

**WSR 13-12-048****PROPOSED RULES****DEPARTMENT OF REVENUE**

[Filed May 31, 2013, 11:49 a.m.]

## Original Notice.

Preproposal statement of inquiry was filed as WSR 13-07-084.

Title of Rule and Other Identifying Information: WAC 458-61A-102 Real estate excise tax—Definitions.

Hearing Location(s): Capital Plaza Building, 4th Floor L&P Conference Room, 1025 Union Avenue S.E., Olympia, WA, on July 10, 2013, at 10:00 a.m. Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Date of Intended Adoption: July 17, 2013.

Submit Written Comments to: Marilou Rickert, P.O. Box 47453, Olympia, WA 98504-7453, e-mail marilour@dor.wa.gov, by July 10, 2013.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499 or Renee Cosare, (360) 725-7514 no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 458-61A-102 provides definitions that apply throughout chapter 458-61A WAC. The department is proposing an amendment to correct the definition of "governmental entity" (subsection (9)) so that it is consistent with state and federal law.

Reasons Supporting Proposal: To amend the rule's definition of "governmental entity" to be consistent with state and federal law.

Statutory Authority for Adoption: RCW 82.01.060, 82.45.150.

Statute Being Implemented: Chapter 82.45 RCW.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Marilou Rickert, 1025 Union Avenue S.E., Suite 544, Olympia, WA, (360) 534-1582; Implementation and Enforcement: Alan Lynn, 1025 Union Avenue S.E., Suite 544, Olympia, WA, (360) 534-1599.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impose any new performance requirement or administrative burden on any small business not already required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is not a significant legislative rule as defined by RCW 34.05.328.

May 31, 2013

Alan R. Lynn

Assistant Director

AMENDATORY SECTION (Amending WSR 11-16-106, filed 8/3/11, effective 9/3/11)

**WAC 458-61A-102 Definitions.** For the purposes of chapter 458-61A WAC, the following definitions apply unless the context requires otherwise:

(1) "**Affidavit**" means the real estate excise tax affidavit provided by the department for use by taxpayers in reporting transfers of real property. Both the seller/grantor and the buyer/grantee, or their agents, sign the affidavit under penalty of perjury. The term also includes the form used to report to the department transfers and acquisitions of a controlling interest in an entity owning real property in this state under WAC 458-61A-101.

(2) "**Consideration**" means money or anything of value, either tangible or intangible, paid or delivered, or contracted to be paid or delivered, including performance of services, in return for the transfer of real property. The term includes the amount of any lien, mortgage, contract indebtedness, or other encumbrance, given to secure the purchase price, or any part thereof, or remaining unpaid on the property at the time of sale. For example, Lee purchases a home for \$250,000. He puts down \$50,000, and finances the balance of \$200,000. The full consideration paid for the house is \$250,000.

(a) "Consideration" includes the issue of an ownership interest in any entity in exchange for a transfer of real property to the entity. For example, if Julie transfers title to 20 acres of commercial property to Smith Development, LLC in exchange for a 50% ownership interest in the company, that constitutes consideration for the transfer. In the case of partnerships, consideration includes the increase in the capital account of the partner made as a result of the partner's transfer of real property to the partnership, unless the transfer is otherwise specifically exempt under WAC 458-61A-211 or 458-61A-212.

(b) "Consideration" includes the assumption of an underlying debt on the property by the buyer at the time of transfer. For example, Ben buys a residence, valued at \$300,000, from Liza. Liza was purchasing the property on a real estate contract that has an outstanding balance of \$175,000. Ben gives Liza \$125,000 in cash and he assumes the obligation on the real estate contract, which Liza assigns to him. Real estate excise tax is due on \$300,000, which is the total consideration for the sale.

(c) "Consideration" does not include the amount of any outstanding lien or encumbrance in favor of the United States, the state, or a municipal corporation for taxes, special benefits, or improvements. For example, Mel buys residential property for \$300,000. The title is encumbered by a lien for unpaid property taxes in the amount of \$12,000, and a lien for municipal sidewalk improvements in the amount of \$6,000. Although Mel will become liable for those liens in order to take title to the property, they are not considered part of the purchase price for the purpose of calculating real estate excise tax. The real estate excise tax is due only on the purchase price of \$300,000.

(3) "**Controlling interest**" means:

(a) In the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of the corporation entitled to vote, or fifty percent of the

capital, profits, or beneficial interest in the voting stock of the corporation; and

(b) In the case of a partnership, association, trust, or other entity, fifty percent or more of the capital, profits, or beneficial interest in the partnership, association, trust, or other entity.

(4) **"County"** means the county treasurer or its agent.

(5) **"Date of sale"** means the date (normally shown on the instrument of conveyance or sale) that ownership of or title to real property, or control of the controlling interest in an entity that has a beneficial interest in real property, is delivered to the buyer/transferee in exchange for valuable consideration. In the case of a lease with option to purchase, the date of sale is the date when the purchase option is exercised and the property is transferred. "Date of sale," "date of transfer," "conveyance date," and "transaction date" all have the same meaning and may be used interchangeably in this chapter. The real estate excise tax is due on the date of sale.

(6) **"Department"** means the department of revenue.

(7) **"Domestic partner"** has the same meaning as defined in chapter 26.60 RCW.

(8) **"Floating home"** means a building on a float used in whole or in part for human habitation as a single-family dwelling, which is not designed for self-propulsion by mechanical means or for propulsion by means of wind, and which is on the property tax rolls of the county in which it is located.

(9) **"Governmental entity"** means:

~~(a) The United States (, any agency or instrumentality of the United States,);~~

~~(b) The state of Washington ("state"), ((any government agency, commission, college, university, or other department of the state, any political subdivision of the state, counties, any county agency, council, instrumentality, commission, office, or department, any Washington taxing district, municipal corporations of this state, and any office, council, department, or instrumentality of a Washington municipal corporation)) including its departments and institutions, as distinct from its corporate agencies or instrumentalities; and~~

(c) Any municipal corporation or political subdivision of the state of Washington, which includes any county, city, town, public utility district, water and/or sewer district, irrigation district, school district, port district, metropolitan municipal corporation, public transportation benefit area, park and recreation district, fire protection district or any other authority described as a municipal corporation or political subdivision of the state of Washington by statute, which is established according to the applicable laws of this state.

(10) **"Mining property"** is property containing or believed to contain metallic or nonmetallic minerals, and sold or leased under terms that require the buyer or lessee to conduct exploration or mining work thereon, and for no other purpose.

(11) **"Mobile home"** means a mobile home as defined by RCW 46.04.302.

(12) **"Mortgage"** has its ordinary meaning, and includes a "deed of trust" for the purposes of this chapter, unless the context clearly indicates otherwise. The term "underlying debt" may also be used to refer to a mortgage or other security interest.

(13) **"Park model trailer"** means a park model trailer as defined in RCW 46.04.622.

(14) **"Real estate"** or **"real property"** means any interest, estate, or beneficial interest in land or anything affixed to land, including the ownership interest or beneficial interest in any entity that owns land, or anything affixed to land, including standing timber and crops. The term includes condominiums and individual apartments for which the buyer receives a warranty deed. The term includes used mobile homes, used park model trailers, used floating homes, and improvements constructed upon leased land. The term also includes any part of an irrigation system that is underground or affixed to the land. The term does not include irrigation equipment that is above the ground or that is not affixed to land. See RCW 82.12.020 for the tax treatment of sales of irrigation equipment that is not included in the definition of "real estate."

(15) **"Real estate contract"** or **"contract"** means any written agreement for the sale of real property in which legal title to the property is retained by the seller as security for the payment of the purchase price. The term does not include earnest money agreements or options to purchase real property.

(16) **"Sale"** means:

(a) Any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, including standing timber, or any estate or interest therein for a valuable consideration, and any contract for such a conveyance, grant, assignment, quitclaim, or transfer, and any lease with an option to purchase real property, including standing timber, or any estate or interest therein or other contract under which possession of the property is given to the purchaser, or any other person at the purchaser's direction, and title to the property is retained by the vendor as security for the payment of the purchase price. The term includes the grant, relinquishment, or assignment of a life estate in property. The term also includes the grant, assignment, quitclaim, sale, or transfer of improvements constructed upon leased land.

(b) The term "sale" also includes the transfer or acquisition within any twelve-month period of a controlling interest in any entity with an interest in real property located in this state for a valuable consideration. For the purposes of this chapter, all acquisitions of persons acting in concert are aggregated for the purpose of determining whether a transfer or acquisition of a controlling interest has taken place. For purposes of establishing the applicable twelve-month period for a transfer or acquisition pursuant to the exercise of an option, see WAC 458-61A-101.

(c) The term "sale" also applies to successive sales of the same property. An owner of real property is subject to payment of the real estate excise tax upon the entry of each successive contract for the sale of the same parcel of property. For example, Bob owns a house that he sells to Sam on a real estate contract. Real estate excise tax is paid on the transfer from Bob to Sam. Sam makes several payments, until he becomes unemployed. Since Sam can no longer make payments on the property, he conveys it back to Bob. Bob then makes a subsequent sale of the house to Sally. Real estate excise tax is due on the transfer from Bob to Sally. See WAC 458-61A-209 for the tax implications on the conveyance from Sam back to Bob.

(d) The term "sale" does not include:

(i) Those real property transfers that are excluded from the definition of "sale" and exempted from the real estate excise tax under RCW 82.45.010(3) and this chapter, including transfers without valuable consideration.

(ii) The transfer of lots or graves in an established cemetery. An established cemetery is one that meets the requirements for ad valorem property tax exemption under chapter 84.36 RCW.

(iii) The transfer of an interest in real property merely to secure a debt or the assignment of a security interest, release of a security interest, satisfaction of a mortgage, or reconveyance under the terms of a mortgage or deed of trust.

(iv) A deed given to a purchaser under a real estate contract upon fulfillment of the terms of the contract provided that the proper tax was paid on the original transaction. The fulfillment deed must be stamped by the county treasurer as required by WAC 458-61A-301, and the stamp must show the affidavit number of the sale for which the deed is fulfilling.

(v) A qualified sale of a manufactured/mobile home community, as defined in RCW 59.20.030, that takes place on or after June 12, 2008, but before December 31, 2018.

(e) **Examples.** The following examples, while not exhaustive, illustrate some of the circumstances in which a transfer may or may not be taxable. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(i) John paid off his home mortgage and wants to get a loan to make improvements and buy a new car. John obtains an equity loan, secured by his home as collateral. This transaction is not subject to the real estate excise tax.

(ii) Bob purchased real property from Sam pursuant to a real estate contract. Real estate excise tax was paid on the purchase price at the time of the sale. Bob has now paid off the property, and Sam is issuing a fulfillment deed to Bob indicating that the real estate contract has been satisfied. The fulfillment deed from Sam to Bob is not subject to the real estate excise tax.

(iii) Diane has made the final payment on her mortgage, and the bank issues a full reconveyance of her property, indicating that the mortgage is paid in full. The reconveyance is not subject to the real estate excise tax.

(iv) Bill is refinancing his mortgage for a lower interest rate. There is a balloon payment on the new loan that will require that he refinance again in five years. Neither transaction is subject to the real estate excise tax.

(17) **"Seller"** means any individual, receiver, assignee, trustee for a deed of trust, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club, company, joint stock company, limited liability company, business trust, municipal corporation, quasi municipal corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, but it does not include the United States or the state of Washington. The term "grantor" is used interchangeably with the term "seller" in this chapter and has the same meaning for purposes of the real estate excise tax.

(18) **"Selling price"** means the true and fair value of the property conveyed. There is a rebuttable presumption that the true and fair value is equal to the total consideration paid or contracted to be paid to the seller or to another person for the seller's benefit.

(a) When the price paid does not accurately reflect the true and fair value of the property, one of the following methods may be used to determine the true and fair value:

(i) A fair market appraisal of the property; or

(ii) An allocation of assets by the seller and the buyer made under section 1060 of the Internal Revenue Code of 1986, as amended.

(b) When the true and fair value of the property at the time of sale cannot reasonably be determined by either of the methods in (a) of this subsection, the market value assessment for the property maintained in the county property tax rolls at the time of sale will be used as the selling price. RCW 82.45.030.

(c) When the sale is of a partial interest in real property, the principal balance of any debt remaining unpaid at the time of sale will be multiplied by the percentage of ownership transferred, and that amount added to any other consideration to determine the selling price.

(d) In the case of a lease with option to purchase, the selling price is the true and fair value of the property conveyed at the time the option is exercised.

**(19) "United States" means:**

(a) The federal government, including the executive, legislative, and judicial branches, its departments, and federal entities exempt from state or local taxation by reason of specific federal statutory exemption.

The mere fact that an entity is a federal entity, such as an instrumentality of the federal government or a federal corporation, does not mean that the entity is immune from tax. The taxability of a federal entity depends on the benefits and immunities conferred upon it by Congress. Thus, to determine the current taxable status of federal entities, the relevant portion of the federal law should be examined.

(b) "United States" does not include entities associated with but not a part of the United States, such as the National Guard (an instrumentality of the state of Washington). Nor does it include entities contracting with the United States government to administer its programs.

## WSR 13-12-057

### PROPOSED RULES

### HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed June 3, 2013, 11:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-22-121.

Title of Rule and Other Identifying Information: WAC 182-501-0050 Healthcare general coverage, 182-501-0060 Healthcare coverage—Scope of covered categories of service, 182-501-0065 Healthcare coverage—Description of covered categories of service, 182-501-0070 Healthcare cov-

erage—Noncovered services, and 182-502-0160 Billing a client.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Conference Room, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at <http://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf> or directions can be obtained by calling (360) 725-1000), on July 9, 2013, at 10:00 a.m.

Date of Intended Adoption: Not sooner than July 10, 2013.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on July 9, 2013.

Assistance for Persons with Disabilities: Contact Kelly Richters by July 1, 2013, TTY (800) 848-5429 or (360) 725-1307 or e-mail [kelly.richters@hca.wa.gov](mailto:kelly.richters@hca.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Upon order of the governor, HCA reduced its budget expenditures for fiscal years 2011 and 2012 by reducing or eliminating a number of optional medical services from program benefits packages for clients twenty-one years of age and older. These medical services include vision, hearing, and dental care. Sections in chapter 182-501 WAC and WAC 182-502-0160 are being amended to reflect and support these program cuts.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: RCW 41.05.021.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Kevin Sullivan, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1344; Implementation and Enforcement: Gail Kreiger, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1681.

No small business economic impact statement has been prepared under chapter 19.85 RCW. HCA has analyzed the proposed rules and concludes they do not impose more than minor costs for affected small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules [review] committee or applied voluntarily.

June 3, 2013

Kevin M. Sullivan  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-501-0050 Health care general coverage.** WAC ~~((388-501-0050))~~ 182-501-0050 through ~~((388-501-0065))~~ 182-501-0065 describe the health care services available to a client on a fee-for-service basis or to a client enrolled in a managed care organization (MCO) (defined in WAC ~~((388-538-050))~~ 182-538-050). For the purposes of this section, health care services includes treatment, equip-

ment, related supplies, and drugs. WAC ~~((388-501-0070))~~ 182-501-0070 describes noncovered services.

(1) Health care service categories listed in WAC ~~((388-501-0060))~~ 182-501-0060 do not represent a contract for health care services.

(2) For the provider to receive payment, the client must be eligible for the covered health care service on the date the health care service is performed or provided.

(3) Under the ~~((department's))~~ agency's fee-for-service programs, providers must be enrolled with the ~~((department))~~ agency or its designee and meet the requirements of chapter ~~((388-502))~~ 182-502 WAC to be paid for furnishing health care services to clients.

(4) The ~~((department))~~ agency or its designee pays only for the health care services that are:

(a) ~~((Within the scope of))~~ Included in the client's ~~((medical program))~~ health care benefits package as described in WAC 182-501-0060;

(b) Covered - See subsection (9) of this section;

(c) Ordered or prescribed by a health care provider who meets the requirements of chapter ~~((388-502))~~ 182-502 WAC;

(d) Medically necessary as defined in WAC ~~((388-500-0005))~~ 182-500-0070;

(e) Submitted for authorization, when required, in accordance with WAC ~~((388-501-0163))~~ 182-501-0163;

(f) Approved, when required, in accordance with WAC ~~((388-501-0165))~~ 182-501-0165;

(g) Furnished by a provider according to chapter ~~((388-502))~~ 182-502 WAC; and

(h) Billed in accordance with ~~((department))~~ agency or its designee program rules and the ~~((department's))~~ agency's current published billing instructions ~~((and numbered memoranda))~~.

(5) The ~~((department))~~ agency does not pay for any health care service requiring prior authorization from the ~~((department))~~ agency or its designee, if prior authorization was not obtained before the health care service was provided; unless:

(a) The client is determined to be retroactively eligible for medical assistance; and

(b) The request meets the requirements of subsection (4) of this section.

(6) The ~~((department))~~ agency does not reimburse clients for health care services purchased out-of-pocket.

(7) The ~~((department))~~ agency does not pay for the replacement of ~~((department-purchased))~~ agency-purchased equipment, devices, or supplies which have been sold, gifted, lost, broken, destroyed, or stolen as a result of the client's carelessness, negligence, recklessness, deliberate intent, or misuse unless:

(a) Extenuating circumstances exist that result in a loss or destruction of ~~((department-purchased))~~ agency-purchased equipment, devices, or supplies, through no fault of the client that occurred while the client was exercising reasonable care under the circumstances; or

(b) Otherwise allowed under ~~((chapter 388-500 WAC))~~ specific agency program rules.

(8) The ~~((department's))~~ agency's refusal to pay for replacement of equipment, device, or supplies will not extend

beyond the limitations stated in specific ((department)) agency program rules.

**(9) Covered health care services.**

(a) Covered health care services are either:

(i) "Federally mandated" - Means the state of Washington is required by federal regulation (42 C.F.R. 440.210 and 220) to cover the health care service for medicaid clients; or

(ii) "State-option" - Means the state of Washington is not federally mandated to cover the health care service but has chosen to do so at its own discretion.

(b) The ((department)) agency may limit the scope, amount, duration, and/or frequency of covered health care services. Limitation extensions are authorized according to WAC ((388-501-0169)) 182-501-0169.

**(10) Noncovered health care services.**

(a) The ((department)) agency does not pay for any health care service((:

(i) That federal or state laws or regulations prohibit the department from covering; or

(ii)) listed as noncovered in WAC ((388-501-0070)) 182-501-0070 or in any other agency program rule, unless the agency grants a request for an exception to rule allowing payment for the noncovered service. The ((department)) agency evaluates a request for a noncovered health care service only if an exception to rule is requested according to the provisions in WAC ((388-501-0160)) 182-501-0160.

(b) When a noncovered health care service is recommended during the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) exam and then ordered by a provider, the ((department)) agency evaluates the health care service according to the process in WAC ((388-501-0165)) 182-501-0165 to determine if it is medically necessary, safe, effective, and not experimental (see WAC ((388-534-0100)) 182-534-0100 for EPSDT rules).

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-501-0060 Health care coverage—((Scope of covered categories of service)) Program benefits packages—Scope of service categories.** ((1) This rule provides a list (see subsection (5)) of medical, dental, mental health, and substance abuse categories of service covered by the department under categorically needy (CN) medicaid, medically needy (MN) medicaid, Alien Emergency Medical (AEM), and medical care services (MCS) programs. MCS means the limited scope of care financed by state funds and provided to general assistance and Alcohol and Drug Addiction Treatment and Support Act (ADATSA) program clients.

(2) Not all categories of service listed in this section are covered under every medical program, nor do they represent a contract for services. Services are subject to the exclusions, limitations, and eligibility requirements contained in department rules.

(3) Services covered under each listed category:

(a) Are determined by the department after considering available evidence relevant to the service or equipment to:

- (i) Determine efficacy, effectiveness, and safety;
- (ii) Determine impact on health outcomes;
- (iii) Identify indications for use;

(iv) Compare alternative technologies; and

(v) Identify sources of credible evidence that use and report evidence-based information.

(b) May require prior authorization (see WAC 388-501-0165), or expedited authorization when allowed by the department.

(c) Are paid for by the department and subject to review both before and after payment is made. The department or the client's managed care organization may deny or recover payment for such services, equipment, and supplies based on these reviews:

(4) The department does not pay for covered services, equipment, or supplies that:

(a) Require prior authorization from the department, if prior authorization was not obtained before the service was provided;

(b) Are provided by providers who are not contracted with the department as required under chapter 388-502 WAC;

(c) Are included in a department waiver program identified in chapter 388-515 WAC; or

(d) Are covered by a third party payer (see WAC 388-501-0200), including medicare, if the third party payer has not made a determination on the claim or has not been billed by the provider.

(5) **Scope of covered service categories.** The following table lists the department's covered categories of health care services:

• Under the four program columns (CN, MN, MCS, and AEM), the letter "C" means a service category is covered for that program, subject to any limitations listed in the specific medical assistance program WAC and department issuances.

• The letter "N" means a service category is not covered under that program.

• The letter "E" means the service category is available only if it is necessary to treat the client's emergency medical condition and may require prior authorization from the department.

• Refer to WAC 388-501-0065 for a description of each service category and for the specific program WAC containing the limitations and exclusions to services.

Service Categories	CN*	MN	MCS	AEM
(a) Adult day health	C	C	N	E
(b) Ambulance (ground and air)	C	C	C	E
(c) Blood processing/administration	C	C	C	E
(d) Dental services	C	C	C	E
(e) Detoxification	C	C	C	E
(f) Diagnostic services (lab & x ray)	C	C	C	E
(g) Family planning services	C	C	C	E
(h) Health care professional services	C	C	C	E
(i) Hearing care (audiology/hearing exams/aids)	C	C	C	E

Service Categories	CN*	MN	MCS	AEM
(j) Home health services	€	€	€	£
(k) Hospice services	€	€	N	£
(l) Hospital services--inpatient/outpatient	€	€	€	£
(m) Intermediate care facility/services for mentally retarded	€	€	€	£
(n) Maternity care and delivery services	€	€	N	£
(o) Medical equipment, durable (DME)	€	€	€	£
(p) Medical equipment, nondurable (MSE)	€	€	€	£
(q) Medical nutrition services	€	€	€	£
(r) Mental health services	€	€	€	£
(s) Nursing facility services	€	€	€	£
(t) Organ transplants	€	€	€	N
(u) Out-of-state services	€	€	N	£
(v) Oxygen/respiratory services	€	€	€	£
(w) Personal care services	€	€	N	N
(x) Prescription drugs	€	€	€	£
(y) Private duty nursing	€	€	N	£
(z) Prosthetic/orthotic devices	€	€	€	£
(aa) School medical services	€	€	N	N
(bb) Substance abuse services	€	€	€	£
(cc) Therapy--occupational/physical/speech	€	€	€	£
(dd) Vision care (exams/lenses)	€	€	€	£

\*Clients enrolled in the State Children's Health Insurance Program and the Children's Health Program receive CN scope of medical care:)) (1) This rule provides a table that lists:

(a) The categorically needy (CN) medicaid, medically needy (MN) medicaid, and medical care services (MCS) programs (includes incapacity-based medical care services and the medical component of the Alcohol and Drug Addiction Treatment and Support Act (ADATSA) program); and

(b) The benefits packages showing what service categories are included for each program.

Service Categories	CN <sup>1</sup> 20-	CN 21+	MN 20-	MN 21+	MCS
Ambulance (ground and air)	Y	Y	Y	Y	Y

(2) Within a service category included in a benefits package, some services may be covered and others noncovered.

(3) Services covered within each service category included in a benefits package:

(a) Are determined, in accordance with WAC 182-501-0050 and 182-501-0055 when applicable.

(b) May be subject to limitations, restrictions, and eligibility requirements contained in agency rules.

(c) May require prior authorization (see WAC 182-501-0165), or expedited authorization when allowed by the agency.

(d) Are paid for by the agency or its designee and subject to review both before and after payment is made. The agency or the client's managed care organization may deny or recover payment for such services, equipment, and supplies based on these reviews.

(4) The agency does not pay for covered services, equipment, or supplies that:

(a) Require prior authorization from the agency or its designee, if prior authorization was not obtained before the service was provided;

(b) Are provided by providers who are not contracted with the agency as required under chapter 182-502 WAC;

(c) Are included in an agency or its designee waiver program identified in chapter 182-515 WAC; or

(d) Are covered by a third-party payor (see WAC 182-501-0200), including medicare, if the third-party payor has not made a determination on the claim or has not been billed by the provider.

(5) Other programs:

(a) Early and periodic screening, diagnosis, and treatment (EPSDT) services are not addressed in the table. For EPSDT services, see chapter 182-534 WAC and WAC 182-501-0050(10).

(b) The following programs are not addressed in the table:

(i) Alien emergency medical (AEM) services (see chapter 182-507 WAC); and

(ii) TAKE CHARGE program (see WAC 182-532-700 through 182-532-790).

(6) **Scope of service categories.** The following table lists the agency's categories of health care services.

(a) Under the CN and MN headings there are two columns. One addresses clients twenty years of age and younger and the other addresses clients twenty-one years of age and older.

(b) The letter "Y" means a service category is included for that program. Services within each service category are subject to limitations and restrictions listed in the specific medical assistance program rules and agency issuances.

(c) The letter "N" means a service category is not included for that program.

(d) Refer to WAC 182-501-0065 for a description of each service category and for the specific program rules containing the limitations and restrictions to services.

<u>Service Categories</u>	<u>CN<sup>1</sup> 20-</u>	<u>CN 21+</u>	<u>MN 20-</u>	<u>MN 21+</u>	<u>MCS</u>
<u>Behavioral health services</u>					
• <u>Mental health (MH) inpatient care</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
• <u>MH outpatient community care</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y<sup>2</sup></u>
• <u>MH psychiatric visits</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y<sup>3</sup></u>
• <u>MH medication management</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
• <u>Substance use disorder (SUD) detoxification</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
• <u>SUD diagnostic assessment</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
• <u>SUD residential treatment</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
• <u>SUD outpatient treatment</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Blood/blood products/related services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Dental services</u>	<u>Y</u>	<u>Y<sup>4</sup></u>	<u>Y</u>	<u>Y<sup>4</sup></u>	<u>Y<sup>4</sup></u>
<u>Diagnostic services (lab and X ray)</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Health care professional services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Hearing evaluations</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Hearing aids</u>	<u>Y</u>	<u>N</u>	<u>Y</u>	<u>N</u>	<u>N</u>
<u>Home health services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Hospice services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>N</u>
<u>Hospital services - Inpatient/outpatient</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Intermediate care facility/services for persons with intellectual disabilities</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Maternity care and delivery services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Medical equipment, durable (DME)</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Medical equipment, nondurable (MSE)</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Medical nutrition services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Nursing facility services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Organ transplants</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Out-of-state services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>N</u>
<u>Outpatient rehabilitation services (OT, PT, ST)</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>N</u>	<u>Y</u>
<u>Personal care services</u>	<u>Y</u>	<u>Y</u>	<u>N</u>	<u>N</u>	<u>N</u>
<u>Prescription drugs</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Private duty nursing</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>N</u>
<u>Prosthetic/orthotic devices</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Psychological evaluation<sup>5</sup></u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>N</u>
<u>Reproductive health services</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Respiratory care (oxygen)</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>School-based medical services</u>	<u>Y</u>	<u>N</u>	<u>Y</u>	<u>N</u>	<u>N</u>
<u>Vision care - Exams, refractions, and fittings</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>	<u>Y</u>
<u>Vision hardware - Frames and lenses</u>	<u>Y</u>	<u>N</u>	<u>Y</u>	<u>N</u>	<u>N</u>

<sup>1</sup> Clients enrolled in the children's health insurance program and the apple health for kids program receive CN-scope of medical care.

<sup>2</sup> Restricted to incapacity-based MCS clients enrolled in managed care.

<sup>3</sup> Incapacity-based MCS clients can receive one psychiatric diagnostic evaluation per year and eleven monthly visits per year for medication management.

<sup>4</sup> Restricted to those clients who meet the categorical requirements described in WAC 182-535-1060.

<sup>5</sup> Only two allowed per lifetime.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-501-0065 Health care coverage—Description of ~~(covered)~~ categories of service.** This rule provides a brief description of the medical, dental, mental health, and substance ~~(abuse)~~ use disorder (SUD) service categories listed in the table in WAC ~~((388-501-0060))~~ 182-501-0060. The description of services under each category is not intended to be all inclusive.

(1) For categorically needy (CN), medically needy (MN), and medical care services (MCS), refer to the WAC citations listed in the following descriptions for specific details regarding each service category. ~~((For Alien Emergency Medical (AEM) services, refer to WAC 388-438-0110.))~~

(2) The following service categories are subject to the exclusions, limitations, restrictions, and eligibility requirements contained in ~~((department))~~ agency rules:

~~((a))~~ ~~((**Adult day health**—Skilled nursing services, counseling, therapy (physical, occupational, speech, or audiology), personal care services, social services, general therapeutic activities, health education, nutritional meals and snacks, supervision, and protection. [WAC 388-71-0702 through 388-71-0776]~~

~~((b))~~ ~~((**Ambulance**~~((—))~~—Emergency medical transportation and ambulance transportation for nonemergency medical needs. (([WAC 388-546-0001 through 388-546-4000]~~

~~((c))~~ ~~((WAC 182-546-0001 through 182-546-4000.))~~

~~((b))~~ ~~((**Behavioral health services**—~~

~~((i))~~ ~~((**Mental health inpatient care - Voluntary and involuntary admissions for psychiatric services.** (WAC 182-550-2600.))~~

~~((ii))~~ ~~((**Mental health outpatient (community mental health) services - Nonemergency, nonurgent counseling.** (WAC 182-531-1400, 388-865-0215, and 388-865-0230.))~~

~~((iii))~~ ~~((**Psychiatric visits.** (WAC 182-531-1400 and 388-865-0230.))~~

~~((iv))~~ ~~((**Mental health medication management.** (WAC 182-531-1400.))~~

~~((v))~~ ~~((**Substance use disorder detoxification.** (WAC 182-508-0305 and 182-550-1100; WAC 182-556-0400(3).))~~

~~((vi))~~ ~~((**Substance use disorder diagnostic assessment.** (WAC 182-508-0330.))~~

~~((vii))~~ ~~((**Substance use disorder residential treatment.** (WAC 182-508-0310 through 182-508-0375; and WAC 182-556-0100.))~~

~~((viii))~~ ~~((**Substance use disorder outpatient treatment.** (WAC 182-508-0310 through 182-508-0375; WAC 182-533-0701 through 182-533-0730; WAC 182-556-0100 and 182-556-0400.))~~

~~((c))~~ ~~((**Blood ~~((processing/administration—)), blood products, and related services~~** - Blood and/or blood derivatives, including synthetic factors, plasma expanders, and their administration. (([WAC 388-550-1400 and 388-550-1500])) (WAC 182-550-1400 and 182-550-1500.))~~

~~((d))~~ ~~((**Dental services**~~((—))~~—Diagnosis and treatment of dental problems including emergency treatment and preventive care. (([Chapters 388-535 and 388-535A-WAC])) (Chapters 182-535 and 182-535A WAC.))~~

~~((e))~~ ~~((**Detoxification**—Inpatient treatment performed by a certified detoxification center or in an inpatient hospital setting. [WAC 388-800-0020 through 388-800-0035; and 388-550-1100]~~

~~((f))~~ ~~((**Diagnostic services**~~((—))~~—Clinical testing and imaging services. (([WAC 388-531-0100; 388-550-1400 and 388-550-1500]~~

~~((g))~~ ~~((**Family planning services**—Gynecological exams; contraceptives, drugs, and supplies, including prescriptions; sterilization; screening and treatment of sexually transmitted diseases; and educational services. [WAC 388-532-530]~~

~~((h))~~ ~~((WAC 182-531-0100; WAC 182-550-1400 and 182-550-1500.))~~

~~((f))~~ ~~((**Health care professional services**~~((—))~~—Office visits, emergency oral health, emergency room, nursing facility, home-based, and hospital-based care; surgery, anesthesia, pathology, radiology, and laboratory services; obstetric services; kidney dialysis and renal disease services; osteopathic care, podiatry services, physiatry, and pulmonary/respiratory services; and allergen immunotherapy. (([Chapter 388-531-WAC]~~

~~((i))~~ ~~((Chapter 182-531 WAC.))~~

~~((g))~~ ~~((**Hearing ~~((care—))~~ evaluations** - Audiology; diagnostic evaluations; hearing exams and testing~~((; and hearing aids. [WAC 388-544-1200 and 388-544-1300; 388-545-700; and 388-531-0100]~~~~

~~((j))~~ ~~((WAC 182-531-0100 and 182-531-0375.))~~

~~((h))~~ ~~((**Hearing aids** - (Chapter 182-547 WAC.))~~

~~((i))~~ ~~((**Home health services**~~((—))~~—Intermittent, short-term skilled nursing care, occupational therapy, physical therapy, speech therapy, home infusion therapy, and health aide services, provided in the home. (([WAC 388-551-2000 through 388-551-2220]~~

~~((k))~~ ~~((WAC 182-551-2000 through 182-551-2220.))~~

~~((j))~~ ~~((**Hospice services**~~((—))~~—Physician services, skilled nursing care, medical social services, counseling services for client and family, drugs, medications (including biologicals), medical equipment and supplies needed for palliative care, home health aide, homemaker, personal care services, medical transportation, respite care, and brief inpatient care. This benefit also includes services rendered in a hospice care center and pediatric palliative care services. (([WAC 388-551-1210 through 388-551-1850]~~

~~((l))~~ ~~((WAC 182-551-1210 through 182-551-1850.))~~

~~((k))~~ ~~((**Hospital services**—**Inpatient/outpatient**~~((—))~~—Emergency room; hospital room and board (includes nursing care); inpatient services, supplies, equipment, and prescription drugs; surgery, anesthesia; diagnostic testing, laboratory work, blood/blood derivatives; radiation and imaging treatment and diagnostic services; and outpatient or day surgery, and obstetrical services. (([Chapter 388-550-WAC]~~

~~((m))~~ ~~((Chapter 182-550 WAC.))~~

~~((l))~~ ~~((**Intermediate care facility/services for ~~((mentally retarded—))~~ persons with intellectual disabilities** - Habilitative training, health-related care, supervision, and residential care. (([Chapter 388-835 WAC]~~

~~((n))~~ ~~((Chapter 388-835 WAC.))~~

~~((m))~~ ~~((**Maternity care and delivery services**~~((—))~~—Community health nurse visits, nutrition visits, behavioral health visits, midwife services, maternity and infant case manage-~~



ment services, family planning services and community health worker visits. (~~WAC 388-533-0330~~)

~~(o)~~ (WAC 182-533-0330.)

~~(n)~~ **Medical equipment, durable (DME)(—)**— Wheelchairs, hospital beds, respiratory equipment; (~~prosthetic and orthotic devices;~~) casts, splints, crutches, trusses, and braces. (~~WAC 388-543-1100~~)

~~(p)~~ (Chapter 182-543 WAC.)

~~(o)~~ **Medical equipment, nondurable (MSE)(—)**— Antiseptics, germicides, bandages, dressings, tape, blood monitoring/testing supplies, braces, belts, supporting devices, decubitus care products, ostomy supplies, pregnancy test kits, syringes, needles, (~~transcutaneous electrical nerve stimulators (TENS) supplies;~~) and urological supplies. (~~WAC 388-543-2800~~)

~~(q)~~ (Chapter 182-543 WAC.)

~~(p)~~ **Medical nutrition services(—)**— Enteral and parenteral nutrition, including supplies. (~~Chapters 388-553 and 388-554 WAC~~)

~~(r)~~ **Mental health services**— Inpatient and outpatient psychiatric services and community mental health services. (~~Chapter 388-865 WAC~~)

~~(s)~~ (Chapters 182-553 and 182-554 WAC.)

~~(q)~~ **Nursing facility services(—)**— Nursing, therapies, dietary, and daily care services. (~~Chapter 388-97 WAC~~)

~~(t)~~ (Chapter 388-97 WAC.)

~~(r)~~ **Organ transplants(—)**— Solid organs, e.g., heart, kidney, liver, lung, pancreas, and small bowel; bone marrow and peripheral stem cell; skin grafts; and corneal transplants. (~~WAC 388-550-1900 and 388-550-2000, and 388-556-0400~~)

~~(u)~~ (WAC 182-550-1900 and 182-556-0400.)

~~(s)~~ **Out-of-state services(—)**— Emergency services; prior authorized care. Services provided in bordering cities are treated as if they were provided in state. (~~WAC 388-501-0175 and 388-501-0180; 388-531-1100; and 388-556-0500~~)

~~(v)~~ **Oxygen/respiratory services**— Oxygen, oxygen equipment and supplies; oxygen and respiratory therapy, equipment, and supplies. (~~Chapter 388-552 WAC~~)

~~(w)~~ — See WAC 182-502-0120 for services out-of-state.

~~(t)~~ **Outpatient rehabilitation services (OT, PT, ST) -** Evaluations, assessments, and treatment. (WAC 182-545-200.)

~~(u)~~ **Personal care services(—)**— Assistance with activities of daily living (e.g., bathing, dressing, eating, managing medications) and routine household chores (e.g., meal preparation, housework, essential shopping, transportation to medical services). (~~(f)~~WAC 388-106-0010, (~~388-106-0300, 388-106-0400, 388-106-0500, 388-106-0600, 388-106-0700, 388-106-0720 and 388-106-0900~~)

~~(x)~~ 388-106-0200, 388-106-0300, 388-106-0600, 388-106-0700, 388-106-0745, and 388-106-0900.)

~~(v)~~ **Prescription drugs(—)**— Outpatient drugs (including in nursing facilities), both generic and brand name; drug devices and supplies; some over-the-counter drugs; oral, topical, injectable drugs; vaccines, immunizations, and biologicals; and family planning drugs, devices, and supplies. (~~WAC 388-530-1100~~) (WAC 182-530-2000.) Additional coverage for medications and prescriptions is addressed in specific program WAC sections.

~~(y)~~ ~~(w)~~ **Private duty nursing(—)**— Continuous skilled nursing services provided in the home, including client assessment, administration of treatment, and monitoring of medical equipment and client care for clients seventeen years of age and under. (~~WAC 388-551-3000~~) (WAC 182-551-3000.) For benefits for clients eighteen years of age and older, see WAC 388-106-1000 through 388-106-1055.

~~(z)~~ ~~(x)~~ **Prosthetic/orthotic devices(—)**— Artificial limbs and other external body parts; devices that prevent, support, or correct a physical deformity or malfunction. (~~WAC 388-543-1100~~)

~~(aa)~~ ~~School medical services~~— Medical services provided in schools to children with disabilities under the Individuals with Disabilities Education Act (IDEA). (~~Chapter 388-537 WAC~~)

~~(bb)~~ ~~Substance abuse services~~— Chemical dependency assessment, case management services, and treatment services. (~~WAC 388-533-0701 through 388-533-0730; 388-556-0100 and 388-556-0400; and 388-800-0020~~)

~~(cc)~~ ~~Therapy Occupational/physical/speech~~— Evaluations, assessments, and treatment. (~~WAC 388-545-300, 388-545-500, and 388-545-700~~)

~~(dd)~~ (WAC 182-543-5000.)

~~(y)~~ **Psychological evaluation -** Complete diagnostic history, examination, and assessment, including the testing of cognitive processes, visual motor responses, and abstract abilities. (WAC 388-865-0610.)

~~(z)~~ **Reproductive health services -** Gynecological exams; contraceptives, drugs, and supplies, including prescriptions; sterilization; screening and treatment of sexually transmitted diseases; and educational services. (WAC 182-532-001 through 182-532-140.)

~~(aa)~~ **Respiratory care (oxygen) -** All services, oxygen, equipment, and supplies related to respiratory care. (Chapter 182-552 WAC.)

~~(bb)~~ **School-based medical services -** Medical services provided in schools to children with disabilities under the Individuals with Disabilities Education Act (IDEA). (Chapter 182-537 WAC.)

~~(cc)~~ **Vision care(—)**— Eye exams, refractions, (~~frames, lenses;~~) fittings, visual field testing, vision therapy, ocular prosthetics, and surgery. (~~WAC 388-544-0250 through 388-544-0550~~) (WAC 182-531-1000.)

~~(dd)~~ **Vision hardware -** Frames and lenses. (Chapter 182-544 WAC.)

**AMENDATORY SECTION** (Amending WSR 12-18-062, filed 8/31/12, effective 10/1/12)

**WAC 182-501-0070 Health care coverage—Noncovered services.** (1) The medicaid agency or its designee does not pay for any health care service not listed or referred to as a covered health care service under the medical programs described in WAC 182-501-0060, regardless of medical necessity. For the purposes of this section, health care services includes treatment, equipment, related supplies, and drugs. Circumstances in which clients are responsible for payment of health care services are described in WAC 182-502-0160.

(2) This section does not apply to health care services provided as a result of the early and periodic screening, diagnosis, and treatment (EPSDT) program as described in chapter 182-534 WAC.

(3) The ~~((department))~~ agency or its designee does not pay for any ancillary health care service(s) provided in association with a noncovered health care service.

(4) The following list of noncovered health care services is not intended to be exhaustive. Noncovered health care services include, but are not limited to:

(a) Any health care service specifically excluded by federal or state law;

(b) Acupuncture, Christian Science practice, faith healing, herbal therapy, homeopathy, massage, massage therapy, naturopathy, and sanopractice;

(c) Chiropractic care for adults;

(d) Cosmetic, reconstructive, or plastic surgery, and any related health care services, not specifically allowed under WAC 182-531-0100(4)(-);

(e) Discography;

(f) Ear or other body piercing;

(g) Face lifts or other facial cosmetic enhancements;

(h) Fertility, infertility or sexual dysfunction testing, and related care, drugs, and/or treatment including but not limited to:

(i) Artificial insemination;

(ii) Donor ovum, sperm, or surrogate womb;

(iii) In vitro fertilization;

(iv) Penile implants;

(v) Reversal of sterilization; and

(vi) Sex therapy.

(i) Gender reassignment surgery and any surgery related to trans-sexualism, gender identity disorders, and body dysmorphism, and related health care services or procedures, including construction of internal or external genitalia, breast augmentation, or mammoplasty;

(j) Hair transplants, epilation (hair removal), and electrolysis;

(k) Marital counseling;

(l) Motion analysis, athletic training evaluation, work hardening condition, high altitude simulation test, and health and behavior assessment;

(m) Nonmedical equipment;

(n) Penile implants;

(o) Prosthetic testicles;

(p) Psychiatric sleep therapy;

(q) Subcutaneous injection filling;

(r) Tattoo removal;

(s) Transport of Involuntary Treatment Act (ITA) clients to or from out-of-state treatment facilities, including those in bordering cities;

(t) Upright magnetic resonance imaging (MRI); and

(u) Vehicle purchase - New or used vehicle.

(5) For a specific list of noncovered health care services in the following service categories, refer to the WAC citation:

(a) Ambulance transportation and nonemergent transportation as described in chapter 182-546 WAC;

(b) Dental services ~~((for clients twenty years of age and younger))~~ as described in chapter 182-535 WAC;

(c) Durable medical equipment as described in chapter 182-543 WAC;

(d) Hearing care services as described in chapter 182-547 WAC;

(e) Home health services as described in WAC 182-551-2130;

(f) Hospital services as described in WAC 182-550-1600;

(g) Health care professional services as described in WAC 182-531-0150;

(h) Prescription drugs as described in chapter 182-530 WAC;

(i) Vision care ~~((services))~~ hardware for clients twenty years of age and younger as described in chapter 182-544 WAC; and

(j) Vision care exams as described in WAC 182-531-1000.

(6) A client has a right to request an administrative hearing, if one is available under state and federal law. When the agency or its designee denies all or part of a request for a noncovered health care service(s), the agency or its designee sends the client and the provider written notice, within ten business days of the date the decision is made, that includes:

(a) A statement of the action the agency or its designee intends to take;

(b) Reference to the specific WAC provision upon which the denial is based;

(c) Sufficient detail to enable the recipient to:

(i) Learn why the agency's or its designee's action was taken; and

(ii) Prepare a response to the agency's or its designee's decision to classify the requested health care service as noncovered.

(d) The specific factual basis for the intended action; and

(e) The following information:

(i) Administrative hearing rights;

(ii) Instructions on how to request the hearing;

(iii) Acknowledgment that a client may be represented at the hearing by legal counsel or other representative;

(iv) Instructions on how to request an exception to rule (ETR) ~~((or nonformulary justification (NFJ)))~~;

(v) Information regarding agency-covered health care services, if any, as an alternative to the requested noncovered health care service; and

(vi) Upon the client's request, the name and address of the nearest legal services office.

(7) A client can request an exception to rule (ETR) as described in WAC 182-501-0160.

**AMENDATORY SECTION** (Amending WSR 12-18-062, filed 8/31/12, effective 10/1/12)

**WAC 182-502-0160 Billing a client.** (1) The purpose of this section is to specify the limited circumstances in which:

(a) Fee-for-service or managed care clients can choose to self-pay for medical assistance services; and

(b) Providers (as defined in WAC 182-500-0085) have the authority to bill fee-for-service or managed care clients for medical assistance services furnished to those clients.

(2) The provider is responsible for:

(a) Verifying whether the client is eligible to receive medical assistance services on the date the services are provided;

(b) Verifying whether the client is enrolled with a medicaid agency-contracted managed care organization (MCO);

(c) Knowing the limitations of the services within the scope of the eligible client's medical program (see WAC 182-501-0050 (4)(a) and 182-501-0065);

(d) Informing the client of those limitations;

(e) Exhausting all applicable medicaid agency or agency-contracted MCO processes necessary to obtain authorization for requested service(s);

(f) Ensuring that translation or interpretation is provided to clients with limited English proficiency (LEP) who agree to be billed for services in accordance with this section; and

(g) Retaining all documentation which demonstrates compliance with this section.

(3) Unless otherwise specified in this section, providers must accept as payment in full the amount paid by the agency or agency-contracted MCO for medical assistance services furnished to clients. See 42 C.F.R. § 447.15.

(4) A provider must not bill a client, or anyone on the client's behalf, for any services until the provider has completed all requirements of this section, including the conditions of payment described in the agency's rules, the agency's fee-for-service billing instructions, and the requirements for billing the agency-contracted MCO in which the client is enrolled, and until the provider has then fully informed the client of his or her covered options. A provider must not bill a client for:

(a) Any services for which the provider failed to satisfy the conditions of payment described in the agency's rules, the agency's fee-for-service billing instructions, and the requirements for billing the agency-contracted MCO in which the client is enrolled.

(b) A covered service even if the provider has not received payment from the agency or the client's MCO.

(c) A covered service when the agency or its designee denies an authorization request for the service because the required information was not received from the provider or the prescriber under WAC 182-501-0165 (7)(c)(i).

(5) If the requirements of this section are satisfied, then a provider may bill a fee-for-service or a managed care client for a covered service, defined in WAC 182-501-0050(9), or a noncovered service, defined in WAC 182-501-0050(10) and 182-501-0070. The client and provider must sign and date the HCA form 13-879, Agreement to Pay for Healthcare Services, before the service is furnished. Form 13-879, including translated versions, is available to download at <http://hrsa.dshs.wa.gov/mpforms.shtml>. The requirements for this subsection are as follows:

(a) The agreement must:

(i) Indicate the anticipated date the service will be provided, which must be no later than ninety calendar days from the date of the signed agreement;

(ii) List each of the services that will be furnished;

(iii) List treatment alternatives that may have been covered by the agency or agency-contracted MCO;

(iv) Specify the total amount the client must pay for the service;

(v) Specify what items or services are included in this amount (such as pre-operative care and postoperative care). See WAC 182-501-0070(3) for payment of ancillary services for a noncovered service;

(vi) Indicate that the client has been fully informed of all available medically appropriate treatment, including services that may be paid for by the agency or agency-contracted MCO, and that he or she chooses to get the specified service(s);

(vii) Specify that the client may request an exception to rule (ETR) in accordance with WAC 182-501-0160 when the agency or its designee denies a request for a noncovered service (~~(other than a nonformulary drug)~~) and that the client may choose not to do so;

(viii) ~~(Specify that the client and their prescriber may request a nonformulary justification (NFJ) in accordance with WAC 182-530-2300 for a nonformulary drug and that the client may choose not to do so;~~

~~(ix))~~ Specify that the client may request an administrative hearing in accordance with chapter 182-526 WAC to appeal the agency's or its designee denial of a request for prior authorization of a covered service and that the client may choose not to do so;

~~((x))~~ (ix) Be completed only after the provider and the client have exhausted all applicable agency or agency-contracted MCO processes necessary to obtain authorization of the requested service, except that the client may choose not to request an ETR or an administrative hearing regarding agency or agency designee denials of authorization for requested service(s); and

~~((xi))~~ (x) Specify which reason in subsection (b) below applies.

(b) The provider must select on the agreement form one of the following reasons (as applicable) why the client is agreeing to be billed for the service(s). The service(s) is:

(i) Not covered by the agency or the client's agency-contracted MCO and the ETR process as described in WAC 182-501-0160 ~~((or the NFJ process as described in WAC 182-530-2300))~~ has been exhausted and the service(s) is denied;

(ii) Not covered by the agency or the client's agency-contracted MCO and the client has been informed of his or her right to an ETR ~~((or NFJ))~~ and has chosen not to pursue an ETR as described in WAC 182-501-0160 ~~((or the NFJ process as described in WAC 182-530-2300))~~;

(iii) Covered by the agency or the client's agency-contracted MCO, requires authorization, and the provider completes all the necessary requirements; however the agency or its designee denied the service as not medically necessary (this includes services denied as a limitation extension under WAC 182-501-0169); or

(iv) Covered by the agency or the client's agency-contracted MCO and does not require authorization, but the client has requested a specific type of treatment, supply, or equipment based on personal preference which the agency or MCO does not pay for and the specific type is not medically necessary for the client.

(c) For clients with limited English proficiency, the agreement must be the version translated in the client's primary language and interpreted if necessary. If the agreement is translated, the interpreter must also sign it;

(d) The provider must give the client a copy of the agreement and maintain the original and all documentation which supports compliance with this section in the client's file for six years from the date of service. The agreement must be made available to the agency or its designee for review upon request; and

(e) If the service is not provided within ninety calendar days of the signed agreement, a new agreement must be completed by the provider and signed by both the provider and the client.

(6) There are limited circumstances in which a provider may bill a client without executing form 13-879, Agreement to Pay for Healthcare Services, as specified in subsection (5) of this section. The following are those circumstances:

(a) The client, the client's legal guardian, or the client's legal representative:

(i) Was reimbursed for the service directly by a third party (see WAC 182-501-0200); or

(ii) Refused to complete and sign insurance forms, billing documents, or other forms necessary for the provider to bill the third party insurance carrier for the service.

(b) The client represented himself/herself as a private pay client and not receiving medical assistance when the client was already eligible for and receiving benefits under a medical assistance program. In this circumstance, the provider must:

(i) Keep documentation of the client's declaration of medical coverage. The client's declaration must be signed and dated by the client, the client's legal guardian, or the client's legal representative; and

(ii) Give a copy of the document to the client and maintain the original for six years from the date of service, for agency or the agency's designee review upon request.

(c) The bill counts toward the financial obligation of the client or applicant (such as spenddown liability, client participation as described in WAC 388-513-1380, emergency medical expense requirement, deductible, or copayment required by the agency or its designee). See subsection (7) of this section for billing a medically needy client for spenddown liability;

(d) The client is under the agency's or an agency-contracted MCO's patient review and coordination (PRC) program (WAC 182-501-0135) and receives nonemergency services from providers or health care facilities other than those to whom the client is assigned or referred under the PRC program;

(e) The client is a dual-eligible client with medicare Part D coverage or similar creditable prescription drug coverage and the conditions of WAC 182-530-7700 (2)(a)(iii) are met;

(f) The service(s) ~~provided to a TAKE CHARGE or family planning only client are not within the scope of~~ is within a service category excluded from the client's benefits package. See WAC 182-501-0060;

(g) The services were noncovered ambulance services (see WAC 182-546-0250(2));

(h) A fee-for-service client chooses to receive nonemergency services from a provider who is not contracted with the agency or its designee after being informed by the provider that he or she is not contracted with the agency or its designee

and that the services offered will not be paid by the client's health care program; and

(i) An agency-contracted MCO enrollee chooses to receive nonemergency services from providers outside of the MCO's network without authorization from the MCO, i.e., a nonparticipating provider.

(7) Under chapter 182-519 WAC, an individual who has applied for medical assistance is required to spend down excess income on health care expenses to become eligible for coverage under the medically needy program. An individual must incur health care expenses greater than or equal to the amount that he or she must spend down. The provider is prohibited from billing the individual for any amount in excess of the spenddown liability assigned to the bill.

(8) There are situations in which a provider must refund the full amount of a payment previously received from or on behalf of an individual and then bill the agency for the covered service that had been furnished. In these situations, the individual becomes eligible for a covered service that had already been furnished. Providers must then accept as payment in full the amount paid by the agency or its designee or managed care organization for medical assistance services furnished to clients. These situations are as follows:

(a) The individual was not receiving medical assistance on the day the service was furnished. The individual applies for medical assistance later in the same month in which the service was provided and the agency or its designee makes the individual eligible for medical assistance from the first day of that month;

(b) The client receives a delayed certification for medical assistance as defined in WAC 182-500-0025; or

(c) The client receives a certification for medical assistance for a retroactive period according to 42 C.F.R. § 435.914(a) and defined in WAC 182-500-0095.

(9) Regardless of any written, signed agreement to pay, a provider may not bill, demand, collect, or accept payment or a deposit from a client, anyone on the client's behalf, or the agency or its designee for:

(a) Copying, printing, or otherwise transferring health care information, as the term health care information is defined in chapter 70.02 RCW, to another health care provider. This includes, but is not limited to:

(i) Medical/dental charts;

(ii) Radiological or imaging films; and

(iii) Laboratory or other diagnostic test results.

(b) Missed, canceled, or late appointments;

(c) Shipping and/or postage charges;

(d) "Boutique," "concierge," or enhanced service packages (e.g., newsletters, 24/7 access to provider, health seminars) as a condition for access to care; or

(e) The price differential between an authorized service or item and an "upgraded" service or item (e.g., a wheelchair with more features; brand name versus generic drugs).

**WSR 13-12-059****WITHDRAWAL OF PROPOSED RULES  
DEPARTMENT OF REVENUE**

(By the Code Reviser's Office)

[Filed June 4, 2013, 9:26 a.m.]

WAC 458-20-257, proposed by the department of revenue in WSR 12-23-051 appearing in issue 12-23 of the State Register, which was distributed on December 5, 2012, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

**WSR 13-12-063****PROPOSED RULES  
HORSE RACING COMMISSION**

[Filed June 4, 2013, 1:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-09-001.

Title of Rule and Other Identifying Information: WAC 260-48-945 123racing pick (n) wager pools.

Hearing Location(s): Auburn City Council Chambers, 25 West Main, Auburn, WA 98002, on August 9, 2013, at 9:30 a.m.

Date of Intended Adoption: August 9, 2013.

Submit Written Comments to: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail doug.moore@whrc.state.wa.us, fax (360) 459-6461, by August 2013.

Assistance for Persons with Disabilities: Contact Patty Sorby by August 6, 2013, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To add a new section to address a new type of wager.

Reasons Supporting Proposal: The Jockey Club has recently adopted new rules regarding reissuing registration papers for thoroughbred that are sold for nonracing purposes which better address the issue from jurisdiction to jurisdiction.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: [Horse racing commission], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Douglas L. Moore, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

June 4, 2013  
Douglas L. Moore  
Executive Secretary

NEW SECTION**WAC 260-48-945 123racing pick (n) wager pools. (1)**

The 123racing pick (n) wager is a separate multileg parimutuel pool wager established by the association on a designated number of races. The gross pool consists of the total amount wagered for the multiple race bet. Winning wagers are determined by the highest points totals earned after all legs of the wager have been completed, based on cumulative mythical win, place, and show wager (an across the board wager), on one betting interest per wagering race. It is not a parlay and has no connection with or relation to other pools conducted by the association other than the utilization of live race payouts as a means of calculating players' fantasy points.

Example: (a) Horse A finishes first and pays \$6.00 for the win, \$5.60 for show, and \$2.20 for place. The total points accumulated are 6.00 + 5.60 + 2.20 for a total of 13.80 points.  
(b) Horse B finishes second and pays \$15.60 for the place, and \$4.80 for show. The total points accumulated are 15.60 + 4.80 for a total of 20.40 points.  
(c) Horse C finishes third and pays \$2.10 for the show. The total points accumulated are 2.10.

(2) A valid 123racing pick (n) wager ticket shall be evidence of a binding contract between the holder of the ticket and the association, and shall constitute an acceptance of 123racing pick (n) wager provisions and rules contained in this section.

(3) A 123racing pick (n) wager may be given a distinctive name by the association conducting the meeting, subject to the commission or executive secretaries approval, and existing licenses, copyrights, and/or patents.

(4) 123racing pick (n) wagers shall be conducted as follows:

(a) One wager requires a predetermined unit stake to be wagered into the gross pool and the selection of one betting interest per wagering race.

(b) "n" represents the number of races that complete the wager and will vary as determined by the host racing association, but shall include no less than four races.

(c) Each leg of the 123racing pick (n) wager consists of a mythical win, place, and show wager on one betting interest per race of the same unit stake as wagered into the gross pool. For example if the unit stake for the 123racing pick (n) is \$2, each leg of the 123racing pick (n) wager consists of a mythical \$2 win, place, and show wager (a \$2 across the board wager) on one betting interest per race. An individual may place any number of separate 123racing pick (n) wagers into a pool.

(d) If a ticket has multiple selections in the same race, only the selection with the highest total points will be accumulated towards the 123racing pick (n) wager.

(e) Official program numbers must be used for all wagers. All players are responsible for ensuring each wager is placed correctly.

(f) Live race payouts are used to calculate players' point totals.

(g) Each player's points will be reflected in their cumulative points total at the end of each race.

(h) Following a race being declared "official," the actual parimutuel pool payout for the mythical across the board wager will be translated to points and added to a player's cumulative points total.

(i) Of the bettors, the player(s) with the highest points total after the last leg is/are the "winner(s)."

(j) The net parimutuel pool is distributed to the bettors scoring the highest scores of all players in the pool by a predetermined method in accordance with subsection (12) of this section.

(5) A selection on a coupled entry or field is considered a selection on the remaining part of the coupled entry or field as determined by the rules of the live corresponding race.

(6) If a selection in any race designates a betting interest that was scratched, excused, or determined by the stewards to be a nonstarter in the race, the selection will be on the actual post-time favorite, as evidenced by total amounts wagered in the win pool at the host association for the contest at the close of wagering on that race. In the event that the win pool total for two or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number.

(7) Points for dead heats will be determined by the payouts of the live corresponding race.

(8) The takeout and its distribution for the 123racing pick (n) wager shall be set and approved by the host regulatory commission, but shall include the distribution of the negotiated proprietary fee.

(9) All tickets shall be refunded if all races comprising the 123racing pick (n) wager are canceled or declared as no contest. The entire pool shall be refunded if less than four races are completed and if four or more races are completed the net pool shall be distributed pursuant to subsection (11) of this section.

(10) After wagering closes on the first race comprising the 123racing pick (n) wager, the pool shall be deemed closed and no entry ticket shall be sold, exchanged, or canceled. No person shall be determined to hold a winning 123racing pick (n) wager ticket until the last designated race has been declared official.

(11) In accordance with the following provisions, the association shall distribute the net pool to the holders of valid tickets that correctly selected the combination of first, second, and/or third place finishers that generated the highest point totals through the designated races/rounds comprising the 123racing pick (n) wager as follows:

(a) 123racing pick (n) with second and third minor pools with predetermined percentages: The major share of the net amount in the 123racing pick (n) parimutuel pool subject to distribution among winning ticket holders shall be distributed to the holder of the parimutuel ticket with the wager that has the highest points total after all races have been completed. The second minor share of the 123racing pick (n) pool shall be distributed to the holder of the parimutuel ticket with the wager that has the second highest point total after all races have been completed, and the third minor share shall be distributed to the holder of the parimutuel ticket with the wager that has the third highest point total after all races have been completed.

(b) If there are two parimutuel wagers that equal the highest point total after all races have been completed, the major and second minor shares of the net amount in the parimutuel pool subject to distribution shall be distributed to those ticket holders. The third minor share of the net amount in the parimutuel pool subject to distribution among winning

ticket holders shall be distributed to the holders of parimutuel tickets with wagers which have the third highest point total after all races have been completed.

(c) If there are three or more parimutuel wagers that equal the highest points total after all races have been completed, one hundred percent of the net amount in the parimutuel pool subject to distribution shall be distributed to those ticket holders.

(d) If one parimutuel ticket wager scores the highest points total, and two or more parimutuel ticket wagers equal the second highest point total after all races have been completed, the major share of the net amount in the parimutuel pool subject to distribution shall be distributed to the highest scoring ticket holder, and the second and third minor shares of the net amount in the parimutuel pool subject to distribution among winning ticket holders shall be distributed to the holders of parimutuel tickets which have the second highest points totals after all races have been completed.

(e) If one parimutuel ticket wager scores the highest points total, one parimutuel ticket wager scores the second highest points total, and two or more parimutuel ticket wagers score the third highest points total after all races have been completed, then the major share of the net amount in the parimutuel pool subject to distribution shall be distributed to the highest scoring ticket holder, the second minor share of the net amount in the parimutuel pool subject to distribution among winning ticket holders shall be distributed to the second highest scoring ticket holder, and the third minor share of the net amount in the parimutuel pool subject to distribution among winning ticket holders shall be distributed to the holders of parimutuel tickets which have the third highest points total.

Examples: The wagers with the highest total accumulated points after all 123racing pick (n) wager races are completed will share in the net pool eligible for distribution among winning ticket holders as follows:

**Payout Example**

**Sample Payouts**

Total wagers:	10,000
Wager denomination:	\$2.00
Pot size:	\$20,000.00
Parimutuel payout:	\$16,060.00 (assumes 19.7% "take-out")

**Finishing Leaderboard Position Payout  
Share % of Net Pool**

Major pool share		
1st	\$9,636.00	60.00%
Secondary minor pool share		
2nd	\$4,818.00	30.00%
Third minor pool share		
3rd	\$1,606.00	10.00%
Total Payout	\$16,060.00	100.00%

(f) With the written approval of the commission, the association may contribute to the net amount of the 123racing pick (n) wager parimutuel pool subject to distribution.

(12) Should circumstances occur which are not addressed by these rules, questions arising thereby shall be resolved in accordance with general parimutuel practice. Decisions regarding distribution of the 123racing pick (n) pool made by the stewards shall be final.

(13) In the event that no points are awarded to any tickets, the net pool for that day will carry over to the next race day as part of the total net pool.

**WSR 13-12-066**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
[Filed June 4, 2013, 2:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-01-094.

Title of Rule and Other Identifying Information: Chapter 246-980 WAC, Home care aides, proposing to: Establish a scope of practice for all long-term care workers; clarify requirements for nurse delegation of duties to home care aides; and revise the rules for home care aide certification and exemption from certification.

Also proposing to amend WAC 246-10-501 to allow use of the brief adjudicative proceeding for home care aide certification applicants and credential holders who are disqualified from working with vulnerable persons by chapter 74.39A RCW.

Hearing Location(s): Department of Health, Point Plaza East, Rooms 152/153, 310 Israel Road S.E., Olympia, WA 98501, on July 9, 2013, at 9:00 a.m.

Date of Intended Adoption: July 16, 2013.

Submit Written Comments to: Kendra Pitzler, P.O. Box 47852, Olympia, WA 98504-7852, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by July 9, 2013.

Assistance for Persons with Disabilities: Contact Kendra Pitzler by June 21, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal implements chapter 164, Laws of 2012 (ESHB 2314) by establishing a scope of practice for all long-term care workers; setting requirements for certain workers to perform duties delegated by nurses; and prohibiting the issuance of a home care aide certification to a person who is disqualified from working with the elderly and people with disabilities ("vulnerable persons") by chapter 74.39A RCW. The rules also incorporate new statutory definitions and certification exemptions; revise the certification application deadline; and no longer require submission of a training certificate to an examination vendor. In addition, references to laws and dates are updated.

Reasons Supporting Proposal: The intent of chapter 18.88B RCW is to protect public safety and improve the quality of care to vulnerable persons by establishing competency requirements for workers who provide care to these patients. The proposal clearly defines "long-term care work-

ers," authorizes qualified home care aides to perform certain duties delegated by registered nurses, and prohibits a person who is disqualified by DSHS from working with vulnerable persons from receiving or maintaining a home care aide certification.

Statutory Authority for Adoption: Chapter 164, Laws of 2012 (ESHB 2314) and chapter 18.130 RCW.

Statute Being Implemented: Chapter 18.88B RCW.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kendra Pitzler, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4723.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05-328. A preliminary cost-benefit analysis may be obtained by contacting Kendra Pitzler, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4723, fax (360) 236-2901, e-mail [kendra.pitzler@doh.wa.gov](mailto:kendra.pitzler@doh.wa.gov).

June 4, 2013

John Wiesman, DrPH, MPH  
Secretary

AMENDATORY SECTION (Amending WSR 96-21-027, filed 10/7/96, effective 11/7/96)

**WAC 246-10-501 Application of brief adjudicative proceedings.** (1) If an adjudicative proceeding is requested, a brief adjudicative proceeding will be conducted where the matter involves one or more of the following:

(a) A determination whether an applicant for a professional, business, or facility license meets the minimum criteria for an unrestricted license and the department proposes to deny such a license or to issue a restricted license;

(b) An application to approve a water system plan under WAC 246-290-100;

(c) An application to approve a project report under WAC 246-290-110;

(d) An application for source approval under WAC 246-290-130;

(e) An application to approve construction documents under WAC 246-290-120;

(f) An application to approve an existing Group A water system under WAC 246-290-140;

(g) An application for source approval under WAC 246-291-100 or 246-291-110;

(h) An application to approve a design report under WAC 246-291-120;

(i) An application to approve an existing Group B water system under WAC 246-291-130;

(j) An application to approve a water system plan under WAC 246-291-140;

(k) A decision under WAC 246-293-190;

(l) A decision with respect to service area conflicts under WAC 246-293-430;

(m) An application for approval as a satellite management agency under WAC 246-295-040;

(n) A civil penalty imposed under RCW 70.119A.040 when the amount of the civil penalty does not exceed two thousand five hundred dollars;

(o) A request to bank nursing home beds under RCW 70.38.111(8) and 70.38.115(13);

(p) A determination as to whether a person is in compliance with the terms and conditions of a final order previously issued by the department;

(q) Any approval of a school or curriculum when such approval by the department is required or authorized by statute or rule;

(r) A determination whether a license holder requesting renewal has submitted all required information and meets minimum criteria for license renewal; ~~((or))~~

(s) A decision to deny, modify, or impose conditions upon an operating permit under WAC 246-294-050; or

(t) A decision to deny or revoke certification as a home care aide when a long-term care worker is disqualified from working with vulnerable persons under chapter 74.39A RCW.

(2) If an adjudicative proceeding is requested, in a matter not listed in subsection (1) of this section, a brief adjudicative proceeding may be conducted in the discretion of the presiding officer when it appears that protection of the public interest does not require that the department provide notice and an opportunity to participate to persons other than the parties and:

- (a) Only legal issues exist; or
- (b) Both parties have agreed to a brief proceeding.

AMENDATORY SECTION (Amending WSR 10-15-103, filed 7/20/10, effective 1/1/11)

**WAC 246-980-010 Definitions.** The definitions in this section and in RCW 74.39A.009 apply throughout this chapter unless the context clearly requires otherwise.

(1) "Activities of daily living" means self-care abilities related to personal care such as bathing, body care, bed mobility, eating, locomotion, use of the toilet, personal hygiene, dressing, and transfer. Activities of daily living include instrumental activities of daily living.

(2) "Date of hire" means:

(a) The date of service authorization for individual providers hired by the department of social and health services.

(b) The date the long-term care worker is hired by an employer other than the department of social and health services.

(3) "Department" means the department of health.

(4) "Direct care worker" means a paid caregiver who provides hands-on personal care services to individuals with disabilities or the elderly requiring long-term care.

(5) ~~("Individual provider" means a person, including a personal aide, who has contracted with the department of social and health services to provide personal care or respite care services to functionally disabled persons under the medicaid personal care, community options program entry system, chore services program, or respite care program, or to provide respite care or residential services and support to per-~~

~~sons with developmental disabilities under chapter 71A.12 RCW, or to provide respite care as defined in RCW 74.13.270.~~

~~((6)) "Instrumental activities of daily living" means routine activities performed in the home or the community such as meal preparation, shopping, house cleaning, laundry, maintaining employment, travel to medical services, use of the telephone, and management of personal finances.~~

~~((7) "Long term care worker" means all persons who are long-term care workers for the elderly or persons with disabilities, including, but not limited to, individual providers of home care services; direct care employees of home care agencies; providers of home care services to persons with developmental disabilities under Title 71A RCW; all direct care workers in state licensed boarding homes, assisted living facilities, and adult family homes; respite care providers; community residential service providers; and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities. "Long-term care worker" does not include:~~

~~(a) Persons employed by the following facilities or agencies: Nursing homes subject to chapter 18.51 RCW; hospitals or other acute care settings; residential habilitation centers under chapter 71A.20 RCW; facilities certified under 42 C.F.R., Part 483; hospice agencies subject to chapter 70.127 RCW; adult day care centers; and adult day health care centers; or~~

~~(b) Persons who are not paid by the state or by a private agency or facility licensed by the state to provide personal care services.~~

~~(8) "Personal care services" means physical or verbal assistance with activities of daily living and instrumental activities of daily living provided because of a person's functional disability.~~

~~(9) "Supported living provider" means a person or entity certified as a supported living provider by the department of social and health services, including the state operated living alternative (SOLA) program, who delivers services and support to meet a client's identified needs. Supported living providers provide instruction, support, and services under chapter 388-101 WAC to clients in their own home to help them live independently.)~~

AMENDATORY SECTION (Amending WSR 12-08-043, filed 3/30/12, effective 4/4/12)

**WAC 246-980-020 Who must be certified as a home care aide?** (1) Any person who is hired on or after January 7, 2012, as a long-term care worker for the elderly or persons with disabilities, regardless of the employment title, must obtain certification as a home care aide. This includes, but is not limited to:

(a) An individual provider of home care services who is reimbursed by the state;

(b) A direct care employee of a home care agency;

(c) A provider of home care services to persons with developmental disabilities under Title 71A RCW;

(d) A direct care worker in a state licensed ~~((boarding home))~~ assisted living facility;



(e) A direct care worker in a state licensed adult family home;

(f) A respite care provider who is reimbursed by the state or employed by a private agency or facility licensed by the state to provide personal care services; and

(g) ~~((A community residential service provider who is reimbursed by the state or employed by a private agency or facility licensed by the state to provide personal care service; and~~

~~(h))~~ Any other direct care workers providing home or community-based services to the elderly or persons with developmental disabilities.

(2) A long-term care worker((s)) who meets the ((above criteria)) requirements in subsection (1) of this section but ((are exempted)) is exempt under WAC 246-980-070 ((are)) is not required to obtain certification.

AMENDATORY SECTION (Amending WSR 10-15-103, filed 7/20/10, effective 1/1/11)

**WAC 246-980-030 Can a nonexempt long-term care worker work before obtaining certification as a home care aide?** (1) A nonexempt long-term care worker may provide care before receiving certification as a home care aide if all the following conditions are met:

(a) Before providing care, the long-term care worker must complete the training required by RCW ~~((74.39A.073 (4)(a) and (b)))~~ 74.39A.074 (1)(d)(i)(A) and (B).

(b) The long-term care worker must submit an application for home care aide certification to the department within ~~((three))~~ fourteen days of hire. An application is considered to be submitted on the date it is post-marked or, for applications submitted in person or on-line, the date it is accepted by the department.

(2) The long-term care worker may not work for more than one hundred fifty calendar days from their date of hire without obtaining certification.

AMENDATORY SECTION (Amending WSR 12-08-043, filed 3/30/12, effective 4/4/12)

**WAC 246-980-040 What must a nonexempt long-term care worker do to be eligible for a home care aide certification and what documentation is required?** (1) To qualify for certification as a home care aide, the applicant must:

(a) Successfully complete the entry level training required by RCW ~~((74.39A.073))~~ 74.39A.074(1) before taking the examination;

(b) Successfully pass the home care aide certification examination; and

(c) Complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8. This is included in the basic training requirements in WAC 388-71-0906 and 388-112-0053.

(2) An applicant((s)) must submit directly to the examination contractor:

(a) A completed application for examination provided by the examination contractor; and

(b) The fee required by the examination contractor~~((; and~~

~~(e) A certificate of completion signed by an instructor approved by the department of social and health services. The certificate must indicate that the applicant has successfully completed the entry level training required by RCW 74.39A.073. The certificate of completion may also be submitted directly from the approved instructor or training program).~~

(3) An applicant((s)) must submit to the department:

(a) A completed application for certification on forms provided by the department;

(b) The required fee; and

(c) A certificate of completion from an approved training program indicating that the applicant has successfully completed the entry level training required by RCW 74.39A.073. The certificate of completion or other official verification may also be submitted directly from the approved instructor or training program.

(4) An applicant((s)) must submit to a state and federal background check as required by RCW ((74.39A.055)) 74.39A.056.

AMENDATORY SECTION (Amending WSR 10-15-103, filed 7/20/10, effective 1/1/11)

**WAC 246-980-050 How long does a nonexempt long-term care worker have to complete the home care aide training and certification requirements?** (1) Training:

(a) A long-term care worker must successfully complete all training required by RCW ~~((74.39A.073))~~ 74.39A.074(1) within one hundred twenty calendar days of the date of hire as a long-term care worker.

(b) A long-term care worker who has not completed the training within one hundred twenty calendar days is no longer eligible to provide care until certification as a home care aide has been granted.

(2) Certification: A long-term care worker who has not been issued a home care aide certification within one hundred fifty days of the date of hire must stop providing care until the certification has been granted.

AMENDATORY SECTION (Amending WSR 10-15-103, filed 7/20/10, effective 1/1/11)

**WAC 246-980-060 How does a nonexempt home care aide renew a certification or reinstate an expired certification?** (1) To renew a home care aide certification:

(a) Certificates must be renewed every year by the home care aide's birthday as provided in chapter 246-12 WAC, Part 2.

(b) Verification of twelve hours of continuing education as required by RCW ~~((74.39A.340))~~ 74.39A.341 and WAC 246-980-110 must accompany the certification renewal.

(2) To reinstate an expired certification:

(a) If the certification has been expired for less than three years, the applicant must submit proof of twelve continuing education hours as required by RCW ~~((74.39A.340))~~ 74.39A.341 and WAC 246-980-110 for each year it has been expired, and meet the requirements of chapter 246-12 WAC, Part 2.

(b) If the certification has been expired for ~~((more than))~~ three years or more, the applicant must successfully repeat

the training and examination requirements in WAC 246-980-040 and meet the requirements of chapter 246-12 WAC, Part 2.

AMENDATORY SECTION (Amending WSR 12-08-043, filed 3/30/12, effective 4/4/12)

**WAC 246-980-070 Who is exempt from obtaining a home care aide certification?** (1) The following individuals are not required to obtain certification as a home care aide. If they choose to voluntarily become certified, they must successfully pass the entry level training required by RCW ((74.39A.073)) 74.39A.074, successfully complete the home care aide certification examination and meet all other requirements of WAC 246-980-080(1).

(a) ~~((An individual who is employed by a nursing home subject to chapter 18.51 RCW, hospital, or other acute care setting; hospice agency subject to chapter 70.127 RCW; adult day care center; or adult day health center, and who does not hold a current health care credential described under subsection (2)(a) of this section.~~

~~((b))~~ An individual provider caring only for a biological, step, or adoptive child or parent.

~~((c))~~ (b) An individual hired prior to ~~((June 30))~~ July 1, 2014, as an individual provider who provides twenty hours or less of care for one person in any calendar month. An individual provider((s)) hired after ((June 30)) July 1, 2014, will be required to complete the required training and obtain certification.

~~((d))~~ (c) An individual employed by a ~~((supported living))~~ community residential service provider.

~~((e))~~ (d) An individual employed by a residential habilitation center licensed under chapter 71A.20 RCW or a facility certified under 42 C.F.R., Part 483.

~~((f))~~ (e) A direct care employee((s)) who ~~((are))~~ is not paid by the state or by a private agency or facility licensed by the state to provide personal care services.

(2) The following long-term care workers are not required to obtain certification as a home care aide. If they choose to voluntarily become certified, they must successfully pass the home care aide certification examination and meet all other requirements of WAC 246-980-080(2). The training requirements under RCW ((74.39A.073)) 74.39A.074(1) are not required.

(a) An individual who holds an active credential by the department as a:

(i) Registered nurse, a licensed practical nurse, or advanced registered nurse practitioner under chapter 18.79 RCW; or

(ii) Nursing assistant-certified under chapter 18.88A RCW(~~;~~

~~(iii) Certified counselor or advisor under chapter 18.19 RCW;~~

~~(iv) Speech language pathologist assistant or audiologist under chapter 18.35 RCW;~~

~~(v) Occupational therapist under chapter 18.59 RCW; or~~

~~(vi) Physical therapist assistant under chapter 18.74 RCW)).~~

(b) A home health aide who ~~((is))~~ was employed by a Medicare certified home health agency within the year before

being hired as a long-term care worker and has met the requirements of 42 C.F.R., Part ((483.35)) 484.36.

(c) A person who is in an approved training program for certified nursing assistant under chapter 18.88A RCW, provided that the training program is completed within one hundred twenty days of the date of hire and that the nursing assistant-certified credential has been issued within one hundred fifty days of the date of hire.

~~((e))~~ (d) An individual with special education training and an endorsement granted by the superintendent of public instruction under RCW 28A.300.010.

~~((f))~~ (e) An individual employed as a long-term care worker on January 6, 2012, or who was employed as a long-term care worker between January 1, 2011, and January 6, 2012, and who ~~((completes))~~ completed all of the training requirements in effect as of the date of hire. This exemption expires if the long-term care worker has not provided care for over three years.

~~((g))~~ (f) The department may require the exempt long-term care worker who is employed between January 1, 2011, and January 6, 2012, to provide proof of that employment. Proof may include a letter or similar documentation from the employer that hired the long-term care worker between January 1, 2011, and January 6, 2012, indicating the first and last day of employment, the job title, a job description, and proof of completing training requirements. Proof of training will also be accepted directly from the approved instructor or training program, if applicable. For an individual provider reimbursed by the department of social and health services, the department will accept verification from the department of social and health services or the Training Partnership.

~~((h))~~ (g) ~~A long-term care worker who is employed on or before January 6, 2012, but has not completed all of his or her training requirements in effect the day he or she was hired, must complete the training within one hundred twenty days of the date of hire to qualify for this exemption.~~

AMENDATORY SECTION (Amending WSR 10-15-103, filed 7/20/10, effective 1/1/11)

**WAC 246-980-080 How does an exempt individual apply for certification as a home care aide?** (1) An individual exempt from certification under WAC 246-980-070(1) may apply for certification as a home care aide as follows:

(a) To qualify for certification as a home care aide, the applicant must:

(i) Successfully complete entry level training as required by RCW 74.39A.073 before taking the examination;

(ii) Successfully pass the home care aide certification examination; and

(iii) Complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8. This is included in the basic training requirements in WAC 388-71-0906 and 388-112-0053.

(b) An applicant((s)) must submit directly to the examination contractor:

(i) A completed application for examination provided by the examination contractor; and

(ii) The fee required by the examination contractor(~~(;~~ and

~~(iii) A certificate of completion signed by a department of social and health services approved instructor. The certificate must indicate that the applicant has successfully completed entry level training required by RCW 74.39A.073. The certificate of completion may also be submitted directly from the approved instructor or training program).~~

(c) An applicant(s) must submit to the department:

(i) A completed application for certification on forms provided by the department;

(ii) The required fee; and

(iii) A certificate of completion from an approved training program signed by a department of social and health services approved instructor. The certificate must indicate that the applicant has successfully completed the entry level training as required by RCW ~~((74.39A.073))~~ 74.39A.074(1). The certificate of completion may also be submitted directly from the approved instructor or training program.

(d) An applicant(s) must submit to a state and federal background check as required by RCW ~~((74.39A.055))~~ 74.39A.056.

(2) A long-term care worker exempt from certification under WAC 246-980-070(2) may apply for certification as a home care aide as follows:

(a) To qualify for certification as a home care aide, the applicant must:

(i) Successfully complete the home care aide certification examination; and

(ii) Complete four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8. This is included in the basic training requirements in WAC 388-71-0906 and 388-112-0053.

(b) An applicant(s) must submit directly to the examination contractor a completed application for examination and the fee required by the examination contractor.

(c) An applicant(s) must submit to the department:

(i) A completed application for certification on forms provided by the department; and

(ii) Proof the individual qualifies for exemption under WAC 246-840-070(2); and

(iii) The required fee.

(d) An applicant(s) must submit to a state and federal background check as required by RCW ~~((74.39A.055))~~ 74.39A.056.

AMENDATORY SECTION (Amending WSR 10-15-103, filed 7/20/10, effective 1/1/11)

**WAC 246-980-090 How does an exempt home care aide renew a home care aide certification or reinstate an expired home care aide certification?** (1) To renew a home care aide certification:

(a) Certificates must be renewed every year by the home care aide's birthday as provided in chapter 246-12 WAC, Part 2.

(b) Verification of twelve hours of continuing education as required by RCW ~~((74.39A.340))~~ 74.39A.341 and WAC 246-980-110 must accompany the certification renewal.

(2) To reinstate a certification that has been expired for less than three years, the applicant must submit proof of twelve continuing education hours as required by RCW

~~((74.39A.340))~~ 74.39A.341 and WAC 246-980-110 for each year it has been expired, and meet the requirements of chapter 246-12 WAC, Part 2.

(3) To reinstate a certification that has been expired for three years or more ~~((than three years))~~:

(a) A long-term care worker exempt from certification under WAC 246-980-070(1) must:

(i) Submit proof that the applicant has worked at least eight hours as a long-term care worker within the last three years and submit twelve hours of continuing education per year as required by RCW ~~((74.39A.340))~~ 74.39A.341 and WAC 246-980-110; or

(ii) Successfully repeat the training and examination requirements in WAC 246-980-080(1).

(b) A long-term care worker exempt from certification under WAC 246-980-070(2) must:

(i) Submit proof that the applicant has worked at least eight hours as a long-term care worker within the past three years and submit twelve hours of continuing education per year as required by RCW ~~((74.39A.340))~~ 74.39A.341 and WAC 246-980-110; or

(ii) Successfully repeat the certification examination requirements in WAC 246-980-080(2).

AMENDATORY SECTION (Amending WSR 10-15-103, filed 7/20/10, effective 1/1/11)

**WAC 246-980-100 Examination and reexamination for home care aide certification.** (1) The certification examination will consist of both a written knowledge test and a skills demonstration.

(2) The certification examination will test the core competencies, including but not limited to, communication skills, worker self-care, problem solving, maintaining dignity, consumer directed care, cultural sensitivity, body mechanics, fall prevention, skin and body care, home care aide roles and boundaries, supporting activities of daily living, and food preparation and handling.

(3) ~~((The))~~ An applicant must apply directly to the examination contractor to take the examination.

(4) The examination contractor will notify ~~((the))~~ an applicant of the date, time, and place of the examination.

(5) The examination contractor will notify both the department and ~~((the))~~ an applicant of the examination results.

(a) An applicant who does not successfully pass any portion of the examination can follow the examination contractor's procedures for review and appeal.

(b) An applicant who does not successfully pass any portion of the examination may retake that portion of the examination two times.

(i) To retake the examination, an applicant must submit an application for reexamination, along with the required reexamination fee directly to the examination contractor.

(ii) An application for reexamination may be submitted any time after ~~((the))~~ an applicant receives notice of not successfully completing any portion of the certification examination.

(c) An applicant who does not successfully pass both portions of the certification examination within two years of

successfully completing the required training or who does not successfully pass both portions of the certification examination after completing the certification examination three times:

- (i) Must retake and successfully complete the core competencies portion of the entry-level training as required by RCW ((74.39A.073)) 74.39A.074; and
- (ii) Cannot continue to provide care as a long-term care worker until the certification has been issued.

**AMENDATORY SECTION** (Amending WSR 10-15-103, filed 7/20/10, effective 1/1/11)

**WAC 246-980-110 Continuing education.** (1) A home care aide((s)) must demonstrate completion of twelve hours of continuing education per year as required by RCW ((74.39A.340)) 74.39A.341. The required continuing education must be obtained during the period between renewals. Continuing education is subject to the provisions of chapter 246-12 WAC, Part 7.

(2) Verification of completion of the continuing education requirement is due upon renewal. If the first renewal period is less than a full year from the date of certification, no continuing education will be due for the first renewal period.

**AMENDATORY SECTION** (Amending WSR 10-15-103, filed 7/20/10, effective 1/1/11)

**WAC 246-980-120 Home care aide—Application—Conviction data—Criteria for denial or conditional license.** (1) An applicant((s)) who ((have)) has any criminal history may be denied certification or may be granted certification with conditions pursuant to RCW 18.130.055.

(2) In determining whether to deny certification or grant certification with conditions due to ((the)) an applicant's criminal history, the department may consider the following factors:

- (a) The severity of the crime as classified under law;
- (b) The number of convictions and whether the applicant has exhibited a pattern of criminal conduct;
- (c) The amount of time elapsed since the date of conviction or the date of offense;
- (d) The amount of time the applicant has spent in the community after release from custody;
- (e) Whether any conviction is listed by the department of social and health services as a disqualifying crime, including those offenses listed in RCW 43.43.830 (5), (6), or (7);
- (f) Whether the applicant has complied with court-ordered conditions such as treatment, restitution, or other remedial or rehabilitative measures;
- (g) Other remediation or rehabilitation by the applicant subsequent to the conviction date;
- (h) Whether the applicant disclosed the conviction on the certification application; and
- (i) Any other factor relating to the applicant's ability to practice as a home care aide with reasonable skill and safety.

(3) A long-term care worker disqualified from working with vulnerable persons under chapter 74.39A RCW may not be certified as a home care aide.

#### NEW SECTION

**WAC 246-980-130 Provision for delegation of certain tasks to a home care aide.** (1) A home care aide-certified may perform tasks delegated by a registered nurse for patients in community-based care settings or in-home care settings each as defined in RCW 18.79.260 (3)(e).

(2) Before performing any delegated task a home care aide-certified must show the certificate of completion of the core delegation training from the department of social and health services to the registered nurse delegator.

(3) A home care aide-certified who is performing nurse delegation tasks must comply with all applicable requirements of the nursing care quality assurance commission in WAC 246-840-910 through 246-840-970.

(4) A home care aide-certified who may be performing insulin injections must show a certificate of completion of diabetic training from the department of social and health services to the registered nurse delegator.

(5) A home care aide-certified must meet any additional training requirements identified by the department of social and health services.

(6) For the purposes of this section, delegated nursing care tasks must be performed:

(a) Only for the specific patient for whom those tasks are delegated;

(b) Only with the patient's consent; and

(c) In compliance with all applicable requirements in WAC 246-840-910 through 246-840-970.

(7) A home care aide-certified may consent or refuse to consent to perform a delegated nursing care task. The home care aide-certified is responsible for his or her own actions with the decision to consent or refuse to consent and the performance of the delegated nursing care task.

(8) A home care aide-certified must not accept delegation of, or perform, the following nursing care tasks:

(a) Administration of medication by injection, with the exception of insulin injections;

(b) Sterile procedures;

(c) Central line maintenance;

(d) Acts that require nursing judgment.

(9) A person who is working as long-term care workers but has not received a home care aide certification must have either a nursing assistant-certified or nursing assistant-registered credential and comply with WAC 246-841-405.

#### NEW SECTION

**WAC 246-980-140 Scope of practice for long-term care workers.** (1) A long-term care worker performs activities of daily living or activities of daily living and instrumental activities of daily living. A person performing only instrumental activities of daily living is not acting under the long-term care worker scope of practice.

(a) Activities of daily living means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, and transfer. This may include fall prevention, skin and body care.

(b) Instrumental activities of daily living means activities in the home and community including cooking, shop-

ping, house cleaning, doing laundry, working, and managing personal finances.

(2) A long-term care worker documents observations and tasks completed, as well as communicates observations on the day they were performed to clients, family, and supervisors.

(3) A long-term care worker may perform medication assistance as described in chapter 246-888 WAC.

(4) A long-term care worker may perform nurse delegated tasks, to include medication administration, if he or she meets and follows the requirements in WAC 246-980-130.

### WSR 13-12-069

#### PROPOSED RULES

#### DEPARTMENT OF TRANSPORTATION

[Filed June 5, 2013, 7:23 a.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 12-23-095.

Title of Rule and Other Identifying Information: New WAC rules regarding no trespass warnings for Washington state ferries' (WSF) terminals, vessels or other WSF facilities, WAC 468-300-800 Authority to issue no trespass warnings/definitions, 468-300-805 No Trespass warnings, 468-300-810 Administrative appeal, and 468-300-815 Administrative hearing.

Hearing Location(s): WSF, 2901 Third Avenue, Suite 500, Seattle, WA 98121-3014, on Wednesday, July 10, 2013, at 1:00 p.m. - 2:00 p.m.

Date of Intended Adoption: July 10, 2013.

Submit Written Comments to: Helmut Steele, Company Security Officer, WSF, 2901 Third Avenue, Suite 500, Seattle, WA 98121-3014, e-mail SteeleH@wsdot.wa.gov, fax (206) 515-3473, by July 9, 2013.

Assistance for Persons with Disabilities: Contact WSF by July 9, 2013, TTY 711 connect to (206) 515-3600 or (206) 515-3601.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed new WAC rules is to establish procedures governing issuance of no trespass warning notices for WSF's terminals, vessels and any other WSF operated facility. The proposed rules also specify the appeal process to contest such notices.

The anticipated effects of this proposal are to: Reduce the risk of damage to WSF property; reduce harassment of, and possible injury to, WSF customers and employees; and reduce violation of state, local, or federal regulation, law, or ordinance including, but not limited to, the city of Seattle pedestrian interference law and any law as set forth under Title 9A RCW.

Reasons Supporting Proposal: The new WAC rules will provide WSF with enforcement options to enhance the safety of WSF terminals, vessels and other WSF facilities, all to benefit WSF customers and employees.

Statutory Authority for Adoption: RCW 47.56.030 and 47.60.010.

Statute Being Implemented: RCW 47.56.030 and 47.60.010.

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

Name of Proponent: Washington state department of transportation, ferries division, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Helmut Steele, 2901 Third Avenue, Suite 500, Seattle, WA 98121-3014, (206) 515-3474.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Pursuant to RCW 19.85.030, the proposed rules will not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is not required under RCW 34.05.328. WSF has determined that the probable benefits of the rules (e.g., safety enhancement) are greater than the probable costs (e.g., administrative appeals), taking into account both the qualitative and quantitative benefits and costs and the directives in the statutes being implemented regarding the operation of WSF.

Kathryn W. Taylor  
Chief of Staff

#### NEW SECTION

**WAC 468-300-800 Authority to issue no trespass warnings/definitions.** The definitions used in chapters 47.56 and 47.60 RCW and chapter 468-300 WAC, shall apply to this section, as well as those additional definitions set forth herein.

(1) "WSF property" shall mean any property real or otherwise, owned or leased by the WSF and includes, but is not limited to, any property which comprises a WSF terminal including access thereto, to any WSF vessel, or other WSF operated facility.

(2) "Authorized officer" shall mean a member of the Washington state patrol (WSP), a law enforcement officer or agency of local jurisdiction, a ferry vessel captain, a port captain, or other designated WSF director or employee.

(3) "Good cause" means facts and circumstances which leads an authorized officer to believe that a person:

(a) Has violated, or through his or her actions or behavior, intends to violate any state, local, or federal regulation, law, or ordinance including, but not limited to, the city of Seattle pedestrian interference law and any law as set forth under Title 9A RCW;

(b) Has disrupted, or through his or her actions or behavior, intends to disrupt WSF operations;

(c) Has harassed, or through his or her actions or behavior, intends to harass or otherwise interfere with a WSF employee or passenger;

(d) Has injured himself, herself or others, or through his or her actions or behavior, intends to injure himself, herself or others, or otherwise takes actions which place persons or WSF property in peril;

(e) Has damaged, defaced, or destroyed WSF property, or through his or her actions or behavior, intends to damage, deface, or destroy WSF property.

NEW SECTION

**WAC 468-300-806 No trespass warnings.** (1) This chapter shall be enforced so as to emphasize voluntary compliance with all applicable laws, rules, regulations, statutes, and policies, and so that inadvertent and/or minor violations of all applicable laws, rules, regulations, statutes, and policies can be corrected without resort to the issuance of a no trespass warning notice. Therefore, prior to issuing a no trespass warning notice to an individual, an authorized officer may choose, in his or her discretion, to first issue a verbal warning and/or a "warning letter" to an individual who exhibits "unacceptable behavior" which does not rise to the level of criminal conduct and/or does not constitute a safety risk.

(2) An authorized officer may issue a no trespass warning notice, which shall be valid and enforceable for a period of sixty days from the date of its issuance, to any individual when he or she has good cause to issue such a no trespass warning notice, which shall conform to the requirements of subsection (4) of this section. Violation of any term of a no trespass warning notice shall constitute the crime of criminal trespass under chapter 9A.52 RCW.

(3) Should an individual:

(a) Violate the terms of the no trespass warning notice;  
or

(b) Receive two no trespass warning notices within a one-year period, then the individual shall be issued a third no trespass warning notice by an authorized officer, which shall be valid and enforceable for a period of one year from the date of the issuance of the third no trespass warning notice.

(4) A no trespass warning notice shall:

(a) Be in writing and signed by the individual authorized officer issuing it;

(b) Contain the date of issuance, the violation that the person is alleged to have committed, and a citation to the code, statute, or rule violated;

(c) Specify the places where the individual will be expelled from and the length during the period in which the no trespass warning notice is valid and enforceable;

(d) Set out the method for appealing the notice, which shall also include the address where the appeal should be sent;

(e) Prominently display a warning of the consequences for failure to comply with the notice and state that a violation of the terms of the notice will constitute criminal trespass under chapter 9A.52 RCW.

(5) The person being expelled need not be charged, tried, or convicted of any crime or be issued an infraction or have an infraction found committed in order for a no trespass warning notice to be issued or effective. The authorized officer need only establish that good cause existed to support the issuance of the no trespass warning notice.

NEW SECTION

**WAC 468-300-811 Administrative appeal.** (1) A person receiving a no trespass warning notice may file an appeal to have the notice rescinded.

(2) The appeal must be in writing, provide the appellant's current address, and shall be accompanied by a copy of the no trespass warning notice that is being appealed.

(3) The written notice of appeal must be sent to the WSF company security officer at the WSF mailing address specified on the following WSF web site: [www.wsdot.wa.gov/ferries/infodesk/contact.htm](http://www.wsdot.wa.gov/ferries/infodesk/contact.htm). You may also contact WSF at 206-515-3400 for information concerning the WSF mailing address. The written notice must be postmarked no later than seven calendar days after the issuance of the no trespass warning notice.

(4) The terms of the no trespass warning notice shall remain in effect during the pendency of any administrative or judicial proceeding.

NEW SECTION

**WAC 468-300-815 Administrative hearing.** (1) The WSF company security officer or his or her designee (hereinafter "hearing official") shall:

(a) Notify the appellant of the hearing date, time, and location;

(b) Conduct a hearing within ten business days of receipt of the notice of appeal; and

(c) Issue a written ruling upholding, rescinding, or modifying the no trespass warning notice no later than five business days after the hearing. The written ruling shall conform to the requirements of the Washington Administrative Procedure Act, chapter 34.05 RCW.

(2) The hearing official shall consider a sworn report or a declaration under penalty of perjury as authorized by RCW 9A.72.085, written by the individual who issued the no trespass warning notice, without further evidentiary foundation. This evidence creates a rebuttable presumption that the violation occurred and the burden thereafter rests with the appellant to overcome the presumption.

(3) The hearing official shall consider the no trespass warning notice and may consider any written or oral sworn testimony of the appellant or witnesses, as well as pictorial or demonstrative evidence offered by the appellant that the hearing official considers relevant and trustworthy. The hearing official may consider information that would not be admissible under the evidence rules in a court of law.

(4) The hearing official may issue subpoenas for the attendance of witnesses and the production of documents, and shall administer individual oaths to witnesses. The hearing official shall not issue a subpoena for the attendance of a witness at the request of the appellant unless the request is accompanied by the fee required by RCW 5.56.010 for a witness in district court. The appellant shall be responsible for serving any subpoena issued at the appellant's request.

(5) If, after the hearing, the hearing official is persuaded on a "more probable than not" basis that the violation did occur, the no trespass warning notice shall be upheld. However, if the appellant can establish that he or she necessarily requires access to the WSF property from which he or she is expelled for purposes of commuting to and from work, school, or necessary medical treatment, the hearing officer shall:

(a) Modify the terms of the no trespass warning notice to allow for travel at specified times only insofar as to limit the specific hardship caused by the expulsion; and

(b) Fine the individual two hundred fifty dollars for the first offense and five hundred dollars for each offense thereafter.

If, however, the violation is not proven on a "more probable than not" basis, then the hearing official shall rescind the no trespass warning notice. If the hearing official rescinds a no trespass warning notice, the no trespass warning notice shall not be considered a prior no trespass warning notice for purposes of WAC 468-300-806(3).

(6) The decision of the hearing official is final. Any appeal of the hearing official's decision may be made in conformance with the Washington Administrative Procedure Act, chapter 34.05 RCW.

(7) No determination of facts made by the hearing official under this section shall have any collateral estoppel effect on a subsequent criminal prosecution or civil proceeding and shall not preclude litigation of those same facts in a subsequent criminal prosecution or civil proceeding.

(8) In no event shall the hearing official be a person who is subordinate to the person who issued the no trespass warning notice.

maximum fare, and amends existing rules governing tariff filings to reflect the new flexible fare rule.

Reasons Supporting Proposal: Consumers and companies will benefit from rules that provide more flexibility in authorizing companies to provide auto transportation services and in allowing companies authority to respond to changes in the market and competition by establishing their fares up to a maximum fare.

Statutory Authority for Adoption: RCW 80.01.040, 81.04.160, 81.04.250, 81.68.030, and 81.68.040.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Ann Rendahl, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1144; Implementation and Enforcement: Steven V. King, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1155.

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

#### Small Business Economic Impact Statement

**I. Introduction:** The utilities and transportation commission (commission) initiated a rule making in September, 2012, in Docket TC-121328, to consider rules to establish fare setting flexibility and competition for auto transportation companies in chapter 480-30 WAC.

Over the past nine months, the commission requested and received three sets of comments from stakeholders and held a stakeholder workshop. The draft rules are now sufficiently developed to publish them as proposed rules, and proceed to the next phase of the rule making. When issuing a notice of proposed rules, agencies must provide a copy of the small business economic impact statement (SBEIS) prepared in accordance with chapter 19.85 RCW, or explain why an SBEIS was not prepared. RCW 34.05.320 (1)(k). The commission has prepared this small business economic impact statement in compliance with the requirements.

**II. SBEIS Requirements:** The Regulatory Fairness Act, codified in chapter 19.85 RCW, provides that an agency must conduct an SBEIS "if the proposed rule will impose more than minor costs on businesses in an industry." RCW 19.85.030. An SBEIS is intended to assist agencies in evaluating any disproportionate impacts of the rule making on small businesses. A business is categorized as "small" under the Regulatory Fairness Act if the business employs fifty or fewer employees.

Under RCW 19.85.040(1), agencies must determine whether there is a disproportionate impact on small businesses in the industry, and under RCW 19.85.030(2), consider means to minimize the costs imposed on small businesses. In determining whether there is a disproportionate impact on small businesses, agencies must compare the cost of compliance for small businesses with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the rule using either the cost per employee, the cost per hour of labor, or the cost per \$100

### WSR 13-12-072

#### PROPOSED RULES

### UTILITIES AND TRANSPORTATION COMMISSION

[Docket TC-121328—Filed June 5, 2013, 8:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-18-074.

Title of Rule and Other Identifying Information: Chapter 480-30 WAC, Passenger transportation companies, this rule making proposes to amend and establish rules regarding applications for auto transportation certificates and establish rules regarding flexible fare authority.

Hearing Location(s): Commission Hearing Room 206, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, on July 26, 2013, at 1:30 p.m.

Date of Intended Adoption: July 26, 2013.

Submit Written Comments to: Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., P.O. Box 47250, Olympia, WA 98504-7250, e-mail records@utc.wa.gov, fax (360) 586-1150, by July 8, 2013. Please include: "Docket TC-121328" in your comments.

Assistance for Persons with Disabilities: Contact Debbie Aguilar by July 12, 2013, TTY (360) 586-8203 or (360) 664-1132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal revises the existing rules and establishes new rules governing applications for certificates to provide auto transportation services to streamline the application process and clarify standards for considering applications. The proposal also establishes a rule to allow companies to receive authority from the commission for flexibility to charge fares up to a

of sales revenue, as a basis for comparing costs. See RCW 19.85.040(1).

**III. SBEIS Evaluation Procedure:** The commission has prepared an SBEIS for the proposed rules in Docket TC-121328 to determine whether the rule would impose a disproportionate impact on small businesses and, if so, to consider means to minimize costs to small businesses.

On April 12, 2013, the commission mailed a notice to all stakeholders interested in the commission's auto transportation company rule making, providing a link to the draft rules and an opportunity to respond to an SBEIS questionnaire. The notice requested that the affected companies provide information concerning the cost impact of draft rules, and to provide specific information for each draft rule that the company identified as causing an impact. The commission received economic impact comments from Bremerton-Kitsap Airporter and Capitol [Capital] Aeroporter. The response from the companies, as well as the general comments on the draft rules the commission received from all stakeholders, are discussed below in Sections IV and V.

To conduct an SBEIS pursuant to the Regulatory Fairness Act, the commission must either determine the cost per employee, the cost per hour of labor or the cost per \$100 of sales revenue. However, none of the affected companies provided this specific quantitative information in response to the questionnaire. Although the results of this survey are based on limited quantitative data, the commission has extensive experience and history with auto transportation company activities and the stakeholders have communicated their views on the impacts of the draft rules throughout this process.

The commission conducted its analysis by considering the purpose of the rule, the reason for the new rule revisions and the cost of compliance asserted by the companies. The commission evaluated whether the estimated cost was reasonable or whether it is already a cost of compliance, and in weighing all the information, determined if any mitigation of the requirements of the draft rules was appropriate. Given the limitation of available economic data, the commission made every effort to evaluate the impacts of the revised rule, to ensure that the effect of the rule making is fair and does not impose a disproportionate burden on the affected companies.

**IV. Compliance Requirements of the Proposed Rules:** The commission initiated this rule making in September 2012 by issuing a CR-101 rule-making notice. The commission has taken the following steps in pursuing this rule making:

- The commission received comments on the CR-101 notice in October 2012. The commission evaluated those comments and revised its approach to the rules based on the comments.
- The commission issued a notice of opportunity to file written comments and a notice of workshop on February 8, 2013. The notice included a set of draft rules. The commission received comments from three companies on the draft rules, summarized those comments, and held a workshop for interested parties on March 22, 2013.
- After reviewing the comments and considering the workshop discussion, the commission revised the

draft rules and issued another notice of opportunity to file written comments and an opportunity to respond to an SBEIS questionnaire on April 12, 2013. The notice included the second draft rules.

- The commission received comments on the second draft rules from four companies and SBEIS questionnaire responses from one of those companies.
- The commission evaluated the comments on the second draft rules and responses to the SBEIS questionnaire, and made additional changes to the draft rules. The commission is now ready to publish and circulate proposed rules, filing a CR-102 with the office of the code reviser.

**V. Results of the Analysis:** Despite receiving only two limited responses to the SBEIS questionnaire, the commission did consider the cost impact of complying with the proposed rules throughout the rule-making process.

Under current law, an existing auto transportation company may object to an application for new or extended authority to provide service by another company. The current rules have resulted in applications for new or extended authority to provide service to be adjudicated in lengthy, formal hearings addressing a wide range of issues, not all of which are contemplated in the underlying law. The proposed rules narrow the scope of the adjudication to that required by the statute: (1) Whether the public convenience and necessity requires the proposed service, and (2) whether an existing company is already providing the same service to the satisfaction of the commission. The proposed rules also require that the adjudication be conducted under a "brief adjudication" process unless the administrative law judge determines that a more formal process is required. The companies acknowledged in workshop discussions that narrowing the scope of the adjudication and using the brief adjudication process would result in decreased costs for the applicants and objecting companies.

In addition, the proposed rules allow a company flexibility regarding what fares to charge passengers, up to a defined maximum fare. To obtain the flexible fare authority, a company must file a new tariff showing its current fares and stating the maximum fare allowed under the rule. The maximum fare also increases each year to (at least partially) offset the impact of inflation and other potential cost drivers. In order to implement the increase, each company that opts for flexible fare authority must file a new tariff each year showing the new maximum rate. Although no company objected to filing tariffs to take advantage of the rule change, the commission is aware that preparing and filing a tariff requires company staff time and expense. However, the commission believes this cost increase is more than offset by the elimination of the need to file monthly fuel surcharge requests (which will no longer be allowed for companies opting for flexible fare authority) and other tariff changes to adjust to market conditions. The cost savings associated with not having to file fuel surcharge requests and other tariff changes with the commission was acknowledged, but not quantified, by both companies that responded to the SBEIS questionnaire.

The companies expressed concern in their written comments and during the workshops regarding the possible economic impact of the commission authorizing additional com-



panies to serve territories or routes already served by an existing company. Capital Aeroporter, in responding to the SBEIS questionnaire, asserted that based on past experience, it would face a ten percent reduction in revenue if another company was allowed to compete for the same customers. No data was provided to substantiate the concern. Bremerton-Kitsap Airporter, in responding to the SBEIS questionnaire, expressed concern that if an applicant was allowed to provide "door-to-door" service where an existing company provides scheduled route service, the existing customer base would have to be shared between the two companies, making neither company viable. Again, no data was provided, other than the statement that the company had tried to provide both scheduled route service and door-to-door service at the same time, and there was little demand for door-to-door service.

The proposed rules do provide an increased opportunity for companies to seek to provide service to customers who are not receiving service or are not receiving service to the satisfaction of the commission. However, a review of the commission's past decisions regarding applications shows that the commission has only approved applications when there is no existing company providing service or the existing company is not providing the same service to the satisfaction of the commission. That basic standard still holds under the proposed rules. The proposed rules do clarify for applicants and existing companies the factors the commission will consider when determining if the proposed service is the same, and if the existing company is providing that same service to the satisfaction of the commission. While some provisions in the rule are more rigorous than the cumulative case law of the commission, the provisions substantially adopt existing policy and practices revealed in a review of past decisions. The commission has amended the draft rules to balance the concerns expressed by the companies with providing the public greater opportunities to receive service.

The companies also expressed concern that the maximum fares authorized under the proposed rules will not be adequate, given anticipated cost increases. The concern is primarily focused on the annual increase of five percent. The commission believes that an initial allowable increase of twenty-five percent and an annual increase of five percent thereafter are sufficient. However, the commission has retained the opportunity for a company to file a new tariff to revise its "base" fares, which could then serve as an adjustment to which the maximum fares could apply. Also, the commission has established an evaluation of the results of the rule changes in five years, which will provide an opportunity to determine whether the five percent annual increase factor is sufficient.

**VI. Proposed Rules that May Create Costs:** The commission's analysis of the major policy issues in question in this rule making supports a finding that none of the proposed rule changes will result in disproportionate economic impacts on small businesses or any other stakeholders involved in these proceedings.

**VII. Summary of Findings:** While only two companies responded to the SBEIS survey, the responses and other information from the companies leads the commission to find that the proposed rule changes will not impose more than minor costs on auto transportation companies. In fact, the

proposed rules are more likely to reduce administrative costs over the long term to small and large auto transportation companies.

**VIII. Mitigation:** The commission's analysis supports a finding of no disproportionate economic impacts to small businesses. As the analysis indicates there is a high likelihood of cost savings to most involved parties in implementing these rules, including small businesses, therefore there is no need to consider any mitigation measures.

**IX. Conclusion:** Chapter 19.85 RCW requires that an agency prepare an SBEIS to assess whether proposed rules would impose more than minor costs on businesses in an industry, in this case, auto transportation companies. Staff mailed surveys designed to obtain information about the cost of compliance with the draft proposed rules to all the stakeholders and companies known to the commission to be involved in or affected by this rule making. Staff received responses from only two companies. The companies' comments reflected a general concern about the possibility the commission would introduce competition where competition would be harmful, while at the same time acknowledging the cost savings created by the proposed flexible fare rule and streamlining of administrative hearing processes.

The commission has determined the proposed revisions to chapter 480-30 WAC are necessary and prudent to conduct its statutory responsibilities and, in addition, the analysis indicates there is little or no possibility that these proposed rules will cause (net) cost increases to small or other businesses in the implementing of these rules. In addition, the commission has determined there is a high likelihood that businesses affected by the rule making, including small businesses, will experience as a result of the proposed rules.

Therefore, based on all information collected throughout the rule-making process to date, the commission concludes there is no new major economic impact that will result from this rule making. In addition, the commission concludes that, at least, minor long-term economic improvements and savings will result from this rule making.

A copy of the statement may be obtained by contacting Washington Utilities and Transportation Commission, Records Center, Docket TC-121328, 1300 South Evergreen Park Drive S.W., P.O. Box 47250, Olympia, WA 98504-7250, phone (360) 664-1234, fax (360) 586-1150, e-mail records@utc.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. The commission is not an agency to which RCW 34.05.328 applies. The proposed rule is not a significant legislative rule of the sort referenced in RCW 34.05.328(5).

June 5, 2013

Steven V. King  
Acting Executive Director  
and Secretary

AMENDATORY SECTION (Amending General Order No. R-533, Docket No. TC-020497, filed 6/8/06, effective 7/9/06)

**WAC 480-30-071 Reporting requirements.** (1) **Auto transportation company annual reports.** An annual report is an end-of-the-year summary of financial and operational

activity that each regulated auto transportation company is required to file with the commission.

(a) Each year the commission provides an annual report form and instructions to each company at its address of record. Failure to receive the form does not relieve a company of its obligation to complete and file its annual report. A company that does not receive an annual report form must contact the commission to obtain a copy of the form.

(b) A company must file a complete, accurate annual report showing all requested information by May 1 of the succeeding year. Information provided on the annual report must agree with source documents maintained at company offices.

(c) The commission may grant an extension of time allowing the company to file its annual report after the May 1 due date if the commission receives a request for extension before May 1.

(d) The commission may issue penalty assessments or take action to suspend or cancel a certificate if a company fails to file its required annual report.

(e) A company selling, canceling, transferring, or in some other manner discontinuing operations must submit an annual report for that portion of the year in which the company operated.

(f) The commission will provide an annual report form for companies charging flexible fares subject to WAC 480-30-420, requiring financial reporting only of the gross intra-state revenues reported to the state department of revenue for the previous calendar year, data to facilitate the commission's review under WAC 480-30-075, and such safety data as the commission may require.

**(2) Charter and excursion carrier annual safety reports.** An annual safety report is a summary of motor vehicle and safety operating information that each charter and excursion carrier is required to file with the commission.

(a) Each year the commission provides an annual safety report form and instructions to each company at its address of record. Failure to receive the form does not relieve a company of its obligation to complete and file its annual safety report. A company that does not receive an annual safety report form must contact the commission to obtain a copy of the form.

(b) A company must file a complete, accurate annual safety report showing all requested information by ~~((December 31))~~ May 1 of each year. Information provided on the annual safety report must agree with source documents maintained at company offices.

(c) The commission may grant an extension of time allowing the company to file its annual safety report after the ~~((December 31))~~ May 1 due date if the commission receives a request for extension before ~~((December 31))~~ May 1.

(d) The commission may issue penalty assessments or take action to suspend or cancel a certificate if a company fails to file its required annual safety report.

**(3) Other reports.** The commission may require a company to file periodic or other special reports.

## NEW SECTION

**WAC 480-30-075 Review of the effects of adopted rule amendments.** (1) Beginning January 1, 2019, the commission will evaluate the effects of WAC 480-30-140, 480-30-420, and the amendments to WAC 480-30-071, 480-30-096, 480-30-116, 480-30-126, 480-30-136, and 480-30-286, adopted by the commission on (date). The issues that may be considered include, but are not limited to:

(a) Whether the amendments increased opportunities to maintain and expand safe, fair, adequate, dependable and fairly priced auto transportation services to the public;

(b) Whether the amendments reduced the cost to the companies of complying with the tariff and application regulations in this chapter and the cost to the agency of enforcing the regulations;

(c) Whether the amendments reduced the duration of time required to process tariffs and applications;

(d) Whether the amendments increased opportunities for new and existing companies to provide service;

(e) A comparison of fares charged by companies under WAC 480-30-420 and fares charged by companies under the standard tariff rules, and by other public and private transportation service providers;

(f) Whether there has been an increase in consumer complaints about unreasonable or unfair fares; and

(g) Whether the changes have resulted in an increase in ridership.

(2) The commission will accomplish the evaluation required under subsection (1) of this section through a rule-making proceeding under chapter 34.05 RCW.

AMENDATORY SECTION (Amending General Order No. R-533, Docket No. TC-020497, filed 6/8/06, effective 7/9/06)

**WAC 480-30-096 Certificates, application filings, general.** (1) A ~~((company))~~ person must submit its certificate application on forms provided by the commission.

(2) Applications must include all requested information, attachments, signed statements, and filing fees.

(a) The commission may reject or defer consideration of an application until the applicant provides all required information;

(b) The commission may reject or defer consideration of an application until the applicant pays any outstanding fees, fines, or penalties; or

(c) The commission may reject or dismiss an application if it includes false, misleading, or incomplete information.

(3) Applications for auto transportation certificate authority must include, but are not limited to:

(a) A complete description of the proposed service including, but not limited to:

(i) The line, route, or service territory described in terms such as streets, avenues, roads, highways, townships, ranges, cities, towns, counties, or other geographic descriptions;

(ii) Whether the service will be:

• "Door-to-door service" - Service provided between locations identified by the passengers and points specifically named by the company in its filed tariff and time schedule. Door-to-door service requires a time schedule in compliance

with WAC 480-30-281 (2)(c) and may be restricted to "by reservation only"; and/or

• "Scheduled service" - Service provided between locations specifically named by the company (e.g., the X Hotel at 4th and Main) and points specifically named by the company in its filed tariff and time schedule. Scheduled service requires the company to file a time schedule in compliance with WAC 480-30-281 (2)(b) and may be restricted to "by reservation only."

(b) A map of the proposed line, route, or service territory that meets the standards described in WAC 480-30-051;

(c) A statement of the applicant's assets and liabilities;

(d) A proposed tariff and time schedule;

(e) A statement of conditions from the applicant and statements from members of the public that ((justify)) demonstrate that public convenience and necessity requires the proposed service;

(f) Ridership and revenue forecasts for the first twelve months of operation;

(g) A ((pro forma)) projected balance sheet and income statement for the first twelve months of operation;

(h) A list of equipment currently owned or leased, or proposed to be purchased or leased, to be used in providing the proposed service; and

(i) A statement of the applicant's prior experience and familiarity with the commission's statutes and rules, specifically safety requirements that govern the operations it proposes.

(j) Evidence of compliance with state tax, labor, employment, business, and vehicle licensing laws and rules. The commission will accept valid, verifiable account numbers showing the applicant has established accounts with other state agencies.

(4) The provisions of this rule do not apply to applications for auto transportation company certificate authority to provide intrastate service over an interstate regular route under a federal grant of authority. Refer to WAC 480-30-101.

(5) An application for new authority filed by a person not currently holding a certificate may propose a tariff that in addition to the applicant's proposed fares includes a request that the company be granted flexible fare authority under WAC 480-30-420 with the proposed maximum fares shown in compliance with the rule. Before the commission grants such authority, it will determine that the proposed base fares are fair, just, reasonable, and sufficient.

(6) A person holding a certificate applying for a name change or mortgage is not required to comply with WAC 480-30-096(3).

(7) A person holding a certificate applying for an extension of authority is only required to file under WAC 480-30-096 (3)(d) if the tariff proposes a new fare design or a new fare specific to the extended authority, in which case the person must file a tariff amendment showing the new fare and the maximum fare allowed under WAC 480-30-420.

AMENDATORY SECTION (Amending General Order No. R-533, Docket No. TC-020497, filed 6/8/06, effective 7/9/06)

**WAC 480-30-116 Certificates, application docket, ~~((protests,)) and ((intervention)) objections, auto transportation company.~~** (1) **Application docket.** The commission publishes a notice of pending certificate applications in the application docket. The commission mails the application docket to each existing auto transportation company certificate holder, to each person with a pending auto transportation company certificate application ~~((to affected local jurisdictions or agencies,))~~ and to any other interested person who has asked to receive copies of the application docket. It includes notice of auto transportation company certificate applications for:

(a) New certificate authority.

(b) Extension of existing certificate authority.

(c) Transfer or lease of all or a portion of certificate authority.

(2) **~~((Protests))~~ Objections.** An existing auto transportation company ~~((certificate holder may file a protest to an application published in the application docket))~~ may object to an application for new authority or an extension of authority published in the application docket only if the company holds a certificate that authorizes the same service and the company provides the same service published in the application docket. No company may file an objection to applications for transfers or lease of all or a portion of certificate authority.

(a) **Form of ~~((protests))~~ objections.** ~~((Protests))~~ Objections must:

(i) Be filed within thirty days of the date the commission mailed the application docket.

(ii) Be filed according to the provisions of WAC 480-07-370.

(iii) Be served on the applicant and the applicant's attorney, if ~~((one is identified in the application docket))~~ the attorney has filed with the commission a notice of appearance.

(iv) Specify ~~((the reasons for the protest))~~ why the company believes it is providing the same service to the satisfaction of the commission and why it is filing the objection.

(v) ~~((Specify the protestant's interest in the proceeding. (vi)))~~ Specify the approximate number of witnesses the ~~((protestant))~~ objecting company intends to present and an estimate of hearing time required for the ~~((protestant's))~~ objecting company's presentation~~((;~~

~~((vii)))~~.

~~((vi))~~ Include the name and address of each person on whose behalf the ~~((protest))~~ objection is filed including that person's certificate number, a copy of the certificate authority, and identification of the portion or portions of the ~~((protestant's))~~ objector's certificate that is the basis for the ~~((protest))~~ objection, and specifically identify the portion or portions of the objector's certificate that authorizes the same service requested by the applicant.

~~((viii)))~~ ~~((vii))~~ Describe any restrictive amendment that could eliminate the ~~((protestant's))~~ objecting company's interest in the application.

(b) **Failure to file ~~((protest))~~ objection on time.** A person who fails to file ~~((a protest))~~ an objection within the

thirty-day (~~(protest)~~) notice period may not in any way participate further in the proceeding, unless that person can show that the commission did not provide proper notice of the pending application, or that good cause exists for the failure to make a timely (~~(protest)~~) objection.

(3) (~~(Intervention. Any person, other than the applicant and protestants to an application, who desires to appear and participate, and who does not desire to broaden the issues of the proceeding, may petition to be an intervener. Refer to WAC 480-07-355 for information on intervention.)~~) The adjudication of applications subject to an objection filed under RCW 81.68.040 will be accomplished in the simplest and most expeditious manner consistent with state law. The adjudication will be limited to the question of whether the objecting company holds a certificate to provide the same service in the same territory, whether the objecting company provides the same service, and whether an objecting company will provide the same service to the satisfaction of the commission.

(4) **Applications not subject to the docket and (~~(protest)~~) objection provisions of this rule.** This rule does not apply to:

(a) Applications for charter and excursion carrier certificates;

(b) Applications to reinstate a certificate canceled for cause under the provisions of WAC 480-30-181, when the application is filed within thirty days of the certificate cancellation date;

(c) Applications for name change;

(d) Applications to mortgage an auto transportation company certificate; and

(e) Applications for an auto transportation company certificate under a federal grant of authority to provide intrastate service over an interstate route(~~(-and~~

(f) Applications for temporary certificate authority)).

AMENDATORY SECTION (Amending General Order No. R-533, Docket No. TC-020497, filed 6/8/06, effective 7/9/06)

**WAC 480-30-126 Certificates, applications, auto transportation company.** (1) A person applying for a certificate to provide auto transportation company services must have the knowledge, experience, and resources to conduct the service it proposes in its application. The applicant must be fit, willing and able to comply with state law and the requirements of this chapter.

(2) The commission must determine that the public convenience and necessity, as defined in WAC 480-30-140(1), requires the proposed service when considering an application for a new certificate or extension of an existing certificate. An applicant must support its application with statements by independent members of the public who need the service or are knowledgeable about the need for service in the territory in which the applicant seeks authority, or a statement by a representative of a city, county or regional transportation planning organization who is knowledgeable about the need for service in the territory in which the applicant seeks authority.

(3) Auto transportation company certificate applications are subject to the application docket notice and (~~(protest)~~) objection provisions of WAC 480-30-116.

(4) The commission may set for hearing any auto transportation company certificate application.

(5) (~~(The commission must provide the opportunity for a hearing and determine that an existing auto transportation company is not providing service to the satisfaction of the commission before it may grant a new certificate or extension of an existing certificate to provide service in a territory already served by another auto transportation company, unless the existing auto transportation company or companies do not object to the application by filing a protest under the provisions of WAC 480-30-116-.)~~) If no existing company files an objection under RCW 81.68.040, the commission may grant an original application or an extension of authority, if:

(a) The applicant demonstrates a need for service not provided by an existing auto transportation company holding a certificate by filing statements by independent members of the public who need the service or are knowledgeable about the need for service in the territory in which the applicant seeks authority, or a statement by a representative of a city, county or regional transportation planning organization who is knowledgeable about the need for service in the territory in which the applicant seeks authority;

(b) The applicant demonstrates the financial ability to provide the proposed service. "Financial ability" means that the applicant has sufficient financing or assets to begin operations and continue them for a reasonable period while developing business. This determination does not require a comprehensive analysis of cost and revenue estimates of the full scope of proposed operations and balancing start-up and long-run operating costs over an extended period; and

(c) The applicant demonstrates that it is willing and able to comply with commission laws and rules.

AMENDATORY SECTION (Amending General Order No. R-533, Docket No. TC-020497, filed 6/8/06, effective 7/9/06)

**WAC 480-30-136 (~~(Certificates, application hearings, auto transportation)~~) Procedure for applications subject to objection, information required of applicant and objecting company.** (~~(1) Auto transportation company certificate application hearings are governed by the provisions of chapter 480-07 WAC.~~

(2) ~~When an application has been protested, the commission will generally not consider written statements from witnesses that have not been available for cross examination at hearing.~~

(3) ~~An applicant must be prepared to present information at hearing, through documents or the testimony of witnesses, including but not limited to, the following:~~

(a) ~~A description of the service proposed and the cost of that service for the area to be served;~~

(b) ~~An estimate of the cost of the facilities to be used in providing the proposed service;~~

(e) ~~The condition of the applicant's equipment and the applicant's program for maintenance and repair;~~

- (d) A statement of the assets available to the applicant that will be used to provide the proposed service;
- (e) Prior experience, if any;
- (f) Familiarity with the statutes and rules that govern the proposed operations;
- (g) The public need for the proposed service.
- (i) The commission will not accept as support an applicant's own statements that its proposed service is needed by the public.

(ii) The applicant must support its application with independent witnesses who actually require the service or are knowledgeable about the need for service in the territory in which the applicant seeks authority.

(4) If an applicant requests a certificate or extension of certificate to operate in a territory already served by another certificate holder, the applicant must also show that the existing transportation company or companies will not provide service in that territory to the satisfaction of the commission.

(5) When determining if the territory at issue is already served by another certificate holder the commission may, among other things consider:

(a) The authority of existing companies and whether or not they are serving to the full extent of that authority.

(b) The kinds, means, and methods of service provided.

(c) Whether the type of service provided reasonably serves the market.

(d) Whether the population density warrants additional facilities or transportation.

(e) The topography, character, and condition of the territory into which the proposed services are to be introduced, and the proposed territory's relation to the nearest territory through which transportation service is already provided.

(f) Whether a grant of the requested authority and the resulting increased competition will benefit the public.) (1) The commission will consider applications for which an objection has been received through brief adjudicative proceedings under WAC 480-07-610, unless the presiding officer determines, based on the facts and circumstances presented, that a hearing or different process is required.

(2) After one or more companies file an objection to an application, the commission will issue a notice of brief adjudication to the objecting company and the applicant, and request the filing of additional information to determine the nature of the objection proceeding. This information may include, but is not limited to:

(a) Statements from independent witnesses provided by an objecting company to demonstrate that the objecting company is providing the same service as the proposed service, to the satisfaction of the commission.

(b) Statements from independent witnesses provided by an objecting company to demonstrate that the traveling public will be harmed by the granting of the application.

(c) Additional supplementary information, evidence or testimony provided by the applicant to demonstrate that public convenience and necessity requires the proposed service.

(3) In considering an objection filed by a company holding a certificate, the commission will determine whether or not the objecting company will provide the same service to the satisfaction of the commission.

(a) If the commission determines that the objecting company holds a certificate to provide the same service in the same territory, that the service is the same as proposed in the application, and that the objecting company is providing the same service to the satisfaction of the commission, the commission will not issue a certificate.

(b) If the commission determines that the objecting company will not provide the same service to the satisfaction of the commission, the commission may grant the application.

#### NEW SECTION

**WAC 480-30-140 Standards for determining "public convenience and necessity," "territory already served by a certificate holder," and "service to the satisfaction of the commission."** (1) Public convenience and necessity.

(a) In the context of auto transportation services, "public convenience and necessity" means that every member of the public should be reasonably afforded the opportunity to receive auto transportation service from a person or company certificated by the commission.

(b) In reviewing applications under this chapter, the commission may, among other things, consider differences in operation, price, market features, and other essential characteristics of a proposed auto transportation service, tailoring its review to the individual circumstances of the application in evaluating whether the public convenience and necessity requires the commission to grant the request for the proposed service and whether an existing company is providing the same service to the satisfaction of the commission. The commission will also consider whether increased competition will benefit the traveling public, including its possible impact on sustainability of service.

(2) Same service. When determining whether one or more existing certificate holders provide the same service in the territory at issue, the commission may, among other things, consider:

(a) The certificate authority granted to the existing companies and whether or not they are providing service to the full extent of that authority;

(b) The type, means, and methods of service provided;

(c) Whether the type of service provided reasonably serves the market;

(d) Whether the population density warrants additional facilities or transportation;

(e) The topography, character, and condition of the territory in which the objecting company provides service and in which the proposed service would operate;

(f) For scheduled route service, the proposed route's relation to the nearest route served by an existing certificate holder. The commission views routes narrowly for the purpose of determining whether service is the same. Alternative routes that may run parallel to an objecting company's route, but which have a convenience benefit to customers, may be considered a separate and different service; and

(g) Door-to-door service and scheduled route service in the same territory will not be considered the same service.

(3) Service to the satisfaction of the commission.

(a) The determination of whether the objecting company is providing service to the satisfaction of the commission is

dependent on, but not limited to, whether the objecting company:

(i) Holds authority to provide, and provides, the same service as proposed by the applicant in the same territory or the same subarea within the territory, for door-to-door service, or along the same route, for scheduled route service, in which the service is proposed;

(ii) Has made a reasonable effort to expand and improve its service to consumers within the same territory or the same subarea within the territory, for door-to-door service, or along the same route, for scheduled route service, in which the service is proposed;

(iii) Provides the service in a manner that is convenient, safe, timely, direct, frequent, expeditious, courteous and respectful, meets the advertised or posted schedules, fulfills commitments made to customers, meets consumer preferences or needs for travel, is responsive to consumer requests by reviewing the company's tariff and certificate in response to requests and when reasonable, proposing changes to the commission, and meets other reasonable performance expectations of consumers;

(iv) Has provided the same service as proposed by the applicant in the same territory or the same subarea within the territory, for door-to-door service, or along the same route, for scheduled route service, in which the service is proposed at fares competitive with those proposed by the applicant.

(b) Whether an objecting company will provide service to the satisfaction of the commission is based on the objecting company's performance regarding the criteria in subsection (3)(a) of this section prior to the date an application for proposed service is filed with the commission. The consideration period will depend on the circumstances, but will generally be for no more than one year. The commission will take into consideration extraordinary events, such as severe weather or unforeseeable disasters, when weighing the performance of an objecting company and consumer response to that performance. The commission will also take into consideration whether the testimony shows a pattern of behavior and whether the company has policies and procedures in place to mitigate or resolve alleged or actual service issues.

(c) In considering whether the objecting company has provided service to the satisfaction of the commission, the commission will consider statements or testimony from members of the public that they choose not to use the objecting company's services because the company fails to meet any of the satisfaction criteria identified in subsection (3)(a) of this section to the witness' satisfaction in determining that the company does not meet the criteria of service to the satisfaction of the commission, unless the service failure was caused by extraordinary events as determined by the commission. Objecting companies may present witnesses to counter claims of an applicant and to substantiate the level of service and customer satisfaction provided.

**AMENDATORY SECTION** (Amending General Order No. R-533, Docket No. TC-020497, filed 6/8/06, effective 7/9/06)

**WAC 480-30-156 Certificates, temporary, auto transportation company.** (1) **Temporary certificates pro-**

**hibited.** The commission is prohibited from granting a temporary certificate to operate in territory that is:

(a) Contained in an existing certificate, unless the existing certificate holder is not providing service to the satisfaction of the commission or does not object to the temporary certificate.

(b) Contained in a pending certificate application unless the temporary certificate application filing is made by the applicant or the applicant does not object to the temporary certificate.

(2) **Requirements.** Temporary certificate applications must meet the ~~((general filing))~~ requirements of WAC 480-30-096.

(3) **Public interest.** The commission may grant a temporary certificate after determining that granting the requested authority is consistent with the public interest. In determining if the requested temporary authority is consistent with the public interest, the commission ~~((will))~~ may consider factors including, but not limited to:

(a) The fitness of the applicant.

(b) The need for the requested service.

(c) Availability of existing service.

(d) Any other circumstances indicating that a grant of temporary authority is consistent with the public interest.

(4) **Support statements required.** Applicants for temporary certificates must include signed ~~((and sworn))~~ support statements from ~~((one or more))~~ potential customers identifying all pertinent facts relating to need for the proposed service.

(5) **Investigation of applications.** Commission staff will investigate the facts surrounding an application and need for the proposed service before making a recommendation that the commission grant or deny an application for temporary certificate. ~~((The staff investigation will include notice of the temporary certificate application to those companies identified in subsection (1) of this section, and allow twenty days for those companies to object to the temporary certificate application.))~~

(6) **Special terms, conditions, and limitations.** The commission may impose special terms, conditions, and limitations in connection with the grant of any temporary certificate.

(7) **Length of service allowed under temporary certificate.** The commission may grant a temporary certificate for up to one hundred eighty days based on an estimate regarding how long it will take to complete review of the permanent certificate application. If a company files an auto transportation company certificate application and a temporary certificate application within thirty days of each other or files an auto transportation company certificate application within thirty days of the order granting the temporary certificate, then the temporary certificate will continue until the commission grants, denies, or dismisses the parallel certificate application, or until the temporary certificate is otherwise canceled, whichever happens first.

(8) **Docketing.** The commission will publish on its application docket~~((=~~

~~((a)))~~ a list of temporary certificate applications that the commission ~~((considered and granted, including any terms and conditions attached to the grant of such authorities; and~~

~~(b) A list of temporary certificate applications the commission considered and denied)) has received.~~

(9) ~~((Protests))~~ **Objections.** An existing auto transportation company or applicant for certificate may file ~~((a protest))~~ an objection opposing the grant or denial of a temporary certificate.

(10) **Form of ~~((protests))~~ objections.** ~~((Protests))~~ Objections must:

(a) Be filed with the commission in writing within ~~((ten))~~ twenty days after the date the commission mails its notice;

(b) Contain a statement of the specific grounds on which the ~~((protest))~~ objection is made;

(c) Contain a statement of the ~~((protestant's))~~ objecting company's interest in the proceeding;

(d) Be served on the applicant; and

(e) Be served on the applicant's representative, if one is stated in the notice.

~~((11) Disposition of protests. The commission may grant or deny a protest without hearing.~~

~~(12) Brief adjudicative proceedings. The commission may order a brief adjudicative proceeding on its own motion or at the request of a party.~~

~~(13) Intervention. Any person, other than the applicant and protestants to an application, who desires to appear and participate, and who does not desire to broaden the issues of the proceeding, may petition to be an intervener. Refer to chapter 480-07 WAC for information on intervention.)~~

AMENDATORY SECTION (Amending General Order No. R-533, Docket No. TC-020497, filed 6/8/06, effective 7/9/06)

**WAC 480-30-261 Tariffs and time schedules, definitions used in.** Definitions of general terms and terms specific to driver and equipment safety are contained in WAC 480-30-036 and 480-30-216, respectively. Unless the language or context indicates that a different meaning is intended, the following definitions apply:

**"Charge"** means a fare or rate assessed by an auto transportation company for providing a service other than the transportation of a passenger(s). For example: The charge for carrying extra baggage on board the bus.

**"Checked baggage"** means passenger baggage that is accepted for transportation but is not carried in the passenger compartment of the vehicle.

**"Fare"** means an amount in the company's tariff assessed for services provided by an auto transportation company. The term "rate" has the same meaning.

~~(("Fare" or "ticket price" means a rate assessed by an auto transportation company for the transportation of a passenger(s).))~~

**"Joint fare"** means a fare or rate ~~((charged))~~ assessed by an auto transportation company for the transportation of a passenger(s) that applies from a point located on one auto transportation company's route to a point located on another auto transportation company's route, made by agreement or arrangement between the companies. A joint fare agreement is also known as a through-ticketing agreement.

**"Local fare"** means a fare or rate charged by an auto transportation company for the transportation of a passenger(s) between stations within a single company's authority.

**"Long and short haul clause"** means a clause that prohibits an auto transportation company from charging more for a shorter than for a longer haul over the same route.

**"Rate"** means an amount in a company's tariff ~~((approved by the commission or allowed to become effective by operation of law.))~~ assessed for services provided by an auto transportation company. ~~((For example: Passenger fares, ticket prices, additional baggage charges))~~ The term "fare" has the same meaning.

**"Sales commission"** means a fee paid to an agent for selling tickets on behalf of an auto transportation company.

**"Seasonal fares and seasonal time schedules"** means ~~((filing of))~~ tariffs or time schedules naming different fares, routes, or arrival and/or departure times for different periods of the year. For example: A company may offer more scheduled routes during certain periods than it does in others; or, a company may assess different fares in heavily traveled months than it does during off-peak months.

**"Through fare"** means a single fare or rate applying from point of origin to point of destination that combines two or more fares or rates in one auto transportation company's tariff or fares or rates from two or more auto transportation companies.

**"Ticket price"** means a fare or rate assessed by an auto transportation company for the transportation of a passenger(s).

AMENDATORY SECTION (Amending General Order No. R-533, Docket No. TC-020497, filed 6/8/06, effective 7/9/06)

**WAC 480-30-276 Tariffs and time schedules, companies must comply with the provisions of filed tariffs and time schedules.** (1) **Tariffs.** Except as authorized by the commission pursuant to WAC 480-30-420, no auto transportation company may assess rates that are higher, lower, or different from those contained in the company's filed tariff. Further, no auto transportation company may accept a payment for service provided that is higher, lower, or different from the rates contained in the company's filed tariff.

(2) **Time schedules.** An auto transportation company must provide service along all routes, and to all points, listed on the company's filed time schedule. Further, an auto transportation company must make a good faith effort to operate in compliance with the times of arrival and/or departure shown on the company's filed time schedule.

AMENDATORY SECTION (Amending General Order No. R-533, Docket No. TC-020497, filed 6/8/06, effective 7/9/06)

**WAC 480-30-286 Tariffs and time schedules, posting.** An auto transportation company must maintain a copy of its filed tariff and its filed time schedule in the company's offices and at each passenger facility. Each vehicle operated must carry a copy of the schedule and fares for each route served by that vehicle. The company must make these documents available to customers for inspection on request during

the company's regular business hours. Vehicles operated by an auto transportation company operating subject to flexible fares under WAC 480-30-420 must carry a copy of the flexible fare tariff and current time schedule, subject to the requirements of WAC 480-30-420(7).

**NEW SECTION**

**WAC 480-30-420 Fare flexibility.** (1) It is in the public interest to provide flexibility to auto transportation companies to charge fares for service.

(2) For the purposes of this section, the following definitions apply:

(a) "Base fare" means the fares set forth in the company's tariff, except for tariff supplements, in effect on the date the company files a proposed tariff for flexible fares as a means to establish maximum fares.

(b) "Flexible fares" means the authority to charge, at the company's discretion, fares in any amount at or below the maximum fares.

(c) "Maximum fare" means a fare set initially at twenty-five percent above the company's base fare, as published in the company's effective tariff, except for tariff supplements. After a maximum fare has been published and become effective, the maximum fare will increase annually by five percent.

(3) A company may file a tariff with the commission to charge flexible fares. Because the filing authorizes the company to increase or decrease any fare at any time, singly or in any combination, the tariff must be filed on thirty days' notice to the commission under RCW 81.28.050. The tariff must show the base fares in effect on the date of the tariff filing and the maximum fares the company may charge. Once the commission approves a flexible fare tariff, the base fare used to establish the maximum fare does not operate as a minimum fare.

(4) A company's tariff filing to charge flexible fares under this section is not subject to a review under WAC 480-30-421 or 480-30-426.

(5) If a company seeks to charge fares above the maximum fare, the company must file tariff revisions in compliance with WAC 480-30-421 or 480-30-426 and all other filing requirements, including tariff publication rules and notice requirements.

(6) If a company seeks to offer free fares, the company must file tariff revisions, if not already contained in the tariff, in compliance with WAC 480-30-396 and all other filing requirements, including tariff publication rules and notice requirements.

(7) Any change in the fares charged by a company at or below the maximum fares is not considered a tariff change and is not subject to tariff filing rules, publication rules and notice requirements under this chapter. Companies may provide notice of changes in fares that the company will charge by posting their actual fares on the company's web site, or notices or brochures provided to customers, subject to the requirements in subsection (8) of this section.

(8) If a company changes the fare it charges, at or below the maximum rate, it must honor the fares charged for tickets

previously sold. However, the company may refund the amount paid for a ticket above the new fare.

(9) A tariff filing whose only purpose is to add a new service option or a service level which has not been previously included in the company's tariff must be filed on at least one business-day notice to the commission in compliance with WAC 480-30-301.

(10) A tariff filing that changes the fare design that results in an increase in the effective base fare must be filed on at least thirty calendar days' notice to the commission as required by WAC 480-30-311 and must comply with filing requirements in WAC 480-30-421 or 480-30-426, as well as tariff filing, publication and notice requirements under this chapter. A company may request an exemption from the tariff filing, publication or notice requirements. An example of a change in the fare design would be current fares published by zip code and proposed fares published by mileage.

(11) A company authorized to charge flexible fares must use the fares to recover all costs associated with providing passenger service, including, but not limited to, fuel costs, tolls, ferry fares, surcharges, and taxes. Any fuel surcharge in effect at the time the company is authorized to charge flexible fares will be canceled and not included in the base fare. A company may not impose any charge on any customer other than a single fare for passenger service provided. This would not affect the company assessing charges for accessorial services (e.g., baggage, cancellation fees, or refund transaction fees) published in the company's tariff at the time the commission approves a flexible fares tariff.

(12) Effective May 1, 2014, and each May 1st thereafter, a company's maximum fare will increase by five percent. Each company will implement the adjusted flexible fare by filing the appropriate tariff pages at least thirty days before the effective date of the change.

(13) If a company seeks to change the base fare upon which the commission has approved flexible fares, the proposed tariff filing will be subject to an earnings review or rate case under WAC 480-30-421 or 480-30-426, and all tariff publication rules and notice requirements.

(14) In communication with consumers, the company must acknowledge that it determines its own fares. Fares may not be attributed to decisions by the commission.

(15) An example of the maximum fare calculation follows:

Year	Base Fare	Maximum Fare	Explanation
0	\$41.00	\$41.00	
1	\$41.00	\$51.25	25% increase in Base Fare
2	\$41.00	\$53.81	5% increase in Maximum Fare
3	\$41.00	\$56.50	5% increase in Maximum Fare
4	\$41.00	\$59.33	5% increase in Maximum Fare
5	\$41.00	\$62.29	5% increase in Maximum Fare



Year	Base Fare	Maximum Fare	Explanation
6	\$41.00	\$65.41	5% increase in Maximum Fare

Note: Rounding: Fares are rounded to \$.01.  
 If the value of the number to the right of the rounding digit is less than five, the rounding digit is left unchanged.  
 If the value of the number to the right of the rounding digit is five or higher, the rounding digit is raised by one.

**WSR 13-12-073**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Economic Services Administration)

[Filed June 5, 2013, 8:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-08-063.

Title of Rule and Other Identifying Information: The department is proposing to amend the following rules to remove medical language references: WAC 388-446-0001, 388-450-0005, 388-450-0030, 388-450-0035, 388-450-0045, 388-450-0055, 388-450-0065, 388-450-0070, 388-450-0080, 388-450-0085, 388-450-0105, 388-450-0106, 388-450-0116, 388-450-0155, 388-450-0160, 388-450-0200, 388-450-0215, 388-455-0005, 388-455-0010, and 388-455-0015.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on July 23, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 24, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, e-mail [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m. on July 23, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by July 2, 2013, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [jennisha.johnson@dshs.wa.gov](mailto:jennisha.johnson@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The community service division is proposing to amend the above rules to remove medical references from fraud, income, educational benefits, gifts, and resources sections. These changes are necessary as the health care authority (HCA) is amending, repealing, or creating medical assistance program rules under Title 182 WAC to implement new regulations.

Reasons Supporting Proposal: These proposed amendments are necessary to comply with 2E2SHB 1738, chapter 15, Laws of 2011, which designated HCA as the single state agency responsible for the administration and supervision of Washington's medicaid programs.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.500, 74.04.510, 74.08.090, and 74.08A.-120.

Statute Being Implemented: 2E2SHB 1738, chapter 15, Laws of 2011.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Leslie Kozak, 712 Pear Street S.E., Olympia, 98501, (360) 725-4589.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed changes do not have an economic impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328(5):

(b)(ii) Rules relating only to internal governmental operations that are not subject to violation by a nongovernmental party;

(b)(vii) "t)his section does not apply to rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

April 24, 2013

Katherine I. Vasquez  
 Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 13-13 issue of the Register.

**WSR 13-12-075**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Economic Services Administration)

[Filed June 5, 2013, 8:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-08-075.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-408-0035 Who is in my assistance unit for Basic Food?

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on July 9, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 10, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax (360) 664-6185, by 5 p.m. on July 9, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by June 11, 2013, TTY

(360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The DSHS community services division is proposing to amend rules under WAC 388-408-0035 to align Basic Food assistance unit rules with federal regulations regarding minor children not living with their parents.

Reasons Supporting Proposal: This rule change is an effort to be responsive to advocate concerns about homeless youth being able to access SNAP benefits. The intent with the rule making is to be **less prescriptive** in the text of the rule. Under current rules, a child living in the home of a non-parental adult who is not providing for them financially must be included in the adult's Basic Food assistance unit (AU) if they do not have adequate income. The proposed change, adopting the less restrictive language of the C.F.R., is intended to allow a homeless youth to be considered a separate AU even if they have little or no income.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, and 74.08.090.

Statute Being Implemented: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. § 273.1.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Robert Thibodeau, 712 Pear Street S.E., Olympia, WA 98504, (360) 725-4634.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendment only affects DSHS program denial letter preparation procedures to align them with procedures described in other rule sections.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

May 29, 2013

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-13-047, filed 6/9/10, effective 8/1/10)

**WAC 388-408-0035 Who is in my assistance unit for Basic Food?** (1) For Basic Food, a person must be in your assistance unit (AU) if they live in the same home as you and:

- (a) Regularly buy food or prepare meals with you; or
- (b) You provide meals for them and they pay less than a reasonable amount for meals.

(2) If the following people live with you, they must be in your AU even if you do not usually buy or prepare food together:

- (a) Your spouse;

(b) Your parents if you are under age twenty-two (even if you are married);

(c) Your children under age twenty-two;

(d) The parent of a child who must be in your AU;

(e) A child (other than a foster child) under age eighteen who doesn't live with their parent unless the child:

(i) Is emancipated; or

(ii) ~~((Gets a TANF grant in their own name; or~~

~~(iii))) Is not financially dependent on an adult in the AU~~

~~((because they get and have control of income of at least the TANF payment standard under WAC 388-478-0020(2) before taxes or other withholdings)).~~

(3) If any of the people in subsections (1) or (2) already receive transitional food assistance under chapter 388-489 WAC, you can only receive benefits if they choose to reapply for Basic Food as described in WAC 388-489-0022.

(4) If you live in an institution where you may be eligible for Basic Food under WAC 388-408-0040, we decide who is in your AU as follows:

(a) If the facility is acting as your authorized representative under WAC 388-460-0015, we include you and anyone who must be in your AU under subsection (2) of this rule; or

(b) If you apply for benefits on your own, we include you, anyone who must be in your AU under subsection (2) of this rule, and other residents you choose to apply with.

(5) Anyone who must be in your AU under subsection (1) or (2) is an ineligible AU member if they:

(a) Are disqualified for an intentional program violation (IPV) under WAC 388-446-0015;

(b) Do not meet ABAWD work requirements under WAC 388-444-0030.

(c) Do not meet work requirements under WAC 388-444-0055;

(d) Do not provide a Social Security number under WAC 388-476-0005;

(e) Do not meet the citizenship or alien status requirements under chapter 388-424 WAC;

(f) Are fleeing a felony charge or violating a condition of parole or probation under WAC 388-442-0010.

(6) If your AU has an ineligible member:

(a) We count the ineligible member's income as part of your AU's income under WAC 388-450-0140;

(b) We count all the ineligible members resources to your AU; and

(c) We do not use the ineligible member to determine your AU's size for the maximum income amount or allotment under WAC 388-478-0060.

(7) If the following people live in the same home as you, you can choose if we include them in your AU:

(a) A permanently disabled person who is age sixty or over and cannot make their own meals if the total income of everyone else in the home (not counting the elderly and disabled person's spouse) is not more than the one hundred sixty-five percent standard under WAC 388-478-0060;

(b) A boarder. If you do not include a boarder in your AU, the boarder cannot get Basic Food benefits in a separate AU;

(c) A person placed in your home for foster care. If you do not include this person in your AU, they cannot get Basic Food benefits in a separate AU;

(d) Roomers; or

(e) Live-in attendants even if they buy or prepare food with you.

(8) If someone in your AU moves out of your home for at least a full issuance month, they are not eligible for benefits as a part of your AU, unless you receive transitional food assistance.

(9) For transitional food assistance, your TFA AU includes the people who were in your Basic Food AU for the last month you received:

(a) Temporary assistance for needy families;

(b) State family assistance; or

(c) Tribal TANF benefits.

(10) If someone received Basic Food or food stamps in another AU or another state, they cannot receive benefits in your AU for the same period of time with one exception. If you already received Basic Food, food stamp, or transitional food assistance benefits:

(a) In another state, you are not eligible for Basic Food for the period of time covered by the benefits you received from the other state; or

(b) In another AU, you are not eligible for Basic Food in a different AU for the same period of time;

(c) In another AU, but you left the AU to live in a shelter for battered women and children under WAC 388-408-0045, you may be eligible to receive benefits in a separate AU.

(11) The following people who live in your home are not members of your AU. If they are eligible for Basic Food, they may be a separate AU:

(a) Someone who usually buys and prepares food separately from your AU if they are not required to be in your AU; or

(b) Someone who lives in a separate residence.

(12) A student who is ineligible for Basic Food under WAC 388-482-0005 is not a member of your AU.

### WSR 13-12-076

#### PROPOSED RULES

#### OLYMPIC COLLEGE

[Filed June 5, 2013, 8:57 a.m.]

Continuance of WSR 13-11-063.

Preproposal statement of inquiry was filed as WSR 13-04-030.

Title of Rule and Other Identifying Information: Withholding services for outstanding student debts, extension of intended adoption date.

Date of Intended Adoption: August 20, 2013.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Statute Being Implemented: Chapter 28B.50 RCW.

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

Name of Proponent: David C. Mitchell, PhD, President, Olympic College, governmental.

Name of Agency Personnel Responsible for Drafting: Thomas Oliver, 1600 Chester Avenue, Bremerton, WA 98337, (360) 475-7502; Implementation and Enforcement:

Janell Whiteley, 1600 Chester Avenue, Bremerton, WA 98337, (360) 475-7504.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no significant economic impact of this proposal.

A cost-benefit analysis is not required under RCW 34.05.328. There is no significant economic impact.

June 5, 2013

Thomas Oliver

Rules Coordinator

### WSR 13-12-081

#### PROPOSED RULES

#### OFFICE OF

#### INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2012-24—Filed June 5, 2013, 11:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-19-082.

Title of Rule and Other Identifying Information: Participating provider contracts.

Hearing Location(s): Training Room, T-120, 5000 Capitol Way South, Tumwater, WA, on July 11, 2013, at 10:00 a.m.

Date of Intended Adoption: July 15, 2013.

Submit Written Comments to: Donna Dorris, P.O. Box 40258, Olympia, WA 98504, e-mail rulescoordinator@oic.wa.gov, fax (360) 586-3109, by July 11, 2013.

Assistance for Persons with Disabilities: Contact Lori [Lorie] Villaflores by July 10, 2013, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amends WAC 284-43-330 by removing language permitting provider agreements filed with the commissioner to omit proprietary compensation information. The rule changes timeframes for the office of insurance commissioner (OIC) to disapprove a provider agreement from fifteen working days to thirty calendar days.

Reasons Supporting Proposal: This proposed rule will be consistent with underlying statutory requirements.

The Affordable Care Act (ACA) requires the OIC to determine if reimbursement methods incentivize health homes, chronic care management, or care coordination for enrollees with complex, high-cost, or multiple chronic conditions, as a component of certification as a qualified health plan (QHP) eligible to participate in the exchange. In order to conduct this analysis the OIC needs access to the proprietary compensation information.

Legislation, SSB 5434, consistent with this rule making passed during the 2013 regular session. The governor signed the bill on May 16, 2013, and chapter 277, Laws of 2013, is effective on July 28, 2013.

Statutory Authority for Adoption: RCW 48.02.060, 48.44.050, 48.44.070, 48.46.030, 48.46.200.

Statute Being Implemented: RCW 48.44.070, 48.46.-030, 48.46.243.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Donna Dorris, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7040; Implementation: Beth Berendt, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117; and Enforcement: Chuck Brown, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7044.

No small business economic impact statement has been prepared under chapter 19.85 RCW. None of the health carriers affected are small businesses under the provisions of RCW 19.85.020(3).

A cost-benefit analysis is not required under RCW 34.05.328. These proposed rule changes are the minimum necessary to meet the explicit, specific content of recently passed legislation (SSB 5434). Therefore, a cost-benefit analysis for this rule amendment is not needed under the provisions of RCW 34.05.328 (5)(b)(v).

June 5, 2013

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 98-21, filed 10/11/99, effective 11/11/99)

**WAC 284-43-330 Participating provider—Filing and approval.** (1) ~~((Beginning May 1, 1998,))~~ A health carrier ~~((shall))~~ must file with the commissioner ~~((fifteen working))~~ thirty calendar days prior to use sample contract forms proposed for use with its participating providers and facilities. ~~((A health carrier need not submit contract provisions governing payment rates, amounts, or similar proprietary information that would indicate provider or facility compensation.))~~

(2) A health carrier shall submit material changes to a sample contract form to the commissioner ~~((fifteen working))~~ thirty calendar days prior to use. Carriers shall indicate in the filing whether any change affects a provision required by this chapter. All changes to contracts must be indicated through strike outs for deletions and underlines for new material. Alternatively, carriers may refile a sample contract that incorporates changes along with a copy of the contract addendum or amendment and any correspondence that will be sent to providers and facilities sufficient for a clear determination of contract changes. Changes not affecting a provision required by this chapter are deemed approved upon filing.

(3) If the commissioner takes no action within ~~((fifteen working))~~ thirty calendar days after submission of a sample contract or a material change to a sample contract form by a health carrier, the change or form is deemed approved except that the commissioner may extend the approval period an additional fifteen ~~((working))~~ calendar days upon giving notice before the expiration of the initial ~~((fifteen day))~~ thirty-day period. Approval may be subsequently withdrawn for cause.

(4) The health carrier shall maintain provider and facility contracts at its principal place of business in the state, or the health carrier shall have access to all contracts and provide copies to facilitate regulatory review upon twenty days prior written notice from the commissioner.