

WSR 16-04-073
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed January 29, 2016, 11:30 a.m., effective February 1, 2016]

Effective Date of Rule: February 1, 2016.

Purpose: The department is creating new rules that support the 2015-2017 biennium budgets for overnight planned respite services as found on pages 63 and 64 of ESSB 6052.S.L.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: ESSB 6052.S.L.

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

Reasons for this Finding: The 2015-2017 biennium budgets provided funding to develop eight community respite beds for adults with developmental disabilities for the provision of short-term community-based planned respite services and eight enhanced respite beds across the state for children. The purpose for these respite beds is to provide family and caregivers relief from the intensity of personal caregiving and an opportunity for behavioral stabilization for children. Without these services some families may be unable to continue to care for their children in their own home and out of home placement could be necessary.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 44, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 44, Amended 0, Repealed 0.

Date Adopted: January 28, 2016.

Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-825-221 Who is eligible to receive overnight planned respite services? (1) To be eligible for overnight planned respite services, you must meet the following conditions at a minimum:

(a) You have been determined eligible for DDA services per chapter 71A.10 RCW;

(b) You are at least eighteen years of age; and

(c) You live at home with your family members (paid or unpaid care provider) or nonfamily members who are not paid to provide care for you.

(2) The adult respite service committee will consider the following factors when reviewing requests for services:

(a) Whether your needs can be safely met in the respite setting;

(b) Whether there are available respite bed vacancies within ninety days of requested dates; and

(c) Whether the stay will meet the legislative intent of reducing utilization of RHCs for respite.

NEW SECTION

WAC 388-825-225 How do I access overnight planned respite services? (1) Your case resource manager will assist you with completing a brief application and to ensure overnight planned respite services are included in your individual support plan;

(2) Upon approval for services, you will work with the provider to complete an individual respite service agreement that outlines agreed support needs and activities prior to your stay.

NEW SECTION

WAC 388-825-229 Who are the qualified providers of overnight planned respite services? Qualified providers must be certified by and contracted with DDA to provide overnight planned respite.

NEW SECTION

WAC 388-825-231 What are the limitations of overnight planned respite services? Overnight planned respite services may not exceed fourteen days in a calendar year.

Chapter 388-829R WAC

OVERNIGHT PLANNED RESPITE SERVICES

NEW SECTION

WAC 388-829R-005 What definitions apply to this chapter? The following definitions apply to this chapter:

"Adult protective services" or "APS" means the investigative body designated by the aging and long term care services administration (AL TSA) to investigate suspected cases of abandonment, abuse, financial exploitation and neglect as defined in chapter 74.34 RCW.

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

"Case manager" means the DDA case resource manager or social worker assigned to a client.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(5) and who also has been determined eligible to receive services by the administration under chapter 71A.16 RCW.

"DDA" or "the administration" means the developmental disabilities administration, an administration of the department of social and health services.

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

"DSHS" or "the department" means the state of Washington department of social and health services and its employees and authorized agents.

"Health, safety, and well-being" means providing a safe living environment, meeting all the clients medical and behavioral needs, adequate staffing based on the client's needs, and access to appropriate community activities.

"Mandatory reporter" means any person working with vulnerable adults required by law to report suspected incidents of abandonment, abuse, neglect, financial exploitation under chapter 74.34 RCW.

"NA-R" means nursing assistant-registered under chapter 18.88A RCW.

"NA-C" means nursing assistant-certified under chapter 18.88A RCW.

"Overnight planned respite services" means services that are intended to provide short-term intermittent relief for persons who live with the DDA client as the primary care provider and are either:

- (1) a family member (paid or unpaid); or
- (2) a nonfamily member who is not paid. These services provide the opportunity for the client to receive support and care while engaging in their community.

"Registered nurse delegation" means the process by which a registered nurse transfers the performance of selected nursing tasks to a NA-R or NA-C in selected situations. (For detailed information, please refer to chapter 18.79 RCW and WAC 246-840-910 through 246-840-970.)

"Regulation" means any federal, state, or local law, rule, ordinance or policy.

"RCW" or "Revised Code of Washington" means all laws adopted by the state of Washington.

"WAC" or "Washington Administrative Code" means administrative codes or rules that are adopted by Washington State agencies to enact legislation and RCW.

NEW SECTION

WAC 388-829R-010 What is the purpose of this chapter? This chapter establishes rules governing the developmental disabilities administration (DDA) overnight planned respite services for eligible clients under chapter 71A.12 RCW.

NEW SECTION

WAC 388-829R-015 Who are the intended recipients of overnight planned respite services? (1) Recipients of overnight planned respite services must meet the following conditions at a minimum:

- (a) Have been determined eligible for DDA services per chapter 71A RCW;
- (b) Be at least eighteen years of age; and
- (c) Live at home with support providers who are family members (paid or unpaid) or unpaid non-family members.

For the purpose of this chapter, "family members" consists of natural, step or adoptive parents; grandparents; and siblings.

(2) The adult respite services committee will consider the following factors when reviewing requests for services:

- (a) Whether the recipient's needs can be safely met in the respite setting;
- (b) Whether there are available vacancies within ninety days of requested dates; and
- (c) Whether the stay will reduce utilization of RHCs for respite.

NEW SECTION

WAC 388-829R-020 What are the responsibilities of overnight planned respite services providers? The overnight planned respite services provider must:

- (1) Meet the requirements of this chapter and their contract;
- (2) Deliver the service on the dates approved by the administration;
- (3) Provide supports and services outlined in the individual respite services agreement;
- (4) Provide adequate staff to administer the program and meet the needs of clients;
- (5) Ensure that clients have immediate access to staff, or the means to contact staff, at all times; and
- (6) Retain all records and other material related to the services contract, for six years after expiration of the contract.

NEW SECTION

WAC 388-829R-025 What requirements must an agency meet to contract with DDA to provide overnight planned respite services? To be eligible to contract with DDA to provide overnight planned respite services, an agency:

- (1) Must be certified by the DDA to perform the duties of overnight planned respite service;
- (2) Must be approved as a contractor by the department;
- (3) Must not provide respite for a client to whom they are related; and
- (4) Must not provide respite to more than one client per household.

NEW SECTION

WAC 388-829R-030 Who must have a background check? (1) Overnight planned respite service providers and their employees and volunteers are required to complete a fingerprint based background check through the DSHS background check central unit (BCCU) prior to working unsupervised with clients per RCW 74.39A.056.

(2) Rechecks are required at least every three years for overnight planned respite services providers. Rechecks must be conducted as follows:

- (a) Individuals who have continuously resided in Washington State for the past three consecutive years must clear a name and date of birth check through BCCU.
- (b) Individuals who have lived outside of Washington State within the past three years must be screened through a

state name, date of birth, and national fingerprint based background check through BCCU.

NEW SECTION

WAC 388-829R-035 What criminal convictions, pending crimes or negative actions will prohibit overnight planned respite services providers and their employees and volunteers from working in a capacity that may involve access to individuals with a developmental disability? (1) Criminal convictions and pending charges that are disqualifying are listed in chapter **388-113 WAC**.

(2) The following negative actions will automatically disqualify an individual from having unsupervised access to individuals with a developmental disability:

(a) A final finding of abuse, neglect, financial exploitation or abandonment of a vulnerable adult, unless the finding was made by adult protective services prior to October 2003.

(b) A final finding of abuse or neglect by child protective services, unless the finding was made prior to October 1, 1998.

(c) A court ordered permanent restraining order or order of protection, either active or expired, that was based upon abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult.

(d) Registered sex offender status.

NEW SECTION

WAC 388-829R-040 May an individual work in an unsupervised capacity with individuals with developmental disabilities when his or her background check reveals a conviction, pending charge or negative action that is not considered disqualifying per WAC 388-113? Yes. An individual with convictions, pending charges or negative actions that are not disqualifying per chapter 388-113 WAC may work in an unsupervised capacity with individuals with developmental disabilities only after the overnight planned respite services provider conducts and documents a character, competence and suitability review.

NEW SECTION

WAC 388-829R-045 What must a character, competence and suitability review include? Character, competence and suitability reviews conducted by overnight planned respite services providers must include consideration of the following factors:

(1) The amount of time that has passed since the individual was convicted or subject to a negative action;

(2) The seriousness of the crime or action that led to the conviction or finding;

(3) The number and types of other convictions in the individual's background;

(4) Age at the time of conviction;

(5) Documentation indicating successful completion of court-ordered programs and restitution;

(6) Behavior since the conviction; and

(7) The vulnerability of those that will be under the individual's care.

NEW SECTION

WAC 388-829R-050 May an individual work in an unsupervised capacity with individuals with developmental disabilities pending the final results of his or her fingerprint based background check through BCCU? (1) The provider may approve individuals for a one hundred twenty-day provisional hire. During the provisional hire period, the individual may work unsupervised when:

(a) The individual has not been disqualified based on the initial result of the Washington state name and date of birth background check by BCCU; and

(b) The provider has verified that the individual submitted fingerprints for the national fingerprint based background check.

(2) If the provider does not receive BCCU's final results before expiration of the one hundred twenty day provisional hire period, the individual may no longer work unsupervised with individuals with developmental disabilities until the provider receives those results and the individual has not been disqualified.

NEW SECTION

WAC 388-829R-055 What must the overnight planned respite services providers share with its employees or potential employees regarding background check results? (1) The provider must provide a copy of the background check notification letter and all attachments to an employee or prospective employee within ten days of receipt of the results; and

(2) The provider must notify prospective hires when they have been disqualified by the background check. The notice must be in writing and include any laws and rules that require disqualification.

NEW SECTION

WAC 388-829R-060 What are the minimum requirements for overnight planned respite services providers? Overnight planned respite services providers must at a minimum:

(1) Have a high school diploma or GED equivalent, unless hired before September 1, 1991;

(2) Be at least eighteen years of age when employed as a direct care staff, or at least twenty-one years of age when employed as an administrator;

(3) Have a clear understanding of job responsibilities and knowledge of individual support plans and client needs;

(4) Have a current background check as required by WAC 388-829R-030; and

(5) Be able to:

(a) Read, understand, and provide services outlined in the individual support plan (ISP) and individual respite services agreement;

(b) Reasonably accommodate the client's individual preferences;

(c) Know the community resources, such as: medical facilities, emergency resources, and recreational opportunities;

- (d) Enable the client to keep in touch with family and friends in a way preferred by the client;
- (e) Protect the client's financial interests;
- (f) Fulfill reporting requirements as required in this chapter and the overnight planned respite services contract;
- (g) Know how and when to contact the client's representative and case manager; and
- (h) Successfully complete the training required in this chapter.

NEW SECTION

WAC 388-829R-065 What training requirements must overnight planned respite services staff meet? Overnight planned respite services provider staff must meet all training and certification requirements that apply to community residential service businesses in accordance with 388-829 WAC. The provider must document that its staff has met these requirements and make this documentation available for DDA.

NEW SECTION

WAC 388-829R-070 What policies and procedures must overnight planned respite services providers have?

(1) Overnight planned respite services providers must develop and implement policies and procedures that address:

- (a) Client rights, including a client's right to file a complaint or suggestion without interference;
- (b) Reporting requirements for suspected abuse, neglect, financial exploitation, or abandonment;
- (c) Client protections when there have been allegations of abuse, neglect, financial exploitation, or abandonment;
- (d) Emergent situations that may pose a danger or risk to the client or others, such as death or serious injury to a client;
- (e) Response to a missing person and other client emergencies;
- (f) Emergency response plans for natural or other disasters;
- (g) Client access to medical, mental health, and law enforcement resources for clients;
- (h) Notification to client's legal representative or relatives in case of emergency;
- (i) Client grievances;
- (j) Appropriate response and supports for clients who engage in aggressive or assaultive behavior; and
- (k) All aspects of the medication support staff including but not limited to:
 - (i) Supervision;
 - (ii) Client refusal;
 - (iii) Services related to medications and treatments provided under the delegation of a registered nurse consistent with chapter 246-840 WAC;
 - (iv) The monitoring of a client who self-administers medication;
 - (v) Medication assistance for clients who need support; and
 - (vi) What the service provider will do in the event they become aware that a client is no longer safe to take his or her own medications.

- (2) The service provider must train staff on its policies and procedures, maintain current written policies and procedures, and make them accessible to all staff and available to clients and legal representatives upon request.

NEW SECTION

WAC 388-829R-075 What are the requirements for an individual respite services agreement? (1) Overnight planned respite services providers must develop an individual respite services agreement with the client's paid or unpaid caregiver at least three business days prior to the client's placement.

- (2) The individual respite services agreement must outline supports and services to be provided during the respite stay.

NEW SECTION

WAC 388-829R-080 What services and activities must be a part of overnight planned respite services? The overnight planned respite services provider must provide the following services and activities at no cost to the client:

- (1) Support staff available, twenty-four hours per day for each day of the respite stay as determined in the individual respite services agreement, to meet the client's needs as identified in the client's assessment;
- (2) A furnished home environment including a private, furnished bedroom for each respite client;
- (3) An accessible site for clients with physical disabilities;
- (4) Toiletries and personal care items;
- (5) Bedding and towels;
- (6) Access to laundry facilities;
- (7) Access to a telephone for local calls;
- (8) Medication monitoring, assistance and administration as needed;
- (9) Instruction and support services identified in the client's individual respite services agreement;
- (10) Transportation as identified in the individual respite services agreement;
- (11) Supports for performing personal hygiene routines and activities of daily living as identified in the individual respite service agreement and individual support plan; and
- (12) Activities within the home and community as outlined in the individual respite services agreement.

NEW SECTION

WAC 388-829R-085 Are overnight planned respite providers responsible to transport a client? (1) The client and the client's family are responsible for transportation to and from the respite services;

- (2) The overnight planned respite services provider is responsible to ensure that the client's transportation needs are met during the respite stay, as identified in the client's individual respite services agreement.

NEW SECTION

WAC 388-829R-090 What requirements must be met before an overnight planned respite provider transports a client? Before transporting a client, overnight planned respite services providers must:

- (1) Carry automobile insurance per chapter 46.30 RCW; and
- (2) Have a valid driver's license per chapter 46.20 RCW.

NEW SECTION

WAC 388-829R-110 What health care assistance must an overnight planned respite provide a client? The overnight planned respite services provider must provide the client the following health care assistance:

- (1) Observe the client for changes in health, taking appropriate action and responding to emergencies;
- (2) Manage medication assistance per chapter 246-888 WAC and administration per WAC 246-840-910 to 246-840-970 and DDA residential medication management requirements specified in the overnight planned respite services contract;
- (3) Assist the client with any medical treatment prescribed by health professionals that does not require registered nurse delegation or professionally licensed services;
- (4) Communicate directly with health professionals when needed; and
- (5) Provide a balanced, nutritional diet.

NEW SECTION

WAC 388-829R-115 How may an overnight planned respite services provider assist a client with medications?

(1) An overnight planned respite services provider may only provide medication assistance per chapter 246-888 WAC, if the client meets the following criteria:

- (a) Is able to put the medication into his or her mouth, apply, or instill the medication; and
- (b) Is aware that he or she is receiving medication.

(2) An overnight planned respite services provider may provide medication assistance under chapter 246-888 WAC.

Medication Assistance Task	May an overnight planned respite services provider complete this task if the client meets both criteria in subsections (1)(a) and (b) of this section?
Remind or coach the client to take his or her medication.	Yes
Open the medication container.	Yes
Hand client the medication container.	Yes
Place medication in the client's hand.	Yes

Transfer medication from a container to another device for the purpose of an individual dose (e.g., pouring liquid medication from a container to a calibrated spoon, medication cup or adaptive device.

Yes

Alter a medication by crushing or mixing, or similar alterations.

Yes, if the client is aware that the medication has been altered or added to food or beverage. A pharmacist or other qualified practitioner must determine it is safe to alter a medication and this must be documented on the prescription container or in the client's record.

Handing the client a pre-filled insulin syringe.

Yes, but the client must be able to inject the insulin by him or herself.

Guide or assist client to apply or instill skin, nose, eye and ear preparations.

Yes, but hand-over-hand administration is not allowed.

Assistance with injectable or IV medication.

No, this is not allowed.

Hand-over-hand assistance with medication.

No, may only be done under nurse delegation.

Assistance with medication beyond the examples provided in this chart.

No, may only be done by a licensed professional within the scope of their license or under registered nurse delegation.

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

NEW SECTION

WAC 388-829R-120 What is required for an overnight planned respite services provider to administer medications and provide delegated nursing tasks? Overnight planned respite services providers must meet the following requirements before administering medications and providing nursing tasks for their clients. The overnight planned respite services provider must either:

- (1) Be a registered nurse (RN) or licensed practical nurse (LPN); or
- (2) Be delegated to perform nursing care tasks by a registered nurse.

NEW SECTION

WAC 388-829R-125 What is required for an overnight planned respite services provider to perform nursing tasks?

ing tasks under the registered nurse delegation program?

In order to be delegated to perform nursing tasks, an overnight planned respite services provider must:

(1) Verify with the delegating registered nurse that it has complied with chapter 18.79 RCW and WAC 246-840-910 through 246-840-990 by:

(a) A current NA-R or NA-C registration or certification as a home care aide (HCA-C) without restriction;

(b) Certification showing completion of the "nurse delegation for nursing assistants" class;

(c) The "nurse delegation training: special focus on diabetes" class when the provider anticipates that the NA-R, NA-C or HCA-C may be administering insulin injections under nurse delegation; or

(d) Certification showing completion of "fundamentals of caregiving" if the overnight planned respite services provider is an NA-R.

(2) Receive client-specific training from the delegating registered nurse.

NEW SECTION

WAC 388-829R-130 When must an overnight planned respite services provider become delegated to perform nursing tasks? (1) The overnight planned respite services provider must comply with the requirements necessary to perform delegated nursing tasks for a client. An overnight planned respite services provider may not offer support to a client whose needs it is unable to meet.

(2) If the overnight planned respite services provider is not eligible to perform nursing tasks, the task must be provided by a person legally authorized to do so such as an RN or LPN.

NEW SECTION

WAC 388-829R-135 What records must the overnight planned respite services provider keep regarding registered nurse delegation? (1) The overnight planned respite services provider must keep the following records when participating in registered nurse delegation:

(a) Written instructions for performing the delegated task from the delegating RN;

(b) The most recent six months of documentation showing that the task was performed; and

(c) Validation of nursing assistant registrations or certifications.

(2) These records must be accessible to the delegating nurse at all times.

NEW SECTION

WAC 388-829R-140 Where may overnight planned respite services be provided? (1) Overnight planned respite services may only be provided in a residence that is maintained and furnished by the overnight planned respite services provider.

(2) No more than one respite client can be served at a time in each residence.

NEW SECTION

WAC 388-829R-145 How must overnight planned respite services providers regulate the water temperature at their residence? (1) Overnight planned respite services providers must regulate the water temperature at their residence by:

(a) Maintaining the water temperature in the household between one hundred five degrees and one hundred twenty degrees fahrenheit; and

(b) Checking the water temperature at least every six months (the water temperature is best measured two hours after substantial hot water usage).

(2) The overnight planned respite services provider must document compliance with these requirements.

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

NEW SECTION

WAC 388-829R-150 What are the requirements for record entries? (1) The overnight planned respite services provider must:

(a) Make entries at the time of or immediately following the event; and

(b) Maintain both the original and corrected entries when an error in the record is made;

(2) Written entries must be:

(a) Legible;

(b) In ink; and

(c) Signed and dated.

(3) Electronic record entries must identify the date the entry was made and the person making the entry by a unique user ID.

NEW SECTION

WAC 388-829R-155 Are client records considered confidential? The overnight planned respite services provider must consider all client information privileged and confidential.

(1) Any transfer or inspection of records to parties other than DSHS, must be authorized by DDA or through a release of information form that:

(a) Includes a specific description of the records the client consents to be released; and

(b) Is signed by the client or the client's legal representative.

(2) A signed release of information is valid for up to one year and must be renewed annually from the signature date.

NEW SECTION

WAC 388-829R-160 How long must an overnight planned respite services provider keep client records? An overnight planned respite provider must keep a client's records for a period of six years from end of the respite stay.

NEW SECTION

WAC 388-829R-165 What must overnight planned respite services providers do when emergencies occur? (1) The overnight planned respite services provider must develop an emergency response plan to address natural and other disasters.

(2) In an emergency, the overnight planned respite services provider must:

- (a) Immediately call 911 if it is a life threatening emergency;
- (b) Provide emergency services;
- (c) Notify DDA and the client's legal representative; and
- (d) Submit a written report to DDA, as required by the DDA residential reporting requirements specified in the overnight planned respite services contract.

NEW SECTION

WAC 388-829R-170 What records must overnight planned respite services providers maintain? (1) Overnight planned respite services providers must keep the following information in client records:

- (a) Client's name and address;
- (b) Name, address, and telephone number of the client's relative or legal representative;
- (c) A copy of the most recent ISP;
- (d) A copy of the individual respite services agreement;
- (e) Nurse delegation records;
- (f) Water temperature monitoring records;
- (g) Staff training records;
- (h) Staff time sheets specific to locations worked;
- (i) Payment records;
- (j) Dates and times of service;
- (k) Progress notes and incident reports;
- (l) Medication intake records;
- (m) A list of the client's personal property upon arrival and departure; and
- (n) A record of money or gift cards managed by the respite provider on behalf of the client during the respite stay.

NEW SECTION

WAC 388-829R-175 Are overnight respite services providers mandatory reporters? (1) Yes. Overnight respite services providers are mandatory reporters. They must report all instances of suspected abandonment, abuse, financial exploitation or neglect of vulnerable adults as defined in chapter 74.34 RCW.

(2) Overnight respite services providers must comply with DDA's residential reporting requirements specified in their contract.

(3) Providers must retain a signed copy of the DDA policy on residential reporting requirements specified in their contract and submit a signed copy of the policy to DDA.

NEW SECTION

WAC 388-829R-180 How must overnight respite services providers report abuse and neglect? Overnight respite services providers must immediately report suspected

abandonment, abuse, financial exploitation or neglect of vulnerable adults to:

(1) Adult protective services using the DSHS toll free telephone number, 1-866-END-HARM or 1-866-363-4276;

(2) DDA in compliance with the DDA residential reporting requirements as specified in the overnight planned respite services contract; and

(3) Law enforcement agencies, as required under chapter 74.34 RCW, including when there is reason to suspect sexual or physical abuse.

NEW SECTION

WAC 388-829R-185 Who provides evaluation and overnight planned respite services? DDA provides oversight and monitoring of the overnight planned respite services provider. DDA will conduct an evaluation in the home where the respite is provided at least every twelve months.

NEW SECTION

WAC 388-829R-190 How often must overnight planned respite services be evaluated? (1) An initial evaluation must be completed within the first ninety days after the overnight planned respite services provider begins providing respite services.

(2) Following the initial evaluation, the overnight planned respite services provider must be evaluated at least every twelve months.

(3) DDA may conduct additional reviews at its discretion.

NEW SECTION

WAC 388-829R-195 How must the overnight planned respite services provider participate in the evaluation process? The overnight planned respite services provider must participate in the evaluation process by:

(1) Allowing scheduled and unscheduled home visits by DDA staff and the DDA contracted evaluators;

(2) Providing information and documentation as requested by the DDA and the DDA contracted evaluators; and

(3) Cooperating in setting up appointments with the DDA and the DDA contracted evaluators.

NEW SECTION

WAC 388-829R-200 What occurs during the review and evaluation process? During the review and evaluation process, DDA contracted evaluators will review compliance with this chapter, and the DDA overnight planned respite services provider contract.

NEW SECTION

WAC 388-829R-205 What happens if the overnight planned respite services providers is found to be out of compliance? (1) If an evaluation finds the overnight planned respite services provider out of compliance with any part of

this chapter or the DDA contract, the provider and DDA must develop a corrective action plan.

(2) The corrective action plan must:

(a) Outline methods for the provider to comply with the required corrections; and

(b) Provide a time frame for the provider to complete the corrective actions.

NEW SECTION

WAC 388-829R-210 When may DDA stop the authorization for payment or terminate a contract for overnight planned respite services provider? DDA may stop the authorization for payment or terminate a contract for the services of an overnight planned respite services provider, when that provider:

(1) Demonstrates inadequate performance or inability to deliver quality care that jeopardizes the client's health, safety, or well-being. DDA may terminate the contract based on a reasonable, good faith belief that the client's health, safety, or well-being is at risk;

(2) Does not complete the corrective actions within the agreed upon time frame; or

(3) Fails to comply with the requirements of this chapter or the overnight planned respite services provider contract.

NEW SECTION

WAC 388-829R-215 May the overnight planned respite services provider contest the department's decision to stop payment or to terminate its contract by administrative hearing? No, the overnight planned respite services provider may not contest the decision to stop payment or termination of the contract by administrative hearing. A client may challenge the department's decision to deny a provider of choice.

WSR 16-05-002

EMERGENCY RULES

DEPARTMENT OF REVENUE

[Filed February 3, 2016, 1:51 p.m., effective February 3, 2016, 1:51 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: WAC 458-20-183 (Rule 183) explains the tax reporting instructions for persons who provide amusement, recreation, and physical fitness services. RCW 82.04.050 is the statute that explains the taxability of these same activities and services. The statute was significantly amended in 2015 due to legislation (HB 1550) which changed the taxability of many of these activities and services. The department will begin the standard rule-making process in 2016 to reflect these changes, but until the final rule is adopted the department wants the public to be aware that many of the tax reporting instructions in Rule 183 are only valid through December 31, 2015.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-183 Amusement, recreation, and physical fitness services.

Statutory Authority for Adoption: RCW 82.45.150, 82.32.300, 82.01.060.

Other Authority: RCW 34.05.350.

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

Reasons for this Finding: Taxpayers providing amusement, recreation, and physical fitness services rely on Rule 183 to assist them in determining their tax reporting requirements. Due to the multiple changes to the statute concerning the taxability of amusement, recreation, and physical fitness services, Rule 183 requires a substantive update using the standard rule-making process. Until the amended rule is adopted, the department wants to ensure the public does not use current Rule 183 to determine their reporting requirements for periods beginning January 1, 2016.

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

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

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

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

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

Date Adopted: February 3, 2016.

Kevin Dixon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 95-22-100, filed 11/1/95, effective 12/2/95)

WAC 458-20-183 Amusement, recreation, and physical fitness services. (1) Introduction. House Bill 1550 (chapter 169, Laws of 2015) made significant changes to many of the activities addressed in this rule. Readers should not rely on this rule for tax periods beginning January 1, 2016, but instead should refer to RCW 82.04.050 and dor.wa.gov for current tax information. This section provides tax reporting instructions for persons who provide amusement, recreation, and physical fitness services, including persons who receive their income in the form of dues and initiation fees. Section 301, chapter 25, Laws of 1993 sp. sess., amended RCW 82.04.050 to include as a retail sale "physical fitness services." This change became effective July 1, 1993. Physical fitness services were previously taxed under the service and other business activities classification. Amusement and recreation services were retail sales prior to the 1993 law amendment and the tax classification remains unchanged for these activities.

(a) Local governmental agencies that provide amusement, recreation, and physical fitness services should also refer to WAC 458-20-189 (Sales to and by the state of Washington, counties, cities, school districts, and other municipal subdivisions).

(b) Persons engaged in operating coin operated amusement devices should refer to WAC 458-20-187 (Coin operated vending machines, amusement devices and service machines).

(c) Persons engaged in providing camping and outdoor living facilities should refer to WAC 458-20-118 (Sale or rental of real estate, license to use real estate) and WAC 458-20-166 (Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc.).

(2) **Definitions.** The following definitions apply throughout this section:

(a) "Amounts derived" means gross income from whatever source and however designated. It includes "gross proceeds of sales" and "gross income of the business" as those terms are defined by RCW 82.04.070 and 82.04.080, respectively. It shall also include income attributable to bona fide "initiation fees" and bona fide "dues."

(b) "Amusement and recreation services" include, but are not limited to: Golf, pool, billiards, skating, bowling, swimming, bungee jumping, ski lifts and tows, basketball, (~~racquet ball~~) racquetball, handball, squash, tennis, and all batting cages. "Amusement and recreation services" also include the provision of related facilities such as basketball courts, tennis courts, handball courts, swimming pools, and charges made for providing the opportunity to dance. The term "amusement and recreation services" does not include instructional lessons to learn a particular activity such as tennis lessons, swimming lessons, or archery lessons.

(c) "Any additional charge" means a price or payment other than bona fide initiation fees or dues, paid by persons for particular goods and services received. The additional charge must be reasonable and any business and/or sales taxes must be paid upon such charges in order to qualify other income denominated as "bona fide dues" or "fees" to be deductible. The reasonableness of any additional charge will be based on one of the following two criteria:

(i) It must cover all costs reasonably related to furnishing the goods or services; or

(ii) It must be comparable with charges made for similar goods or services by other comparable businesses.

(d) "Direct overhead costs" include all items of expense immediately associated with the specific goods or services for which the costs of production method is used. For example, the salary of a swimming pool lifeguard or the salary of a golf club's greenskeeper are both direct overhead costs in providing swimming and golfing respectively.

(e) "Dues" are those amounts periodically paid by members solely for the purpose of entitling those persons to continued membership in the club or similar organization. It shall not include any amounts paid for goods or services rendered to the member by the club or similar organization.

(f) "Entry fees" means those amounts paid solely to allow a person the privilege of entering a tournament or other type of competition. The term does not include any amounts charged for the underlying activity.

(g) "Goods or services rendered" shall include those amusement, recreation, and physical fitness services defined to be retail sales in (m) of this subsection. Also see, WAC 458-20-166 (Hotels, motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc.) and WAC 458-20-244 (Food products). The term shall include the totality or aggregate of goods or services available to members. It is not determinative that some members actually receive more goods or actually enjoy more services than others so long as the totality of the goods or services offered are made available to members in general.

(h) "Indirect overhead costs" means overhead costs incurred by the service provider that are not immediately associated with the specific goods and services. These costs include a pro rata share of total operating costs, including all executive salaries and employee salaries that are not "direct overhead costs" as that term is defined in (d) of this subsection, as well as a pro rata share of administrative expenses and the cost of depreciable capital assets.

(i) "Initiation fees" means those amounts paid solely to initially admit a person as a member to a club or organization. "Bona fide initiation fees" within the context of this rule shall include only those one-time amounts paid which genuinely represent the value of membership in a club or similar organization. It shall not include any amount paid for or attributable to the privilege of receiving any goods or services other than mere nominal membership.

(j) "League fees" means those amounts paid solely for the privilege of allowing a person or a person's team to join an association of sports teams or clubs that compete chiefly amongst themselves. The term does not include any amounts charged for the underlying activity.

(k) "Nonprofit youth organization" means a nonprofit organization engaged in character building of youth which is exempt from property tax under RCW 84.36.030.

(l) "Physical fitness services" include, but are not limited to: All exercise classes, whether aerobic, dance, water, jazzercise, etc., providing running tracks, weight lifting, weight training, use of exercise equipment, such as treadmills, bicycles, stair-masters and rowing machines, and providing personal trainers (i.e., a person who assesses an individual's workout needs and tailors a physical fitness workout program to meet those individual needs). "Physical fitness services" do not include instructional lessons such as those for self-defense, martial arts, yoga, and stress-management. Nor do these services include instructional lessons for activities such as tennis, golf, swimming, etc. "Instructional lessons" can be distinguished from "exercise classes" in that instruction in the activity is the primary focus in the former and exercise is the primary focus in the latter.

(m) "Sale at retail" or "retail sale" include the sale or charge made by persons engaged in providing "amusement and recreation services" and "physical fitness services" as those terms are defined in (b) and (l) of this subsection. The term "sale at retail" or "retail sale" does not include: The sale of or charge made for providing facilities where a person is merely a spectator, such as movies, concerts, sporting events, and the like; the sale of or charge made for instructional lessons, or league fees and/or entry fees; charges made for carnival rides where the customer purchases tickets at a central

ticket distribution point and then the customer is subsequently able to use the purchased tickets to gain admission to an assortment of rides or attractions; or, the charge made for entry to an amusement park or theme park where the predominant activities in the area are similar to those found at carnivals.

(n) "Significant amount" relates to the quantity or degree of goods or services rendered and made available to members by the organization. "Significant" is defined as having great value or the state of being important.

(o) "Value of such goods or services" means the market value of similar goods or services or computed value based on costs of production.

(3) Business and occupation tax.

(a) **Retailing classification.** Gross receipts from the kind of amusement, recreation, and physical fitness services defined to be retail sales in subsection (2)(m) of this section are taxable under the retailing classification. Persons engaged in providing these activities are also taxable under the retailing classification upon gross receipts from sales of meals, drinks, articles of clothing, or other property sold by them.

(b) **Service and other activities classification.** Gross receipts from activities not defined to be retail sales, such as tennis lessons, golf lessons, and other types of instructional lessons, are taxable under the service and other activities classification. Persons providing licenses to use real estate, such as separately itemized billings for locker rentals, are also taxable under this classification. See WAC 458-20-118 (Sale or rental of real estate, license to use real estate).

(4) Receiving income in the form of dues and/or initiation fees.

(a) **General principles.** For the purposes of the business and occupation tax, all amounts derived from initiation fees and dues must be reported as gross income which then must be apportioned between taxable and deductible income. The following general principles apply to providing amusement, recreation, and physical fitness services when income is received in the form of dues and/or initiation fees:

(i) RCW 82.04.4282 provides for a business and occupation tax deduction for amounts derived from activities and charges of essentially a nonbusiness nature. The scope of this statutory deduction is limited to situations where no business or proprietary activity (including the rendering of goods or services) is engaged in which directly generates the income claimed for deduction. Many for-profit or nonprofit entities may receive "amounts derived," as defined in this section, which consist of a mixture of tax deductible amounts (bona fide initiation fees and dues) and taxable amounts (payment for significant goods and services rendered). To distinguish between these kinds of income, the law requires that tax exemption provisions be strictly construed against the person claiming exemption. Also, RCW 82.32.070 requires the maintenance of suitable records as may be necessary to determine the amount of any tax due. The result of these statutory requirements is that all persons must keep adequate records sufficient to establish their entitlement to any claimed tax exemption or deduction.

(ii) The law does not contemplate that the deduction provided for by RCW 82.04.4282 should be granted merely because the payments required to be made by members or

customers are designated as "initiation fees" or "dues." The statutory deduction is not available for outright sales of tangible personal property or for providing facilities or services for a specific charge. Neither is it available if dues are in exchange for any significant amounts of goods or services rendered by the recipient thereof to members without any additional charge to the member, or if the dues are graduated upon the amount of goods or services rendered. Thus, it is only those initiation fees and dues which are paid solely and exclusively for the express privilege of belonging as a member of a club, organization, or society, which are deductible.

(iii) In applying RCW 82.04.4282, no distinction is made between the kinds of clubs, organizations, associations, or other entities which may be eligible for this deduction. They may be operated for profit or nonprofit. They may be owned by the members, incorporated, or operating as a partnership, limited liability company, joint venture, sole proprietorship, or cooperative group. They may be of a charitable, fraternal, social, political, benevolent, commercial, or other nature. The availability of the deduction is determined solely by the nature of the activity or charge which generates the "amounts derived" as that term is defined in subsection (2)(a) of this section.

(iv) Nonprofit youth organizations, as defined in subsection (2)(k) of this section, may deduct fees or dues received from members even though the members are entitled to use the organization's facilities, including camping and recreational facilities, in return for such payments. (See RCW 82.04.4271.)

(b) **Allocation of income.** Persons who derive income from initiation fees and dues may find that they have incurred business and occupation tax liability under both the retailing and service and other activities classifications. For example, an organization may furnish exercise equipment as well as provide lessons in martial arts to its members in return for payment of dues. The former is a retailing taxable activity while the latter is taxable under the service business tax. These taxes are at different rates. Once the income has been allocated between taxable and deductible amounts, the parts of taxable income attributable to either retailing activities or service activities must be reported on the combined excise tax return under the appropriate classification and under the prevailing tax rates. In addition, state and local retail sales taxes measured by the retailing portions must be separately collected from dues paying members, reported, and remitted with the same excise tax return.

(c) **Alternative methods of reporting.** Persons who receive any "amounts derived" from initiations fees and/or dues may report their tax liabilities and determine the amount of tax reportable under different classifications (retailing or service) by use of two alternative allocation methods. The taxpayer may only change its selected allocation method annually and all changes are prospective only. These mutually exclusive methods are:

(i) Actual records of facilities usage.

(A) Persons may allocate their income based upon such actual records of facilities usage as are maintained. This method is accomplished by either: The allocation of a reasonable charge for the specific goods or services rendered; or, the average comparable charges for such goods or services

made by other comparable businesses. In no case shall any charges under either method be calculated to be less than the actual cost of providing the respective good or service. When using the average comparable charges method the term "comparable businesses" shall not include subsidized public facilities when used by a private facility.

(B) The actual records of facilities usage method must reflect the nature of the goods or services and the frequency of use by the membership, either from an actual tally of times used or a periodic study of the average membership use of facilities. Actual usage reporting may also be based upon a graduated or sliding fees and dues structure. For example, an organization may charge different initiation fees or dues rates for a social membership than for a playing membership. The difference between such rates is attributable to the value of the goods or services rendered. It constitutes the taxable portion of the "amounts derived" allocable to that particular activity. Because of the broad diversification of methods by which "amounts derived" may be assessed or charged to members, the actual records of usage method of reporting may vary from organization to organization.

(C) Organizations which provide more than one kind of "goods or services" as defined in subsection (2)(g) of this section, may provide such actual records for each separate kind of goods or services rendered. Based upon this method, the total of apportioned "taxable" income may be subtracted from total gross income to derive the amount of gross income which is entitled to deduction as "bona fide initiation fees and dues" under RCW 82.04.4282; or

(ii) Cost of production method.

(A) The cost of production allocation method is based upon the cost of production of goods or services rendered. Persons using this method are advised to seek the department's review of the cost accounting methods applied, in order to avoid possible tax deficiency assessment if records are audited. In such cases, the cost of production shall include all items of expense attributable to the particular facility (goods or services) made available to members, including direct and indirect overhead costs.

(B) No portion of assets which have been fully depreciated will be included in computing overhead costs, nor will there be included any costs attributable to membership recruitment and advertising, or providing members with the indicia of membership (membership cards, certificates, contracts of rights, etc.).

(C) The cost of production method is performed by multiplying gross income (all "amounts derived") by a fraction, the numerator of which is the direct and indirect costs associated with providing any specific goods or service, and the denominator of which is the organization's total operating costs. The result is the portion of "amounts derived" that is allocable to the taxable facility (goods or services rendered). If more than one kind of facility (goods or services) is made available to members, this formula must be applied for each facility in order to determine the total of taxable and deductible amounts and to determine the amount of taxable income to report as either retailing taxable or service taxable. The balance of gross amounts derived is deductible as bona fide initiation fees or dues.

(D) Under very unique circumstances and only upon advance written request and approval, the department will consider variations of the foregoing accounting methods as well as unique factors.

(E) Unless income accounting and reporting are accomplished by one or a combination of methods outlined in this section, or under a unique reporting method authorized in advance by the department, it will be presumed that all "amounts derived" by any person who provides "goods or services" as defined herein, constitute taxable, nondeductible amounts.

(5) Retail sales tax.

(a) The retail sales tax must be collected upon charges for admissions, the use of facilities, equipment, and exercise classes by all persons engaged in the amusement, recreation, and physical fitness services that are defined to be retail sales in subsection (2)(m) of this section. The retail sales tax must also be collected upon sales of food, drinks and other merchandise by persons engaging in such businesses. See WAC 458-20-244 (Food products). In the case of persons who receive their income in the form of dues and/or initiation fees, the amount of gross receipts determined to be taxable under the retailing business and occupation classification shall be used to determine the person's retail sales tax liability under this subsection.

(b) When the charge for merchandise is included within a charge for admission which is not a "sale at retail" as defined herein, the retail sales tax applies to the charge made for both merchandise and admission, unless a proper segregation of such charge is made in the billing to the customer and upon the books of account of the seller.

(c) The retail sales tax applies upon the purchase or rental of all equipment and supplies by persons providing amusement, recreation, and physical fitness services, other than merchandise that is actually resold by them. For example, the retail sales tax applies to purchases of such things as soap or shampoo provided at no additional charge to members of a health club.

(6) Transitory provisions for nonprofit youth organizations. The 1993 amendment of RCW 82.04.050 resulted in "physical fitness services" provided by nonprofit youth organizations being classified as retail sales. However, section 1, chapter 85, Laws of 1994, amended RCW 82.08.0291 and thereby exempted from the definition of retail sale, the sale of such services by a nonprofit youth organization to members of the organization. This change became effective July 1, 1994. Therefore, nonprofit youth organizations are only liable for retail sales tax on the sale or charge made for "physical fitness services" from July 1, 1993, to June 30, 1994. Nonprofit youth organizations were previously exempt from the collection of retail sales tax on "amusement and recreation services" (RCW 82.08.0291) and were previously not subject to retailing business and occupation tax on both the provision of "physical fitness services" and "amusement and recreation services" (RCW 82.04.4271). Nonprofit youth organizations, however, may have tax liabilities for other types of activities, such as retail sales of food, retail sales of tangible personal property, or the license to use real estate, as discussed above.

WSR 16-05-011
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-23—Filed February 4, 2016, 4:56 p.m., effective February 4, 2016, 4:56 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-310-19500T; and amending WAC 220-310-195.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: An emergency rule is needed to correct an error in filing WSR 16-04-127. The boundary for the Wenatchee River was listed as permissible to fish in the four hundred foot section below Dryden Dam. Fishing below this area would have had the potential to impact not only steelhead but also salmon fishing on the Wenatchee River. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: February 4, 2016.

J. W. Unsworth
 Director

NEW SECTION

WAC 220-310-19500U Freshwater exceptions to statewide rules—Eastside. Notwithstanding the provisions of WAC 220-310-195, effective immediately until further notice, it is unlawful to violate the following provisions, provided that unless otherwise amended, all permanent rules remain in effect:

(1) **Wenatchee River:** It is permissible to fish for steelhead from the mouth to 400 feet below Tumwater Dam.

(2) **Icicle River:** It is permissible to fish for steelhead from the mouth to 500 feet downstream of the Leavenworth National Fish Hatchery Barrier Dam.

(3) **Entiat River:** It is permissible to fish for steelhead from the mouth to approximately one half mile upstream to a point perpendicular with the intersection of the Entiat River Road and Hedding Street.

(4) **Okanogan River:** It is permissible to fish for steelhead from the mouth to the Highway 97 Bridge in Oroville.

(5) **Similkameen River:** It is permissible to fish for steelhead from the mouth to 400 feet below Enloe Dam.

(6) It is unlawful to violate the following provisions during the open times in the waters listed in this section:

(a) Night closure and selective gear rules are in effect.

(b) Daily limit:

(i) Two hatchery steelhead; 20 inch minimum size.

(ii) Five hatchery rainbow trout; less than 20 inches in total length.

(c) Mandatory retention of adipose fin clipped steelhead, except release all steelhead with a floy (anchor) tag attached or one or more round 1/4 inch in diameter holes punched in the caudal (tail) fin. Adipose present steelhead must be released unharmed and cannot be removed from the water prior to release.

(d) Anglers must cease fishing for the day when the daily limit of two hatchery steelhead are obtained, regardless of the number of hatchery rainbow trout obtained.

(7) **Methow River:** It is unlawful to fish for or possess whitefish from the mouth to the confluence of the Chewuch River in Winthrop.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-310-19500T Freshwater exceptions to statewide rules—Eastside. (16-20)

WSR 16-05-017
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-21—Filed February 5, 2016, 12:11 p.m., effective February 9, 2016, 8:00 a.m.]

Effective Date of Rule: February 9, 2016, 8:00 a.m.

Purpose: Amend Puget Sound commercial crab fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-69-24000P; and amending WAC 220-52-040, 220-12-020, and 220-69-240.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: This emergency rule will allow the retention of Tanner crab as incidentally caught in the

Puget Sound commercial Dungeness crab fishery. Only male Tanner crab with a carapace width of 4.5 inches or more may be retained. Surveys by state and treaty biologists have determined that nearly all Tanner crabs encountered in Puget Sound are *Chionoecetes bairdi* and not *Chionoecetes tanneri* as indicated in the permanent rule. Due to this finding, an adjustment has been made to WAC 220-12-020 in order to correct this error. These provisions are in conformity with agreed management plans with applicable tribes, entered into as required by court order. There is insufficient time to adopt permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 0, Repealed 1.

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

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

Date Adopted: February 5, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-52-04000M Commercial crab fishery—Unlawful acts. Notwithstanding the provisions of WAC 220-52-040, WAC 220-52-043 and WAC 220-52-046, effective 8:00 a.m. February 9, 2016, until further notice, incidental catch may not be retained. It is unlawful to retain salmon, food fish, or any shellfish other than octopus and Tanner crabs (*Chionoecetes* spp.) that is taken incidental to any commercial crab fishing. Additionally, Tanner crabs may only be retained in Crab Region 1 (defined as all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, and 22B) and Crab Region 3-1 (defined as all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 23A and 23B.) Tanner crabs retained must be males with a minimum width of 4.5 inches across the widest point in the carapace.

NEW SECTION

WAC 220-12-02000B Shellfish—Classification. Notwithstanding the provisions of WAC 220-12-020, effective 8:00 a.m. February 9, 2016, until further notice, the following species is classified as shellfish under RCW 77.12.047 and is subject to the provisions of this title:

Crab

Tanner crab *Chionoecetes* spp.

NEW SECTION

WAC 220-69-24000Q Duties of commercial purchasers and receivers. Notwithstanding the provisions of WAC 220-69-240, effective at 8:00 am, February 9, 2016, until further notice, it is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab taken by non-treaty fishers from Puget Sound, to fail to report to the department the previous day's purchases by 10:00 a.m. the following day. Reports must be made by fax to (425) 338-1066 or by e-mail at crabreport@dfw.wa.gov, and must specify the dealer name, dealer phone number, date of delivery of crab to the original receiver, total number of pounds of crab caught by non-treaty fishers, by Crab Management Region or by Marine Fish-Shellfish Management and Catch Reporting Area. This rule also applies to the incidental take of Tanner crabs (*Chionoecetes* spp.) during the Dungeness crab fishery.

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

REPEALER

The following section of the Washington Administrative code is repealed effective 8:00 a.m. February 9, 2016:

WAC 220-69-24000P Duties of commercial purchasers and receivers (15-442)

WSR 16-05-020

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed February 8, 2016, 8:43 a.m., effective February 19, 2016]

Effective Date of Rule: February 19, 2016.

Purpose: The addition of a definition for psychopharmacologic medications, the addition of a new section describing the use of psychopharmacologic medications, and the language clarifying the use of physical restraints needed to go into effect July 1, 2015. This is the only way that medicaid clients can stay in these facilities and receive payment through community first choice which the legislature directed the department to implement. It is necessary for the immediate health, safety and welfare for those residents so that they can remain in the facility and not have to move. The current emergency rules expire on February 19, 2016.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-76-11000, 388-76-11004, 388-76-11005, 388-76-11010, 388-76-11015, 388-76-11020, 388-76-11025, 388-76-11030, 388-76-11035 and 388-76-11040; and amending WAC 388-76-10000, 388-76-10655, 388-76-10660, and 388-76-10685.

Statutory Authority for Adoption: Chapter 70.128 RCW.
Other Authority: Chapter 70.128 RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or

general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: To comply with federal rules. The department has proceeded with the permanent rule-making process. The department filed a CR-102 as WSR 16-01-176 on December 22, 2015. The department has not filed [a] CR-103P yet since these rules involve coordinating the timing of the effective date with another division.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 4, Repealed 10.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 4, Repealed 10.

Date Adopted: February 3, 2016.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-03-037, filed 1/12/15, effective 2/12/15)

WAC 388-76-10000 Definitions. "Abandonment" means action or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult:

(1) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain or mental anguish; and

(2) Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

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

chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not consensual.

(b) **"Physical abuse"** means a willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or chemical or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

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

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

"Adult family home" means:

(1) A residential home in which a person or an entity is licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to a licensed operator, resident manager, or caregiver, who resides in the home.

(2) As used in this chapter, the term "entity" includes corporations, partnerships and limited liability companies, and the term "adult family home" includes the person or entity that is licensed to operate an adult family home.

"Affiliated with an applicant" means any person listed on the application as a partner, officer, director, resident manager, or majority owner of the applying entity, or is the spouse or domestic partner of the applicant.

"Applicant" means an individual, partnership, corporation, or other entity seeking a license to operate an adult family home.

"Capacity" means the maximum number of persons in need of personal or special care who are permitted to reside in an adult family home at a given time. The capacity includes:

(1) The number of related children or adults in the home who receive personal or special care and services; plus

(2) The number of residents the adult family home may admit and retain - The resident capacity. The capacity number listed on the license is the "resident capacity."

"Caregiver" means any person eighteen years of age or older responsible for providing direct personal or special care to a resident and who is not the provider, entity representative, a student or volunteer.

"Dementia" is defined as a condition documented through the assessment process required by WAC 388-76-10335.

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

"Department case manager" means the department authorized staff person or designee assigned to negotiate, monitor, and facilitate a care and services plan for residents receiving services paid for by the department.

"Developmental disability" means:

(1) A person who meets the eligibility criteria defined by the division of developmental disabilities under WAC 388-823-0040; or

(2) A person with a severe, chronic disability which is attributable to cerebral palsy or epilepsy, or any other condition, other than mental illness, found to be closely related to mental retardation which results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation, and requires treatment or services similar to those required for these persons (i.e., autism); and

(a) The condition was manifested before the person reached age eighteen;

(b) The condition is likely to continue indefinitely; and

(c) The condition results in substantial functional limitations in three or more of the following areas of major life activities:

(i) Self-care;

(ii) Understanding and use of language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction; and

(vi) Capacity for independent living.

"Direct supervision" means oversight by a person who has demonstrated competency in the basic training and specialty training if required, or who has been exempted from the basic training requirements and is:

(1) On the premises; and

(2) Quickly and easily available to the caregiver.

"Domestic partners" means two adults who meet the requirements for a valid state registered domestic partnership as established by RCW 26.60.030 and who have been issued a certificate of state registered domestic partnership.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(6).

"Financial solvency" means that the applicant or provider is able to meet debts or financial obligations with some money to spare.

"Entity representative" means the individual designated by a provider who is or will be responsible for the daily operation of the adult family home and who meets the requirements of this chapter and chapter 388-112 WAC.

"Home" means adult family home.

"Imminent danger" or **"immediate threat"** means serious physical harm to or death of a resident has occurred, or there is a serious threat to the resident's life, health or safety.

"Indirect supervision" means oversight by a person who:

(1) Has demonstrated competency in the basic training and specialty training if required; or

(2) Has been exempted from the basic training requirements; and

(3) Is quickly and easily available to the care giver, but not necessarily on-site.

"Inspection" means a review by department personnel to determine the health, safety, and well-being of residents, and the adult family home's compliance with this chapter and chapters 70.128, 70.129, 74.34 RCW, and other applicable rules and regulations. The department's review may include an on-site visit.

"Management agreement" means a written, executed agreement between the adult family home and another individual or entity regarding the provision of certain services on behalf of the adult family home.

"Mandated reporter" means an employee of the department, law enforcement, officer, social worker, professional school personnel, individual provider, an employee of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW. For the purpose of the definition of a mandated reporter, **"Facility"** means a residence licensed or required to be licensed under chapter 18.20 RCW (Assisted living facilities), chapter 18.51 RCW (Nursing homes), chapter 70.128 RCW (Adult family homes), chapter 72.36 RCW (Soldiers' homes), chapter 71A.20 RCW (Residential habilitation centers), or any other facility licensed by the department.

"Medical device" as used in this chapter, means any piece of medical equipment used to treat a resident's assessed need.

(1) A medical device is not always a restraint and should not be used as a restraint;

(2) Some medical devices have considerable safety risks associated with use; and

(3) Examples of medical devices with known safety risks when used are transfer poles, Posey or lap belts, and side rails.

"Medication administration" means giving resident medications by a person legally authorized to do so, such as a physician, pharmacist or nurse.

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

"Mental illness" is defined as an Axis I or II diagnosed mental illness as outlined in volume IV of the Diagnostic and Statistical Manual of Mental Disorders (a copy is available for review through the aging and disability services administration).

"Minimal" means violations that result in little or no negative outcome and/or little or no potential harm for a resident.

"Moderate" means violations that result in negative outcome and actual or potential harm for a resident.

"Multiple facility provider" means a provider who is licensed to operate more than one adult family home.

"Neglect" means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

(2) An act or omission by a person or entity with duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

"Nurse delegation" means a registered nurse transfers the performance of selected nursing tasks to competent nursing assistants in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the resident.

"Over-the-counter medication" is any medication that can be purchased without a prescriptive order, including but not limited to vitamin, mineral, or herbal preparations.

"Permanent restraining order" means a restraining order and/or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (for example, one year), after which it expires.

"Personal care services" means both physical assistance and/or prompting and supervising the performance of direct personal care tasks as determined by the resident's needs and does not include assistance with tasks performed by a licensed health professional.

"Physical restraint" means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and is not required to treat the resident's medical symptoms.

"Placement agency" is an "elder or vulnerable adult referral agency" as defined in chapter 18.330 RCW and means a business or person who receives a fee from or on behalf of a vulnerable adult seeking a referral to care services or supportive housing or who receives a fee from a care services provider or supportive housing provider because of any referral provided to or on behalf of a vulnerable adult.

"Practitioner" includes a physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant licensed in the state of Washington.

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

"Provider" means:

(1) Any person who is licensed to operate an adult family home and meets the requirements of this chapter; or

(2) Any corporation, partnership, or limited liability company that is licensed under this chapter to operate an adult family home and meets the requirements of this chapter.

"Psychopharmacologic medications" means the class of prescription medications, which includes but is not limited to antipsychotics, antianxiety medications, and antidepressants, capable of affecting the mind, emotions, and behavior.

"Recurring" or "repeated" means that the department has cited the adult family home for a violation of applicable licensing laws or rules and the circumstances of (1) and (2) of this definition are present:

(1) The department previously imposed an enforcement remedy for a violation of the same section of law or rule for

substantially the same problem following any type of inspection within the preceding thirty-six months; or

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

(3) If the previous violation in (1) or (2) of this definition was pursuant to a law or rule that has changed at the time of the new violation, a citation to the equivalent current law or rule section is sufficient.

"Resident" means any adult unrelated to the provider who lives in the adult family home and who is in need of care. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law.

"Resident manager" means a person employed or designated by the provider to manage the adult family home and who meets the requirements of this chapter.

"Serious" means violations that result in one or more negative outcomes and significant actual harm to residents that does not constitute imminent danger; and/or, there is reasonable predictability of recurring actions, practices, situations or incidents with potential for causing significant harm to a resident.

"Severity" means the seriousness of a violation as determined by actual or potential negative outcomes for residents and subsequent actual or potential for harm. Outcomes include any negative effect on the resident's physical, mental or psychosocial well being (i.e., safety, quality of life, quality of care).

"Significant change" means:

(1) A lasting change, decline or improvement in the resident's baseline physical, mental or psychosocial status;

(2) The change is significant enough so the current assessment and/or negotiated care plan do not reflect the resident's current status; and

(3) A new assessment may be needed when the resident's condition does not return to baseline within a two week period of time.

"Special care" means care beyond personal care services as defined in this section.

"Staff" means any person who:

(1) Is employed or used by an adult family home, directly or by contract, to provide care and services to any resident.

(2) Staff must meet all of the requirements in this chapter and chapter 388-112 WAC.

"Temporary restraining order" means restraining order or order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties before an initial hearing.

"Uncorrected" means the department has cited a violation of WAC or RCW following an inspection and the violation remains uncorrected at the time of a subsequent inspection for the specific purpose of verifying whether such violation has been corrected.

"Unsupervised" means not in the presence of:

(1) Another employee or volunteer from the same business or organization; or

(2) Any relative or guardian of any of the children or individuals with developmental disabilities or vulnerable adults to which the employee, student or volunteer has access during the course of his or her employment or involvement with the business or organization.

"Usable floor space" means resident bedroom floor space exclusive of:

- (1) Toilet rooms;
- (2) Closets;
- (3) Lockers;
- (4) Wardrobes;
- (5) Vestibules; and
- (6) The space required for the door to swing if the bedroom door opens into the resident bedroom.

"Water hazard" means any body of water over twenty-four inches in depth that can be accessed by a resident, and includes but not limited to:

- (1) In-ground, above-ground, and on-ground pools;
- (2) Hot tubs, spas;
- (3) Fixed-in-place wading pools;
- (4) Decorative water features;
- (5) Ponds; or
- (6) Natural bodies of water such as streams, lakes, rivers, and oceans.

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

"Vulnerable adult" includes a person:

- (1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;
- (2) Found incapacitated under chapter 11.88 RCW;
- (3) Who has a developmental disability as defined under RCW 71A.10.020;
- (4) Admitted to any facility;
- (5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW;
- (6) Receiving services from an individual provider; or
- (7) With a functional disability who lives in his or her own home, who is directing and supervising a paid personal aide to perform a health care task as authorized by RCW 74.39.050.

NEW SECTION

WAC 388-76-10463 Medication—Psychopharmacologic For residents who are given psychopharmacologic medications, the adult family home must ensure:

- (1) The resident assessment indicates that a psychopharmacologic medication is necessary to treat the resident's medical symptoms;
- (2) In situations when a psychopharmacological drug is used for a resident, the home must ensure that the:
 - (a) Drug is prescribed by a physician or health care professional with prescriptive authority;
 - (b) Resident's negotiated care plan includes strategies and modifications of the environment and staff behavior to address the symptoms for which the medication is prescribed;

(c) Changes in medication only occur when the prescriber decides it is medically necessary; and

(d) Resident has given informed consent for its use.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10655 Physical restraints. The adult family home must ensure:

- (1) Each resident's right to be free from physical restraints used for discipline or convenience;
- (2) ~~((Less))~~ Prior to the use of a physical restraint, less restrictive alternatives have been tried and are documented in the resident's negotiated care plan; and
- (3) That physical restraints used have been assessed as necessary to treat the resident's medical symptoms and addressed on the resident's negotiated care plan; and
- (4) That if physical restraints are used to treat a resident's medical symptoms that the restraints are applied and immediately supervised on-site by a:
 - (a) Licensed registered nurse;
 - (b) Licensed practical nurse; or
 - (c) Licensed physician; and
 - (d) For the purposes of this subsection, immediate supervised means that the licensed person is in the home and quickly and easily available.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10660 Chemical restraints. (1) For the purposes of this section "chemical restraint" means a ~~((psycho))~~ psychopharmacologic drug that is ~~((used))~~ given for discipline or convenience and not required to treat the resident's medical symptoms.

- (2) The adult family home must ensure that each resident is free from chemical restraints(:
 - ~~(a) Each resident is free from chemical restraints used for discipline or convenience;~~
 - ~~(b) The resident assessment indicates that a chemical restraint is necessary to treat the resident's medical symptoms;~~
 - ~~(c) In situations when a psychopharmacological drug is used for a resident, the home must ensure that the:~~
 - ~~(i) Drug is prescribed by a physician or health care professional with prescriptive authority;~~
 - ~~(ii) Resident's negotiated care plan includes strategies and modifications of the environment and staff behavior to address the symptoms for which the medication is prescribed;~~
 - ~~(iii) Changes in medication only occur when the prescriber decides it is medically necessary; and~~
 - ~~(iv) Resident has given informed consent for its use).~~

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10685 Bedrooms. The adult family home must:

- (1) Ensure each resident's bedroom is an outside room, which allows entrance of natural light;

- (2) Ensure window and door screens:
- Do not hinder emergency escape; and
 - Prevent entrance of flies and other insects.
- (3) Ensure each resident, including those using mobility aids such as wheelchairs and walkers has direct, unrestricted, and free access from the bedroom through doors, hallways and corridors to common use areas and other rooms used for care and services including bathrooms;
- (4) Make separate bedrooms available for each sex;
- (5) Make reasonable efforts to accommodate residents wanting to share the room;
- (6) Provide each bedroom with a minimum usable floor space as required in WAC 388-76-10690.
- (7) Give each resident the opportunity to have a lock on their door if they chose to unless having a locked door would be unsafe for the resident and this is documented in the resident's negotiated careplan.
- (8) Ensure each bedroom has a closet or a wardrobe, armoire or reasonable facsimile thereof. Neither the closet nor wardrobe/armoire floor space will be considered a part of the room's usable square footage. The home must not remove a closet in order to provide additional floor space.
- ~~((8))~~ (9) Ensure no more than two residents to a bedroom;
- ~~((9))~~ (10) Unless the resident chooses to provide their own furniture and bedding, the home must provide each resident a bed thirty-six inches or more wide with:
- A clean, comfortable mattress;
 - A waterproof cover for use when needed or requested by the resident;
 - Clean sheets and pillow cases;
 - Adequate clean blankets to meet the needs of each resident; and
 - Clean pillows.
- ~~((10))~~ (11) Not use the upper bunk of double-deck beds for a resident's bed;
- ~~((11))~~ (12) Provide a call bell or intercom system if the provider, entity representative, resident manager or caregiver bedroom is not within hearing distance of each resident bedroom and the system is required by the department;
- ~~((12))~~ (13) Ensure that members of the household, other than residents, do not share bedrooms with residents; and
- ~~((13))~~ (14) Ensure a resident does not share a bedroom with a person under eighteen years of age, unless the person is the resident's own child.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-76-11000 Resident protection program—Investigation of reports.
- WAC 388-76-11004 Resident protection program—Individual defined.
- WAC 388-76-11005 Resident protection program—Notice to individual of preliminary finding.

- WAC 388-76-11010 Resident protection program—Notice to others of preliminary finding.
- WAC 388-76-11015 Resident protection program—Disputing a preliminary finding.
- WAC 388-76-11020 Resident protection program—Hearing procedures to dispute preliminary finding.
- WAC 388-76-11025 Resident protection program—Finalizing a preliminary finding.
- WAC 388-76-11030 Resident protection program—Appeal of the initial order or finding.
- WAC 388-76-11035 Resident protection program—Reporting final findings.
- WAC 388-76-11040 Resident protection program—Disclosure of investigative and finding information.

WSR 16-05-043

EMERGENCY RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 16-24—Filed February 10, 2016, 9:20 a.m., effective February 22, 2016]

Effective Date of Rule: February 22, 2016.

Purpose: Amend recreational fishing rules for Puget Sound salmon.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-62100W and 232-28-62100X; and amending WAC 232-28-621.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Reasons for this Finding: Preliminary estimates indicate that encounters of Chinook salmon in Marine Area 6 will exceed the preseason expectations. This emergency rule closes salmon fishing in Marine Area 6 to ensure compliance with conservation objectives and agreed-to management plans. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: February 10, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 232-28-62100X Puget Sound salmon—Saltwater seasons and daily limits. Notwithstanding the provisions of WAC 232-28-621, effective February 22 through April 10, 2016, it is unlawful to fish for salmon in those waters of Marine Area 6. Unless otherwise amended, all permanent rules remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed effective February 22, 2016:

WAC 232-28-62100W Puget Sound salmon—Saltwater seasons and daily limits. (16-15)

The following section of the Washington Administrative Code is repealed effective April 11, 2016:

WAC 232-28-62100X Puget Sound salmon—Saltwater seasons and daily limits.

WSR 16-05-045
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-22—Filed February 10, 2016, 1:08 p.m., effective February 10, 2016, 1:08 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend commercial fishing rules for sea urchins.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-07300U; and amending WAC 220-52-073.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: An emergency rule is needed to close the commercial harvest of green sea urchins in Districts 3 and 4 as the quota limit is approaching. Harvestable surpluses of green sea urchin exist in the districts specified to

allow for commercial harvest. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: February 10, 2016.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-52-07300V Sea urchins Notwithstanding the provisions of WAC 220-52-073, effective immediately until further notice, it is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section:

(1) The following areas are open for green sea urchin harvest seven days-per-week: Sea Urchin District 1, District 2, District 6, and District 7. It is unlawful to harvest green sea urchins smaller than 2.25 inches (size is largest test diameter exclusive of spines).

(2) The maximum cumulative landing of green sea urchins for each weekly fishery opening period is 3,000 pounds per valid designated sea urchin harvest license. It is permissible for all or any fraction of the maximum 3,000 pound total to be harvested during any legal harvest date within any legal harvest area so long as the cumulative total for the fishery week does not exceed the maximum. Each fishery week begins Monday and ends Sunday.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-07300U Sea urchins. (16-05)

WSR 16-05-046
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed February 10, 2016, 4:06 p.m., effective February 19, 2016]

Effective Date of Rule: February 19, 2016.

Purpose: The change to requiring lockable doors in assisted living facilities went into effect on July 1, 2015, when WAC 388-110-222 and 388-110-242 went into effect by emergency rule filing WSR 15-14-082. Current emergency rules will expire on February 19, 2016. Since permanent rules will not be in effect by that date, the emergency rules need to be extended. This is the only way that medicaid clients can stay in these facilities and receive payment through community first choice which the legislature directed the department to implement. It is necessary for the immediate health, safety and welfare for those residents so that they can remain in the facility and not have to move.

Statutory Authority for Adoption: RCW 74.39A.010.

Other Authority: RCW 74.39A.010.

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

Reasons for this Finding: To comply with federal rules. The department has proceeded with the permanent rule-making process. The department has not filed [a] CR-103P yet since these rules involve coordinating the timing of the effective date with another division.

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

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

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

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

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

Date Adopted: February 4, 2016.

Katherine I. Vasquez
 Rules Coordinator

NEW SECTION

WAC 388-110-222 Enhanced adult residential care physical requirements Effective July 1, 2015, the contractor

must ensure that, at the resident's choice, each resident has the ability to lock his/her unit door, unless otherwise indicated in the resident's NSA.

NEW SECTION

WAC 388-110-242 Adult residential care physical requirements Effective July 1, 2015, the contractor must ensure that, at the resident's choice, each resident has the ability to lock his/her unit door, unless otherwise indicated in the resident's NSA.

WSR 16-05-055
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-25—Filed February 12, 2016, 10:36 a.m., effective February 12, 2016, 10:36 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The purpose of this rule making is to provide for treaty Indian fishing opportunity in the Columbia River while protecting salmon listed as threatened or endangered under the Endangered Species Act (ESA). This rule making implements federal court orders governing Washington's relationship with treaty Indian tribes and federal law governing Washington's relationship with Oregon.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05100P; and amending WAC 220-32-051.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, and 77.12.047.

Other Authority: *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546); *Northwest Gillnetters Ass'n v. Sandison*, 95 Wn.2d 638, 628 P.2d 800 (1981); Washington fish and wildlife commission policies concerning Columbia River fisheries; 40 Stat. 515 (Columbia River Compact).

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

Reasons for this Finding: Extends the ongoing seasons in SMCRA 1G and 1F (The Dalles and John Day pools). Harvest to date has been low and sturgeon remain available under the current harvest guidelines for each pool. The regulation continues to allow the sale of fish as outlined in Section 2. The season is consistent with the 2008-2017 Management Agreement and the associated biological opinion. Rule is consistent with action of the Columbia River Compact on January 27 and February 11, 2016. Conforms state rules with tribal rules. There is insufficient time to promulgate permanent regulations.

The Yakama, Warm Springs, Umatilla, and Nez Perce Indian tribes have treaty fishing rights in the Columbia River and inherent sovereign authority to regulate their fisheries.

Washington and Oregon also have some authority to regulate fishing by treaty Indians in the Columbia River, authority that the states exercise jointly under the congressionally ratified Columbia River Compact. *Sohappy v. Smith*, 302 F. Supp. 899 (D. Or. 1969). The tribes and the states adopt parallel regulations for treaty Indian fisheries under the supervision of the federal courts. A court order sets the current parameters. *United States v. Oregon*, Civil No. 68-513-KI (D. Or.), Order Adopting 2008-2017 *United States v. Oregon* Management Agreement (Aug. 12, 2008) (Doc. No. 2546). Some salmon and steelhead stocks in the Columbia River are listed as threatened or endangered under the federal ESA. On May 5, 2008, the National Marine Fisheries Service issued a biological opinion under 16 U.S.C. § 1536 that allows for some incidental take of these species in the fisheries as described in the 2008-2017 *U.S. v. Oregon* Management Agreement.

Columbia River fisheries are monitored very closely to ensure consistency with court orders and ESA guidelines. Because conditions change rapidly, the fisheries are managed almost exclusively by emergency rule. As required by court order, the Washington (WDFW) and Oregon (ODFW) departments of fish and wildlife convene public hearings and invite tribal participation when considering proposals for new emergency rules affecting treaty fishing rights. *Sohappy*, 302 F. Supp. at 912. WDFW and ODFW then adopt regulations reflecting agreements reached.

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

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

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

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

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

Date Adopted: February 12, 2016.

Joe Stohr
for J. W. Unsworth
Director

NEW SECTION

WAC 220-32-05100Q Columbia River salmon seasons above Bonneville Dam. Notwithstanding the provisions of WAC 220-32-050, WAC 220-32-051, WAC 220-32-052 and WAC 220-32-058, effective immediately until further notice, it is unlawful for a person to take or possess salmon, steelhead, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch taken for commercial purposes in Columbia River Salmon Management and Catch Reporting Areas 1F, 1G, and 1H. However, those individuals possessing treaty fishing rights under the Yakima, Warm Springs, Umatilla, and Nez Perce treaties may fish for salmon, steel-

head, sturgeon, shad, carp, catfish, walleye, bass, or yellow perch under the following provisions:

(1) Open Areas: SMCRA 1G and 1H (The Dalles Pool and John Day Pool):

(a) Season: Immediately through 6:00 p.m. February 22, 2016.

(b) Gear: Gill nets, hoop nets, dip bag nets, and rod and reel with hook and line. No mesh restriction on gillnets.

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon between 43-54 inches in fork length may be sold or kept for subsistence. Live release of all oversize and under-size sturgeon is required.

(2) Open Areas: SMCRA 1F, 1G, and 1H (Zone 6):

(a) Season: Immediately through 6:00 p.m. March 21, 2016.

(b) Gear: Hoop nets, dip bag nets, and rod and reel with hook and line.

(c) Allowable sale: Salmon, steelhead, shad, carp, catfish, walleye, bass, or yellow perch. Sturgeon from 43-54 inches caught in the John Day and Dalles pools may be sold only if caught during open commercial gillnet periods for that pool. Sturgeon between 38-54 inches in fork length in SMCRA 1F may only be kept for subsistence. Live release of all oversize and under-size sturgeon is required.

(3) 24-hour quick reporting is required for Washington wholesale dealers for all areas as provided in WAC 220-69-240, except that all landings from treaty fisheries described above must be reported within 24-hours of completing the fish ticket (not 24-hours after the period concludes).

(4) Fish caught during the open period may be sold after the period concludes.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-32-05100P Columbia River salmon seasons above Bonneville Dam. (16-10)

WSR 16-05-089
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-27—Filed February 16, 2016, 3:52 p.m., effective February 16, 2016, 3:52 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend Puget Sound commercial crab fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04500M; and amending WAC 220-52-045.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: Provisions in state/tribal management agreements will be achieved by the opening dates contained herein. The special management areas are listed in accordance with state/tribal management agreements. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: February 16, 2016.

J. W. Unsworth
Director

NEW SECTION

WAC 220-52-04500N Commercial crab fishery—Seasons and areas—Coastal. Notwithstanding the provisions of WAC 220-52-045, effective immediately until further notice, it is unlawful to fish for Dungeness crab in Washington coastal waters, the Pacific Ocean, Grays Harbor, Willapa Bay, or the Columbia River, except as provided for in this section.

(1) The area from and the U.S./Canada border to the WA/OR border (46°15.00) and Willapa Bay is open.

(2) For the purposes of this section, the waters of Willapa Bay are defined to include the marine waters east of a line connecting 46°44.76 N, 124°05.76 W and 46°38.93 N, 124°04.33 W.

(3) Licenses and vessels designated to those licenses that participate (as defined by WAC 220-52-036) in the coastal commercial Dungeness crab fishery in the waters of the Pacific Ocean between Point Arena, California and the U.S. Canada border, are prohibited from fishing in any area where the season opening is delayed for the first 30 days following the opening of the delayed area if the vessel was employed in the coastal crab fishery during the previous 45 days.

(4) The Quinalt primary special management area (PSMA) is closed to fishing for Dungeness crab until further notice. The PSMA includes the area shoreward of a line approximating the 27-fathom depth curve between Raft River (47°28.00) and Copalis River (47°08.00) according to the following coordinates:

(a) Northeast Corner (Raft River): 47°28.00 N. Lat. 124°20.70 W. Lon.

(b) Northwest Corner: 47°28.00 N. Lat. 124°34.00 W. Lon.

(c) Southwest Corner: 47°08.00 N. Lat. 124°25.50 W. Lon.

(d) Southeast Corner (Copalis River): 47°08.00 N. Lat. 124°11.20 W. Lon.

(5) The Quileute special management area (SMA) is closed to fishing for Dungeness crab until further notice. The SMA includes the area shoreward of a line approximating the 30-fathom depth curve between Destruction Island and Cape Johnson according to the following points:

(a) Northeast Corner (Cape Johnson): 47°58.00' N. Lat. 124°40.40' W. Lon.

(b) Northwest Corner: 47°58.00' N. Lat. 124°49.00' W. Lon.

(c) Southwest Corner: 47°40.50' N. Lat. 124°40.00' W. Lon.

(d) Southeast Corner (Destruction Island): 47°40.50' N. Lat. 124°24.43' W. Lon.

(6) Effective immediately, the Makah special management area (SMA) is open to fishing. The SMA includes the waters between 48°02.15 N. Lat. and 48°19.50 N. Lat. east of a line connecting those points and approximating the 25-fathom line according to the following coordinates:

(a) Northeast Corner: Tatoosh Island

(b) Northwest Corner: 48°19.50 N. Lat. 124°50.45 W. Lon.

(c) Southwest Corner: 48°02.15 N. Lat. 124°50.45 W. Lon.

(d) Southeast Corner: 48°02.15 N. Lat. 124°41.00 W. Lon.

(7) It is unlawful for a vessel to use more than 200 pots in the Makah SMA until 8:00 A.M. March 17, 2016. Fishers must pre-register with the Department of Fish and Wildlife 24 hours prior to deploying gear in this area by one of the three following methods:

- Fax transmission to Carol Henry at 360-249-1229;
- E-mail to Carol Henry at Carol.Henry@dfw.wa.gov; or
- Telephone call to Carol Henry at 360-249-1296.

(8) All other provisions of the permanent rule remain in effect.

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.

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

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-04500M Coastal crab seasons (16-09)

WSR 16-05-090
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-26—Filed February 16, 2016, 3:54 p.m., effective February 16, 2016, 3:54 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amend recreational fishing rules for razor clams.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000I and 220-56-36000J; and amending WAC 220-56-360.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, and 77.12.047.

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

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 4 and 5. Washington department of health has certified clams from this beach to be safe for human consumption. There is insufficient time to adopt permanent rules.

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

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

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

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

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

Date Adopted: February 16, 2016.

J. W. Unsworth
 Director

NEW SECTION

WAC 220-56-36000J Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 2, 3, 4, 5, 6 or 7 except as provided for in this section:

(1) Effective immediately through 11:59 p.m. March 10, 2016, razor clam digging is permissible in Razor Clam Area 1. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(2) Effective 12:01 p.m. February 19 through 11:59 p.m. February 20, 2016, razor clam digging is permissible in

Razor Clam Area 4. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(3) Effective 12:01 p.m. February 19 through 11:59 p.m. February 21, 2016, razor clam digging is permissible in Razor Clam Area 5. Digging is permissible from 12:01 p.m. to 11:59 p.m. each day only.

(4) It is unlawful to dig for razor clams at any time in the Long Beach or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-56-36000I Razor clams—Areas and seasons.
 (16-19)

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. March 11, 2016:

WAC 220-56-36000J Razor clams—Areas and seasons.

WSR 16-05-093
EMERGENCY RULES
BUILDING CODE COUNCIL

[Filed February 16, 2016, 5:48 p.m., effective February 16, 2016, 5:48 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: This modification to WAC 51-54A-8000 is necessary to provide immediate implementation of certain fire safety requirements related to elevator shaft components, now scheduled to be effective on July 1, 2016.

Citation of Existing Rules Affected by this Order: Amending WAC 51-54A-8000.

Statutory Authority for Adoption: RCW 19.27.031, 19.27.074.

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

Reasons for this Finding: This emergency rule is being extended to ensure elevator shafts in buildings will meet the safety standards established in NFPA 13-13 Installation of Sprinkler Systems, Section 8.15.5 Elevator Hoistways and Machine Rooms. This emergency rule further provides an exception for cables and belts meeting safety ratings. NFPA standard 13-13 is set to be effective on July 1, 2016, with adoption and implementation of the 2015 Fire Code. The rule is needed to ensure life safety for occupants of buildings being constructed before that date. This filing is for the purpose of renewing WSR 15-21-075, filed on October 20, 2015.

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

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

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

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

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

Date Adopted: October 16, 2015.

David F. Kokot
Chair

AMENDATORY SECTION (Amending WSR 13-04-063, filed 2/1/13, effective 7/1/13)

WAC 51-54A-8000 Referenced standards.

NFPA 13-10 Installation of Sprinkler Systems (except Section 8.15.5; NFPA 13-13 Installation of Sprinkler Systems, Section 8.15.5 Elevator Hoistways and Machine Rooms only) 903.3.1.1, 903.3.2, 903.3.5.1.1, 903.3.5.2, 904.1.1, 905.3.4, 907.6.3, 1009.3, 3201.1, 3204.2, Table 3206.2, 3206.9, 3207.2, 3207.2.1, 3208.2.2, 3208.2.2.1, 3208.4, 3210.1, 3401.1, 5104.1, 5106.5.7, 5704.3.3.9, Table 5704.3.6.3(7), 5704.3.7.5.1, 5704.3.8.4

NFPA 96-07 Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations 609.3

NFPA 720-12 Standard for the Installation of Carbon Monoxide (CO) Warning Equipment in Dwelling Units 908.7, 1103.9

Washington state legislature directed DSHS to implement this program under SSB 6387 and ESHB 2746. IFS and CFC option are long-term care services funded in part by federal dollars, and under federal law are subject to recovery. The health care authority (HCA) must implement emergency rules to comply with federal law and will amend WAC 182-527-2742, which controls DSHS's and HCA's ability to recoup for services subject to recovery. The agency has completed the permanent rule making and filed the final rules under WSR 16-05-054 on February 12, 2016. The permanent rule making is effective on March 14, 2016.

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

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

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

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

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

Date Adopted: February 16, 2016.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-20-091, filed 9/29/14, effective 10/30/14)

WAC 182-527-2742 Services subject to recovery.

~~((The medicaid agency or its designee considers the medical services the client received and the dates when the services were provided to the client, to determine whether the client's estate is liable for the cost of medical services provided. Subsection (1) of this section covers liability for medicaid services, subsection (2) of this section covers liability for state-only funded long-term care services (LTC), and subsection (3) of this section covers liability for all other state-only funded services. An estate can be liable under any of these subsections.~~

~~(1) The client's estate is liable for:~~

~~(a) All medicaid services provided from July 26, 1987, through June 30, 1994;~~

~~(b) The following medicaid services provided after June 30, 1994, and before July 1, 1995:~~

~~(i) Nursing facility services;~~

~~(ii) Home and community-based services; and~~

~~(iii) Hospital and prescription drug services provided to a client while receiving nursing facility services or home and community-based services;~~

~~(e) The following medicaid services provided after June 30, 1995, and before June 1, 2004:~~

~~(i) Nursing facility services;~~

~~(ii) Home and community-based services;~~

~~(iii) Adult day health;~~

WSR 16-05-094

EMERGENCY RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed February 16, 2016, 9:36 p.m., effective February 16, 2016, 9:36 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Amendments to this rule are necessary to clarify that individual and family services (IFS), and community first choice (CFC) option are subject to estate recovery, and to remove Washington medicaid integration partnership (WMIP) because it has been discontinued.

Citation of Existing Rules Affected by this Order: Amending WAC 182-527-2742.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Reasons for this Finding: The department of social and health services (DSHS) implemented the IFS waiver in June of 2015 and the CFC option, effective July 1, 2015. The

(iv) Medicaid personal care;

(v) Private duty nursing administered by the aging and long-term support administration (AL TSA) of the department of social and health services (DSHS); and

(vi) Hospital and prescription drug services provided to a client while receiving services described under (c)(i), (ii), (iii), (iv), or (v) of this subsection;

(d) The following services provided on and after June 1, 2004, through December 31, 2009:

(i) All Medicaid services, including those services described in subsection (c) of this section;

(ii) Medicare savings programs services for individuals also receiving Medicaid;

(iii) Medicare premiums only for individuals also receiving Medicaid; and

(iv) Premium payments to managed care organizations;

(e) The following services provided on or after January 1, 2010, through December 31, 2013:

(i) All Medicaid services except those described in (d)(ii) and (iii) of this subsection;

(ii) All institutional Medicaid services described in (c) of this subsection;

(iii) Premium payments to managed care organizations; and

(iv) The client's proportional share of the state's monthly contribution to the centers for Medicare and Medicaid services (CMS) to defray the costs for outpatient prescription drug coverage provided to a person who is eligible for Medicare Part D and Medicaid; and

(f) The following services provided after December 31, 2013:

(i) Nursing facility services, including those provided in a developmental disabilities administration (DDA) residential habilitation center (RHC);

(ii) Home and community-based services authorized by AL TSA or DDA, as follows:

(A) Community options program entry system (COPEs);

(B) New Freedom consumer directed services (NFCDS);

(C) Basic Plus waiver;

(D) CORE waiver;

(E) Community protection waiver;

(F) Children's intensive in-home behavioral support (CHBS) waiver;

(G) Medicaid personal care;

(H) Residential support waiver;

(iii) The portion of the Washington apple health (WAH) managed care premium used to pay for LTC services under the program of all-inclusive care for the elderly (PACE) authorized by AL TSA;

(iv) The portion of the WAH managed care premium used to pay for LTC services under the Washington Medicaid integration partnership (WMIP) authorized by AL TSA or DDA;

(v) Roads to community living (RCL) demonstration project;

(vi) Personal care services funded under Title XIX or XXI;

(vii) Private duty nursing administered by AL TSA or DDA;

(viii) Intermediate care facility for individuals with intellectual disabilities (ICF/ID) services provided in either a private community setting or in an RHC; and

(ix) Hospital and prescription drug services provided to a client while receiving services under subsection (1)(f)(i) through (viii) of this section.

(2) The client's estate is liable for all state-only funded LTC services (excluding the services listed in subsection (3)(a) through (d) of this section) and related hospital and prescription drug services provided to:

(a) Clients of the home and community services division of DSHS on and after July 1, 1995; and

(b) Clients of the DDA on and after June 1, 2004.

(3) The client's estate is liable for all state-only funded services provided regardless of the age of the client at the time the services were provided, with the following exceptions:

(a) State-only funded adult protective services (APS);

(b) Supplemental security payment (SSP) authorized by DDA;

(c) Offender reentry community safety program (ORCSP); and

(d) Volunteer chore services.) The agency's payment for the following services is subject to recovery:

(1) State-only funded services, except:

(a) Adult protective services;

(b) Offender reentry community safety program services;

(c) Supplemental security payments authorized by the developmental disabilities administration (DDA); and

(d) Volunteer chore services.

(2) For dates of service after December 31, 2013:

(a) Basic Plus waiver services;

(b) Community first choice services;

(c) Community option program entry system services;

(d) Community protection waiver services;

(e) CORE waiver services;

(f) Hospice services;

(g) Hospital and prescription drug services provided to a client while he or she receives services listed in this subsection;

(h) Intermediate care facility for individuals with intellectual disabilities services provided in either a private community setting or in an RHC;

(i) Individual and family services;

(j) Medicaid personal care services;

(k) New Freedom consumer directed services;

(l) Nursing facility services;

(m) Personal care services funded under Title XIX or XXI;

(n) Private duty nursing administered by aging and long-term support administration (AL TSA) or DDA;

(o) Residential habilitation center services;

(p) Residential support waiver services;

(q) Roads to community living demonstration project services;

(r) The portion of the managed care premium used to pay for AL TSA-authorized LTC services under the program of all-inclusive care for the elderly.

(3) For dates of service beginning January 1, 2010, through December 31, 2013:

(a) Medicaid services;

(b) Premium payments to managed care organizations;
and

(c) The client's proportional share of the state's monthly contribution to the centers for medicare and medicaid services to defray the costs for outpatient prescription drug coverage provided to a person who is eligible for medicare Part D and medicaid.

(4) For dates of service beginning June 1, 2004, through December 31, 2009:

(a) Medicaid services;

(b) Medicare premiums only for individuals also receiving medicaid;

(c) Medicare savings programs services for individuals also receiving medicaid; and

(d) Premium payments to managed care organizations.

(5) For dates of service beginning July 1, 1995, through May 31, 2004:

(a) Adult day health services;

(b) Home and community-based services;

(c) Hospital and prescription drug services provided to a client while receiving any of the services in this subsection;

(d) Medicaid personal care services;

(e) Nursing facility services; and

(f) Private duty nursing services.

(6) For dates of service beginning July 1, 1994, through June 30, 1995:

(a) Home and community-based services;

(b) Hospital and prescription drug services provided to a client while receiving nursing facility services or home and community-based services; and

(c) Nursing facility services.

(7) For dates of service beginning July 26, 1987, through June 30, 1994: Medicaid services.

(8) For dates of service through December 31, 2009. If a client was eligible for the medicare savings program (MSP), but not otherwise medicaid eligible, his or her estate is liable only for any sum paid to cover medicare premiums and cost-sharing benefits.

(9) For dates of service on or after January 1, 2010. If a client was eligible for medicaid under chapter 182-517 WAC and the MSP, his or her estate is not liable for any sum paid to cover medical assistance cost-sharing benefits.