates of emergency department visits for playground injuries than any other age group. Most of these injuries occur at school (Phelan 2001). On public playgrounds, more injuries occur on climbers than on any other equipment (Tinsworth 2001).

Cost and availability. All costs below assume that the SACC has swinging and climbing equipment and chooses to use it with children in care. Costs assume:

- Except for rubber mulch purchased by the bag, ground cover materials prices are as-delivered, but not installed. Some pea gravel or wood chip suppliers

ers may charge for hauling materials outside the supplier's local area.

- Costs do not include digging out existing soil in the swing area, which could vary widely depending on the soil conditions and source of labor (free labor to hiring a contractor and/or renting excavating equipment).
- Taxes are not included.

A. Pea gravel (3/8 inch) is available from many soil, construction or landscape materials providers at \$15.75 to \$33.95 per cubic yard delivered, with a five-yard minimum order in most areas. It would take up to six cubic yards to fill one hundred ninety-six square feet to a depth of nine inches, at an estimated cost of \$95 to \$204.

B. Engineered playground wood chips are available from selected local landscape material suppliers or outdoor playground equipment retailers at a cost of \$31 to \$55 per cubic yard delivered, typically with a five-yard minimum order (one supplier priced chips at \$16.25, but with a twenty-yard minimum order). It would take up to six cubic yards to fill one hundred ninety-six square feet to a depth of nine inches, at an estimated cost of \$186 to \$330.

C. Ground/shredded rubber mulch is available online or at selected retail outlets. Prices range from \$35 for a thirty-pound bag (66.7 bags/ton), to \$850 per ton delivered (Costco.com). It would take nearly one ton of rubber mulch to create a one hundred ninety-six square foot area six inches deep, costing an estimated \$850 if purchased in bulk or up to \$2,300 in thirty-pound bags.

4. Fencing around swimming pools: Proposed WAC 170-297-5200 Swimming pools defined—Barriers and supervision, when there is a swimming pool on the premises, the licensee must provide a five foot high fence that blocks access to the swimming pool.

Why the rule is needed. According to Caring for Our Children, 3rd Edition, most drownings happen in fresh water, often in home swimming pools (1). Most children drown within a few feet of safety and in the presence of a supervising adult.⁵

Cost. All costs below assume:

- A five foot tall fence.
- A galvanized chain link.
- Tax is not included.

Prices range from between \$12.00 to \$20.00 per linear square foot installed. Prices vary based on the landscape and size. This rule should not affect most SACC facilities as the fencing requirement around swimming pools is already located in the building code.

Efforts to Mitigate (Reduce) Costs of the Proposed Rules

RCW 19.85.030 requires DEL, where legal and feasible to meet the stated objectives of the statute upon which the rule is based, to reduce or mitigate the impact of costs imposed by the proposed rules on small businesses. The new or increased costs described in this SBEIS are directly or indirectly related to protecting the health and safety of children in licensed SACC. RCW 43.215.005(4) states the legislature's objectives in establishing DEL, including: "(c) To

safeguard and promote the health, safety and well-being of children receiving child care and early learning assistance, which is paramount over the right of any person to provide care."

DEL is proposing the following to offset costs of complying with the proposed rules: Forms, applications and improvement of paperless processes. DEL plans to update or create several templates of forms and applications that are required in the proposed rules, so that facilities will not need to create their own documents. DEL is also moving towards streamlining our paperless processes.

Impact of the Proposed Rules on Job Creation or Loss – RCW 19.85.040

New costs of complying with the proposed rules are summarized to provide a basis for determining whether compliance will have an impact on small business job creation or loss.

One-time Costs: Costs to a new or current licensee will depend on individual factors (e.g., whether a new or current facility does or does not meet the new requirements for play equipment groundcover, fencing), and individual choices (e.g., whether a new or current licensee plans to use pea gravel or rubber mulch to meet groundcover requirements).

Table 1. New One-Time Costs Imposed by the Proposed Rules (Cost[s] Are NOT Cumulative):

	Estimated low-end cost	Estimated high-end cost	Notes
Ground cover	\$95	\$2,300 (shredded rubber mulch, six inches deep)	Materials only based on one hundred ninety-six square feet.
Fencing	\$12.00 linear foot	\$20.00 linear foot	Five foot high, galvanized chain link fencing.

Ongoing Costs: The new ongoing costs imposed by the proposed rule on small businesses, converted to annualized costs, are estimated to range from \$171 to \$634.60, these costs will be incurred only if specific conditions exist at the child care facility.

Table 2. New Ongoing Costs Imposed by the Proposed Rules (Costs Are NOT Cumulative):

	Initial cost of compliance (prelicense)	High-end or annualized cost of continued compliance	Notes
Septic system inspection and maintenance	\$250 to \$500 (prelicense)	\$171	Annualized cost assumes inspection and pumping every three years.
Lifeguard on duty when a swimming pool is in use	\$0 (if no swimming activities)	\$200 to \$400	Annualized cost assumes ten to twenty hours of swim time with a hired lifeguard.

Table 2. New Ongoing Costs Imposed by the Proposed Rules (Costs Are NOT Cumulative):

	Initial cost of compliance (prelicense)	High-end or annualized cost of continued compliance	Notes
Additional staff	\$0 (if no swimming activities)	[\$]117.30 to [\$]234.60	Annualized cost assumes ten to twenty hours of swim time with one additional staff for thirty children.

Job Loss: Based on how the licensee chooses to meet the requirements of the proposed rules that impose costs, and whether certain conditions exist at the child care facility (e.g., private septic system in a county that does not require periodic septic inspection), these costs may impact the licensee's decision to employee paid staff, or the number of hours that the licensee uses paid staff in a given year. At an hourly rate of \$11.73 per hour, the low end of one-time and ongoing compliance costs may result in the licensee foregoing paying about one hundred forty-six hours of staff time the first year (we are estimating \$12.00 per foot for a one hundred foot fence, so they would lose one hundred two hours of staff time per one hundred feet of fence) and about fifteen hours per year thereafter. At the very high end, compliance costs may result in the licensee foregoing paying an estimated four hundred forty to four hundred seventy-eight hours of staff time in the first year (we are estimating \$20.00 a foot for a one hundred foot fence, so they would lose one hundred seventy-one hours of staff time per one hundred feet of fence), and an estimated fifty-four hours per year each year thereafter. For the very high end, all the rules that create new one-time and ongoing costs would need to apply to the licensee, and the licensee would need to choose all of the highest cost means of complying with the rules. Licensees may choose less costly options to comply with the rules, which would have lower impact on their ability to hire staff.

Job Creation: The rules are not expected to result in significant job creation. Additional part-time staff may be needed to meet staff-to-child ratio requirements on an occasional basis during outings or water-related activities, but these staffing requirements may also be met by using unpaid volunteers.

¹ An SBEIS is prepared under chapter 19.85 RCW when a proposed Washington state agency rule may impose "more than minor" costs on businesses that must comply with the rule. A small business is one that is independently owned and employs fifty or fewer employees. "More than minor" is defined as cost of compliance with new or revised requirements greater than either 3/10 of one percent of annual business revenue, or 1/10 of one percent of annual payroll. Using the revenue calculation, 3/10 of one percent of the low point average annual SACC income (\$61,230) equals \$286.12. Using the revenue calculation, 3/10 of one percent of the high point average annual SACC income (\$136,349) equals \$637.15. Using the revenue calculation, 3/10 of one percent of the midpoint average annual SACC income (\$75,599) equals \$353.27.

² 2009. 10 Leading Causes of Death by Age Group. U.S. Centers for Disease Control and Prevention.

³ 2009. 10 Leading Causes of Injury Deaths by Age Group Highlighting Unintentional Injury Deaths, United States - 2009 - U.S. Centers for Disease Control and Prevention.

⁴ 2011. 2011 Child Care in the State of Washington. NACCRRRA

⁵ 2011. Caring for Our Children, National Health and Safety Performance Standards - Third Edition., AAP, APHA, NRC.

A copy of the statement may be obtained by contacting DEL Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970, phone (360) 725-4421, fax (360) 586-0533, e-mail Rules@del.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328.

September 5, 2012
Elizabeth M. Hyde
Director

Chapter 170-297 WAC

LICENSED SCHOOL AGE CHILD CARE STANDARDS

NEW SECTION

WAC 170-297-0001 Authority. The department of early learning was established under chapter 265, Laws of 2006. Chapter 43.215 RCW establishes the department's responsibility and authority to set and enforce licensing requirements and standards for licensed child care agencies in Washington state, including the authority to adopt rules to implement chapter 43.215 RCW.

NEW SECTION

WAC 170-297-0005 Intent. This chapter reflects the department's commitment to quality early learning experiences for children, and promotes the health, safety, and positive development of children receiving care in a licensed school age setting serving only children five years of age through twelve years of age who are attending kindergarten or school.

NEW SECTION

WAC 170-297-0010 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)(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 a child not less than five years of age through twelve years of age who is attending kindergarten or school.

"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 department action 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 one tablespoon of chlorine bleach to one quart of cool water, allowed to stand wet for at least two minutes; 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.

"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.

"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 school age 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 with no expiration date that is issued to a licensee following the initial licensing period as provided in WAC 170-297-1430.

"Nonprescription medication" means any of the following:

(a) Nonaspirin fever reducers or pain relievers;

(b) Nonnarcotic cough suppressants;

(c) Cold or flu medications;

(d) Antihistamines or decongestants;

(e) Vitamins;

(f) Ointments or lotions specially intended to relieve itching;

(g) Diaper ointments and talc free powders specially used in the diaper area of children;

(h) Sun screen;

(i) Hand sanitizer gels; or

(j) Hand wipes with alcohol.

"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 they are swallowed or come 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.

"RCW" means Revised Code of Washington.

"Revocation" or **"revoke"** means the formal department action 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 three-quarters teaspoon of chlorine bleach to one quart of cool water, allowed to stand wet for at least two minutes; 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 of a minimum 140 degrees Fahrenheit.

"Screen time" means watching, using or playing television, computers, video games, video or DVD players, mobile communication devices, and similar devices.

"Staff" means a person or persons employed by the licensee to provide child care and to supervise children served at the center.

"STARS" means the state training and registry system.

"Suspension of a license" means a formal department action to immediately stop a license pending a department decision regarding further enforcement action.

"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.

NEW SECTION

WAC 170-297-0050 Special needs accommodations.

The provisions of this section apply to any requirement in this chapter.

(1) The department may approve accommodations to requirements in these standards for the special needs of an individual child when:

(a) The licensee or designee submits to the department a written plan, signed by the parent or guardian, that describes how the child's needs will be met in the licensed child care; and

(b) The licensee or designee has supporting documentation of the child's special needs provided by a licensed or certified:

(i) Physician or physician's assistant;

(ii) Mental health professional;

(iii) Education professional;

(iv) Social worker with a bachelor's degree or higher degree with a specialization in the individual child's needs; or

(v) Registered nurse or advanced registered nurse practitioner.

(2) The documentation described in this subsection must be in the form of an:

(a) Individual education plan (IEP);

(b) Individual health plan (IHP);

(c) 504 plan; or

(d) Individualized family service plan (IFSP).

(3) The licensee or designee's written plan and all documentation required under this section must be kept in the child's file and a copy submitted to the department.

(4) The licensee must keep written documentation on file, signed by the parent or guardian, that a visiting health professional may be providing services to the child at the child care program, if applicable.

(5) The licensee must keep written documentation on file that all staff have been trained on how to implement the plan for the individual child.

(6) The written plan must be updated annually or when there is a change in the child's special needs.

(7) See WAC 170-297-5625 regarding supervision, capacity, and staff-to-child ratios for children with documented special needs.

NEW SECTION

WAC 170-297-1000 License required. (1) A school-age program that provides child care for children must be licensed by the department unless exempt under RCW 43.215.010(2).

(2) A child care program claiming an exemption must provide to the department proof that they qualify for an exemption using a department approved form.

NEW SECTION

WAC 170-297-1035 Fire inspection/certification. (1)

The license applicant/licensee must conform to rules adopted by the state fire marshal's office, establishing standards for fire prevention and protection of life and property from fire, under chapter 212-12 WAC.

(2) The department must not issue a license until the state fire marshal's office has certified or inspected and approved the facility.

(3) The licensee must continue to comply with state and local fire code following the state fire marshal inspection.

NEW SECTION

WAC 170-297-1040 Exemption from fire inspection for school sites. The department may exempt a program from the safety inspection by the state fire marshal's office if the program is located in a school and if that school can provide written proof of a fire certification signed by the local fire official within six months prior to licensure.

NEW SECTION

WAC 170-297-1050 The licensee. (1) The applicant for a license under this chapter must be twenty-one years of age or older.

(2) The licensee is the individual(s) or organization:

(a) Whose name appears on the license issued by the department;

(b) Responsible for complying with the standards in this chapter, chapter 43.215 RCW, chapter 170-06 WAC DEL background check rules, and other applicable laws or rules; and

(c) Responsible for training staff on the licensing standards in this chapter.

(3) The licensee must comply with all requirements in this chapter unless another code or ordinance is more restrictive. Local officials are responsible for enforcing city or county ordinances and codes such as zoning, building, or environmental health regulations.

(4) The licensee must have the understanding, ability, physical health, emotional stability and good judgment to meet the needs of the children in care.

NEW SECTION

WAC 170-297-1075 Child care subsidy. A child care program that receives child care subsidy payments must follow the requirements of the applicable subsidy program. A child care program that receives subsidy payments under the working connections child care or seasonal child care programs must follow the requirements of chapter 170-290 WAC.

NEW SECTION

WAC 170-297-1100 Tribal or military regulated or operated child care—Certification for payment. (1) A child care program that is regulated by an Indian tribe or the federal Department of Defense is exempt from licensing.

(2) A tribe or a child care regulated by the federal Department of Defense may request certification:

(a) For subsidy payment only; or

(b) As meeting licensing standards of this chapter.

(3) A child care program seeking certification under this section must be located on the premises over which the tribe or federal Department of Defense has jurisdiction.

NEW SECTION

WAC 170-297-1125 Orientation required. (1) A license applicant(s) applying for an initial license must complete an orientation provided by the department within twelve months prior to submitting a license application.

(2) The school age program director and the school age site coordinator of the child care program must attend an orientation provided by the department within six months of employment or assuming the position.

NEW SECTION

WAC 170-297-1200 Background checks. (1) The license applicant(s) or licensee(s) must submit a completed background check form and obtain written authorization from the department consistent with the requirements of chapter 170-06 WAC for each of the following:

(a) Any license applicant;

(b) The licensee(s); and

(c) Each staff person or volunteer.

(2) Each individual seeking a first time DEL background check must undergo a fingerprint-based FBI background check. See RCW 43.215.215.

(3) The licensee must keep background check authorization letters from the department on file for the licensee, staff person, or volunteer and must allow the department to inspect the file upon request.

(4) The licensee must not allow any individual who has not been authorized by the department to have unsupervised access to the children in care at any time.

(5) The licensee must verify annually that each individual who is required to have a background check under this section has either obtained a department clearance or has applied for a department background check. The verification must be submitted with the licensee's annual license fee and declarations required under WAC 170-297-1450.

NEW SECTION

WAC 170-297-1250 License application packet—Contents. (1) The individual or entity seeking a license under this chapter is the license applicant.

(2) The license applicant must submit a license application packet that includes:

(a) A completed department application form;

(b) A copy of the applicant's orientation certificate;

(c) Completed background clearance forms for each staff person or volunteer having unsupervised or regular access to the child in care;

(d) Parent, staff and operation policies (handbooks). See WAC 170-297-2350, 170-297-2375, 170-297-2400, and 170-297-2425;

(e) A floor plan, including proposed licensed and unlicensed space with emergency exits and emergency exit pathways identified;

(f) A Washington state business license, or a tribal, county, or city business or occupation license, as applicable;

(g) An on-site septic system inspection report if applicable under WAC 170-297-1375;

(h) Well water testing results if applicable under WAC 170-297-1400;

(i) A lead or arsenic evaluation agreement, only for a site located in the Tacoma smelter plume under WAC 170-297-1360;

(j) The license fee under WAC 170-297-1325;

(k) A federal employer identification number; and

(l) A staffing plan to include:

(i) The number and position types and qualifications of staff to meet the projected capacity of the facility;

(ii) How the applicant or licensee will verify that staff hired meet the qualifications as provided in this chapter; and

(iii) Projected staff training plan for the first year of the program.

(3) In addition to subsection (2)(a) through (l) of this section, if the license applicant is an individual, the following must be submitted with the license application:

(a) A copy of a current government issued photo identification;

(b) A copy of the license applicant's Social Security card under 42 U.S.C. 666 (a)(13) and RCW 26.23.150 regarding child support, or, if the license applicant does not have a Social Security card, a sworn declaration stating that he or she does not have a Social Security card.

(4) In addition to subsection (2)(a) through (l) of this section, if the license applicant is an entity, a copy of the certificate of incorporation, partnership agreement or similar business organization document must be submitted with the license application.

(5) The licensee must submit a copy of the federal Internal Revenue Service letter showing the applicant's employer identification number (EIN) if the applicant plans to employ staff.

NEW SECTION

WAC 170-297-1275 Application processing. (1) The department may take up to ninety days to complete the licensing process. The ninety days begins when the department receives the license applicant's signed and dated application packet, fees, and background check forms.

(2) If an incomplete application packet is submitted, the department will inform the license applicant of the deficiencies and provide a time frame in which to provide the required information. If an application remains incomplete the department may deny the license.

NEW SECTION

WAC 170-297-1300 Withdrawing an incomplete application. (1) If the license applicant is unable to successfully complete the licensing process within ninety days, the license applicant may withdraw the application and reapply when the applicant is able to meet licensing requirements.

(2) A license applicant who has not withdrawn his or her incomplete application and is unable to meet the application requirements will be denied a license. See RCW 43.215.300.

NEW SECTION

WAC 170-297-1325 Fees—When due.

License fees.

(1) The annual license fee is one hundred twenty-five dollars for the first twelve children, plus twelve dollars for each additional child over twelve, or as otherwise set by the legislature.

(2) The license fee is nonrefundable and is due:

(a) With the license applicant's initial license application packet; and

(b) Annually thereafter, thirty days prior to the anniversary date of the license.

(3) Payment must be in the form of a check or money order.

Background check fees.

(4) Each individual required to obtain a department background check must pay the fee established under chapter 170-06 WAC. The fee must be submitted with the individual's completed and signed background check application form.

(5) Each individual submitting a first-time license application and each individual applying for the first time for a department background check clearance must be fingerprinted and pay the processing fee.

NEW SECTION

WAC 170-297-1350 Liability insurance coverage. (1) The license applicant or licensee must, at the time of licensure and at any inspection, provide to the department proof of insurance or self-insurance as required under RCW 43.215.535.

(2) The licensee must:

(a) Notify the department when insurance coverage is terminated within thirty days of termination;

(b) Post notice, clearly visible to parents, guardians, volunteers, and staff, when insurance coverage lapses or is terminated; and

(c) Provide written notice to parents when coverage lapses or is terminated within thirty days of lapse or termination.

(3) The department may deny, suspend, revoke, or not continue a license when the licensee fails to comply with the requirements of this section.

NEW SECTION

WAC 170-297-1360 Lead and arsenic hazards—Tacoma smelter plume. A child care facility in the designated Tacoma smelter plume (counties of King, Pierce, and Thurston) must contact the state department of ecology (DOE) and complete a signed access agreement with DOE for further evaluation of the applicant's property and possible arsenic and lead soil sampling.

NEW SECTION

WAC 170-297-1375 Private septic system—Inspection and maintenance. (1) If the licensed premises are served by a private septic system (not connected to a sewer system) the septic system must be maintained in a manner acceptable to the local public health authority.

(2) The licensee must follow the local public health authority's requirements for periodic septic system inspection and maintenance, and keep the inspection and maintenance records on the premises.

(3) If there are no local public health requirements for periodic septic system inspections, the licensee must:

(a) Have the system inspected by a septic system inspector certified by the local health jurisdiction within six months prior to submitting a license application under WAC 170-297-1250 and every three years after a license is issued under this chapter; and

(b) Maintain the septic system as required by the inspection report.

(4) Septic system inspection and maintenance records must be kept on the premises and made available to the department upon request.

NEW SECTION**WAC 170-297-1400 Private well and water system.**

(1) If the licensed facility gets water from a private well on the premises, the licensee must follow the local public health authority's requirements for periodic water testing, and keep the test records on the premises.

(2) When there are no local public health requirements for periodic water testing, the licensee must:

(a) Test the water for coliform bacteria and nitrates every three years. The test must indicate "safe" levels of coliform bacteria and nitrates as defined by the state department of health; and

(b) Keep the test results records on the premises.

(3) If test results indicate unsafe levels of coliform bacteria or nitrates as defined by the state department of health, the licensee must:

(a) Immediately stop using the well water in the child care and inform the local public health authority and the department;

(b) Take steps required by the local public health authority to repair the well or water system;

(c)(i) If directed by the local public health authority or the department, discontinue child care operations until repairs are made; or

(ii) If the local public health authority and the department determine that child care operations may continue with an alternate source of safe water, provide the safe water as directed; and

(d) Test the water as often as required by the local public health authority until tests indicate safe levels of coliform bacteria and nitrates.

NEW SECTION

WAC 170-297-1410 Department inspection. (1) Prior to the department issuing a license, a department licensor must inspect the proposed indoor and outdoor spaces to be used for child care to verify compliance with the requirements of this chapter.

(2) Access must be granted to the department licensor during the child care hours of operation for the purpose of announced or unannounced monitoring visits to inspect the indoor or outdoor licensed space to verify compliance with the requirements of this chapter.

NEW SECTION

WAC 170-297-1430 Initial license. A child care facility that demonstrates compliance with health and safety requirements of this chapter but may not be in full compliance with all requirements may be issued an initial license.

(1) An initial license is valid for six months from the date issued.

(2) At the department's discretion, an initial license may be extended for up to three additional six month periods not to exceed a total of two years.

(3) The department must evaluate the program staff's ability to follow all of the rules contained in this chapter during the initial license period.

(4) The department may issue a nonexpiring full license to a licensee operating under an initial license who:

(a) Demonstrates full compliance with the health and safety requirements of this chapter at any time during the period of initial licensure;

(b) Demonstrates substantial compliance with other requirements of this chapter at any time; and

(c) Meets the requirements for a nonexpiring full license as provided in WAC 170-297-1450(1).

(5) The department must deny a nonexpiring full license to a licensee operating under an initial license when the licensee does not demonstrate the ability to comply with all the rules contained in this chapter during the initial licensing period.

NEW SECTION

WAC 170-297-1450 Nonexpiring license. (1) To qualify for a nonexpiring full license, a licensee must submit the following to the department on an annual basis, at least thirty calendar days prior to the anniversary date (the date the first license is issued) of the license:

(a) The annual nonrefundable license fee as provided in WAC 170-297-1325(1);

(b) A declaration to the department on a department-approved form indicating:

(i) The licensee's intent to continue operating a licensed child care program; or

(ii) The licensee's intent to cease operation on a date certain;

(c) A declaration on a department-approved form that the licensee is in compliance with all department licensing rules; and

(d) Documentation of completed background check applications as determined by the department established schedule as provided in RCW 43.215.215 (2)(f). For each individual required to have a background check clearance, the licensee must verify a current background check clearance or submit a background check application at least thirty days prior to the license anniversary date.

(2) The requirements of subsection (1) of this section must be met:

(a) Before a licensee operating under an initial license is issued a nonexpiring full license; and

(b) Every twelve months after issuance of a nonexpiring full license.

(3) If the licensee fails to meet the requirements in subsection (1) of this section for continuation of a nonexpiring full license, the license expires and the licensee must submit a new application for licensure.

(4) Nothing about the nonexpiring license process in this section may interfere with the department's established monitoring practice.

(5) A licensee has no right to an adjudicated proceeding (hearing) to appeal the expiration, nonrenewal, or noncontinuation of a nonexpiring full license as a result of the licensee's failure to comply with the requirements of this section.

NEW SECTION**WAC 170-297-1525 Change in circumstances.** (1)

The licensee must report the following changes in the licensee's circumstances to the department within twenty-four hours:

- (a) Fire or other structural damage to the licensed child care space or other parts of the premises;
 - (b) When the licensee becomes aware of a charge or conviction against the licensee or a staff person and the charge or conviction is a disqualifying crime under WAC 170-06-0120;
 - (c) When the licensee becomes aware of an allegation or finding of abuse or neglect of a child or vulnerable adult made against the licensee or a staff person. The licensee must also report the change in circumstances to the department of social and health services children's administration within twenty-four hours;
 - (d) Resignation or termination of the program director or site coordinator.
- (2) The licensee must notify the department ninety days prior to the following:
- (a) Making structural changes to the licensed space;
 - (b) Changing licensed space usage; and
 - (c) Requesting a change of capacity.
- (3) The licensee must notify the department when liability insurance coverage is terminated within thirty days of termination.
- (4) An updated floor plan must be submitted and approved by the department.
- (5) A fire marshal visit is required for change of circumstances listed in subsections (1)(a) and (2) of this section.

NEW SECTION**WAC 170-297-1625 Exception to rule.** (1) The department cannot waive a requirement in state or federal law.

- (2) The department may approve an exception to a rule in this chapter.
- (3) An exception to rule request must be:
- (a) In writing on a department form;
 - (b) Submitted to the licensor; and
 - (c) Approved by the director or director's designee.
- (4) The department may approve an exception only for a specific purpose or child.
- (5) An exception is time limited and may not exceed the specific time period approved by the department.
- (6) If the exception request is approved, the notice of the approved exception must be posted with other notices for parent and public view, unless the exception is for a specific child.
- (7) The department may approve an alternate method of achieving a specific requirement's intent as an exception to rule.
- (a) The alternate method must not jeopardize the health, safety or welfare of the children in care.
 - (b) A copy of the department approved exception must be posted on the premises for parent and public view.
- (8) The department's denial of an exception request is not subject to appeal under chapter 170-03 WAC.

STAFF QUALIFICATIONSNEW SECTION

WAC 170-297-1710 Program director. (1) The licensee must serve as or employ a program director who is responsible for the overall management of the child care program and operation.

- (2) The program director must have the understanding, ability, physical health, emotional stability and good judgment to meet the needs of the children in care.
- (3) The program director must:
- (a) Be at least twenty-one years of age;
 - (b) Have two years' experience in management, supervision, or leadership;
 - (c) Attend a department orientation within six months of employment or assuming the position;
 - (d) Have a TB test as required under WAC 170-297-1750;
 - (e) Have a background clearance as required under chapter 170-06 WAC;
 - (f) Have current CPR and first-aid certification as required under WAC 170-297-1825;
 - (g) Complete HIV/AIDS training and annual bloodborne pathogens training as required under WAC 170-297-1850;
 - (h) Have a high school diploma or equivalent;
 - (i) Have a minimum of forty-five college credits in ECE or school age education (or thirty college credits and one hundred fifty training hours in a related field); and
 - (j) Have completed twenty hours of STARS training or possess an exemption.
- (4) A program director must be on the premises for the majority of hours that care is provided each day.
- (5) When the program director is not on-site the program director must leave a qualified staff person in charge. This staff person must meet the same qualifications as the program director and must not be responsible for the direct care of a group of children.

NEW SECTION

WAC 170-297-1715 Site coordinator. (1) A child care program may employ a site coordinator responsible for being on-site with children, program planning, and program implementation. The site coordinator must provide regular supervision of staff and volunteers.

- (2) The site coordinator must have the understanding, ability, physical health, emotional stability and good judgment to meet the needs of the children in care.
- (3) Site coordinator staff must:
- (a) Be twenty-one years of age;
 - (b) Have two years management experience in a related field;
 - (c) Attend a department orientation within six months of employment or assuming the position;
 - (d) Have a high school diploma or equivalent;
 - (e) Have completed thirty college credits in ECE or school age education, or twenty college credits and one hundred clock hours of related community training;

(f) Have completed twenty hours of STARS training or possess an exemption;

(g) Complete ongoing training hours as required under WAC 170-297-1800;

(h) Develop an individual training plan;

(i) Have a food worker card, if applicable; and

(j) Attend an agency orientation as required under WAC 170-297-5800.

(4) A site coordinator must be on the premises for the majority of hours that care is provided each day. If temporarily absent from the program, the site coordinator must leave a competent, designated staff person in charge who meets the qualifications of a site coordinator.

(5) The site coordinator may also serve as child care staff when the role does not interfere with management and supervisor responsibilities.

NEW SECTION

WAC 170-297-1720 Lead teachers. (1) Lead teachers may be employed to be in charge of a child or a group of children.

(2) The lead teacher must have the understanding, ability, physical health, emotional stability and good judgment to meet the needs of the children in care.

(3) Lead teachers must:

(a) Be eighteen years of age or older;

(b) Have one year experience in school-age care;

(c) Have a TB test as required under WAC 170-297-1750;

(d) Have a background clearance as required under chapter 170-06 WAC;

(e) Have current CPR and first-aid certification as required under WAC 170-297-1825;

(f) Complete HIV/AIDS training and annual bloodborne pathogens training as required under WAC 170-297-1850;

(g) Have a high school diploma or equivalent;

(h) Complete twenty hours of STARS training within six months of assuming the position of lead teacher;

(i) Complete ongoing training hours as required under WAC 170-297-1800;

(j) Have a food worker card; and

(k) Attend an agency orientation as required under WAC 170-297-5800.

(4) Lead teachers are counted in the staff-to-child ratio.

(5) When the site coordinator is off-site or unavailable, lead teachers may assume the duties of site coordinator when they meet the site coordinator minimum qualifications, but are not counted in the staff-to-child ratio while in the role of site coordinator.

NEW SECTION

WAC 170-297-1730 Program assistants. (1) Program assistants may be employed to assist in program and curriculum under the direction of a lead teacher or higher.

(2) Program assistants under eighteen years of age must not be left in charge of a group of children and may care for children only under direct, visual or auditory supervision by a lead teacher or higher.

(3) Program assistants eighteen years of age or older may have sole responsibility for a child or group of children for a brief period of time when there is a staff person on the premises who meets the lead teacher qualifications.

(4) Program assistants must have the understanding, ability, physical health, emotional stability and good judgment to meet the needs of the children in care.

(5) Program assistants must:

(a) Be sixteen years of age or older;

(b) Have a TB test as required under WAC 170-297-1750;

(c) Have a background clearance as required under chapter 170-06 WAC;

(d) Have current CPR and first-aid training as required under WAC 170-297-1825;

(e) Complete HIV/AIDS training and annual bloodborne pathogens training as required under WAC 170-297-1850;

(f) Have a food worker card; and

(g) Attend an agency orientation as required under WAC 170-297-5800.

(6) Program assistants are counted in the staff-to-child ratio.

NEW SECTION

WAC 170-297-1735 Volunteers. (1) The licensee may utilize volunteers who assist in the program under the direct supervision of the program implementation staff.

(2) The volunteers must have the understanding, ability, physical health, emotional stability and good judgment to meet the needs of the children in care.

(3) The volunteer must:

(a) Be sixteen years of age or older;

(b) Have a background check as required under chapter 170-06 WAC;

(c) Attend an agency orientation as required under WAC 170-297-5800; and

(d) Have an employment application on file.

(4) It is recommended, but not required, that volunteers have the following:

(a) CPR and first-aid certification;

(b) HIV/AIDS training and annual bloodborne pathogen training;

(c) TB test; and

(d) Food worker card.

(5) The volunteer may be counted in the staff-to-child ratio if the volunteer meets all program assistant qualifications, but must be under the direct supervision of the program implementation staff.

NEW SECTION

WAC 170-297-1745 Staff meetings. Staff meetings must be conducted no less than twice per calendar year for planning and program operation. Written documentation of the staff meetings, including content and attendees of each meeting, must be kept on file.

NEW SECTION

WAC 170-297-1750 Tuberculosis. (1) Each staff person must provide documentation signed by a licensed health care professional of tuberculosis (TB) testing or treatment consisting of:

(a) A negative Mantoux test (also known as a tuberculin skin test (TST)) or negative interferon gamma release assay (IGRA) completed within twelve months before license application or employment; or

(b) A previous or current positive TST or positive IGRA with documentation within the previous twelve months:

(i) Of a chest X ray with negative results; or

(ii) Showing that the individual is receiving or has received therapy for active or latent TB disease and is cleared to safely work in a child care setting. As used in this section, "latent TB" means when a person is infected with the TB germ but has not developed active TB disease.

(2) A TB test or chest X ray may not be required if it is against the health care provider's advice. Documentation that includes a health screening must be signed by the health care professional and submitted that indicates the TB test or chest X ray is not necessary.

NEW SECTION

WAC 170-297-1775 Basic twenty hour STARS training. Prior to working unsupervised with children the director, site coordinator, and lead teacher must register in MERIT and:

(1) Complete the basic twenty hours of STARS training; or

(2) Request an exemption to the STARS training requirement.

NEW SECTION

WAC 170-297-1800 Ongoing training. (1) The director, site coordinator and lead teachers must complete a minimum of ten hours of STARS ongoing training yearly.

(2) Any staff that exceeds the ten-hour ongoing training requirement in any year may carry over up to five hours of ongoing training toward meeting the next year's requirement.

(3) The training may include:

(a) Staff person's choice of training; and

(b) Department directed training.

(4) The program director and on-site coordinator must take five hours of training each year in program management and administration for the first two years in these positions.

NEW SECTION

WAC 170-297-1820 Program provided training. The program staff must be provided with the following training:

(1) Child growth and development;

(2) Child guidance;

(3) Communication;

(4) Cultural and individual diversity;

(5) Curriculum development;

(6) Environmental design;

(7) Family systems;

(8) Health safety and nutrition;

(9) Professionalism; and

(10) Other training as appropriate.

NEW SECTION

WAC 170-297-1825 First aid and cardiopulmonary resuscitation (CPR) certification. (1) Each staff person must have a current first aid and cardiopulmonary resuscitation (CPR) certification as established by the expiration date of the document.

(2) Proof of certification may be a card, certificate or instructor letter.

(3) The first aid and CPR training and certification must:

(a) Be certified by the American Red Cross, American Heart Association, American Safety and Health Institute, or other nationally recognized certification approved by the department;

(b) Include child and adult CPR; and

(c) Include a hands-on component.

NEW SECTION

WAC 170-297-1850 HIV/AIDS training—Blood-borne pathogens plan. (1) Each staff person must complete a one-time training approved by DOH under chapter 70.24 RCW on the prevention and transmission of HIV/AIDS (human immunodeficiency virus/acquired immunodeficiency syndrome).

(2) The licensee must have a written bloodborne pathogens exposure control plan that includes:

(a) A list of the staff and volunteers providing child care who may be exposed to bloodborne pathogens; and

(b) Procedures for cleaning up bodily fluid spills (blood, feces, nasal or eye discharge, saliva, urine, or vomit), including the use of gloves, proper cleaning and disinfecting of contaminated items, disposal of waste materials, and handwashing.

(3) Staff must be trained in the bloodborne pathogens exposure control plan annually and the licensee must document this training in individual personnel files.

NEW SECTION

WAC 170-297-1925 Assistants and volunteers—Supervision. (1) The licensee or designee is responsible for supervision of program staff.

(2) The licensee or designee must be aware of what staff are doing and available and able to respond if the need arises to protect the health and safety of the children.

(3) When supervising assistants and volunteers, the licensee or designee must be within visual or auditory range of an assistant or volunteer.

RECORDKEEPING, REPORTING AND POSTINGNEW SECTION

WAC 170-297-2000 Recordkeeping—Records available to the department. The licensee must keep all records required in this chapter for a minimum of five years:

(1) All records from the previous twelve months must be kept in the licensed space as defined in WAC 170-297-0010 and be available immediately for the department's review.

(2) Records older than twelve months to five years old must be provided to the department within two weeks of the date of the department's written request.

NEW SECTION

WAC 170-297-2025 Child records—Confidentiality.

(1) Records for all children must be kept in a confidential manner.

(2) Each enrolled child's health record must be available to staff when needed for medical administration or emergencies.

(3) A child's parent or guardian must be allowed access to all records for their child.

NEW SECTION

WAC 170-297-2050 Child records—Contents. (1) An enrollment record is required for every child who is enrolled and counted in capacity. Each child's enrollment record must include the following:

- (a) The child's beginning enrollment date;
- (b) End of enrollment date for children no longer in the licensee's care;
- (c) The child's birth date;
- (d)(i) The child's current immunization record, on a DOH certificate of immunization status (CIS) form signed by the parent or guardian; or
 - (ii) A DOH certificate of exemption (COE) form signed by the parent for religious, philosophical, or personal exemption; or
 - (iii) A DOH certificate of exemption (COE) form signed by the parent and a health care professional for a medical exemption;
- (e) The child's health history that includes:
 - (i) Known health conditions such as allergies, asthma, and diabetes;
 - (ii) Date of last physical exam; and
 - (iii) Date of last dental exam;
- (f) Names, phone numbers, and addresses of persons authorized to pick up the child;
- (g) Emergency contacts. If no emergency contact is available, a written emergency contact plan may be accepted;
- (h) Parent or guardian information including name, phone numbers, address, and contact information for reaching the family while the child is in care;
 - (i) Medical and dental care provider names and contact information, if the child has providers. If the child has no medical or dental provider, the parent or guardian must provide a written plan for medical or dental injury or incident; and
 - (j) Consent to seek medical care and treatment of the child in the event of injury or illness, signed by the child's parent or guardian.

(2) If applicable, a child's records must include:

- (a) Injury/incident reports (see WAC 170-297-3575 and 170-297-3600);

(b) A medication authorization and administration log (see WAC 170-297-3375);

(c) A plan for special or individual needs of the child (see WAC 170-297-0050); and

(d) Documentation of use of physical restraint (see WAC 170-297-6250).

(3) The child's records must include signed parent permissions (see WAC 170-297-6400) as applicable for:

- (a) Field trips;
- (b) Transportation; and
- (c) Visiting health professionals providing services to the child at the child care program site.

NEW SECTION

WAC 170-297-2075 Staff records. Records for each staff person must include documentation of:

- (1) Current first aid, child and adult CPR training certification;
- (2) Bloodborne pathogens training certification;
- (3) HIV/AIDS training certification;
- (4) TB test results or documentation as required under WAC 170-297-1750;
- (5) Current state food worker card for staff if required under WAC 170-297-7675;
- (6) Completed background check form if applicable under WAC 170-297-1200 and a copy of the department-issued authorization letter;
- (7) Copy of a current government issued picture identification;
- (8) Emergency contact information;
- (9) Completed application form or resume for staff when hired;
- (10) Documentation for staff of:
 - (a) Twenty hour basic STARS training;
 - (b) Ongoing training completed; and
 - (c) Registration in MERIT;
- (11) Record of training provided to staff and volunteers.

NEW SECTION

WAC 170-297-2125 Child attendance records—Staff to child ratio records. The following records must also be kept on file:

- (1) Daily attendance for each child counted in capacity that includes the:
 - (a) Child's dates of attendance;
 - (b) Time the child arrives or returns to the child care facility, including the signature of the person authorized by the child's parent or guardian to sign the child in; and
 - (c) Time the child leaves the child care facility including signature of the authorized person to sign the child out.

Staff must sign a child in/out where the parent or guardian has given specific written permission that would allow that child to leave the facility.

- (2) Names of staff being counted to meet the daily staff-to-child ratio requirements.

NEW SECTION

WAC 170-297-2150 Facility records. The following facility records must be kept:

- (1) Fire extinguisher annual maintenance or receipts indicating annual purchase of new fire extinguisher(s), under WAC 170-297-3000;
- (2) Septic system inspection and maintenance, if required under WAC 170-297-1375;
- (3) Water testing results if required under WAC 170-297-1400;
- (4) Emergency preparedness evacuation drill records under WAC 170-297-2925;
- (5) Documents from any department visits, inspections, or monitoring checklists; and
- (6) As applicable, compliance agreements or safety plans between the licensee and the department.

NEW SECTION

WAC 170-297-2175 Materials that must be posted. The following must be posted in the licensed space during operating hours and clearly visible to the parents, guardians, volunteers, and staff:

- (1) A statement of the child care program philosophy of child development;
- (2) Emergency information posted adjacent to the telephone, including:
 - (a) 911 or emergency services number;
 - (b) Name of the child care program, telephone number(s), address, and directions from the nearest major arterial street or nearest cross street to the child care program;
 - (c) Washington poison center toll-free phone number; and
 - (d) DSHS children's administration intake (child protective services) toll-free telephone number;
- (3) Emergency preparedness plan and drills posted near each emergency exit door with the following information:
 - (a) Dates and times of previous drills;
 - (b) Procedure for sounding alarm;
 - (c) Monthly smoke detector check;
 - (d) Annual fire extinguisher check;
 - (e) Floor plan, with emergency exits and emergency exit pathways identified; and
 - (f) Emergency medical information or explanation of where that information can be found;
- (4) Child care licensing information, including:
 - (a) The current department-issued child care license;
 - (b) Staff names and work hours; and
 - (c) If applicable, a copy of current department-approved exceptions to the rules;
- (5) Food menus;
- (6) If applicable, notice of any current or pending department enforcement action. Notice must be posted:
 - (a) Immediately upon receipt; and
 - (b) For at least two weeks or until the violation causing the enforcement action is corrected, whichever is longer;
- (7) Notice that the licensee does not have the liability insurance coverage required under WAC 170-297-1350, or that the coverage is lapsed or terminated, if applicable;

(8) A notice stating that additional information about the child care license is available upon request. This information must include:

- (a) Copies of department monitoring checklists;
- (b) If applicable, any facility licensing compliance agreements (FLCA); and
- (c) If applicable, a copy of any enforcement action taken by the department for the previous three years;
- (9) A typical daily schedule as described in WAC 170-297-6575; and
- (10) Current lesson plans.

NEW SECTION

WAC 170-297-2200 Reporting incidents to 911 (emergency services). The following must be reported immediately to 911 emergency services by the licensee or designee:

- (1) A child missing from care, as soon as the staff realizes the child is missing;
- (2) Medical emergency (injury or illness) that requires immediate professional medical care;
- (3) Incorrect administration of any medication, except nonprescription topical creams or ointments;
- (4) Overdose of any oral, inhaled or injected medication;
- (5) Asthma attack;
- (6) Fire and other emergencies;
- (7) Poisoning or suspected poisoning; and
- (8) Other incidents requiring emergency response.

NEW SECTION

WAC 170-297-2225 Reporting incidents to Washington poison center. The licensee or designee must immediately report the following to the Washington poison center, after calling 911, and must follow any instructions from the poison center:

- (1) Any poisoning or suspected poisoning;
- (2) A child receiving too much of any oral, inhaled or injected medication; and
- (3) A child taking or receiving another child's medication.

NEW SECTION

WAC 170-297-2250 Reporting incidents to a child's parent or guardian and the department. (1) The licensee or designee must report to a child's parent or guardian and the department:

- (a) Immediately:
 - (i) Any incident reported under WAC 170-297-2200, after calling 911;
 - (ii) Any incident reported under WAC 170-297-2225, after calling 911 and Washington poison center;
 - (iii) A child's demonstrated acts, gestures or behaviors that may cause serious intentional harm to self, others or property; and
 - (iv) Use of physical restraint on a child;
- (b) Within twenty-four hours:

(i) Injury or other health concern to a child that does not require professional medical treatment (report to parent only);

(ii) Change in child care staff that may impact child care staffing;

(iii) Change in the program phone number or e-mail; and

(iv) Child's exposure to a reportable communicable disease from the list in WAC 246-110-010(4).

(2) The licensee must notify the department when liability insurance coverage terminates within thirty days of termination.

(3) The licensee must give a child's parent or guardian written notice when liability insurance coverage lapses or is terminated within thirty days of lapse or termination.

NEW SECTION

WAC 170-297-2275 Other incident reporting to the department. (1) The licensee or designee must report to the department any of the incidents or changes as required under WAC 170-297-2200, or 170-297-2225, 170-297-2250, 170-297-2300, and 170-297-2325.

(2) Regarding the licensee, staff, or volunteers, the licensee or designee must report to the department within twenty-four hours any:

(a) Pending charge or conviction for a crime listed in WAC 170-06-0120;

(b) Allegation or finding of child abuse or neglect under chapter 26.44 or 74.15 RCW;

(c) Allegation or finding of abuse or neglect of a vulnerable adult under chapter 74.34 RCW; or

(d) Pending charge, conviction, or negative action from outside Washington state consistent with or the same crime listed in WAC 170-06-0120, or the definition of "negative action" as defined in RCW 43.215.010.

NEW SECTION

WAC 170-297-2300 Reporting to DSHS children's administration intake. The licensee or designee is required to report the following to DSHS children's administration intake-child protective services (CPS) or law enforcement as required under RCW 26.44.030, and to the licensor:

(1) Any suspected child abuse or neglect;

(2) A child's disclosure of sexual or physical abuse;

(3) Inappropriate sexual contact between two or more children;

(4) A child's attempted suicide or talk about attempting suicide; and

(5) Death of a child while in care or from injury or illness that may have occurred while the child was in care.

NEW SECTION

WAC 170-297-2325 Notifiable conditions. (1) The licensee or designee must report a staff person, volunteer, or child diagnosed with a notifiable condition as defined in chapter 246-101 WAC to the local health jurisdiction or the state department of health.

(2) Contact the local health jurisdiction for the list of notifiable conditions and reporting requirements.

(3) A person must be excluded from the program when diagnosed with a notifiable condition and must not return to the program until approved to do so by the local health officer.

NEW SECTION

WAC 170-297-2350 Policies. (1) The child care program must have written policies for:

(a) Parents and guardians, also known as the parent handbook;

(b) Program and staff.

(2) All policies must be submitted to the department.

NEW SECTION

WAC 170-297-2375 Parent/guardian policies (handbook). The written parent/guardian policies (handbook) must include:

(1) Hours of operation including closures and vacations;

(2) Information on how children's records are kept current, including immunization records;

(3) Enrollment and disenrollment process;

(4) Access to children during child care hours;

(5) Program philosophy (the program's view of child learning and development);

(6) Typical daily schedule, including sample curriculum;

(7) The program's policy on use of media such as movies, television, computers and music, in child learning and development;

(8) Communication plan with parents/guardians including:

(a) How the parent or guardian may contact the child care program staff with questions or concerns;

(b) How the child care program staff will communicate the child's progress with the parent or guardian at least twice a year; and

(c) How the child care program staff will work with parents to support the child;

(9) Written plan for any child's specific needs, if applicable;

(10) Fee and payment plans;

(11) Nondiscrimination statement, including Americans with Disabilities Act statement;

(12) Cultural awareness activities;

(13) Religious activities and how families' specific religious preferences are addressed;

(14) How holidays are recognized in the program;

(15) Confidentiality policy, including when information may be shared. See WAC 170-297-2025;

(16) Items that the licensee requires the parent or guardian to provide;

(17) Guidance and discipline policy. See WAC 170-297-6050;

(18) Reporting suspected child abuse or neglect;

(19) Food service practices, including:

(a) Meal and snack schedule;

(b) How child food preferences are addressed; and

(c) Guidelines on food brought from the child's home;

(20) Off-site field trips requirements. See WAC 170-297-2450;

(21) Transportation requirements. See WAC 170-297-6475;

(22) Staffing plan;

(23) Access to staff training and professional development records;

(24) Health care and emergency preparedness policies including:

(a) Emergency preparedness and evacuation plans. See WAC 170-297-2825 and 170-297-2850;

(b) Injury or medical emergency response and reporting;

(c) Medication management including storage and dispensing. See WAC 170-297-3325;

(d) Exclusion/removal policy of ill persons. See WAC 170-297-3210;

(e) Reporting of notifiable conditions to public health;

(f) Immunization tracking. See WAC 170-297-3250; and

(g) Infection control methods, including:

(i) Handwashing (WAC 170-297-3625) and, if applicable, hand sanitizers (WAC 170-297-3650); and

(ii) Cleaning and sanitizing procedures including the sanitizing method and products used. See WAC 170-297-3850 through 170-297-3925;

(25) Nonsmoking policy. See WAC 170-297-4050;

(26) Drug and alcohol policy. See WAC 170-297-4025; and

(27) A signature page with parent/guardian signature documenting that the parent/guardian has received the handbook policies. The signature page must be kept on file on the premises.

NEW SECTION

WAC 170-297-2400 Program/operations policies. (1)

The child care program must have written program/operations policies that include:

(a) All information in the parent/guardian handbook under WAC 170-297-2375;

(b) Plans to keep required program/staff records current;

(c) Child supervision requirements;

(d) Mandatory reporting requirement of suspected child abuse and neglect and other incidents under WAC 170-297-2300;

(e) A plan for off-site field trips;

(f) A plan for transporting children;

(g) Medical emergency, fire, disaster and evacuation responsibilities;

(h) Guidance and discipline responsibilities;

(i) A plan for staff to include:

(i) Staff responsibilities;

(ii) Staff training;

(iii) Staff expectations; and

(iv) Professional development.

(2) Program/operations policies may be integrated with staff policies required under WAC 170-297-2425 in a single written policy document.

NEW SECTION

WAC 170-297-2425 Staff policies. (1) The child care program must have written staff policies and provide training

on the policies to all staff and volunteers. Staff policies must include:

(a) All the information in the parent/guardian handbook under WAC 170-297-2375, except fees;

(b) A plan for keeping staff records current including:

(i) Completed background check forms and department clearance letters;

(ii) First aid and CPR certification;

(iii) TB test results;

(iv) Required training and professional development for staff persons; and

(v) Training that the licensee must provide to staff;

(c) Job descriptions;

(d) Staff responsibilities for:

(i) Child supervision requirements;

(ii) Guidance/discipline techniques;

(iii) Food service practices;

(iv) Off-site field trips;

(v) Transporting children;

(vi) Health, safety and sanitization procedures;

(vii) Medical emergencies, fire, disaster and evacuations; and

(viii) Mandatory reporting of suspected child abuse and neglect.

(2) The licensee or designee must keep documentation of all staff training on policies.

(3) Staff policies may be integrated with program/operations policies required under WAC 170-297-2400 in a single written policy document.

NEW SECTION

WAC 170-297-2450 Off-site activity policy. A written policy for off-site activities is required and must include:

(1) Parent notification and permissions. See WAC 170-297-6400;

(2) Supervision plan;

(3) Transportation plan. See WAC 170-297-6475;

(4) Emergency procedures including bringing each child's:

(a) Emergency contact information;

(b) Medical records;

(c) Individual medications for children who have them; and

(d) Medication administration log;

(5) Medication management;

(6) A policy for maintaining a complete first-aid kit; and

(7) A policy for charging of fees, if any.

FIRE AND EMERGENCY PREPAREDNESS

NEW SECTION

WAC 170-297-2575 Combustible and flammable materials. (1) The licensee must not allow combustible materials (including, but not limited to, lint, or rags soaked in grease, oils, or solvent) to accumulate; these items must be removed from the building or stored in a closed metal container.

(2) The licensee must store items labeled "flammable," in areas that are inaccessible to children and away from exits.

NEW SECTION

WAC 170-297-2600 Furnaces and other heating devices. (1) The licensee must keep paper, rubbish, or combustible materials at least three feet away from any furnace, fireplace, or other heating device.

(2) Furnaces must be inaccessible to the children, isolated, enclosed or protected.

(3) Any appliance or heating device that has a hot surface capable of burning a child must be made inaccessible to the children in care during operating hours when the appliance or device is in use or is still hot after use.

NEW SECTION

WAC 170-297-2625 Electrical motors. The licensee must keep electrical motors on appliances free of accumulated dust or lint.

NEW SECTION

WAC 170-297-2675 Open flame devices, candles, matches and lighters. (1) The licensee must not use or allow the use of open flame devices in the licensed space or any space accessible to the children during operating hours.

(2) The licensee must not use or allow the use of candles during operating hours.

(3) The licensee must keep matches and lighters inaccessible to children.

NEW SECTION

WAC 170-297-2700 Emergency flashlight. The licensee must have a working flashlight available for use as an emergency light source. The licensee must have extra batteries if the flashlight is powered by batteries.

NEW SECTION

WAC 170-297-2725 Portable heaters and generators. (1) The licensee must not use or allow the use of portable heaters or fuel-powered generators in any area inside of licensed space during operating hours.

(2) When a portable fuel-powered generator is in use:

(a) The generator must be placed at least fifteen feet from buildings, windows, doors, ventilation intakes, or other places where exhaust fumes may be vented into the licensed space; and

(b) Appliances must be plugged directly into the generator or to a heavy duty outdoor-rated extension cord that is plugged into the generator.

NEW SECTION

WAC 170-297-2775 Telephone. (1) The licensee must have a working telephone in the licensed space.

(2) The licensee must have a telephone readily available with sufficient backup power to function for at least five hours in the event of an electrical power outage.

NEW SECTION

WAC 170-297-2825 Fire evacuation plan. (1) If there is a fire during child care operating hours, the licensee's and program staff's first responsibility is to evacuate the children to a safe place outside.

(2) The licensee or designee must develop a written fire evacuation plan and post it at a place that is clearly visible to the staff, parents, guardians, and volunteers. The evacuation plan must be evaluated annually and updated as needed.

(3) The evacuation plan must include:

(a) An evacuation floor plan that identifies emergency exit pathways, emergency exit doors, and emergency exit windows;

(b) Method(s) to be used for sounding an alarm;

(c) Actions to be taken by the person discovering the fire;

(d) A written description of how the licensee or program staff will evacuate all children, including nonambulatory children;

(e) Calling 911 after evacuating the children;

(f) How the licensee or program staff will account for all of the children in attendance;

(g) Where children and program staff will gather away from the building pending arrival of the fire department or emergency response; and

(h) How the licensee or designee will inform parents or guardians and arrange pick up of children if needed.

NEW SECTION

WAC 170-297-2850 Disaster plan. (1) The licensee must have a written disaster plan for emergencies other than fire. The plan must be:

(a) Reviewed by the licensee annually and updated as needed;

(b) Reviewed by program staff annually or when updated, with signature documentation of review; and

(c) Reviewed with parents or guardians when a child is enrolled, and when the plan is updated.

(2) The written disaster plan must cover at minimum the following:

(a) For disasters that may require evacuation:

(i) How the licensee or program staff will evacuate all children, especially those who are nonambulatory;

(ii) What to take when evacuating the children, including:

(A) First-aid kit;

(B) Child medication records; and

(C) If applicable, individual children's medication;

(iii) Where to go;

(iv) How the licensee and program staff will account for all of the children in attendance; and

(v) How the children will be reunited with their parents or guardians after the event;

(b) Earthquake procedures including:

(i) What the licensee or program staff will do during an earthquake;

(ii) How the licensee or program staff will account for all of the children in attendance; and

(iii) After an earthquake, how the licensee or designee will assess whether the licensed space is safe for the children;

(c) Lockdown of the facility or shelter-in-place, including:

- (i) How doors and windows will be secured if needed; and
- (ii) Where children will stay safely inside the facility; and
- (d) How parents and guardians will be contacted after the emergency situation is over.

(3) The licensee must keep on the premises a three-day supply of food, water, and medications required by individual children for use in a disaster, lockdown, or shelter-in-place incident.

(4) As used in this section, "lockdown" means to remain inside the child care facility when police or an official emergency response agency notifies the licensee or program staff that it is unsafe to leave the facility or be outdoors during an emergency situation.

(5) As used in this section, "shelter-in-place" means an identified neighborhood location that the licensee or program staff must take the children to during an emergency situation.

NEW SECTION

WAC 170-297-2875 Fire, disaster training for staff and volunteers. (1) The licensee or designee must provide fire, evacuation, and disaster training for all program staff and volunteers when the individual is first employed, when the training content is updated, and at least once each calendar year. The training must include:

- (a) All elements of the fire, evacuation and disaster plans;
- (b) Operation of the fire extinguishers;
- (c) How to test the smoke detectors and, if required, test carbon monoxide detectors and replace detector batteries; and
- (d) Program staff responsibilities in the event of a fire or disaster.

(2) The training must be documented in the program staff's or volunteer's personnel file.

NEW SECTION

WAC 170-297-2900 Emergency drills. The licensee and program staff must practice emergency drills with the children as follows:

- (1) Fire/evacuation drill: Once each calendar month;
- (2) Earthquake or lockdown/shelter-in-place drill: Once every three calendar months; and
- (3) Emergency drills must be conducted during different times of the day.

NEW SECTION

WAC 170-297-2925 Record of emergency drills. The licensee or designee must keep records of emergency drills performed and post the records as required in WAC 170-297-2175. Records must include:

- (1) The date and time the drill took place;
- (2) Program staff who participated;

- (3) Number of children who participated;
- (4) Length of drill; and
- (5) Notes about how the drill went and improvements, if any, that need to be made.

NEW SECTION

WAC 170-297-2975 Additional method to sound an alarm. The licensee must have an additional method to sound an alarm that is used only in a fire, emergency situation, or drill.

NEW SECTION

WAC 170-297-3000 Fire extinguishers. (1) The licensee must have working fire extinguishers, readily available. A fire extinguisher must be:

- (a) Located on each level of the licensed premises used for child care; and
- (b) Mounted:
 - (i) Within seventy-five feet of an exit; and
 - (ii) Along the path of an exit.
- (2) A fire extinguisher may be mounted in a closed unlocked closet. There must be:
 - (a) A sign on the closet door to indicate that a fire extinguisher is mounted inside; and
 - (b) No obstructions blocking access to the closet.
- (3) The licensee must have documentation on file of annual:
 - (a) Fire extinguisher maintenance; or
 - (b) Proof of purchasing new extinguishers.

HEALTH

NEW SECTION

WAC 170-297-3200 Health plan. (1) A written health plan must be in place for the program and contain the following:

- (a) Communicable disease notification under WAC 170-297-3210;
- (b) Exclusion of ill person under WAC 170-297-3210;
- (c) Exclusion of person diagnosed with a notifiable condition under WAC 170-297-2325;
- (d) Immunization tracking under WAC 170-297-3250 through 170-297-3300;
- (e) Medication management under WAC 170-297-3315 through 170-297-3550;
- (f) Medication storage under WAC 170-297-3325;
- (g) Injury treatment under WAC 170-297-3575 through 170-297-3600;
- (h) Abuse and neglect protection and training under WAC 170-297-6275;
- (i) Caring for children with special needs under WAC 170-297-0050;
- (j) Care for animals on the premises;
- (k) Handwashing and hand sanitizers under WAC 170-297-3625 through 170-297-3650;
- (l) Food and food services;

(m) How general cleaning will be provided and how areas such as food contact surfaces, kitchen equipment, toys, and toileting equipment, will be cleaned and sanitized; and

(n) Cleaning and sanitizing laundry under WAC 170-267-3850.

(2) The health plan must be reviewed and dated by a physician, a physician's assistant, or a registered nurse and submitted to the department every three years.

NEW SECTION

WAC 170-297-3210 Communicable disease procedure. (1) When a licensee or program staff person becomes aware that any program staff person or child in care has been diagnosed with any of the communicable diseases as defined in WAC 246-110-010, the licensee or designee must:

(a) Notify parents or guardians of each of the children in care within twenty-four hours; and

(b) Follow the health policy before providing care or before readmitting the program staff person or child into the child care.

(2) The licensee's health policy must include provisions for excluding or separating a child or program staff person with a communicable disease. Children with any of the following symptoms must be excluded from care until guidelines permit readmission:

(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; or

(d) Drainage of thick mucus or pus from the eye.

NEW SECTION

WAC 170-297-3250 Immunization tracking. (1) The licensee or designee is required to track each child's immunization status in accordance with WAC 246-105-060. The child care program must:

(a) Keep all DOH approved forms described in WAC 246-105-050 for each enrolled child;

(b) Keep a list of currently enrolled children with medical, religious, philosophical, or personal immunization exemptions. This list must be sent to the local health department upon request;

(c) Return the department of health CIS or applicable form to the parent when the child is withdrawn from the child care program. A child care program may not withhold from the parent a child's health department-approved form for any reason, including nonpayment of child care program fees; and

(d) Provide access to immunization records to agents of the state or local health department of each child enrolled.

(2) The child care program must submit an immunization status report under chapter 28A.210 RCW either electronically on the internet or on a form provided by the health department. The report must be submitted to the health department by November 1st of each year. If a facility opens after October 1st, the report is due thirty days from the first day the program begins.

NEW SECTION

WAC 170-297-3275 Accepting a child who does not have current immunizations. (1) The child care program may accept a child who is not current with immunizations on a conditional basis if immunizations are:

- (a) Initiated before or on enrollment; and
- (b) Completed as soon as medically possible.

(2) The child care program must have on file a document signed and dated by the parent or guardian stating when the child's immunizations will be brought up to date.

NEW SECTION

WAC 170-297-3300 Immunizations—Exemption. The child care program may accept a child without any immunizations if the parent or guardian provides a DOH certificate of exemption form:

(1) Expressing a religious, philosophical or personal objection to immunization, signed by the child's parent or guardian; or

(2) Indicating a medical exemption signed by a health professional as provided in WAC 246-105-060.

NEW SECTION

WAC 170-297-3315 Medication management. (1) The child care program's health care policy must include:

- (a) Medication management;
- (b) Safe medication storage; and
- (c) Whether the licensee chooses to give medications to children in care.

(2) If the licensee chooses to give medications to children in care, the program policy must include:

(a) How giving medications will be documented (medication log), including documenting when a medication is given or not given as prescribed or as indicated on the permission form; and

(b) Permission to give medications to a child signed by the child's parent or guardian, and by a licensed medical professional when appropriate.

(3) Only a trained and authorized program staff person may give medication or observe a child taking his or her own medication as described in WAC 170-297-3550.

(4) Prior to being authorized to give medications to children in care, the licensee or trained and authorized program staff person must complete medication management training.

(5) If the licensee chooses not to give any medications to children in care, the licensee or designee must inform parents in the parent/guardian handbook.

(6) If the licensee or program staff person decides not to give a specific medication to a child after having received written permission by the child's parent or guardian, the licensee or program staff person must immediately notify the parent or guardian of the decision to not give the medication.

(7) The licensee and program staff must make reasonable accommodations and give medication if a child has a condition where the Americans with Disabilities Act (ADA) would apply.

NEW SECTION

WAC 170-294-3325 Medication storage. (1) The licensee and program staff must store all medications, as well as vitamins, herbal remedies, dietary supplements, and pet medications as described in the following table:

- (a) In a locked container or cabinet until used; or
 - (b) Inaccessible to children. The licensee must keep emergency rescue medications listed in subsection (3)(a)(i) through (vi) of this section inaccessible but available for emergency use to meet the individual's emergency medical needs.
- (2) The licensee and program staff must store all controlled substances in a locked container.

Medication Storage Table			
This list is not inclusive of all possible items in each category. Medications must be maintained as directed on the medication label, including refrigeration if applicable.			
(3)	If the medication is a (an):	The medication must be stored in a locked container or cabinet.	The medication must be stored inaccessible to children.
(a)	Individual's emergency rescue medications:		
(i)	Any medication used to treat an allergic reaction;		X
(ii)	Nebulizer medication;		X
(iii)	Inhaler;		X
(iv)	Bee sting kit;		X
(v)	Seizure medication;		X
(vi)	Other medication needed for emergencies.		X
(b)	Nonprescription medications, including herbal or natural:		
(i)	Pain reliever, cough syrup, cold or flu medication;	X	
(ii)	Vitamins, all types including natural;	X	
(iii)	Topical nonprescription medication;		X
(iv)	Hand sanitizer, when not in use.		X

Medication Storage Table			
(c)	Prescription medication:		
(i)	Intended use -Topical;	X	
(ii)	Intended use - Ingestible, inhaled or by injection.	X	
(d)	Pet medications (all types).	X	

NEW SECTION

WAC 170-297-3375 Medication permission. (1) The child care program must have written permission from a child's parent or guardian to give a child any medication. The permission must include:

- (a) Child's first and last name;
- (b) Name of the medication and condition being treated;
- (c) Frequency and amount of dose to be given;
- (d) How medication is to be given;
- (e) Medication storage requirements;
- (f) Expected side effects of the medication;
- (g) Start and stop date for administering medication not to exceed thirty calendar days, except as provided in subsection (2) of this section;
- (h) Parent or guardian signature; and
- (i) Date of signature.

(2) A parent or guardian may give up to one hundred eighty calendar days written permission for use of the following:

- (a) Sun screen;
 - (b) Hand sanitizers; or
 - (c) Hand wipes with alcohol.
- (3) For prescription medications, the parent permission form is effective up to the number of days stated on the medication label. The licensee must not give medication past the date prescribed on the label.
- (4) A written record of medication administration (medication log) must be kept that includes the:
- (a) Child's name;
 - (b) Name of medication;
 - (c) Dose given;
 - (d) Dates and time of each medication given; and
 - (e) Name and signature of the person administering the medication.

(5) The parent or guardian must be allowed to review their own child's written medication administration records.

(6) Any unused medication must be returned to the child's parent or guardian.

(7) Medication permission forms must be kept confidential.

(8) Medication permission forms and medication logs for the previous twelve months must be kept in the licensed space and available for review by the licensor.

NEW SECTION

WAC 170-297-3425 Medication requirements. The licensee or designee must follow the medication directions for managing and giving prescription and nonprescription

medication for the individual children in care. The licensee or designee must not give or allow giving of a medication:

- (1) That does not have age, dosage and frequency directions, and information about potential adverse reaction;
- (2) That has expired; or
- (3) For any purpose or condition other than prescribed or described on the medication label.

NEW SECTION

WAC 170-297-3450 Sedating a child prohibited. Program staff must not give or allow giving of any medication for the purpose of sedating a child unless the medication has been prescribed for that purpose by a qualified health care professional.

NEW SECTION

WAC 170-297-3475 Prescription medication. The licensee or program staff may give a prescribed medication to a child only if the following conditions are met:

- (1) The medication is prescribed only for the child the medication is being given to;
- (2) The parent or guardian has provided written permission as described in WAC 170-297-3375;
- (3) The prescribed medication is given in the amount and frequency prescribed by the child's health care professional with prescription authority;
- (4) The prescribed medication must only be given for the purpose or condition that the medication is prescribed to treat;
- (5) The medication must:
 - (a) Be in the original container;
 - (b) Be labeled with the child's first and last name; and
 - (c) Have a nonexpired expiration date;
 - (6) The container must have, or the parent or guardian must provide, information from the pharmacy about:
 - (a) Medication storage; and
 - (b) Potential adverse reactions or side effects; and
 - (7) The medication has been stored at the proper temperature noted on the container label or pharmacy instructions.

NEW SECTION

WAC 170-297-3525 Nonprescription medications. The licensee or designee may give nonprescription medications, as defined in this chapter, only when the following conditions are met:

- (1) The parent or guardian has given signed written permission as provided in WAC 170-297-3375.
- (2) The nonprescription medication is:
 - (a) Given to or used with a child only in the dosage, frequency and as directed on the manufacturer's label;
 - (b) Given in accordance to the age or weight of the child needing the medication;
 - (c) Given only for the purpose or condition that the medication is intended to treat;
 - (d) Is in the original container; and
 - (e) Has a nonexpired expiration date, if applicable.
- (3) The medication container or packaging includes, or the parent or guardian provides information about:

- (a) Medication storage; and
- (b) Potential adverse reactions or side effects; and
- (4) The medication has been stored at the proper temperature noted on the container label or instructions.

NEW SECTION

WAC 170-297-3550 Children taking their own medication. The licensee may permit a child to take his or her own medication if:

- (1) The licensee follows all of the requirements in WAC 170-297-3475 (1) through (5);
- (2) The child is physically and mentally capable of properly taking the medication;
- (3) The licensee has on file the child's parent or guardian written approval for the child to take his or her own medication;
- (4) The medication and related medical supplies are locked and inaccessible to other children and unauthorized persons, except emergency rescue medications that may be stored inaccessible to other children but not locked; and
- (5) A trained and authorized program staff person observes and documents in the child's medication administration record that the medication was taken or not taken.

NEW SECTION

WAC 170-297-3575 Injuries requiring first aid only. When a child has an injury that requires first aid only, a written or verbal notice must be given by program staff to the parent or guardian and a record must be kept of the notice on file.

NEW SECTION

WAC 170-297-3600 Injuries or illness requiring professional medical treatment. (1) When program staff becomes aware that a child's injury or illness may require professional medical treatment, the licensee or designee must:

- (a) Call 911, when applicable, and follow their recommendations;
- (b) Administer first aid; and
- (c) Call the child's parent or guardian.
- (2) After taking actions as prescribed in subsection (1) of this section, the licensee or designee must:
 - (a) Call the department; and
 - (b) Within twenty-four hours, submit an injury/incident report form to the department.
 - (3) The injury/incident report form must include:
 - (a) The name of child;
 - (b) The date, time and location where the injury or illness occurred;
 - (c) A description of the injury or illness;
 - (d) The names of program staff present;
 - (e) The action taken by program staff; and
 - (f) The signature of program staff.

NEW SECTION

WAC 170-297-3625 Handwashing procedure. (1) The licensee or program staff must follow and teach children

proper handwashing procedures. Proper handwashing procedures include:

- (a) Washing hands with warm water and liquid soap for a minimum of twenty seconds;
- (b) Drying hands with a paper towel, single-use cloth towel or air hand dryer; and
- (c) Turning off the water with paper towel or single use cloth towel.
 - (2) Paper towels must be disposed of after a single use.
 - (3) If cloth towels are used, they must be washed and sanitized after each use.
 - (4) If an air hand dryer is used, it must have a heat guard to prevent burning and must turn off automatically.

NEW SECTION

WAC 170-297-3635 When handwashing is required.

- (1) Program staff must wash hands:
 - (a) Upon arriving to the program;
 - (b) After personal toileting or assisting a child with toileting;
 - (c) Before and after giving medication or applying topical ointment;
 - (d) After attending to an ill or injured child;
 - (e) After contact with bodily fluids;
 - (f) Before preparing, serving, or eating food;
 - (g) When returning from playground/outside;
 - (h) After handling garbage and garbage receptacles;
 - (i) Before and after handling or feeding pets/animals;
 - (j) After smoking; and
 - (k) As needed when hands are soiled.
- (2) Children must wash their hands:
 - (a) Upon arrival to the program;
 - (b) When returning from playground and/or outside;
 - (c) Before the child eats;
 - (d) Before the child participates in food activities;
 - (e) After the child's toileting;
 - (f) Before and after handling or feeding pets/animals;
 - (g) After touching bodily fluids, including after sneezing or coughing; and
 - (h) As needed when hands are soiled.

NEW SECTION

WAC 170-297-3925 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.			(i) Vacuum daily.

NEW SECTION

WAC 170-297-3650 Hand sanitizers. (1) Program staff may allow the use of hand sanitizer products when a child's parent or guardian has given written and signed permission as described in WAC 170-270-3375(2) for hand sanitizer use.

- (2) Hand sanitizer products may be used:
 - (a) When handwashing facilities are not available, such as an outing, emergency, or disaster; or
 - (b) After proper handwashing.
 - (3) Hand sanitizer gels must not be used in place of proper handwashing if handwashing facilities are available.

NEW SECTION

WAC 170-297-3700 Carpets. The licensee must clean installed carpet in the licensed space at least twice each calendar year, or more often when soiled, using a carpet shampoo machine, steam cleaner, or dry carpet cleaner.

NEW SECTION

WAC 170-297-3850 Cleaning laundry. When the licensee does child care laundry on-site, the licensee must wash the laundry using:

- (1) Laundry soap or detergent; and
- (2) Sanitize as defined in WAC 170-297-0010.

NEW SECTION

WAC 170-297-3875 Cleaning and sanitizing toys. The licensee must clean and sanitize toys as provided in WAC 170-297-0010:

- (1) Before a child plays with a toy that has come into contact with another child's mouth or bodily fluids;
- (2) After being contaminated with bodily fluids or visibly soiled; or
- (3) Not less than weekly when the toys have been used by the children.

CLEANING, SANITIZING, AND DISINFECTING TABLE				
		"X" means CLEAN	And SANITIZE or DISINFECT	FREQUENCY
				(ii) Installed carpet - Clean yearly or more often when soiled using a carpet shampoo machine, steam cleaner, or dry carpet cleaner.
		X		(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/hairbrushes, (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).			Weekly or more often when soiled.
		X	Sanitize (see subsection (3) of this section)	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)	Handwashing sinks, faucets, surrounding counters, soap dispensers, doorknobs.	X	Disinfect (see subsection (2) of this section)	Daily or more often when soiled.
(j)	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.
(k)	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.).
(l)	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.
(m)	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, allowed to stand wet for at least two minutes; 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, allowed to stand wet for at least two minutes; 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.

NEW SECTION

WAC 170-297-3950 Pest control. (1) The licensee must keep the premises free from rodents, fleas, cockroaches, and other insects and pests.

(2) If pests are present in the licensed space, the licensee must:

(a) Take action to remove or eliminate pests; and

(b) Use the least poisonous method of pest management possible; or

(c) Use chemical pesticides for pest management. If chemical pesticides are used, the licensee must:

(i) Post a notice visible to parents, guardians and staff forty-eight hours in advance of the application of chemical pesticides; and

(ii) Comply with the Washington state department of agriculture's compliance guide for *Pesticide use at Public Schools (K-12) and Licensed Day Care Centers* in applying chemical pesticides.

NEW SECTION

WAC 170-297-4000 Lead, asbestos, arsenic and other hazards. The licensee must take action to prevent child exposure when the licensee becomes aware that any of the following are present in the indoor or outdoor licensed space:

(1) Lead based paint;

(2) Plumbing containing lead or lead solders;

(3) Asbestos;

(4) Arsenic or lead in the soil or drinking water;

(5) Toxic mold; or

(6) Other identified toxins or hazards.

NEW SECTION

WAC 170-297-4025 Drugs and alcohol. (1) The licensee, staff and volunteers must not:

(a) Have or use illegal drugs on the premises;

(b) Consume or be under the influence of alcohol during operating hours; or

(c) Be under the influence of drugs that would impair the ability to provide care for the children as provided in this chapter.

(2) The licensee, staff and volunteers must follow the school districts drug free zone policy if the child care program is located on school district property.

NEW SECTION

WAC 170-297-4050 No smoking. (1) As required by chapter 70.160 RCW, the licensee and program staff must, under the following conditions, prohibit smoking by anyone:

(a) In any outdoor or indoor licensed space;

(b) Within twenty-five feet of any entrance, exit, window, or ventilation intake of the facility; or

(c) In motor vehicles used to transport children.

(2) Program staff must keep tobacco products, cigarettes and containers holding cigarette butts, cigar butts, or ashes inaccessible to the children.

NEW SECTION

WAC 170-297-4075 First-aid kit. (1) The licensee must have a complete first-aid kit at all times:

(a) In the licensed space;

(b) On any off-site trip; and

(c) In any vehicle used to transport children in care.

(2) A complete first-aid kit must include clean:

(a) Disposable nonporous protective gloves;

(b) Adhesive bandages of various sizes;

(c) Small scissors;

(d) Tweezers;

(e) An elastic wrapping bandage;

(f) Sterile gauze pads;

(g) Ice packs;

(h)(i) Mercury free thermometer that is:

(A) Used with a disposable sleeve; or

(B) Cleaned and sanitized after each use; or

(ii) A single-use thermometer that is disposed of after a single use;

(i) A sling, or a large triangular bandage; and

(j) Adhesive tape.

(3) The first-aid kit must include a current first-aid manual.

NEW SECTION

WAC 170-297-4100 Poisons, chemicals and other substances. (1) The licensee and program staff must:

(a) Store poisons in a locked container inaccessible to children and where poisons will not contaminate food;

(b) If poisons are not in the original container, clearly label the container with the name of the product and the words "poison" or "toxic."

(2) The following describes chemicals and other substances that must be stored inaccessible to children:

(a) Nail polish remover;

(b) Sanitizers and disinfectants;

(c) Household cleaners and detergents;

(d) Toxic plants;

(e) Plant fertilizer;

(f) Ice melt products;

(g) Pool chemicals;

(h) Pesticides or insecticides;

- (i) Fuels, oil, lighter fluid, or solvents;
- (j) Matches or lighters;
- (k) Air freshener or aerosols;
- (l) Personal grooming products including, but not limited

to:

- (i) Lotions, creams, or toothpaste;
 - (ii) Liquid, powder, or cream personal hygiene products;
 - (iii) Shampoo, conditioners, hair gels or hair sprays;
 - (iv) Makeup or cosmetics;
 - (m) Dish soap, dishwasher soap or additives;
 - (n) Tobacco products, including cigarette/cigar butts and contents of ashtrays; and
 - (o) Alcohol, opened or unopened.
- (3) The licensee and program staff must:
- (a) Keep a material safety data sheet on-site for all chemicals used or present on-site;
 - (b) Store pesticides in their original container; and
 - (c) Store cleaning and sanitizing chemicals in their original containers unless they are diluted, in which case the licensee may store them in an alternate container labeled to indicate the container's contents.

ENVIRONMENTS

NEW SECTION

WAC 170-297-4200 Toys, equipment, and recalled items. (1) The licensee must maintain equipment, toys or other items in the child care in good and safe working condition.

(2) The licensee must remove a recalled item as soon as the licensee becomes aware that the item used in the licensee's child care operation has been recalled.

NEW SECTION

WAC 170-297-4225 Indoor licensed space—Minimum space. (1) The indoor licensed space must have thirty-five square feet per child for the maximum number of children stated on the license, measured to include only the space intended for use by children in care.

(2) Indoor space that is not counted in the minimum square footage requirement includes:

- (a) Unlicensed space that is made inaccessible to children in care;
- (b) Hallway space that leads to an exit; and
- (c) Bathrooms.

NEW SECTION

WAC 170-297-4250 Indoor temperature. The indoor temperature must be no less than sixty-five degrees Fahrenheit and no higher than seventy-five degrees Fahrenheit during the winter or eighty-two degrees Fahrenheit during the summer.

NEW SECTION

WAC 170-297-4275 Fans, air conditioning or cross ventilation. A fan, air conditioner or cross ventilation must be used in licensed space when the inside temperature

exceeds eighty degrees Fahrenheit. Fans and air conditioners must be kept inaccessible to the children, or a protective barrier must be used to prevent children from accessing fan blades.

NEW SECTION

WAC 170-297-4300 Window coverings. (1) Window coverings with pull cords or inner cords capable of forming a loop are prohibited as provided by RCW 43.215.360.

(2) Window coverings may be allowed that have been manufactured or altered to eliminate the formation of a loop.

(3) A window covering may not be secured to the frame of a window or door used as an emergency exit in any way that would prevent the window or door from opening easily.

NEW SECTION

WAC 170-297-4350 Electrical outlets, cords and power strips. (1) The licensee must use electrical outlets that are in good working order without exposed wires or broken covers.

(2) Interior outlets near sinks, tubs or toilets must be:

(a) Tamper-resistant ground fault circuit interrupter (GFCI) type; or

(b) Made inaccessible to the children.

(3) Electrical cords must be:

(a) Secured to prevent a tripping hazard;

(b) In good working order, not torn or frayed and without any exposed wire; and

(c) Plugged directly into an outlet, or a surge protector that is plugged directly into an outlet.

(4) Power strips with a surge protector may be used and must be made inaccessible to the children.

(5) Extension cords may be used only for a brief or temporary purpose and must be plugged into an outlet or into a surge protected power strip.

NEW SECTION

WAC 170-297-4360 Area lighting. All areas of the facility must have natural or artificial lighting that provides adequate illumination for facility activities.

NEW SECTION

WAC 170-297-4375 Lighting safety. (1) Ceiling-mounted light fixtures in licensed space accessible to children must have one of the following:

(a) Shatter-resistant covers; or

(b) Shatter-resistant light bulbs.

(2) The licensee must not:

(a) Allow bare light bulbs in any play space;

(b) Use lights or light fixtures indoors that are intended or recommended for outdoor use; or

(c) Use halogen lamps in any area accessible to children during operating hours.

NEW SECTION

WAC 170-297-4475 Emergency exit pathways. Pathways to all emergency exits must be kept free from clutter and obstructions. Emergency exits and pathways to emergency exits are licensed space.

NEW SECTION

WAC 170-297-4550 Windows. (1) Windows in the licensed space that are within the reach of the children must have a screen or guard to prevent a child's exit or limited opening of less than three and one-half inches.

(2) When a protective guard is used on any window it must not block outdoor light from entering the child care or prevent air flow into the child care.

(3) Where a window is used as an emergency exit window, the window and guards, if provided, must be equipped to enable staff to release the guard and open the window fully when emergency exit is required.

NEW SECTION

WAC 170-297-4625 Toileting facility. A toileting facility must be available for use by the children.

(1) The toileting facility must have at minimum:

(a) One working flush-type toilet for every thirty children based on the licensed capacity. One-third of the toilets may be replaced by a urinal;

(b) Privacy for toileting for children of the opposite sex; and

(c) A mounted toilet paper dispenser and toilet paper for each toilet.

(2) The toileting facility must be ventilated by the use of a window that can be opened or an exhaust fan.

(3) A diaper changing area must be provided to meet the diapering needs of the children when applicable.

NEW SECTION

WAC 170-297-4635 Handwashing sinks. (1) Handwashing facilities must be located in or immediately outside of:

(a) Rooms used for toileting; and

(b) Areas used for food preparation.

(2) Soap and warm water must be provided at each handwashing sink, as well as:

(a) Disposable paper towels; or

(b) A heated-air hand-drying device with heat guards to prevent contact with surfaces that get hotter than one hundred twenty degrees Fahrenheit.

(3) The handwashing procedures must be posted at each handwashing sink.

NEW SECTION

WAC 170-297-4650 Bathroom floors. Bathrooms and other rooms subject to moisture must have flooring that is washable and moisture resistant. The floor must be cleaned and disinfected as provided in WAC 170-297-0010 daily or more often if needed.

NEW SECTION

WAC 170-297-4700 Water temperature. Water must be kept at a temperature of at least sixty degrees Fahrenheit and not more than one hundred twenty degrees Fahrenheit.

NEW SECTION

WAC 170-297-4725 Guns and other weapons. Firearms or other weapons are prohibited on the premises.

NEW SECTION

WAC 170-297-4750 Storage for each child's belongings. Separate storage for each child's belongings must be provided.

PETS AND OTHER ANIMALSNEW SECTION

WAC 170-297-4800 Pet and other animal policy. A program that has a pet or pets must:

(1) Inform children's parents and guardians that the child care program has a pet; and

(2) Have a pet policy in the parent handbook that includes:

(a) How children will have access to pets;

(b) How children will be kept safe around pets;

(c) Pet immunizations; and

(d) Handling of pet waste.

NEW SECTION

WAC 170-297-4850 Pet and other animal health and safety. (1) Pets that have contact with children must:

(a) Have current immunizations for communicable diseases;

(b) Show no signs of disease, worms or parasites; and

(c) Have veterinarian documentation that the pet is non-aggressive.

(2) Children and program staff must wash their hands as required under WAC 170-297-3650 before and after handling or feeding pets or handling pet toys or equipment.

(3) Programs that are on school district property must follow the school district's policy for pets.

NEW SECTION

WAC 170-297-4875 Pets and other animals interacting with children. (1) The licensee or program staff must not have reptiles, amphibians, chickens, or ducks on-site due to the risk of Salmonella.

(2) When community activities or special events include reptiles, amphibians, chickens, or ducks, the licensee or program staff must directly supervise the children when interacting with these animals to reduce the risk of Salmonella.

Children and program staff must wash their hands before and after interacting with these animals.

NEW SECTION**WAC 170-297-4900 Pet and other animal wastes.** (1)

All animal wastes and litter must be disposed of immediately.

(2) Animal waste must be disposed of in a way that children cannot come in contact with the material.

(3) Animal waste, including fish tank water, may not be disposed of in sinks used by children or staff, except custodial sinks. If custodial sinks are used to dispose of animal waste, the sink area must be washed, rinsed and disinfected after disposal.

OUTDOOR ENVIRONMENTNEW SECTION

WAC 170-297-4925 Licensed outdoor space. (1) The licensee must provide a safe outdoor play area on the premises.

(a) The outdoor play space must contain seventy-five square feet of usable space per child for the number of children stated on the license.

(b) If the premises does not have seventy-five square feet of available outdoor space per child, the licensee may provide an alternative plan, approved by the department, to meet the requirement for all children in care to have daily opportunities for active outdoor play.

(2) The licensed outdoor play space must be enclosed within a fence, barrier, or identified boundary. When a fence has slats, openings between the slats must be no wider than three and one-half inches.

(3) When the licensed outdoor play space is not adjacent to the licensed facility the licensee must:

(a) Identify and use a safe route to and from the licensed outdoor space that is approved by the department; and

(b) Supervise the children at all times when passing between the licensed outdoor space and the facility.

(4) The licensee must provide a written plan, approved by the department, to make roadways and other dangers adjacent to the licensed outdoor play space inaccessible to children.

(5) The department may approve all or part of the outdoor space for use by a child care program that is on school district property and has been inspected and maintained by the school district using the Consumer Product Safety Commission's *Public Playground Safety Handbook*.

NEW SECTION**WAC 170-297-4950 Playground equipment—**

Ground cover—Fall zones. (1) The licensee must not place climbing play equipment on concrete, asphalt, packed soil, lumber, or similar hard surfaces when being used by children.

(2) The ground under swings and play equipment intended to be climbed must be covered by a shock absorbing material. Grass alone is not an acceptable ground cover material under swings or play equipment intended to be climbed. Acceptable ground cover includes:

(a) Pea gravel at least nine inches deep;

(b) Playground wood chips at least nine inches deep;

(c) Shredded recycled rubber at least six inches deep; or

(d) Other department approved material.

(3) A six-foot fall zone must surround all equipment that has a platform over forty-eight inches tall that is intended to be climbed.

(4) The fall zone area must extend at least six feet beyond the perimeter of the play equipment. For swings, the fall zone must be the distance to the front and rear of the swing set equal to or greater than twice the height of the top bar from which the swing is suspended.

(5) Swing sets must be positioned further away from structures to the front and rear of the swing set. The distance to the front and rear of the swing set from any playground equipment or other structure must be a distance equal to or greater than twice the height of the top bar from which the swing is suspended.

(6) The department may approve all or part of a playground for use by a child care program that is on school district property and has been inspected and maintained by the school district using the Consumer Product Safety Commission's *Public Playground Safety Handbook*.

NEW SECTION

WAC 170-297-5000 Play equipment. The licensee must have play equipment that is developmentally appropriate and maintained in a safe working condition. The licensee must inspect play equipment at least weekly for injury hazards, broken parts, or damage. Unsafe equipment must be repaired immediately or must be made inaccessible to children until repairs are made.

NEW SECTION

WAC 170-297-5050 Bouncing equipment prohibited. The licensee must not use or allow the use of bouncing equipment including, but not limited to, trampolines, rebounders, and inflatable equipment.

NEW SECTION

WAC 170-297-5100 Outdoor supervision. (1) Program staff must be within sight or hearing range of the children when in the licensed outdoor space and be available and able to respond if the need arises for the safety of the children.

(2) The required staff-to-child ratio must be maintained when the children are in the licensed outdoor space.

NEW SECTION

WAC 170-297-5125 Outdoor areas and daily physical activities. (1) The licensed program must have an outdoor play area that promotes a variety of age and developmentally appropriate active play for the children in care.

(2) The program staff must provide outdoor activities at least twenty minutes for every three hours of care unless conditions pose a health and safety risk to the children.

(3) Conditions that may pose a health and safety risk include, but are not limited to:

(a) Heat in excess of one hundred degrees Fahrenheit;

(b) Cold less than twenty degrees Fahrenheit;

- (c) Lightning storm, tornado, hurricane, or flooding, if there is immediate or likely danger to the children;
- (d) Earthquake;
- (e) Air quality emergency ordered by a local or state air quality authority or public health authority;
- (f) Lockdown order by a public safety authority; or
- (g) Other similar incidents.

WATER SAFETY

NEW SECTION

WAC 170-297-5150 Water safety and activity. (1) When the children in care are involved in swimming or other water activities, the program staff must maintain the following water safety precautions:

- (a) A minimum staff-to-child ratio of 1:10 must be maintained;
- (b) A certified lifeguard, with a nationally recognized certification, must be present at all times. Lifeguards are not counted in the staff-to-child ratio.
- (2) Swimming pools and natural bodies of water must be inaccessible to the children when not in use.
- (3) Program staff must not allow the children use of or access to a hot tub, spa tank, or whirlpool.

NEW SECTION

WAC 170-297-5175 Wading pools—Defined—Supervision. (1) A wading pool means an enclosed pool with water depth of two feet or less measured without children in the pool that can be emptied and moved.

- (2) When a wading pool is used by the children, the licensee or program staff must:
 - (a) 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) Daily, empty, clean, and sanitize the pool as provided in WAC 170-297-0010. When the pool is soiled with urine, feces, vomit, or blood, the licensee or program staff must immediately empty, clean, and sanitize.

NEW SECTION

WAC 170-297-5200 Swimming pools defined—Barriers and supervision. (1) A swimming pool is a pool that has a water depth greater than two feet.

- (2) When there is a swimming pool on the premises the licensee must provide:
 - (a) A door alarm or bell on each door opening to the pool area to warn staff when the door is opened;
 - (b) A five foot high fence that blocks access to the swimming pool. When the fence has slats the openings between slats must not be wider than three and one-half inches wide;
 - (c) Gates with a self-latching device at entrance and exit points to the swimming pool and lock each gate; and
 - (d) An unlocking device that is inaccessible to children but readily available to the licensee or staff.

(3) The licensee must maintain the swimming pool according to manufacturer's specifications, including cleaning and sanitizing.

(4) When the swimming pool on the premises is used by the children:

- (a) The licensee must obtain written permission from the parent or guardian of each child using the swimming pool;
- (b) There must be one person present at the swimming pool at all times who is a certified lifeguard, with a nationally recognized certification; and
- (c) The licensee must provide one additional staff person more than the required staff-to-child ratio than provided in WAC 170-297-5700 to help supervise the children.

NEW SECTION

WAC 170-297-5225 Bodies of water or water hazards on the licensed premises. (1)(a) As used in WAC 170-297-5150 through 170-297-5250, a "body of water" is a natural area or man-made area or device that contains or holds more than two inches of water.

(b) "Body of water" does not include a wading pool as defined in WAC 170-297-5175, a water activity table, small bird baths or rain puddles with a water depth of two inches or less.

(2) When children are in care the licensee must:

- (a) Make any body of water in the licensed space inaccessible with a physical barrier (not to include a hedge or vegetation barrier) or fence that is at least five feet tall. When a fence has slats or open grids, openings must not be wider than three and one-half inches; and
- (b) Directly supervise or have a primary staff person directly supervise children, with the staff-to-child ratios observed, whenever children play in any area with a body of water.

NEW SECTION

WAC 170-297-5250 Bodies of water outside and near licensed space. (1) The following bodies of water must be made inaccessible to children in care, and the child care program must have a written safety plan approved by the department for:

(a) Ponds, lakes, storm retention ponds, ditches, fountains, fish ponds, landscape pools or similar bodies of water located outside and near (in close proximity to) the licensed space, regardless of whether the body of water is on or off the premises; or

(b) Any uncovered well, septic tank, below grade storage tank; farm manure pond or similar hazards that are on the premises.

(2) Unless attending a swimming or water play activity, when outside the licensed premises the licensee or program staff must keep children from having access to bodies of water that pose a drowning hazard.

SUPERVISION, CAPACITY AND RATIO

NEW SECTION

WAC 170-297-5600 Staff-to-child ratio. (1) The licensee must provide qualified staff to meet the staffing requirements and ratios described in WAC 170-297-5700 at all times during operating hours, including off-site trips or when transporting children in care.

(2) The licensee must provide additional staff as described in WAC 170-297-5150 through 170-297-5250 when children are participating in water activities or near water.

NEW SECTION

WAC 170-297-5625 Capacity. (1) The child care program must not exceed the total number or ages of children in attendance stated on the child care license.

(2) All children in care through twelve years of age in attendance on the premises, attending an off-site field trip or activity, or being transported by the licensee or program staff are counted in capacity.

(3) All children within the age range on the license count in ratio, including children of program staff, or visiting children who are not accompanied by an adult.

(4) The licensee must receive department approval to care for a child with special needs as documented in WAC 170-297-0050 if the child is older than the maximum age identified on the license. A child with documented special needs may be in care up to age nineteen and must be counted in ratio.

(5) If an individual child with special needs requires individualized supervision, a program staff person providing individualized supervision for that child does not count in the staff-to-child ratio for the other children in care.

NEW SECTION

WAC 170-297-5700 Staff-to-child ratio. At minimum, a 1:15 staff-to-child ratio must be maintained at all times.

NEW SECTION

WAC 170-297-5725 Groups. (1) The program must provide clearly defined licensed space for each group of children.

(2) A 1:15 staff-to-child ratio must be maintained at all times.

(3) Group size must not exceed thirty children.

(4) Group size may exceed thirty only for brief periods of time not to exceed fifteen minutes, or for special events such as assemblies or performances.

(5) Qualified staff must supervise each group.

(6) The total number of children in all groups must not exceed the licensed capacity of the space.

LICENSEE RESPONSIBILITIES

NEW SECTION

WAC 170-297-5750 Supervising children. (1) The licensee must provide required staffing levels, staff-to-child ratios and supervision for the number of children in attendance.

(2) The licensee or program staff must be aware of what the children are doing at all times and be available and able to promptly assist or redirect activities when necessary.

(3) The licensee and program staff must consider the following when deciding how closely to supervise the children:

(a) Ages of the children;

(b) Individual differences and abilities;

(c) Layout of the indoor and outdoor licensed space and play area;

(d) The risk associated with the activities children are engaged in; and

(e) Any nearby hazards including those in the licensed or unlicensed space.

(4) An electronic communication or surveillance device does not replace direct supervision of the children.

(5) The required staff-to-child ratio must be maintained when the children are in the licensed outdoor space.

(6) The licensee or program staff must be within sight or hearing range of children when in the licensed indoor and outdoor space and be available and able to respond if the need arises for the safety of the children, including when:

(a) Moving from indoors to outdoors;

(b) Moving from room to room; and

(c) The child uses the restroom.

(7) When only one staff person is present, a second qualified staff person must be on-site, able, and readily available to assist in an emergency.

(8) See:

(a) WAC 170-297-5150 for additional supervision requirements when children are engaged in an off-site water play or swimming activity;

(b) WAC 170-297-5175 for additional supervision requirements when children are using a wading pool; and

(c) WAC 170-297-5200 for additional supervision requirements when children are using a swimming pool.

NEW SECTION

WAC 170-297-5800 Orientation for staff. (1) The licensee or designee must provide a program orientation to all new staff on:

(a) Licensing standards in this chapter;

(b) The program's policies and procedures;

(c) Goals and philosophy of the program;

(d) Planned daily activities and routines;

(e) Age-appropriate child guidance and behavior management methods;

(f) Child abuse and neglect prevention, detection, and reporting policies and procedures;

(g) Special health and developmental needs of individual children if applicable;

- (h) Fire prevention, emergency preparedness and safety procedures; and
 - (i) Personnel policies.
- (2) The licensee or designee must document when the training occurred and identify the staff that received the training.

NURTURE AND GUIDANCE

NEW SECTION

WAC 170-297-6000 Interactions with children. The licensee and program staff must:

- (1) Actively seek out meaningful conversations with children and talk about events of importance to the child;
- (2) Be available and responsive to children and interact on the child's level, encouraging them to ask questions, share experiences, ideas and feelings;
- (3) Encourage children to evaluate a problem and form a resolution rather than impose an adult solution; help children to develop mediation and negotiation skills to solve problems;
- (4) Foster creativity and independence;
- (5) Build on children's strengths while allowing for mistakes;
- (6) Treat equally all children in care regardless of race, religion, culture, sex, family structure and ability;
- (7) Demonstrate positive interactions with children and other adults when children are present;
- (8) Be in frequent verbal communication with children in a positive, reinforcing, cheerful and soothing way;
- (9) Treat each child with consideration and respect;
- (10) Appropriately touch and smile at children;
- (11) Speak to the children at their eye level when possible and appropriate;
- (12) Respond to and investigate cries or other signs of distress immediately;
- (13) Perform age or developmentally appropriate nurturing activities that:
 - (a) Take into consideration the parent's own nurturing practices;
 - (b) Promote each child's learning self-help and social skills; and
 - (c) Stimulate the child's development; and
- (14) Provide each child opportunities for vocal expression; adult voices must not always dominate the overall sound of the group.

NEW SECTION

WAC 170-297-6025 Prohibited interactions. In the presence of the children in care the licensee and program staff must not or allow others to:

- (1) Use profanity, obscene language, "put downs," cultural, or racial slurs;
- (2) Have angry or hostile interactions;
- (3) Use name calling or make derogatory, shaming, or humiliating remarks; or
- (4) Use or threaten to use any form of physical harm or inappropriate discipline, such as, but not limited to:
 - (a) Spanking children;

- (b) Biting, jerking, kicking, hitting, or shaking;
- (c) Pulling hair;
- (d) Pushing, shoving, or throwing a child; and
- (e) Inflicting pain or humiliation as a punishment.

NEW SECTION

WAC 170-297-6050 Guidance and discipline. The licensee and program staff must use consistent, fair, and positive guidance and discipline methods. These methods must be appropriate to the child's developmental level, abilities, culture, and related to the child's behavior.

- (1) Only the licensee or a program staff person trained in the child care program's expected standards may discipline a child in care.
- (2) The licensee or designee is responsible for developing a written policy including:
 - (a) Setting standards for guidance and discipline;
 - (b) Communicating to parents, guardians, and children in care what the policy is;
 - (c) Training program staff and volunteers in the standards of guidance and discipline policy; and
 - (d) Any disciplinary actions by the licensee or program staff that occur during child care hours.

NEW SECTION

WAC 170-297-6075 Positive options for discipline. The licensee and program staff must use positive guidance methods. The guidance methods may include any of the following:

- (1) Redirecting;
- (2) Planning ahead to prevent problems;
- (3) Encouraging appropriate behavior;
- (4) Explaining consistent, clear rules;
- (5) Allowing children to be involved in solving problems; and
- (6) Explaining to the child the reasonable and age appropriate natural and logical consequences related to the child's behaviors.

NEW SECTION

WAC 170-297-6100 Separating a child from the group. (1) The licensee or program staff may separate a child from other children as a form of discipline only long enough to allow the child to regain control of him or herself. The child must remain under the direct supervision of the licensee or program staff person.

- (2) The licensee and program staff must:
 - (a) Take into account the child's developmental level and ability to understand the consequences of his or her actions;
 - (b) Communicate to the child the reason for being separated from the other children;
 - (c) Not discipline any child by separating the child from the group and placing himself or her in a closet, a bathroom, a locked room, outside or in unlicensed space; or
 - (d) Not use confining space or equipment for the purpose of punishment or restricting a child's movements.

NEW SECTION

WAC 170-297-6125 Preventing harmful or aggressive acts. The licensee and program staff must:

- (1) Take steps to protect children from the harmful acts of other children;
- (2) Immediately intervene when a child becomes physically aggressive; and
- (3) Document serious behavior incidents and develop, as needed, individual written behavior plans with parent input.

NEW SECTION

WAC 170-297-6150 Prohibited actions. The licensee and program staff must not:

- (1) Restrict a child's breathing;
- (2) Deprive a child of:
 - (a) Sleep, food, water, clothing or shelter;
 - (b) Needed first aid; or
 - (c) Required or emergency medical or dental care.
- (3) Interfere with a child's ability to take care of his or her own hygiene and toileting needs;
- (4) Withhold hygiene care, toileting care or diaper changing to any child unable to provide such care for himself or herself; or
- (5) Withhold active play as punishment.

NEW SECTION

WAC 170-297-6175 Using alternate methods before using physical restraint. (1) Program staff must be trained on alternate methods to use before using physical restraint.

(2) Before using physical restraint, the licensee and program staff must first use other methods described in WAC 170-297-6075 to redirect or de-escalate a situation.

NEW SECTION

WAC 170-297-6200 Physical restraint—Prohibited uses or methods. The licensee and program staff must not use:

- (1) Physical restraint as a form of punishment or discipline;
- (2) Mechanical restraints including, but not limited to, handcuffs and belt restraints;
- (3) Locked time-out or isolation space;
- (4) Bonds, ties, tape, or straps to restrain a child; or
- (5) Physical restraint techniques that restrict breathing or inflict pain. These include, but are not limited to:
 - (a) Restriction of body movement by placing pressure on joints, chest, heart, or vital organs;
 - (b) Sleeper holds, which are holds used by law enforcement officers to subdue a person;
 - (c) Arm twisting;
 - (d) Hair holds;
 - (e) Choking or putting arms around the throat; or
 - (f) Chemical restraint such as mace or pepper spray.

NEW SECTION

WAC 170-297-6225 Physical restraint—Holding method allowed. When a child's behavior makes it necessary for his or her own or another's protection, the licensee or program staff may restrain the child by holding the child as gently as possible. A child must not be physically restrained longer than necessary to control the situation.

NEW SECTION

WAC 170-297-6250 Notice and documenting use of physical restraint. If physical restraint is used the licensee or program staff must:

- (1) Report use of physical restraint to the child's parent or guardian and the department as required under WAC 170-297-2250;
- (2) Assess any incident of physical restraint to determine if the decision to use physical restraint and its application were appropriate;
- (3) Document the incident in the child's file; and
- (4) Develop a safety plan with the licensor if required by the department.

NEW SECTION

WAC 170-297-6275 Abuse and neglect—Protection and training. (1) The licensee and program staff must:

- (a) Protect children in care from all forms of child abuse or neglect as defined in RCW 26.44.020; and
 - (b) Report suspected or actual abuse or neglect as required under RCW 26.44.030 to DSHS children's administration intake (child protective services) or law enforcement.
- (2) The licensee or designee must provide training for program staff and volunteers on:
- (a) Prevention of child abuse and neglect as defined in RCW 26.44.020; and
 - (b) Mandatory reporting requirements under RCW 26.44.030.

PROGRAMNEW SECTION

WAC 170-297-6400 Off-site activities—Parent or guardian permission. (1) Program staff must:

- (a) Have written permission from the parent or guardian prior to the child engaging in off-site activities. The written permission must be kept in the child's file.
 - (b) Have a separate permission for activities that occur less often than once per calendar month.
- (2) For scheduled or unscheduled off-site activities that may occur more than once a month, the licensee must:
- (a) Have a signed parent or guardian permission on file for each child; and
 - (b) Inform parents and guardians about how to contact program staff when children are on an off-site activity.

NEW SECTION**WAC 170-297-6425 Off-site activity supervision.**

When on an off-site activity, the program staff responsible for the care of the children must at all times provide direct sight and sound supervision and be able to promptly assist or redirect the children's activities.

NEW SECTION

WAC 170-297-6450 Off-site activity—Emergency information and supplies. When on an off-site activity, program staff must have available:

- (1) An emergency consent form for each child that includes:
 - (a) Emergency contact information;
 - (b) Permission to obtain medical treatment for the child in the event of a medical emergency;
 - (c) A list of the child's allergies, if applicable; and
 - (d) Permission to administer medications, if applicable;
- (2) Emergency supplies, including:
 - (a) A first-aid kit; and
 - (b) Each child's required medication or emergency medicine, if applicable.

NEW SECTION

WAC 170-297-6475 Transportation. When transporting children in care, the licensee, staff, and volunteers must:

- (1) Follow RCW 46.61.687 and other applicable law regarding child restraints and car seats;
- (2) Carry in the vehicle all items required under WAC 170-297-6450 and a current copy of each child's completed enrollment form;
- (3) Maintain the vehicle in safe operating condition with vehicle maintenance record available on-site;
- (4) Have a valid driver's license to operate the type of vehicle being driven, if the licensee, staff, or volunteer is driving;
- (5) Have a current insurance policy that covers the driver, the vehicle, and all occupants;
- (6) Take attendance each time children are getting in or getting out of the vehicle;
- (7) Never leave children unattended in the vehicle; and
- (8) Maintain required staff-to-child ratio and capacity.

NEW SECTION

WAC 170-297-6500 Using public transportation. The licensee or program staff may transport children using public transportation, provided that children are supervised at all times and required staff-to-child ratios are maintained. The licensee and program staff must not allow or send children on public transportation unsupervised.

NEW SECTION

WAC 170-297-6550 Typical daily schedule. (1) A typical daily schedule must be posted that includes program activities.

- (2) The typical daily schedule must include:

- (a) Hours of operation;
 - (b) Types of activities, including screen time;
 - (c) General timelines for activities;
 - (d) Routine transportation times, if applicable;
 - (e) Menus and meal service; and
 - (f) Outdoor times.
- (3) Evidence of daily activities may be shared or demonstrated through:
- (a) Display;
 - (b) Writing; or
 - (c) A checklist.

NEW SECTION

WAC 170-297-6575 Activities to promote child growth and development. (1) An activity program must be implemented that is designed to meet the developmental, cultural, and individual needs of the children in care. The activity program must contain a range of learning experiences for the children to:

- (a) Gain self-esteem, self-awareness, conflict resolution, self-control, and decision-making abilities;
 - (b) Develop socially, emotionally, intellectually, and physically;
 - (c) Learn about nutrition, health, and personal safety;
 - (d) Experiment, create, and explore; and
 - (e) Recognize and support positive cultural and individual identities.
- (2) The activity program schedule must include activities that offer a variety of options including a balance between:
- (a) Child-initiated and staff-initiated activities;
 - (b) Free choice and organized events;
 - (c) Individual and group activities; and
 - (d) Quiet and active experiences.
- (3) The activity program schedule must include activities that provide the children daily opportunities for small and large muscle activities and outdoor play.
- (4) The program schedule must include the opportunity for the children to participate in moderate to vigorous physical activity on an average of thirty minutes for every three hours of care.
- (5) Program staff should encourage learning in school.
 - (6) The child care program must operate under a regular schedule of activities with allowances for special events when applicable.

(7) Child movements must be managed from one planned activity or care area to another to achieve smooth, unregimented transitions by:

- (a) Establishing familiar routines;
- (b) Contributing to learning experiences; and
- (c) Maintaining staff-to-child ratio and group size guidelines.

NEW SECTION**WAC 170-297-6600 Equipment and play materials.**

- (1) Safe equipment and play materials must be provided that are:
 - (a) Washable and clean; and
 - (b) Nonpoisonous or free of toxins.

(2) Materials and equipment must accommodate children with special needs.

(3) Basic school supplies and program staff support must be provided for children to work on their homework.

NEW SECTION

WAC 170-297-6625 Art materials. All prepackaged art materials used in the child care must be labeled "nontoxic" and as conforming to or meeting "ASTM D-4236." This does not apply to food items used as art materials, bulk paper, or items from the natural environment.

NEW SECTION

WAC 170-297-6650 Screen time. When the child care program provides screen time for children in care, the screen time must:

- (1) Be educational, developmentally and age appropriate;
- (2) Have child-appropriate content; and
- (3) Not have violent or adult content.

NEW SECTION

WAC 170-297-6675 Screen time—Limitations. The licensee or staff must:

- (1) Limit screen time for any child to no more than one hour per week;
- (2) Not require children to participate in screen time;
- (3) Provide alternative activities to screen time; and
- (4) Place the television screen at least three feet from the children.

NEW SECTION

WAC 170-297-6775 Diversity. The licensee must:

- (1) Provide an environment that reflects each child's daily life, family culture and language, and the diversity in society;
- (2) Describe or demonstrate to the licensor, or have a written plan for how:
 - (a) The licensee will discuss with parents how the child care reflects that child's daily life and family's culture or language; and
 - (b) The child care environment reflects the diversity in society.

FOOD SERVICE AND NUTRITION

NEW SECTION

WAC 170-297-7500 Food and milk must meet USDA guidelines. (1) Meals and snack foods must be provided to children in care according to the most current edition of the U.S. Department of Agriculture (USDA) child and adult care food program (CACFP) charts for the ages of children in care.

(2) Milk must be provided to children in care according to the most current edition of the USDA CACFP charts for the ages of children in care.

NEW SECTION

WAC 170-297-7515 Menus and dietary restrictions.

(1) Menus must be posted in the licensed space in a place where parents and staff can easily view them. Menus must include:

- (a) Food type and portion sizes planned and served;
- (b) Two weeks or more of food variety before repeating menus;
- (c) Dates; and
- (d) Any changes that are made posted on the menu.

(2) When a child has a food allergy or special dietary requirement due to a health condition program staff must:

- (a) Obtain written instructions from the child's parent or guardian and health care provider identifying foods to avoid and appropriate alternatives; and
- (b) Post the child's dietary restrictions where food is prepared and served.

NEW SECTION

WAC 170-297-7525 Parent or guardian-provided food. (1) A parent or guardian may provide alternative food for their child if a written food plan is completed and signed by the parent or guardian and the licensee or program staff.

(2) A written food plan may include accommodations for:

- (a) The child's medical needs;
 - (b) Special diets;
 - (c) Religious or cultural preference; or
 - (d) Family preference.
- (3) If food provided by the parent or guardian does not meet the USDA CACFP meal pattern it must be supplemented by the program.

NEW SECTION

WAC 170-297-7530 Food sources. (1) Food sources that are not approved include:

- (a) Leftover food that was previously served from outside the site;
- (b) Home canned food due to the risk of botulism poisoning;
- (c) Donated food from restaurants or caterers that was previously served;
- (d) Game meat that has not been inspected by the USDA; and
- (e) Meat, fish, poultry or milk that is from a source not inspected for sale.

(2) All food must be prepared on-site unless it is provided by a:

- (a) Licensed satellite kitchen, catering kitchen or other source licensed by the local health jurisdiction; or
- (b) Parent or guardian as provided in WAC 170-297-7525.

NEW SECTION

WAC 170-297-7575 Drinking water. (1) A safe supply of drinking water must always be available to each child and must be served in a sanitary manner.

(2) Drinking water may not be obtained from any hand-washing sink.

NEW SECTION

WAC 170-297-7580 Drinking fountains. (1) Inclined jet-type drinking fountains may be used.

(2) Bubble-type drinking fountains and drinking fountains attached to or part of sinks used for any purpose other than the drinking fountain must not be used.

(3) Drinking fountains must be cleaned and sanitized, as provided in WAC 170-297-0010, on a daily basis or more often as needed.

NEW SECTION

WAC 170-297-7625 Meal and snack schedule. Meals and snacks must be served based on the following:

(1) Breakfast must be provided either by the program or the school;

(2) A snack must be provided for children in care for one to three hours after school; and

(3) When all-day care is provided, meals, including lunch, and snacks must be served at intervals not less than two hours and not more than three and one-half hours apart.

NEW SECTION

WAC 170-297-7650 Serving foods. (1) The licensee or program staff may:

(a) Serve each child individually; or

(b) Serve family style in serving containers that allow each child the opportunity to serve themselves.

(2) The licensee or program staff must:

(a) Closely supervise all children when eating;

(b) Not force or shame a child to eat or try any food;

(c) Not punish a child for refusing to try or eat foods;

(d) Serve meals in a safe and sanitary manner;

(e) Be respectful of each child's cultural food practices; and

(f) Sit with children during meals when possible.

NEW SECTION

WAC 170-297-7675 Food worker card. (1) Each staff person preparing or handling food must obtain and maintain a current Washington state department of health food worker card prior to handling or preparing food.

(2) At least one individual with a food worker card must be on-site during hours when food is provided.

(3) The licensee or designee must provide orientation and ongoing training as needed for all staff involved in food preparation and service.

(4) The licensee must keep a copy of each individual's food worker card on file.

NEW SECTION

WAC 170-297-7680 Safe food handling. (1) Program staff must follow the safe preparation, cooking, and serving

guidelines in the current edition of the food workers manual prepared by the state department of health.

(a) Food must be served at temperatures of not less than one hundred thirty-five degrees Fahrenheit for hot foods and not more than forty-one degrees Fahrenheit for cold foods.

(b) All opened moist foods that have not been served must be covered, dated, and maintained at a temperature of forty-one degrees Fahrenheit or lower in the refrigerator or frozen in the freezer.

(c) Raw animal foods must be fully cooked to heat all parts of the food to a temperature and for a time of:

(i) One hundred forty-five degrees Fahrenheit or above for fifteen seconds for fish and meat;

(ii) One hundred sixty degrees Fahrenheit for fifteen seconds for chopped or ground fish, chopped or ground meat or raw eggs; or

(iii) One hundred sixty-five degrees Fahrenheit or above for fifteen seconds for poultry or stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, or stuffing containing fish meat or poultry.

(d) Potentially hazardous cooked foods must be cooled in an uncovered container, protected from cross contamination, and in a shallow layer of three inches or less in cooling equipment maintained at an ambient temperature of forty-one degrees Fahrenheit or less.

(2) Program staff must:

(a) Wash their hands prior to preparing food and after handling raw meats, poultry, or fish; and

(b) Not prepare food when ill with vomiting, diarrhea or infectious skin sores that cannot be covered.

(3) Previously prepared food may be served if:

(a) The food was not previously served; and

(b) It was stored at the proper temperature for less than twenty-four hours after preparation.

(4) Leftover foods or opened foods in the refrigerator must be labeled with the date that they were opened or cooked.

(5) Each staff person preparing or handling food must maintain a current Washington state department of health food worker's permit.

NEW SECTION

WAC 170-297-7700 Washing dishes. The licensee or program staff must wash dishes thoroughly after each use by one of the following methods:

(1) Automatic dishwasher; or

(2) Handwashing method, by immersion in hot soapy water, rinsing, and sanitizing, as provided in WAC 170-297-0010, and air drying.

NEW SECTION

WAC 170-297-7725 Food containers and utensils. (1) Cookware containers must not be used to cook or reheat food in a microwave oven, unless the container is labeled by the manufacturer as "for microwave use," "microwave safe," or similar labeling.

(2) The licensee may use disposable serving containers, dishes and utensils that are sturdy, used only once and thrown away after use.

(3) The licensee must keep sharp utensils and other utensils that may cause serious injury or a choking hazard inaccessible to children when the utensils are not in use.

NEW SECTION

WAC 170-297-7750 Food preparation area. (1) Program staff must clean and sanitize food preparation and eating surfaces before and after use. The food preparation area must:

(a) Have surfaces that are free of cracks and crevices; and

(b) Have a floor made of a material that is resistant to moisture.

(2) The following kitchen equipment must be available to cook and serve food:

(a) A range with a properly vented hood or exhaust fan; and

(b) A refrigerator and freezer, or a combination refrigerator/freezer.

(3) There must be a designated food preparation sink in the licensed facility. When the food preparation sink is used for other purposes during nonchild care hours, it must be thoroughly cleaned and sanitized, as provided in WAC 170-297-0010, prior to use and a colander must be used to prevent food items from coming in contact with the sink basin.

(4) There must be a handwashing sink accessible during food preparation. See WAC 170-297-4635.

(5) A calibrated and working food thermometer must be used to monitor food temperature. The thermometer must be either a metal stem-type thermometer or a digital thermometer.

NEW SECTION

WAC 170-297-7800 Food storage. (1) Food must be stored:

(a) In the original containers or in clean, labeled containers that are airtight and off the floor;

(b) In a manner that prevents contamination from other sources;

(c) In an area separate from toxic materials such as cleaning supplies, paint, or pesticides;

(d) With a date that is not past the manufacturer's expiration or freshness date; and

(e) In a refrigerator, cooler, or freezer if cold holding is required.

(2) Raw meat, poultry, or fish in the refrigerator must be stored below cooked or ready to eat foods.

(3) Foods not requiring refrigeration must be stored at least six inches above the floor in a clean dry storeroom, or in a closed cupboard or pantry.

(4) Dry bulk foods not in their original containers must be stored in containers with tight fitting covers. Containers must be labeled and dated.

NEW SECTION

WAC 170-297-7825 Satellite kitchens. (1) When a satellite kitchen or catering service is used to provide food to the child care program, the child care program must have on file

a copy of the permit issued by the local health jurisdiction to the satellite kitchen or catering service.

(2) When the satellite kitchen or catering service does not remain on-site during the food service the child care program must develop a system to record the temperature of perishable food once it arrives from a satellite kitchen or a catering service. The system must include:

(a) The name and the temperature of the food;

(b) The date and time the temperature was checked; and

(c) The name and signature or recognized initials of the person who is checking and recording the food temperatures.

(3) The child care program must have a written policy that describes:

(a) How food will be handled once it is on-site;

(b) What back-up system the program will use if the food does not arrive, not enough food arrives, or the food cannot be served; and

(c) How records will be stored on-site for six months.

ENFORCEMENT OF LICENSING STANDARDS

NEW SECTION

WAC 170-297-8000 Facility licensing compliance agreements. At the department's discretion, when a licensee is in violation of this chapter or chapter 43.215 RCW, a facility licensing compliance agreement may be issued in lieu of the department taking enforcement action.

(1) The facility licensing compliance agreement contains:

(a) A description of the violation and the rule or law that was violated;

(b) A statement from the licensee regarding the proposed plan to comply with the rule or law;

(c) The date the violation must be corrected;

(d) Information regarding other licensing action that may be imposed if compliance does not occur by the required date; and

(e) Signature of the licensor and licensee.

(2) The licensee must return a copy of the completed facility license compliance agreement to the department by the date indicated when corrective action has been completed.

(3) The licensee may request a supervisory review regarding the violation of rules or laws identified on the facility license compliance agreement.

(4) A facility license compliance agreement is not subject to appeal under chapter 170-03 WAC.

NEW SECTION

WAC 170-297-8010 Nonreferral status. In addition to or in lieu of an enforcement action under this chapter, the department may place a child care facility on no referral status as provided in RCW 43.215.300(4).

NEW SECTION

WAC 170-297-8025 Time period for correcting a violation. The length of time the program has to make the corrections depends on:

- (1) The seriousness of the violation;
- (2) The potential threat to the health, safety and well-being of the children in care; and
- (3) The number of times the program has violated rules in this chapter or requirements under chapter 43.215 RCW.

NEW SECTION

WAC 170-297-8050 Civil monetary penalties (fines). A civil monetary penalty (fine) may be imposed when the licensee or program staff violates a rule in this chapter or a requirement in chapter 43.215 RCW.

- (1) A fine of two hundred fifty dollars per day may be imposed for each violation.
- (2) The fine may be assessed and collected with interest for each day a violation occurs.
- (3) A fine may be imposed in addition to other action taken against the license including denial, modification, probation, suspension, revocation, or discontinuation.
- (4) At the department's discretion, the fine may be withdrawn or reduced if the child care program comes into compliance during the notification period in WAC 170-297-8075.
- (5) When a fine is assessed the licensee has the right to a hearing under chapter 170-03 WAC. The fine notice will include information about the licensee's hearing rights and how to request a hearing.

NEW SECTION

WAC 170-297-8060 When fines are levied. The department may base a fine for violation of a rule under this chapter or a requirement in chapter 43.215 RCW, according to whether the licensee:

- (1) Has allowed the existence of any condition that creates a serious safety and health risk;
- (2) Or any staff person uses corporal punishment or humiliating methods of control or discipline;
- (3) Or any staff person fails to provide the required supervision;
- (4) Fails to provide required light, ventilation, sanitation, food, water, or heating;
- (5) Provides care for more than the highest number of children permitted by the license; or
- (6) Repeatedly fails to follow the rules in this chapter or the requirements in chapter 43.215 RCW. As used in this section, "repeatedly" means a violation that has been the subject of a facility license compliance agreement that occurs more than once in a twelve-month time period.

NEW SECTION

WAC 170-297-8075 Fines—Payment period. A fine must be paid within twenty-eight calendar days after the licensee receives the notice unless:

- (1) The department approves a payment plan requested by the licensee; or
- (2) The licensee requests a hearing as provided in RCW 43.215.307(3).

NEW SECTION

WAC 170-297-8100 Notice of fine—Posting. The licensee must post the department letter notifying the licensee of a final notice of a civil penalty:

- (1) Immediately upon receipt;
- (2) In the licensed space where it is clearly visible to parents and guardians; and
- (3) For two weeks or until the violation causing the fine is corrected, whichever is longer.

NEW SECTION

WAC 170-297-8125 Failure to pay a fine—Department action. If the licensee fails to pay a fine within twenty-eight calendar days after the fine assessment becomes final the department may suspend, revoke or not continue the license.

NEW SECTION

WAC 170-297-8150 Denial, suspension, revocation, modification or noncontinuation of a license. (1) A license may be denied, suspended, modified, revoked or not continued when the licensee fails to comply with the requirements in this chapter or any provisions of chapter 43.215 RCW.

- (2) A license may be denied, suspended, modified or revoked when the licensee knowingly allows others to fail to comply with the requirements in this chapter or any provisions of chapter 43.215 RCW.

NEW SECTION

WAC 170-297-8175 Violations—Enforcement action. The department may deny, suspend, revoke, or not continue a license when:

- (1) The licensee or program staff are unable to provide the required care for the children in a way that promotes their health, safety and well-being;
- (2) The licensee or program staff person is disqualified under chapter 170-06 WAC (DEL background check rules);
- (3) The licensee or program staff person has been found to have committed child abuse or child neglect;
- (4) The licensee has been found to allow program staff or volunteers to commit child abuse or child neglect;
- (5) The licensee or program staff person has a current charge or conviction for a disqualifying crime under WAC 170-06-0120;
- (6) There is an allegation of child abuse or neglect against the licensee, staff, or volunteer;
- (7) The licensee or program staff person fails to report to DSHS children's administration intake or law enforcement any instances of alleged child abuse or child neglect;
- (8) The licensee tries to obtain or keep a license by deceitful means, such as making false statements or leaving out important information on the application;
- (9) The licensee or a program staff person commits, permits or assists in an illegal act at the child care premises;
- (10) The licensee or a program staff person uses illegal drugs or alcohol in excess, or abuses prescription drugs;

(11) The licensee knowingly allowed a program staff person or volunteer to make false statements on employment or background check application related to their suitability or competence to provide care;

(12) The licensee does not provide the required number of qualified program staff to care for the children in attendance;

(13) The licensee or program staff fails to provide the required level of supervision for the children in care;

(14) When there are more children than the maximum number stated on the license at any one time;

(15) The licensee or program staff refuses to allow department authorized staff access during child care operating hours to:

- (a) Requested information;
- (b) The licensed space;
- (c) Child, staff, or program files; or
- (d) Staff or children in care;

(16) The licensee is unable to manage the property, fiscal responsibilities or staff in the facility; or

(17) The licensee or program staff cares for children outside the ages stated on the license.

NEW SECTION

WAC 170-297-8225 Notice of license denial, suspension, revocation, or modification. (1) The department notifies the licensee of the denial, suspension, revocation, or modification of the license by sending a certified letter or by personal service.

(2) The letter contains information on what the licensee may do if the licensee disagrees with the decision to deny, suspend, revoke, or modify the license.

(3) The licensee has a right to appeal the denial, suspension, revocation or modification of the license.

(4) The department notice will include information on hearing rights and how to request a hearing.

NEW SECTION

WAC 170-297-8250 Probationary license. A probationary license may be issued to a licensee operating under a nonexpiring full license as part of a corrective action plan. The department refers the licensee for technical assistance as provided in RCW 43.215.290 prior to issuing a probationary license.

NEW SECTION

WAC 170-297-8275 Probationary license—Cause. A department decision to issue a probationary license must be based on the following:

- (1) Negligent or intentional noncompliance with the licensing rules;
- (2) A history of noncompliance with the licensing rules;
- (3) Current noncompliance with the licensing rules; or
- (4) Any other factors relevant to the specific situation and consistent with the intent or purpose of chapter 43.215 RCW.

NEW SECTION

WAC 170-297-8300 Issuing a probationary license. When the department issues a probationary license, the licensee must:

(1) Provide the parents and guardians of enrolled children notice of the probationary license in a department-approved format within five working days of the licensee receiving the probationary license;

(2) Provide documentation to the department that parents or guardians of enrolled children have been notified;

(3) Inform new parents or guardians of the probationary status before enrolling new children;

(4) Post documentation of the approved written probationary license as required by RCW 43.215.525; and

(5) Return the licensee's nonexpiring full license to the department.

NEW SECTION

WAC 170-297-8325 Refusing a FLCA or probationary license. (1) The licensee has the right to:

(a) Refuse or refuse to sign a facility licensing compliance agreement; or

(b) Refuse to agree to a probationary license.

(2) Refusing a facility license compliance agreement or probationary license may result in one of the following enforcement actions:

(a) Modification of the license;

(b) Noncontinuation of a nonexpiring full license;

(c) Suspension of the license; or

(d) Revocation of the license.

NEW SECTION

WAC 170-297-8350 Providing unlicensed care—Notice. (1) If the department determines that an individual is providing unlicensed child care in his or her home, the department will send the individual written notice within ten calendar days to explain:

(a) Why the department suspects that the individual is providing child care without a license;

(b) That a license is required and why;

(c) That the individual must immediately stop providing unlicensed child care;

(d) That if the individual wishes to obtain a license, within thirty calendar days from the date of the department's notice in this subsection (1) the individual must submit a written agreement, on a department form, stating that he or she agrees to:

(i) Attend the next available department child care licensing orientation; and

(ii) Submit a child care licensing application after completing orientation; and

(e) That the department has the authority to issue a fine of two hundred fifty dollars per day for each day that the individual continues to provide child care without a license.

(2) The department's written notice in subsection (1) of this section must inform the individual providing unlicensed child care:

(a) How to respond to the department;

- (b) How to apply for a license;
 - (c) How a fine, if issued, may be suspended or withdrawn if the individual applies for a license;
 - (d) That the individual has a right to request an adjudicative proceeding (hearing) if a fine is assessed; and
 - (e) How to ask for a hearing.
- (3) If an individual providing unlicensed child care does not submit an agreement to obtain a license as provided in subsection (1)(d) of this section within thirty calendar days from the date of the department's written notice, the department will post information on its web site that the individual is providing child care without a license.

NEW SECTION

WAC 170-297-8375 Unlicensed care—Fines and other penalties. A person providing unlicensed child care may be:

- (1) Assessed a fine of two hundred fifty dollars a day for each day unlicensed child care is provided;
- (2) Guilty of a misdemeanor; or
- (3) Subject to an injunction.

NEW SECTION

WAC 170-297-8400 Hearing process. (1) Department notice of an enforcement action against the license includes information about the right to request an adjudicative proceeding (hearing) and how to request a hearing.

(2) The hearing process is governed by chapter 34.05 RCW, Administrative Procedure Act, applicable sections of chapter 43.215 RCW, Department of early learning, and chapter 170-03 WAC, DEL hearing rules.