

WSR 12-13-024
RULES OF COURT
STATE SUPREME COURT

[June 7, 2012]

IN THE MATTER OF THE ADOPTION) ORDER
OF THE AMENDMENTS TO RPC 4.4-) NO. 25700-A-1000
RESPECT FOR THE RIGHTS OF THIRD)
PERSONS-NEW WA COMMENT)

The Washington State Bar Association having recom-
mended the adoption of the proposed amendments to RPC
4.4-Respect for the Rights of Third Persons, and the Court
having approved the proposed amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the pro-
posed amendments as shown below hereto are to be pub-
lished for comment in the Washington Reports, Washington
Register, Washington State Bar Association and Administra-
tive Office of the Court's websites in January 2013.

(b) The purpose statement as required by GR 9(e), is
published solely for the information of the Bench, Bar and
other interested parties.

(c) Comments are to be submitted to the Clerk of the
Supreme Court by either U.S. Mail or Internet E-Mail by no
later than April 30, 2013. Comments may be sent to the fol-
lowing address: P.O. Box 40929, Olympia, Washington
98504-0929, or Camilla.Faulk@courts.wa.gov. Comments
submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this ___ day of June,
2012.

For the Court

Madsen, C.J.

CHIEF JUSTICE

GR 9 Cover Sheet
Suggested Amendment
Rules of Professional Conduct (RPC)
Rule 4.4: Respect for Rights of Third Persons

Submitted by the Board of Governors of the
Washington State Bar Association

Purpose

The suggested Comment addresses the issue of whether
a lawyer's assertion or inquiry about immigration status vio-
lates the Rules of Professional Conduct when the lawyer's
purpose is to intimidate, coerce, or obstruct that person from
participating in a civil matter. The Comment to Rule 4.4 is
intended to address a gap in Washington's ethics laws by pro-
viding clear guidance to lawyers as to what is and is not per-
mitted in the context of civil litigation involving individuals
who are unauthorized immigrants or who are perceived to be
so. This guidance will protect access to the civil justice sys-
tem regardless of a person's immigration status or ethnicity.

Background

The Department of Homeland Security estimates that
there were 11.6 million unauthorized immigrants living in the
United States as of January 2008. Salas v. Hi-Tech Erectors,

168 Wn.2d 664, 669-70 (2010). With the significant pres-
ence of unauthorized immigrants have come attempts to use
immigration status in litigation, whether or not the party or
witness in question is actually an unauthorized immigrant.
There is a substantial amount of federal and state authority
emphasizing that use of immigration status chills access to
the courts and has a variety of adverse effects on the civil jus-
tice system:

Even documented workers may be chilled ... fear[ing]
that their immigration status would be changed, or that their
status would reveal the immigration problems of their family
or friends; similarly, new legal residents or citizens may feel
intimidated by the prospect of having their immigration his-
tory examined in a public proceeding. Any of these individ-
uals, failing to understand the relationship between their liti-
gation and immigration status, might choose to forego civil
rights litigation.

Rivera et al. v. NIBCO, Inc., 364 F.3d 1057, 1065 (9th
Cir. 2004) (affirming entry of protective order preventing
defendant from inquiring into plaintiffs' immigration status
and eligibility for employment); see also Perez-Farias v.
Global Horizons, Inc., 2009 WL 1011180, at *18-19
(E.D.Wash. 2009) (explaining that immigration status had
been raised in class action "only as a result of an unspoken
perception that persons with Hispanic last names are not eli-
gible for work," and declining to "perpetuate any stereotyp-
ing of the local Hispanic population by assuming that persons
with Hispanic surnames ... are not eligible to work.")

In TXI Transportation Co.v. Hughes, 306 S.W.3d 230
(Tex. 2010), a wrongful death action arising out of a collision
between a tractor-trailer rig owned by TXI Transportation
and a passenger vehicle, the Texas Supreme Court held the
trial court committed prejudicial error by admitting evidence
impugning the character of the driver of the TXI truck based
on his immigration status. Noting that the issue of which
driver was responsible was "hotly contested," the Court
explained that the plaintiff hedged his theory by calling atten-
tion to the truck driver's immigration status wherever possi-
ble. This included dozens of references to the driver's status
as an "illegal immigrant," his prior deportation, his use of a
"falsified" Social Security number, and his use of a commer-
cial driver's license that was characterized as "invalid" or
"fraudulently obtained." Id. at 243. The Court explained that
"[s]uch appeals to racial and ethnic prejudices, whether
'explicit and brazen' or 'veiled and subtle,' cannot be tolerated
because they undermine the very basis of our judicial pro-
cess." Id. at 245.

The Court further noted that the error was harmful not
only because the prejudicial effect "far outweighed any pro-
bative value," but also because "it fostered the impression
that [the driver's] employer should be held liable because it
hired an illegal immigrant." Id. at 245; see also Statewide
Grievance Comm. v. Paige, 2004 WL 1833462, at *6 (Conn.
Super. Ct. 2004) (concluding that lawyer violated Rule 8.4 by
making veiled threats to his former client and the client's new
lawyer to reveal information that would harm the client's
chances for a successful immigration application and add
information to an FBI investigation against the client; the
court found that these threats "violated Rule 8.4 because they
constituted conduct prejudicial to the administration of jus-

tice and an attempt, by intimidation, to obstruct the grievance process and system.").

Appropriate ethical guidance for lawyers will help ensure that parties and witnesses can participate in the civil justice system without fear that a lawyer's unwarranted use of immigration status or ethnicity will adversely affect them. *See generally* David P. Weber, (*Unfair Advantage: Damocles' Sword and the Coercive Use of Immigration Status in a Civil Society*, 94 Marq. L. Rev. 613 (2010) (surveying the legal and ethical response to the coercive use of immigration status or "status coercion" in civil proceedings and negotiations, and concluding that as unauthorized immigrants are one of the most vulnerable and susceptible populations to harm done to them; the ethical rules governing lawyers and judges should clearly state, and be understood, as prohibiting this type of coercion).

Although there are a number of reported examples of Washington lawyers alluding to immigration status of an opposing party (e.g., *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664; *Perez-Farias v. Global Horizons, Inc.*, 2009 WL 1011180; *Sandoval v. Rizzuti Farms, Ltd.*, 2009 WL 2058145 (E.D. Wash. 2009)), there is at present no ethics opinion or published disciplinary precedent in Washington clarifying the circumstances under which such conduct is unethical. This void in Washington's ethics law establishes the need for a clear and definitive statement about the ethical parameters and prohibitions in this area.

Ethics Rules and Opinions Relating to Immigration Status Coercion

Former WSBA Formal Opinion 167

From 1969-1972, the ethical duties of Washington lawyers were governed by the former Code of Professional Responsibility (CPR), which was based on the American Bar Association (ABA) Model Code of Professional Responsibility. During that period, the WSBA Board of Governors issued WSBA Formal Ethics Opinion No. 167 (withdrawn), which prohibited threatening to report a person to immigration authorities solely to gain an advantage in a civil matter. Opinion 167 was based on former Disciplinary Rule (DR) 7-105(A), which provided that a "lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter." The principles reflected in DR 7-105(A) were explained further in Ethical Consideration 7-21, which was referenced in Opinion 167:

The rationale for this opinion is stated in EC 7-21 which points out that the purpose of civil adjudication is to settle disputes between parties while the criminal process is designed to protect society as a whole. Threats to use the criminal process to coerce adjustment of private civil controversies is a subversion of that process; also, the person against whom criminal process is so misused may be deterred from asserting available legal rights and thus the usefulness of the civil process in settling private disputes is impaired.

Because the threat of contacting INS would involve an abuse of the judicial process, it would undermine public confidence in our legal system. Attorneys should refrain from such conduct.

WSBA Formal Ethics Op. 167 (withdrawn).

The Withdrawal of Former WSBA Formal Ethics Opinion No. 167.

The ABA replaced the Model Code of Professional Responsibility with the Model Rules of Professional Conduct in 1983. In 1985, Washington followed suit by adopting the Washington Rules of Professional Conduct to replace the CPR. Neither the ABA nor Washington included DR 7-105(A) in the Rules of Professional Conduct. It appears that former Opinion 167 was subsequently withdrawn because the rule upon which it was based, DR 7-105(A), was no longer a part of Washington's ethics rules.

The Position of the American Bar Association (ABA)

In 1992, following the abrogation of DR 7-105(A), the American Bar Association issued an ethics opinion on the use of threats of criminal prosecution in connection with a civil matter. Applying the Model Rules, the ABA concluded that, in general, a lawyer is not prohibited from using the possibility of presenting criminal charges against the opposing party in a civil matter as long as certain conditions are met, i.e., (1) the criminal matter is related to the civil claim, (2) the lawyer has a well-founded belief that both the civil claim and the criminal charges are warranted by the law and the facts, and (3) the lawyer does not attempt to exert or suggest improper influence over the criminal process. However, if a threat to bring criminal charges is unrelated to the client's civil claim, if the lawyer does not believe both the civil claim and potential criminal charges are well-founded, or if there is an attempt to suggest or exert improper influence over the criminal process, a number of ethics rules may be violated.

According to the ABA opinion, requiring a relationship between the civil and criminal matters tends to ensure that negotiations will be focused on the true value of the civil claim, which presumably includes any criminal liability arising from the same facts or transaction, and discourages exploitation of extraneous matters that have nothing to do with evaluating that claim. Introducing into civil negotiations an unrelated criminal issue solely to gain leverage in settling a civil claim furthers no legitimate interest of the justice system, and tends to prejudice its administration.

ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 92-363 (1992) [hereinafter ABA Formal Op. 92-363].

In evaluating the issue, the ABA noted that the express prohibition in former DR 7-105(A) was "deliberately omitted" from the Model Rules because the drafters believed that 'extortionate, fraudulent, or otherwise abusive threats were covered by other, more general prohibitions in the Model Rules and thus that there was no need to outlaw such threats specifically.' ... Model Rules that provide an explanation of why the omitted provision DR 7-105(A) was deemed unnecessary and set the limits on legitimate use of threats of prosecution are Rules 8.4, 4.4, 4.1 and 3.1.

Id. The ABA has taken no position on the ethics of a lawyer's use of immigration status in the context of civil litigation.

Unlike Washington, a number of jurisdictions chose to adopt prohibitions similar to DR 7-105(A) in their Rules of Professional Conduct. *See, e.g.*, Cal. Rules of Prof'l Conduct R. 5-100 (2011) (a member shall not threaten to present criminal, administrative, or disciplinary charges to obtain an

advantage in a civil dispute); Colo. Rules of Prof'l Conduct R. 4.5 (2008) (a lawyer shall not threaten criminal, administrative or disciplinary charges to obtain an advantage in a civil matter nor shall a lawyer present or participate in presenting criminal, administrative or disciplinary charges solely to obtain an advantage in a civil matter).

In Washington, although former DR 7-105(A) has not been expressly incorporated into the RPCs, and former Opinion 167 has been withdrawn, in some circumstances the conduct addressed by those former authorities is prohibited by the current RPCs. With respect to use of information about immigration status, because of the particular vulnerabilities of unauthorized immigrants and the increasing frequency of lawyer conduct intended to exploit that vulnerability, it is appropriate to clarify those circumstances and identify the rules that are implicated.

North Carolina Ethics Opinions

One state has identified the ethical prohibitions on exploiting immigration status. The North Carolina State Bar (NCSB) has adopted two formal ethics opinions related to use of immigration status in civil matters. The first addressed threatening to report a person's immigration status; the second addressed actually reporting the person's immigration status.

In 2005 the NCSB issued Formal Ethics Opinion 3, which addressed the following question:

May the defense lawyer threaten to report the plaintiff or a witness to immigration authorities to induce the plaintiff to capitulate during the settlement negotiations of the civil suit?

NCSB Formal Ethics Op. 3 (2005).

The NCSB cited ABA Formal Opinion No. 92-363 as support for its conclusion that:

There is no valid basis for distinguishing between threats to report unrelated criminal conduct and threats to report immigration status to the authorities: the same exploitation of extraneous matters and abuse of the justice system may occur. Rule 4.4(a) prohibits a lawyer, when representing a client, from using means that have no substantial purpose other than to embarrass, delay, or burden a third person. ... The threat to expose a party's undocumented immigration status serves no other purpose than to gain leverage in the settlement negotiations for a civil dispute and furthers no legitimate interest of our adjudicative system. Therefore, a lawyer may not use the threat of reporting an opposing party or a witness to immigration officials in settlement negotiations on behalf of a client in a civil matter.

Id.

In 2009, the NCSB issued Formal Ethics Opinion 5, which addressed the following inquiry:

If Lawyer engages in the discovery [of immigration status] and determines that [plaintiff] is in the country illegally, may Lawyer call the US Immigration and Customs Enforcement (ICE) and report the [plaintiff's] status?

NCSB Formal Ethics Op. 5 (2009).

The NCSB answered that a lawyer may not do so, unless federal or state law requires the lawyer to report the plaintiff's immigration status to ICE. The opinion cited Rule 4.4(a) (prohibiting the use of means that have no substantial purpose other than to embarrass, burden, etc. a third person) and

Rule 8.4(d) (prohibiting conduct prejudicial to the administration of justice). Opinion 5 also noted that it is unlikely under this circumstance that the lawyer's impetus to report the plaintiff to ICE is motivated by any purpose other than those prohibited under the rules.

Relevance and Admissibility of Immigration Status in Washington Courts

In *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664 (2010), the Washington Supreme Court addressed whether evidence of undocumented immigration status was admissible with respect to a claim for front pay in a personal injury action. The trial court admitted evidence of immigration status. The jury then determined that the defendant was negligent, but found no proximate cause between this negligence and the plaintiff's injuries.

On the issue of lost future earnings, the Supreme Court held that the plaintiff's immigration status was relevant, noting that relevance under ER 401 "is not a high hurdle." *Id.* at 670. With that standard in mind, the Court stated, "one consequential fact [with regard to front pay] will be the market in which he sells his labor." *Id.* Even a minimal increase in the risk that the plaintiff's future labor market will not be the United States is sufficient to meet the requirements of ER 401 and 402. *Id.*

Despite having some relevance, the Court concluded that under ER 403, the prejudicial effect of admitting the immigration evidence substantially outweighed its relevance:

We recognize that immigration is a politically sensitive issue. Issues involving immigration can inspire passionate responses that carry a significant danger of interfering with the fact finder's duty to engage in reasoned deliberation. In light of the low probative value of immigration status with regard to lost future earnings, the risk of unfair prejudice brought about by the admission of a plaintiff's immigration status is too great. Consequently, we are convinced that the probative value of a plaintiff's undocumented status, by itself, is substantially outweighed by the danger of unfair prejudice.

Id. at 672. The Court rejected the defendant's assertion that the error was harmless, explaining that "[w]e find the risk of prejudice inherent in admitting immigration status to be great, and we cannot say it had no effect on the jury." *Id.* at 673.

Salas did not involve issues of the ethics surrounding the use of an individual's immigration status in a civil matter. But the Court acknowledged the "obvious" prejudicial effects of using immigration status against a person. *Id.* at 672.

In another recent case, a former executive director of a non-profit organization alleged discrimination by board members because the director had asked board members about their immigration status to protect the organization's funding. *Diaz v. Washington State Migrant Council*, No. 29005-1-11, 2011 WL 5842778 (Wash. Ct. App. Nov. 22, 2011) (Division III). The Court of Appeals found that the trial court did not abuse its discretion in denying a motion by the board members seeking a protective order to prevent discovery of immigration status. *Diaz* indicates that immigration status is discoverable when immigration status is central to the factual basis of the cause of action. The court did not address ethical issues.

The decisions in *Salas* and *Diaz* demonstrate the increasing focus on immigration status in civil litigation, and the corresponding need for ethical guidance explaining when inquiry into immigration status, or reporting immigration status, violates the Rules of Professional Conduct.

The Suggested New Comment to Rule 4.4

When a lawyer uses information about a person's immigration status with a purpose to intimidate, coerce, or obstruct that person from participating in a civil matter, a number of existing RPCs may be violated. The most relevant rule in this regard is RPC 4.4(a), which provides:

In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

Suggested Comment [4] to RPC 4.4 seeks to clarify that, in representing a client, it is unethical under RPC 4.4(a) for a lawyer to make a statement or inquiry about immigration status for the purpose of intimidating or coercing a person, or obstructing that person from participating in a civil matter.

The suggested Comment further states: "When a lawyer is representing a client in a civil matter, a lawyer's communication to a party or a witness that the lawyer will report that person to immigration authorities, or a lawyer's report of that person to immigration authorities, furthers no substantial purpose of the civil adjudicative system if the lawyer's purpose is to intimidate, coerce, or obstruct that person." This is consistent with the view espoused by the North Carolina State Bar, which opined that "The threat to expose a party's undocumented immigration status serves no other purpose than to gain leverage in the settlement negotiations for a civil dispute and furthers no legitimate interest of our adjudicative system." NCSB Formal Ethics Op. 3 (2005).

As the suggested Comment recognizes, implied references to a person's immigration status may violate the rule. In certain other contexts, the RPCs prohibit both express and implied assertions. See RPC 8.4(e) (misconduct for a lawyer to "state or imply" an ability to influence improperly a government agency or official); RPC 4.3 (in dealing with an unrepresented person, lawyer shall not "state or imply" that lawyer is disinterested). Similarly, where immigration status is concerned, a statement or inquiry may seek to accomplish an improper objective without expressly addressing that objective. See *TXI Transp. Co. v. Hughes*, 306 S.W.3d at 243-45 (numerous inappropriate references to a person's immigration status, whether "explicit and brazen" or "veiled and subtle," intolerably undermine "the very basis of our judicial process"). Thus, for example, when a lawyer, with the intent to coerce a favorable settlement, threatens to report a party's undocumented status to U.S. Immigration and Customs Enforcement if the party does not agree to a settlement demand, the lawyer has made a prohibited express assertion. By contrast, a seemingly informational or advisory inquiry in the context of a demand letter or a deposition question - e.g., "Did you know that because a trial is a public proceeding, information about your undocumented status could end up in the hands of U.S. Immigration and Customs Enforcement?" - may have the same prohibited purpose and be designed to achieve the same unjust result. Inquiries into immigration

status therefore should be evaluated not merely in terms of whether they embody direct threats or intimidation, but whether their underlying purpose or objective is prohibited, regardless of whether the express language or conduct is of an overtly threatening or coercive nature.

Finally, because a variety of ethics rules may be implicated by conduct designed to intimidate, coerce, or obstruct a person on the basis of immigration status, the suggested Comment cross-references a number of other RPCs. Specifically, the additional rules referenced in the suggested Comment are as follows:

- RPC 8.4(d) prohibits conduct that is prejudicial to the administration of justice. See NCSB Formal Ethics Op. 3 (2005) (introducing into civil negotiations an unrelated criminal issue solely to gain leverage in settling a civil claim "furthers no legitimate interest of the justice system, and tends to prejudice its administration") (quoting ABA Formal Op. 92-363). The Washington Supreme Court has noted that "conduct deemed prejudicial to the administration of justice has generally been conduct of an attorney in his official or advocacy role or conduct which might physically interfere with enforcing the law," and "clear violations of accepted practice norms." *In re Disciplinary Proceeding against Curran*, 115 Wn.2d 747, 764-65 (1990). If a lawyer, acting as a legal advocate, threatens to use immigration enforcement to coerce or avoid adjustment of a private civil controversy, such conduct may also be prejudicial to the administration of justice, as that rule has been interpreted by the Supreme Court in *Curran*.
- RPC 8.4(h) prohibits conduct that is prejudicial to the administration of justice toward judges, other parties and/or their counsel, witnesses and/or their counsel, jurors, or court personnel or officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status. In some circumstances, immigration status coercion may reasonably be interpreted as manifesting prejudice on the basis of national origin because immigrants in the United States are widely considered to be of ethnic origins other than European.
- Rule 8.4(b) prohibits criminal acts that reflect adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects. Threatening to report a party or witness to immigration authorities to gain an advantage in a civil matter may constitute the crime of extortion in violation of RPC 8.4(b). See ABA Formal Op. 92-363.

The purpose of the civil adjudication system is to resolve disputes between parties, while immigration enforcement is designed to implement federal immigration policies. Assertions or inquiries regarding a party's or witness's immigration status to gain an advantage in a civil matter subvert the civil justice system. A Comment to Washington's Rules of Professional Conduct can make clear that a lawyer representing a

client may not use the threat of reporting, or actually report, an opposing party or a witness to immigration officials to intimidate, coerce, or obstruct that person in a civil matter.

Conclusion

The suggested Comment will provide guidance to Washington attorneys, and protection for parties and witnesses, where the question of immigration status may arise.

**RULES OF PROFESSIONAL CONDUCT (RPC)
RULE 4.4 RESPECT FOR RIGHTS OF THIRD PERSONS**

(a) - (b) [Unchanged.]

Comment

[1] - [3] [Unchanged.]

Additional Washington Comment (4)

[4] The duty imposed by paragraph (a) of this Rule includes a lawyer's assertion or inquiry about a third person's immigration status when the lawyer's purpose is to intimidate, coerce, or obstruct that person from participating in a civil matter. Issues involving immigration status carry a significant danger of interfering with the proper functioning of the justice system. See Salas v. Hi-Tech Erectors, 168 Wn.2d 664, 230 P.3d 583 (2010). When a lawyer is representing a client in a civil matter, a lawyer's communication to a party or a witness that the lawyer will report that person to immigration authorities, or a lawyer's report of that person to immigration authorities, furthers no substantial purpose of the civil adjudicative system if the lawyer's purpose is to intimidate, coerce, or obstruct that person. A communication in violation of this Rule can also occur by an implied assertion that is the equivalent of an express assertion prohibited by paragraph (a). See also Rules 8.4(b) (prohibiting criminal acts that reflect adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects), 8.4(d) (prohibiting conduct prejudicial to the administration of justice), and 8.4(h) (prohibiting conduct that is prejudicial to the administration of justice toward judges, other parties and/or their counsel, witnesses and/or their counsel, jurors, or court personnel or officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status).

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 12-13-063
RULES OF COURT
STATE SUPREME COURT
[June 15, 2012]**

IN THE MATTER OF THE ADOPTION OF) ORDER
NEW APR 28—LIMITED PRACTICE RULE) NO. 25700-A-1005
FOR LIMITED LICENSE LEGAL TECHNI-)
CIANS)

The Practice of Law Board having recommended the adoption of New APR 28—Limited Practice Rule for Lim-

ited License Legal Technicians, and the Court having considered the revised rule and comments submitted thereto, and having determined by majority that the rule will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

That we adopt APR 28, the Limited Practice Rule for Limited License Legal Technicians. It is time. Since this rule was submitted to the Court by the Practice of Law Board in 2008, and revised in 2012, we have reviewed many comments both in support and in opposition to the proposal to establish a limited form of legal practitioner. During this time, we have also witnessed the wide and ever-growing gap in necessary legal and law related services for low and moderate income persons.

We commend the Practice of Law Board for reaching out to a wide spectrum of affected organizations and interests and for revising the rule to address meritorious concerns and suggestions. We also thank the many individuals and organizations whose suggestions to the language of the rule have improved it. The Limited License Legal Technician Rule that we adopt today is narrowly tailored to accomplish its stated objectives, includes appropriate training, financial responsibility, regulatory oversight and accountability systems, and incorporates ethical and other requirements designed to ensure competency within the narrow spectrum of the services that Limited License Legal Technicians will be allowed to provide. In adopting this rule we are acutely aware of the unregulated activities of many untrained, unsupervised legal practitioners who daily do harm to "clients" and to the public's interest in having high quality civil legal services provided by qualified practitioners.

The practice of law is a professional calling that requires competence, experience, accountability and oversight. Legal License Legal Technicians are not lawyers. They are prohibited from engaging in most activities that lawyers have been trained to provide. They are, under the rule adopted today, authorized to engage in very discrete, limited scope and limited function activities. Many individuals will need far more help than the limited scope of law related activities that a limited license legal technician will be able to offer. These people must still seek help from an attorney. But there are people who need only limited levels of assistance that can be provided by non-lawyers trained and overseen within the framework of the regulatory system developed by the Practice of Law Board. This assistance should be available and affordable. Our system of justice requires it.

I. The Rule

Consistent with GR 25 (the Supreme Court rule establishing the Practice of Law Board),¹ the rule² establishes a framework for the licensing and regulation of non-attorneys to engage in discrete activities that currently fall within the definition of the "practice of law" (as defined by GR 24)³ and which are currently subject to exclusive regulation and oversight by this Court. The rule itself authorizes no one to practice. It simply establishes the regulatory framework for the consideration of proposals to allow non-attorneys to practice. As required by GR 25, the rule establishes certification requirements (age, education, experience, pro bono service, examination, etc.),⁴ defines the specific types of activities that

a limited license legal technician would be authorized to engage in,⁵ the circumstances under which the limited license legal technician would be allowed to engage in authorized activities (office location, personal services required, contract for services with appropriate disclosures, prohibitions on serving individuals who require services beyond the scope of authority of the limited license legal technician to perform),⁶ a detailed list of prohibitions,⁷ and continuing certification and financial responsibility requirements.⁸

In addition to the rule, we are today acting on the Practice of Law Board's proposal to establish a Limited License Legal Technician Board.⁹ This Board will have responsibility for considering and making recommendations to the Supreme Court with respect to specific proposals for the authorization of limited license legal technicians to engage in some or all of the activities authorized under the Limited License Legal Technician Rule, and authority to oversee the activities of and discipline certified limited license legal technicians in the same way the Washington State Bar Association does with respect to attorneys. The Board is authorized to recommend that limited license legal technicians be authorized to engage in specific activities within the framework of - and limited to - those set forth in the rule itself. We reserve the responsibility to review and approve any proposal to authorize limited license legal technicians to engage in specific activities within specific substantive areas of legal and law related practice, and our review is guided by the criteria outlined in GR 25.

Today we adopt that portion of the Practice of Law Board's proposal which authorizes limited license legal technicians who meet the education, application and other requirements of the rule be authorized to provide limited legal and law related services to members of the public as authorized by this rule.¹⁰

II. The Need for a Limited License Legal Technician Rule

Our adversarial civil legal system is complex. It is unaffordable not only to low income people but, as the 2003 Civil Legal Needs Study documented, moderate income people as well (defined as families with incomes between 200% and 400% of the Federal Poverty Level).¹¹ One example of the need for this rule is in the area of family relations which are governed by a myriad of statutes. Decisions relating to changes in family status (divorce, child residential placement, child support, etc.) fall within the exclusive province of our court system. Legal practice is required to conform to specific statewide and local procedures, and practitioners are required to use standard forms developed at both the statewide and local levels. Every day across this state, thousands of unrepresented (pro se) individuals seek to resolve important legal matters in our courts. Many of these are low income people who seek but cannot obtain help from an over-taxed, underfunded civil legal aid system. Many others are moderate income people for whom existing market rates for legal services are cost-prohibitive and who, unfortunately, must search for alternatives in the unregulated marketplace.

Recognizing the difficulties that a ballooning population of unrepresented litigants has created, court managers, legal aid programs and others have embraced a range of strategies to provide greater levels of assistance to these unrepresented

litigants. Innovations include the establishment of courthouse facilitators in most counties, establishment of courthouse-based self-help resource centers in some counties, establishment of neighborhood legal clinics and other volunteer-based advice and consultation programs, and the creation of a statewide legal aid self-help website. As reflected most recently in a study conducted by the Washington Center for Court Research,¹² some of these innovations - most particularly the creation of courthouse facilitators - have provided some level of increased meaningful support for pro se litigants.

But there are significant limitations in these services and large gaps in the type of services for pro se litigants. Courthouse facilitators serve the courts, not individual litigants. They may not provide individualized legal advice to family law litigants. They are not subject to confidentiality requirements essential to the practitioner/client relationship. They are strictly limited to engaging in "basic services" defined by GR 21.¹³ They have no specific educational/certification requirements, and often find themselves providing assistance to two sides in contested cases. Web-based self-help materials are useful to a point, but many litigants require additional one-on-one help to understand their specific legal rights and prerogatives and make decisions that are best for them under the circumstances.

From the perspective of pro se litigants, the gap places many of these litigants at a substantial legal disadvantage and, for increasing numbers, forces them to seek help from unregulated, untrained, unsupervised "practitioners." We have a duty to ensure that the public can access affordable legal and law related services, and that they are not left to fall prey to the perils of the unregulated market place.

III. Specific Concerns and Responses

A number of specific issues that have been raised both in support of and in opposition to this rule deserve additional discussion and response.

Proponents have suggested that the establishment and licensing of limited license legal technicians should be a primary strategy to close the Justice Gap for low and moderate income people with family related legal problems. While there will be some benefit to pro se litigants in need of limited levels of legal help, we must be careful not to create expectations that adoption of this rule is not intended to achieve.

By design, limited license legal technicians authorized to engage in discrete legal and law related activities will not be able to meet that portion of the public's need for help in family law matters that requires the provision of individualized legal representation in complex, contested family law matters. Such representation requires the informed professional assistance of attorneys who have met the educational and related requirements necessary to practice law in Washington. Limited purpose practitioners, no matter how well trained within a discrete subject matter, will not have the breadth of substantive legal knowledge or requisite practice skills to apply professional judgment in a manner that can be consistently counted upon to meet the public's need for competent and skilled legal representation in complex legal cases.

On the other hand, and depending upon how it is implemented, the authorization for limited license legal technicians to engage in certain limited legal and law related activities

holds promise to help reduce the level of unmet need for low and moderate income people who have relatively uncomplicated family related legal problems and for whom some level of individualized advice, support and guidance would facilitate a timely and effective outcome.

Some opposing the rule believe that limited licensing legal technicians to engage in certain family related legal and law related activities poses a threat to the practicing family law bar.

First, the basis of any regulatory scheme, including our exercise of the exclusive authority to determine who can practice law in this state and under what circumstances, must start and end with the public interest; and any regulatory scheme must be designed to ensure that those who provide legal and law related services have the education, knowledge, skills and abilities to do so. Protecting the monopoly status of attorneys in any practice area is not a legitimate objective.

It is important to observe that members of the family law bar provide high levels of public and pro bono service. In fact, it is fair to say that the demands of pro bono have fallen disproportionately on members of the family law bar. As pointed out in the comments to the Practice of Law Board's proposal, young lawyers and others have been working for years to develop strategies to provide reduced fee services to moderate income clients who cannot afford market-rate legal help. Over the past year, these efforts have been transformed into the Washington State Bar Association's newly established Moderate Means program,¹⁴ an initiative which holds substantial promise to deliver greater access to legal representation for greater numbers of individuals between 200% and 400% of the federal poverty guideline being provided services at affordable rates.

In considering the impact that the limited licensing of legal technicians might have on the practicing family law bar it is important to push past the rhetoric and focus on what limited license legal technicians will be allowed to do, and what they cannot do under the rule. With limited exception,¹⁵ few private attorneys make a living exclusively providing technical legal help to persons in simple family law matters. Most family law attorneys represent clients on matters that require extended levels of personalized legal counsel, advice and representation - including, where necessary, appearing in court - in cases that involve children and/or property.

Stand-alone limited license legal technicians are just what they are described to be - persons who have been trained and authorized to provide technical help (selecting and completing forms, informing clients of applicable procedures and timelines, reviewing and explaining pleadings, identifying additional documents that may be needed, etc.) to clients with fairly simple legal law matters. Under the rule we adopt today, limited license legal technicians would not be able to represent clients in court or contact and negotiate with opposing parties on a client's behalf. For these reasons, the limited licensing of legal technicians is unlikely to have any appreciable impact on attorney practice.

The Practice of Law Board and other proponents argue that the limited licensing of legal technicians will provide a substantially more affordable product than that which is available from attorneys, and that this will make legal help more accessible to the public. Opponents argue that it will be

economically impossible for limited license legal technicians to deliver services at less cost than attorneys and thus, there is no market advantage to be achieved by creating this form of limited practitioner.

No one has a crystal ball. It may be that stand-alone limited license legal technicians will not find the practice lucrative and that the cost of establishing and maintaining a practice under this rule will require them to charge rates close to those of attorneys. On the other hand, it may be that economies can be achieved that will allow these very limited services to be offered at a market rate substantially below those of attorneys. There is simply no way to know the answer to this question without trying it.

That said, if market economies can be achieved, the public will have a source of relatively affordable technical legal help with uncomplicated legal matters. This may reduce some of the demand on our state's civil legal aid and pro bono systems and should lead to an increase in the quality and consistency of paperwork presented by pro se litigants.

Further, it may be that non-profit organizations that provide social services with a family law component (e.g., domestic violence shelters; pro bono programs; specialized legal aid programs) will elect to add limited license legal technicians onto their staffs. The cost would be much less than adding an attorney and could enable these programs to add a dimension to their services that will allow for the limited provision of individualized legal help on many cases - especially those involving domestic violence. Relationships might be extended with traditional legal aid programs or private pro bono attorneys so that there might be sufficient attorney supervision of the activities of the limited license legal technicians to enable them to engage in those activities for which "direct and active" attorney supervision is required under the rule.

Some have suggested that there is no need for this rule at all, and that the WSBA's Moderate Means Program will solve the problem that the limited licensing of legal technicians is intended to address. This is highly unlikely. First, there are large rural areas throughout the state where there are few attorneys. In these areas, many attorneys are barely able to scrape by. Doing reduced fee work through the Moderate Means program (like doing pro bono work) will not be a high priority.

Second, limited licensing of legal technicians *complements*, rather than competes with, the efforts WSBA is undertaking through the Moderate Means program. We know that there is a huge need for representation in contested cases where court appearances are required. We know further that pro se litigants are at a decided disadvantage in such cases, especially when the adverse party is represented.¹⁶ Limited license legal technicians are not permitted to provide this level of assistance; they are limited to performing mostly ministerial technical/legal functions. Given the spectrum of unmet legal needs out there, Moderate Means attorneys will be asked to focus their energy on providing the help that is needed most - representing low and moderate income people who cannot secure necessary representation in contested, often complex legal proceedings.

Opponents of the rule argue that the limited licensing of legal technicians presents a threat to clients and the public.

that custom today because I have very strong feelings that our court's decision to adopt the new Admission to Practice Rule, APR 28, is ill-considered, incorrect, and most of all extremely unfair to the members of the Washington State Bar Association (WSBA).

Let me quickly add that by expressing disagreement with the court's approval of this new rule, I am not suggesting that the legal needs of all persons in this state are currently being met. Like my judicial colleagues, I know that there is a great unmet need for legal services and we in the judiciary and the legal profession have an obligation to look for appropriate ways to expand the availability of legal assistance to the public.

My opposition to the board's work product should, therefore, not be considered disagreement with the goal the Practice of Law Board was seeking to achieve—expanding the availability of legal services to individuals who are confronted with legal problems. Rather, my opposition to the rule is based on the fact this rule and its attendant regulations impose an obligation on the members of the WSBA to underwrite the considerable cost of establishing and maintaining what can only be characterized as a mini bar association within the present WSBA. Assuming our court has the inherent authority to create this new profession of legal technicians, I do not believe that we possess the authority to tax the lawyers of this state to pay "all of the expenses reasonably and necessarily incurred" by the Non-Lawyer Practice Commission, a body which comes into being pursuant to the rule and regulations. *See* Regulation 3(G). Pertinent to this point, I note that it is generally acknowledged that it will likely cost several hundred thousand dollars to set up the commission that will oversee this new profession of legal technicians. We have not been informed that the WSBA presently has sufficient money within its treasury to underwrite this considerable expense and I have significant doubts that it has an abundance of cash on hand. In fact, in light of the dues rollback, the opposite is true. Although I recognize that this court's order delays implementation of the new rule until January 1, 2013, I think it is unrealistic to assume that the WSBA will realize any large windfall of funds in 2013. Consequently, the only way the WSBA will be able to fulfill the considerable financial obligation this court has imposed upon it is to either reduce the amount it budgets for the programs and services it presently supports or increase the yearly dues of its members. Either way you look at it, this court is imposing a tax on lawyers.

The APR 28 regulations suggest that the APR 28 program will eventually support itself through certification fees. In that regard, we have been advised that something in the order of \$200,000 may eventually be generated by these fees. In this day and age, \$200,000 does not go very far and it is hard for me to see how this APR 28 program with its testing, certification, continuing education, and discipline provisions can be accommodated with a yearly budget of that amount. The hoped for self-sufficiency of the program will, in my view, depend to a large extent on the numbers of persons achieving legal technician status under the rule. Although this court was earlier led to believe that initially there would be certification of legal technicians only in family law matters, the rule and regulations this court has approved provide

the Practice of Law Board with unbridled discretion to recommend to the Supreme Court the areas, within the full range of practice areas encompassed by the GR 24 definition of the practice of law, in which legal technicians can practice.¹ I sense that the Practice of Law Board realized that there is uncertainty about whether the certification fees will produce sufficient funds to underwrite the annual cost of the legal technician program and, thus, provided that funding for the commission will be generated by certification fees "as well as commitments from the WSBA." Regulation 3(G).²

The unfairness of imposing what seems beyond doubt a significant obligation on the lawyers of this state is made all the more manifest by the fact that in recent years, the WSBA has undertaken, with the encouragement of this court, a number of efforts designed to address the very problems the new APR 28 purports to mitigate. I am speaking of (1) increased encouragement for Washington lawyers to provide pro-bono service and the provision of free and low cost training for lawyers who wish to provide such service; (2) the highly successful home foreclosure legal aid project, which helps low and moderate income persons deal with the threat of home foreclosure; (3) a major one-time contribution by the WSBA of cash to the Legal Foundation of Washington in order to offset the impact of reduced Interest on Lawyers Trust Accounts revenues coming to the foundation, a contribution which leveraged a \$3 million donation from the Gates Foundation to the Legal Foundation of Washington; (4) the statewide moderate means program, which is designed to assist individuals who need the assistance of a lawyer to obtain those services at a reduced cost; and (5) a check off on the annual license fee for lawyers, suggesting an annual contribution of at least \$50 by lawyers to the Campaign for Equal Justice to help ensure equal access to justice for all Washingtonians regardless of financial standing.

The WSBA is not required to undertake any of the aforementioned initiatives but it has done so voluntarily with great zeal and enthusiasm endeavoring to address the public's legal needs. Furthermore, all of this was done at great expense to the WSBA. Indeed the WSBA's contribution of \$1.5 million to the Legal Foundation of Washington in 2009 was a truly heroic gesture but one which made a major dent in the cash reserves the WSBA had built up over the years. Whether the obligation this court is now imposing on the WSBA will result in eliminating or curtailing any of these programs and initiatives, no one knows for certain. If, however, that is the result of our action, it would be a sad day for the WSBA and the many persons positively affected by the bar's considerable efforts.

Finally, I wish to observe that an impartial observer might wonder why the Supreme Court does not assume responsibility for funding implementation of APR 28. After all, the fact that the legal needs of the public are not being met is a problem that affects the entire community, not just a segment of our state's population like its attorneys at law. Such a question would not be farfetched because in a number of states the expense associated with the admission and disciplining of lawyers is subsumed within the budget of the highest court in those states. I suspect, though, that if this court had been asked to assume financial responsibility for establishing and administering this major program for certification

of legal technicians, with the vague promise that the program may someday be self-supporting, we would have concluded that we presently do not have sufficient funds within our budget with which to undertake this responsibility. Is it fair or equitable for this court to eschew assuming financial responsibility for the program in this time of economic distress, and instead impose the obligation on all of the state's lawyers, many of whom are feeling adverse affects of the current downturn of the economy? I say no. Because the majority by its order says yes, I dissent from the order.

DATED at Olympia, Washington this 14th day of June, 2012.

¹ The court's order contains a statement that "we adopt the portion of the Practice of Law Board's proposal which authorizes legal technicians ... to provide limited legal and law related services to members of the public in certain defined family law related areas. It is noteworthy that the proposed rule, APR 28, and regulations do not contain the words "family law."

² The court's order expresses confidence that the fee based system will be "cost neutral." Perhaps it will be self-sufficient someday, but this conclusion does not address the significant start up costs which the court order requires the WSBA to pay.

OWENS, J.

C. Johnson, J.

I concur in result only.

Fairhurst, J.

New Admission to Practice Rule 28: Limited Practice Rule for Limited License Legal Technicians

A) Purpose. The Civil Legal Needs Study (2003), commissioned by the Supreme Court, clearly established that the legal needs of the consuming public are not currently being met. The public is entitled to be assured that legal services are rendered only by qualified trained legal practitioners. Only the legal profession is authorized to provide such services. The purpose of this rule is to authorize certain persons to render limited legal assistance or advice in approved practice areas of law. This rule shall prescribe the conditions of and limitations upon the provision of such services in order to protect the public and ensure that only trained and qualified legal practitioners may provide the same. This rule is intended to permit trained Limited License Legal Technicians to provide limited legal assistance under carefully regulated circumstances in ways that expand the affordability of quality legal assistance which protects the public interest.

B) Definitions. For purposes of this rule, the following definitions will apply:

1) "APR" means the Supreme Court's Admission to Practice Rules.

2) "Board" when used alone means the Limited License Legal Technician Board.

3) "Lawyer" means a person licensed and eligible to practice law in any U.S. jurisdiction.

4) "Limited License Legal Technician" means a person qualified by education, training and work experience who is authorized to engage in the limited practice of law in approved practice areas of law as specified by this rule and related regulations. The legal technician does not represent the client in court proceedings or negotiations, but provides

limited legal assistance as set forth in this rule to a pro se client.

5) "Paralegal/legal assistant" means a person qualified by education, training or work experience, who is employed or retained by a lawyer, law office, corporation, governmental agency or other entity and who performs specifically delegated substantive law-related work for which a lawyer is responsible.

6) "Reviewed and approved by a Washington lawyer" means that a Washington lawyer has personally supervised the legal work and documented that supervision by the Washington lawyer's signature and bar number.

7) "Substantive law-related work" means work that requires knowledge of legal concepts and is customarily, but not necessarily, performed by a lawyer.

8) "Supervised" means a lawyer personally directs, approves and has responsibility for work performed by the Limited License Legal Technician.

9) "Washington lawyer" means a person licensed and eligible to practice law in Washington and who is an active or emeritus member of the Washington State Bar Association.

10) Words of authority:

a) "May" means "has discretion to," "has a right to," or "is permitted to".

b) "Must" or "shall" mean "is required to".

c) "Should" means recommended but not required.

C) Limited License Legal Technician Board.

1) *Establishment.* There is hereby established a Limited License Legal Technician Board. The Board shall consist of 13 members appointed by the Supreme Court of the State of Washington, nine of whom shall be active Washington lawyers, and four of whom shall be non-lawyer Washington residents. At least one member shall be a legal educator. The members shall initially be appointed to staggered terms of one to three years. Thereafter, appointments shall be for three year terms. No member may serve more than two consecutive full three year terms.

2) *Board Responsibilities.* The Board shall be responsible for the following:

(a) Recommending practice areas of law for LLLTs, subject to approval by the Supreme Court;

(b) Processing applications and fees, and screening applicants;

(c) Administering the examinations required under this rule which shall, at a minimum, cover the rules of professional conduct applicable to Limited License Legal Technicians, rules relating to the attorney-client privilege, procedural rules and substantive law issues related to one or more approved practice areas;

(d) Determining LLLT Continuing Legal Education (LLLT CLE) requirements and approval of LLLT CLE programs;

(e) Approving education and experience requirements for licensure in approved practice areas;

(f) Establishing and over-seeing committees and tenure of members;

(g) Establishing and collecting examination fees, LLLT CLE fees, annual license fees, and other fees in such amounts approved by the Supreme Court as are necessary to carry out the duties and responsibilities of the Board; and

(h) Such other activities and functions as are expressly provided for in this rule.

3) *Rules and Regulations.* The Board shall propose rules and regulations for adoption by the Supreme Court that:

(a) Establish procedures for grievances and disciplinary proceedings;

(b) Establish trust account requirements and procedures;

(c) Establish rules of professional and ethical conduct; and

(d) Implement the other provisions of this rule.

D) **Requirements for Applicants.** An applicant for licensure as a Limited License Legal Technician shall:

1) *Age.* Be at least 18 years of age.

2) *Moral Character and Fitness to Practice.* Be of good moral character and demonstrate fitness to practice as a Limited License Legal Technician.

3) *Education and Experience.* Have the following education and experience:

a)(i) An associate degree or equivalent program, or a bachelor degree, in paralegal/legal assistant studies approved by the American Bar Association or the Board, together with a minimum of two years experience as a paralegal/legal assistant doing substantive law-related work under the supervision of a lawyer, provided that at least one year is under a Washington lawyer; or

(ii) A post-baccalaureate certificate program in paralegal/legal assistant studies approved by the Board, together with a minimum of three years experience as a paralegal/legal assistant doing substantive law-related work under the supervision of a lawyer, provided that at least one year is under a Washington lawyer; and

b) Complete at least 20 hours of pro bono legal service in Washington as approved by the Board, within two years prior to taking the Limited License Legal Technician examination.

In all cases, the paralegal/legal assistant experience must be acquired after completing the education requirement, unless waived by the Board for good cause shown.

4) *Application.* Execute under oath and file with the Board two copies of his/her application, in such form as the Board requires. An applicant's failure to furnish information requested by the Board or pertinent to the pending application may be grounds for denial of the application.

5) *Examination Fee.* Pay, upon the filing of the application, the examination fee and any other required application fees as established by the Board and approved by the Supreme Court.

E) **Licensing Requirements.** In order to be licensed as a Limited License Legal Technician, all applicants must:

1) *Examination.* Take and pass the examinations required under these rules;

2) *Annual License Fee.* Pay the annual license fee;

3) *Financial Responsibility.* Show proof of ability to respond in damages resulting from his or her acts or omissions in the performance of services permitted by this rules. The proof of financial responsibility shall be in such form and in such amount as the Board may by regulation prescribe; and

4) Meet all other licensing requirements set forth in the rules and regulations proposed by the Board and adopted by the Supreme Court.

F) **Scope of Practice Authorized by Limited Practice Rule.** The Limited License Legal Technician shall ascertain whether the issue is within the defined practice area for which the LLLT is licensed. If it is not, the LLLT shall not provide the services required on this issue and shall inform the client that the client should seek the services of a lawyer. If the issue is within the defined practice area, the LLLT may undertake the following:

1) Obtain relevant facts, and explain the relevancy of such information to the client;

2) Inform the client of applicable procedures, including deadlines, documents which must be filed, and the anticipated course of the legal proceeding;

3) Inform the client of applicable procedures for proper service of process and filing of legal documents;

4) Provide the client with self-help materials prepared by a Washington lawyer or approved by the Board, which contain information about relevant legal requirements, case law basis for the client's claim, and venue and jurisdiction requirements;

5) Review documents or exhibits that the client has received from the opposing side, and explain them to the client;

6) Select and complete forms that have been approved by the State of Washington, either through a governmental agency or by the Administrative Office of the Courts or the content of which is specified by statute; federal forms; forms prepared by a Washington lawyer; or forms approved by the Board; and advise the client of the significance of the selected forms to the client's case;

7) Perform legal research and draft legal letters and pleadings documents beyond what is permitted in the previous paragraph, if the work is reviewed and approved by a Washington lawyer;

8) Advise a client as to other documents that may be necessary to the client's case (such as exhibits, witness declarations, or party declarations), and explain how such additional documents or pleadings may affect the client's case;

9) Assist the client in obtaining necessary documents, such as birth, death, or marriage certificates.

G) **Conditions Under Which A Limited License Legal Technician May Provide Services.**

1) A Limited License Legal Technician must have a principal place of business having a physical street address for the acceptance of service of process in the State of Washington;

2) A Limited License Legal Technician must personally perform the authorized services for the client and may not delegate these to a non-licensed person. Nothing in this prohibition shall prevent a person who is not a licensed LLLT from performing translation services;

3) Prior to the performance of the services for a fee, the Limited License Legal Technician shall enter into a written contract with the client, signed by both the client and the Limited License Legal Technician that includes the following provisions:

(a) An explanation of the services to be performed, including a conspicuous statement that the Limited License Legal Technician may not appear or represent the client in court, formal administrative adjudicative proceedings, or

other formal dispute resolution process or negotiate the client's legal rights or responsibilities, unless permitted under GR 24(b);

(b) Identification of all fees and costs to be charged to the client for the services to be performed;

(c) A statement that upon the client's request, the LLLT shall provide to the client any documents submitted by the client to the Limited License Legal Technician;

(d) A statement that the Limited License Legal Technician is not a lawyer and may only perform limited legal services. This statement shall be on the ~~face~~-first page of the contract in minimum twelve-point bold type print;

(e) A statement describing the Limited License Legal Technician's duty to protect the confidentiality of information provided by the client and the Limited License Legal Technician's work product associated with the services sought or provided by the Limited License Legal Technician;

(f) A statement that the client has the right to rescind the contract at any time and receive a full refund of unearned fees. This statement shall be conspicuously set forth in the contract; and

(g) Any other conditions required by the rules and regulations of the Board.

4) A Limited License Legal Technician may not provide services that exceed the scope of practice authorized by this rule, and shall inform the client, in such instance, that the client ~~requires~~ should seek the services of a lawyer.

5) A document prepared by an LLLT shall include the LLLT's name, signature and license number beneath the signature of the client.

H) **Prohibited Acts.** In the course of dealing with clients or prospective clients, a Limited License Legal Technician shall not:

1) Make any statement that the Limited License Legal Technician can or will obtain special favors from or has special influence with any court or governmental agency;

2) Retain any fees or costs for services not performed;

3) Refuse to return documents supplied by, prepared by, or paid for by the client, upon the request of the client. These documents must be returned upon request even if there is a fee dispute between the Limited License Legal Technician and the client; ~~or~~

4) Represent or advertise, in connection with the provision of services, other legal titles or credentials that could cause a client to believe that the Limited License Legal Technician possesses professional legal skills beyond those authorized by the license held by the Limited License Legal Technician;

5) Represent a client in court proceedings, formal administrative adjudicative proceedings, or other formal dispute resolution process, unless permitted by GR 24;

6) Negotiate the client's legal rights or responsibilities, or communicate with another person the client's position or convey to the client the position of another party; unless permitted by GR 24(b).

7) Provide services to a client in connection with a legal matter in another state, unless permitted by the laws of that state to perform such services for the client.

8) Represent or otherwise provide legal or law related services to a client, except as permitted by law, this rule or associated rules and regulations;

9) Otherwise violate the Limited License Legal Technicians' Rules of Professional Conduct.

I) Continuing Licensing Requirements.

1) *Continuing Education Requirements.* Each Limited License Legal Technician annually must complete the Board-approved number of credit hours in courses or activities approved by the Board; provided that the Limited License Legal Technician shall not be required to comply with this subsection during the calendar year in which he or she is initially licensed.

2) *Financial Responsibility.* Each Limited License Legal Technician shall annually provide proof of financial responsibility in such form and in such amount as the Board may by regulation prescribe.

3) *Annual Fee.* Each Limited License Legal Technician shall pay the annual license fee established by the Board and approved by the Supreme Court.

J) **Existing Law Unchanged.** This rule shall in no way modify existing law prohibiting non-lawyers from practicing law or giving legal advice other than as authorized under this rule or associated rules and regulations.

K) Professional Responsibility and Limited License Legal Technician-Client Relationship.

1) Limited License Legal Technicians acting within the scope of authority set forth in this rule shall be held to the standard of care of a Washington lawyer.

2) Limited License Legal Technicians shall be held to the ethical standards of the Limited License Legal Technicians' Rules of Professional Conduct, which shall create an LLLT IOLTA program for the proper handling of funds coming into the possession of the Limited License Legal Technician.

3) The Washington law of attorney-client privilege and law of a lawyer's fiduciary responsibility to the client shall apply to the Limited License Legal Technician-client relationship to the same extent as it would apply to an attorney-client relationship.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the State Supreme Court and appear in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 12-13-064
RULES OF COURT
STATE SUPREME COURT**

[June 15, 2012]

IN THE MATTER OF THE ADOPTION OF) ORDER
NEW STANDARDS FOR INDIGENT) NO. 25700-A-1004
DEFENSE AND CERTIFICATION OF COM-)
PLIANCE)

The Washington State Bar Association having recommended the adoption of New Standards for Indigent Defense and Certification of Compliance, and the Court having considered the amendments and comments submitted thereto, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the standards and certificate as shown below are adopted.

(b) That the New Standards for Indigent Defense, except Standard 3.4, will be published in the Washington Reports and will become effective September 1, 2012. New Standard 3.4 will be published in the Washington Reports and become effective on September 1, 2013.

DATED at Olympia, Washington this 15th day of June, 2012.

	Madsen, C.J.
_____	_____
Chambers, J.	_____
_____	_____
J. M. Johnson, J.	Stephens, J.
_____	_____
Wiggins, J.	Gonzales, J.
_____	_____

STANDARDS FOR INDIGENT DEFENSE

The following Standards for Indigent Defense are adopted pursuant to CrR 3.1, CrRLJ 3.1 and JuCR 9.2 and shall have an effective date concurrent with the effectiveness of amendments to those rules approved by the Court July 8, 2010 (effective July 1, 2012);

Standard 3: Caseload Limits and Types of Cases

3.1 The contract or other employment agreement or government budget shall specify the types of cases for which representation shall be provided and the maximum number of cases which each attorney shall be expected to handle.

3.2 The caseload of public defense attorneys shall allow each lawyer to give each client the time and effort necessary to ensure effective representation. Neither defender organizations, county offices, contract attorneys nor assigned counsel should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation. As used in this Standard, "quality representation" is intended to describe the minimum level of attention, care, and skill that Washington citizens would expect of their state's criminal justice system.

3.3 General Considerations

Caseload limits reflect the maximum caseloads for fully supported full-time defense attorneys for cases of average complexity and effort in each case type specified. Caseload limits assume a reasonably even distribution of cases throughout the year.

The increased complexity of practice in many areas will require lower caseload limits. The maximum caseload limit should be adjusted downward when the mix of case assignments is weighted toward offenses or case types that demand more investigation, legal research and writing, use of experts, use of social workers, or other expenditures of time and resources. Attorney caseloads should be assessed by the

workload required, and cases and types of cases should be weighted accordingly.

If a defender or assigned counsel is carrying a mixed caseload including cases from more than one category of cases, these standards should be applied proportionately to determine a full caseload. In jurisdictions where assigned counsel or contract attorneys also maintain private law practices, the caseload should be based on the percentage of time the lawyer devotes to public defense.

The experience of a particular attorney is a factor in the composition of cases in the attorney's caseload.

The following types of cases fall within the intended scope of the caseload limits for criminal and juvenile offender cases in Standard 3.4 and must be taken into account when assessing an attorney's numerical caseload: partial case representations, sentence violations, specialty or therapeutic courts, transfers, extraditions, representation of material witnesses, petitions for conditional release or final discharge, and other matters that do not involve a new criminal charge.

Definition of case: A case is defined as the filing of a document with the court naming a person as defendant or respondent, to which an attorney is appointed in order to provide representation. In courts of limited jurisdiction multiple citations from the same incident can be counted as one case.

3.4 Caseload Limits

The caseload of a full-time public defense attorney or assigned counsel should not exceed the following:

- 150 Felonies per attorney per year; or
- 300 Misdemeanor cases per attorney per year or, in jurisdictions that have not adopted a numerical case weighting system as described in this Standard, 400 cases per year; or
- 250 Juvenile Offender cases per attorney per year; or
- 80 open Juvenile Dependency cases per attorney; or
- 250 Civil Commitment cases per attorney per year; or

1 Active Death Penalty trial court case at a time plus a limited number of non death penalty cases compatible with the time demand of the death penalty case and consistent with the professional requirements of Standard 3.2 or

36 Appeals to an appellate court hearing a case on the record and briefs per attorney per year. *(The 36 standard assumes experienced appellate attorneys handling cases with transcripts of an average length of 350 pages. If attorneys do not have significant appellate experience and/or the average transcript length is greater than 350 pages, the caseload should be accordingly reduced.)*

Full time Rule 9 interns who have not graduated from law school may not have caseloads that exceed twenty-five percent (25%) of the caseload limits established for full time attorneys. *[Effective September 1, 2013]*

3.5 Case Counting

The local government entity responsible for employing, contracting with or appointing public defense attorneys should adopt and publish written policies and procedures to implement a numerical case-weighting system to count cases. If such policies and procedures are not adopted and published, it is presumed that attorneys are not engaging in case weighting. A numerical case weighting system must:

- A. recognize the greater or lesser workload required for cases compared to an average case based on a method that adequately assesses and documents the workload involved;

B. be consistent with these Standards, professional performance guidelines, and the Rules of Professional Conduct;

C. not institutionalize systems or practices that fail to allow adequate attorney time for quality representation; and

D. be periodically reviewed and updated to reflect current workloads; and

E. be filed with the State of Washington Office of Public Defense.

Cases should be assessed by the workload required. Cases and types of cases should be weighted accordingly. Cases which are complex, serious, or contribute more significantly to attorney workload than average cases should be weighted upwards. In addition, a case weighting system should consider factors that might justify a case weight of less than one case.

Notwithstanding any case weighting system, resolutions of cases by pleas of guilty to criminal charges on a first appearance or arraignment docket are presumed to be rare occurrences requiring careful evaluation of the evidence and the law, as well as thorough communication with clients, and must be counted as one case.

3.6 Case Weighting

The following are some examples of situations where case weighting might result in representations being weighted as more or less than one case. The listing of specific examples is not intended to suggest or imply that representations in such situations should or must be weighted at more or less than one case, only that they may be, if established by an appropriately adopted case weighting system.

A. Case Weighting Upwards: Serious offenses or complex cases that demand more-than-average investigation, legal research, writing, use of experts, use of social workers and/or expenditures of time and resources should be weighted upwards and counted as more than one case.

B. Case Weighting Downward: Listed below are some examples of situations where case weighting might justify representations being weighted less than one case. However, care must be taken because many such representations routinely involve significant work and effort and should be weighted at a full case or more.

i. Cases that result in partial representations of clients, including client failures to appear and recommencement of proceedings, preliminary appointments in cases in which no charges are filed, appearances of retained counsel, withdrawals or transfers for any reason, or limited appearances for a specific purpose (not including representations of multiple cases on routine dockets).

ii. Cases in the criminal or offender case type that do not involve filing of new criminal charges, including sentence violations, extraditions, representations of material witnesses, and other matters or representations of clients that do not involve new criminal charges. Non-complex sentence violations should be weighted as at least 1/3 of a case.

iii. Cases in specialty or therapeutic courts if the attorney is not responsible for defending the client against the underlying charges before or after the client's participation in the specialty or therapeutic court. However, case weighting must recognize that numerous hearings and extended monitoring of client cases in such courts significantly contribute to attorney workload and in many instances such cases may warrant allocation of full case weight or more.

iv. Cases on a criminal or offender first appearance or arraignment docket where the attorney is designated, appointed or contracted to represent groups of clients on that docket without an expectation of further or continuing representation and which are not resolved at that time (except by dismissal). In such circumstances, consideration should be given to adjusting the caseload limits appropriately, recognizing that case weighting must reflect that attorney workload includes the time needed for appropriate client contact and preparation as well as the appearance time spent on such dockets.

v. Representation of a person in a court of limited jurisdiction on a charge which, as a matter of regular practice in the court where the case is pending, can be and is resolved at an early stage of the proceeding by a diversion, reduction to an infraction, stipulation on continuance, or other alternative non-criminal disposition that does not involve a finding of guilt. Such cases should be weighted as at least 1/3 of a case.

Related Standards

American Bar Association, *Standards for Criminal Justice*, 4-1.2, 5-4.3.

American Bar Association *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*. [[Link](#)]

American Bar Association, *Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation*, May 13, 2006, *Formal Opinion 06-441*. [[Link](#)]

The American Council of Chief Defenders *Statement on Caseloads and Workloads*, (2007). [[Link](#)]

American Bar Association *Eight Guidelines of Public Defense Related to Excessive Caseloads*. [[Link](#)]

National Advisory Commission on Criminal Standards and Goals, *Task Force on Courts*, 1973, Standard 13.12.

American Bar Association *Disciplinary Rule 6-101*.

American Bar Association *Ten Principles of a Public Defense Delivery System*. [[Link](#)]

ABA Standards of Practice for Lawyers who Represent Children in Abuse & Neglect Cases, (1996) American Bar Association, Chicago, IL.

The American Council of Chief Defenders *Ethical Opinion 03-01* (2003).

National Legal Aid and Defender Association, *Standards for Defender Services*, Standards IV-I.

National Legal Aid and Defender Association, *Model Contract for Public Defense Services* (2002). [[Link](#)]

NACC Recommendations for Representation of Children in Abuse and Neglect Cases (2001). [[Link](#)]

City of Seattle Ordinance Number: 121501 (2004). [[Link](#)]

Seattle-King County Bar Association Indigent Defense Services Task Force, Guideline Number 1.

Washington State Office of Public Defense, *Parents Representation Program Standards Of Representation (2009)*. [[Link](#)]

Keeping Defender Workloads Manageable, Bureau of Justice Assistance, U.S. Department of Justice, Indigent Defense Series #4 (Spangenberg Group, 2001). [[Link](#)]

5.2 Administrative Costs

A. Contracts for public defense services shall provide for or include administrative costs associated with providing legal representation. These costs should include but are not limited to travel, telephones, law library, including electronic legal research, financial accounting, case management systems, computers and software, office space and supplies, training, meeting the reporting requirements imposed by these standards, and other costs necessarily incurred in the day-to-day management of the contract.

B. Public defense attorneys shall have 1) access to an office that accommodates confidential meetings with clients and 2) a postal address, and adequate telephone services to ensure prompt response to client contact.

6.1 Investigators

Public defense attorneys shall use investigation services as appropriate.

Standard 13: Limitations on Private Practice

Private attorneys who provide public defense representation shall set limits on the amount of privately retained work which can be accepted. These limits shall be based on the percentage of a full-time caseload which the public defense cases represent.

Standard 14: Qualifications of Attorneys

14.1 In order to assure that indigent accused receive the effective assistance of counsel to which they are constitutionally entitled, attorneys providing defense services shall meet the following minimum professional qualifications:

A. Satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court; and

B. Be familiar with the statutes, court rules, constitutional provisions, and case law relevant to their practice area; and

C. Be familiar with the Washington Rules of Professional Conduct; and

D. Be familiar with the Performance Guidelines for Criminal Defense Representation approved by the Washington State Bar Association; and

E. Be familiar with the consequences of a conviction or adjudication, including possible immigration consequences and the possibility of civil commitment proceedings based on a criminal conviction; and

F. Be familiar with mental health issues and be able to identify the need to obtain expert services; and

G. Complete seven hours of continuing legal education within each calendar year in courses relating to their public defense practice.

14.2 Attorneys' qualifications according to severity or type of case¹:

A. Death Penalty Representation. Each attorney acting as lead counsel in a criminal case in which the death penalty has been or may be decreed and which the decision to seek the death penalty has not yet been made shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. At least five years criminal trial experience; and
- iii. Have prior experience as lead counsel in no fewer than nine jury trials of serious and complex cases which were tried to completion; and
- iv. Have served as lead or co-counsel in at least one aggravated homicide case; and
- v. Have experience in preparation of mitigation packages in aggravated homicide or persistent offender cases; and
- vi. Have completed at least one death penalty defense seminar within the previous two years; and
- vii. Meet the requirements of SPRC 2.²

The defense team in a death penalty case should include, at a minimum, the two attorneys appointed pursuant to SPRC 2, a mitigation specialist and an investigator. Psychiatrists, psychologists and other experts and support personnel should be added as needed.

B. Adult Felony Cases - Class A

Each attorney representing a defendant accused of a Class A felony as defined in RCW 9A.20.020 shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Either:
 - a. has served two years as a prosecutor; or
 - b. has served two years as a public defender; or two years in a private criminal practice; and
 - iii. Has been trial counsel alone or with other counsel and handled a significant portion of the trial in three felony cases that have been submitted to a jury.

C. Adult Felony Cases - Class B Violent Offense

Each attorney representing a defendant accused of a Class B violent offense as defined in RCW 9A.20.020 shall meet the following requirements.

- i. The minimum requirements set forth in Section 1; and
- ii. Either:
 - a. has served one year as a prosecutor; or
 - b. has served one year as a public defender; or one year in a private criminal practice; and
 - iii. Has been trial counsel alone or with other counsel and handled a significant portion of the trial in two Class C felony cases that have been submitted to a jury.

D. Adult Sex Offense Cases

A list of attorneys who meet the requirements of proficiency and experience, and who have demonstrated that they are learned in the law of capital punishment by virtue of training or experience, and thus are qualified for appointment in death penalty trials and for appeals will be recruited and maintained by a panel created by the Supreme Court. All counsel for trial and appeal must have demonstrated the proficiency and commitment to quality representation which is appropriate to a capital case. Both counsel at trial must have five years' experience in the practice of criminal law be familiar with and experienced in the utilization of expert witnesses and evidence, and not be presently serving as appointed counsel in another active trial level death penalty case. One counsel must be, and both may be, qualified for appointment in capital trials on the list, unless circumstances exist such that it is in the defendant's interest to appoint otherwise qualified coun-

sel learned in the law of capital punishment by virtue of training or experience. The trial court shall make findings of fact if good cause is found for not appointing list counsel.

At least one counsel on appeal must have three years' experience in the field of criminal appellate law and be learned in the law of capital punishment by virtue of training or experience. In appointing counsel on appeal, the Supreme Court will consider the list, but will have the final discretion in the appointment of counsel. [\[Link\]](#)

Each attorney representing a client in an adult sex offense case shall meet the following requirements:

- i. The minimum requirements set forth in Section 1 and Section 2(C); and
- ii. Been counsel alone of record in an adult or juvenile sex offense case or shall be supervised by or consult with an attorney who has experience representing juveniles or adults in sex offense cases.

E. Adult Felony Cases - All other Class B Felonies, Class C Felonies, Probation or Parole Revocation

Each attorney representing a defendant accused of a Class B felony not defined in Section 2 (C) or (D) above or a Class C felony, as defined in RCW 9A.20.020, or involved in a probation or parole revocation hearing shall meet the following requirements:

- i. The minimum requirements set forth in Section 1, and
- ii. Either:
 - a. has served one year as a prosecutor; or
 - b. has served one year as a public defender; or one year in a private criminal practice; and
 - iii. Has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury; and
 - iv. Each attorney shall be accompanied at his or her first felony trial by a supervisor if available.

F. Persistent Offender (Life Without Possibility of Release) Representation

Each attorney acting as lead counsel in a "two-strikes" or "three strikes" case in which a conviction will result in a mandatory sentence of life in prison without parole shall meet the following requirements:

- i. The minimum requirements set forth in Section 1;³ and
- ii. Have at least:
 - a. four years criminal trial experience; and
 - b. one year experience as a felony defense attorney; and
 - c. experience as lead counsel in at least one Class A felony trial; and
 - d. experience as counsel in cases involving each of the following:
 1. Mental health issues; and
 2. Sexual offenses, if the current offense or a prior conviction that is one of the predicate cases resulting in the possibility of life in prison without parole is a sex offense; and
 3. Expert witnesses; and
 4. One year of appellate experience or demonstrated legal writing ability.

G. Juvenile Cases - Class A

Each attorney representing a juvenile accused of a Class A felony shall meet the following requirements:

- i. The minimum requirements set forth in Section 1, and
- ii. Either:
 - a. has served one year as a prosecutor; or

- b. has served one year as a public defender; one year in a private criminal practice; and
- iii. Has been trial counsel alone of record in five Class B and C felony trials; and
- iv. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor, if available.

H. Juvenile Cases - Classes B and C

Each attorney representing a juvenile accused of a Class B or C felony shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Either:
 - a. has served one year as a prosecutor; or
 - b. has served one year as a public defender; or one year in a private criminal practice, and
 - iii. has been trial counsel alone in five misdemeanor cases brought to a final resolution; and
 - iv. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor if available.

I. Juvenile Sex Offense Cases

Each attorney representing a client in a juvenile sex offense case shall meet the following requirements:

- i. The minimum requirements set forth in Section 1 and Section 2(H); and
- ii. Been counsel alone of record in an adult or juvenile sex offense case or shall be supervised by or consult with an attorney who has experience representing juveniles or adults in sex offense cases.

J. Juvenile Status Offenses Cases. Each attorney representing a client in a "Becca" matter shall meet the following requirements:

- i. The minimum requirements as outlined in Section 1; and
- ii. Either:
 - a. have represented clients in at least two similar cases under the supervision of a more experienced attorney or completed at least three hours of CLE training specific to "status offense" cases; or
 - b. have participated in at least one consultation per case with a more experienced attorney who is qualified under this section.

K. Misdemeanor Cases

Each attorney representing a defendant involved in a matter concerning a simple misdemeanor or gross misdemeanor or condition of confinement, shall meet the requirements as outlined in Section 1.

L. Dependency Cases

Each attorney representing a client in a dependency matter shall meet the following requirements:

- i. The minimum requirements as outlined in Section 1; and
- ii. Attorneys handling termination hearings shall have six months dependency experience or have significant experience in handling complex litigation.
- iii. Attorneys in dependency matters should be familiar with expert services and treatment resources for substance abuse.
- iv. Attorneys representing children in dependency matters should have knowledge, training, experience, and ability in communicating effectively with children, or have participated in at least one consultation per case either with a state

Office of Public Defense resource attorney or other attorney qualified under this section.

M. Civil Commitment Cases

Each attorney representing a respondent shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Each staff attorney shall be accompanied at his or her first 90 or 180 day commitment hearing by a supervisor; and
- iii. Shall not represent a respondent in a 90 or 180 day commitment hearing unless he or she has either:
 - a. served one year as a prosecutor, or
 - b. served one year as a public defender, or one year in a private civil commitment practice, and
 - c. been trial counsel in five civil commitment initial hearings; and
 - iv. Shall not represent a respondent in a jury trial unless he or she has conducted a felony jury trial as lead counsel; or been co-counsel with a more experienced attorney in a 90 or 180 day commitment hearing.

N. Sex Offender "Predator" Commitment Cases

Generally, there should be two counsel on each sex offender commitment case. The lead counsel shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and
- ii. Have at least:
 - a. Three years criminal trial experience; and
 - b. One year experience as a felony defense attorney or one year experience as a criminal appeals attorney; and
 - c. Experience as lead counsel in at least one felony trial; and
 - d. Experience as counsel in cases involving each of the following:
 1. Mental health issues; and
 2. Sexual offenses; and
 3. Expert witnesses; and
 - e. Familiarity with the Civil Rules; and
 - f. One year of appellate experience or demonstrated legal writing ability.

Other counsel working on a sex offender commitment cases should meet the Minimum Requirements in Section 1 and have either one year experience as a public defender or significant experience in the preparation of criminal cases, including legal research and writing and training in trial advocacy.

O. Contempt of Court Cases

Each attorney representing a respondent shall meet the following requirements:

- i. the minimum requirements set forth in Section 1; and
- ii. Each attorney shall be accompanied at his or her first three contempt of court hearings by a supervisor or more experienced attorney, or participate in at least one consultation per case with a state Office of Public Defense resource attorney or other attorney qualified in this area of practice.

P. Specialty Courts

Each attorney representing a client in a specialty court (e.g., mental health court, drug diversion court, homelessness court) shall meet the following requirements:

- i. The minimum requirements set forth in Section 1; and

- ii. The requirements set forth above for representation in the type of practice involved in the specialty court (e.g., felony, misdemeanor, juvenile); and

- iii. Be familiar with mental health and substance abuse issues and treatment alternatives.

14.3 Appellate Representation.

Each attorney who is counsel for a case on appeal to the Washington Supreme Court or to the Washington Court of Appeals shall meet the following requirements:

A. The minimum requirements as outlined in Section 1; and

B. Either:

- i. has filed a brief with the Washington Supreme Court or any Washington Court of Appeals in at least one criminal case within the past two years; or

- ii. has equivalent appellate experience, including filing appellate briefs in other jurisdictions, at least one year as an appellate court or federal court clerk, extensive trial level briefing or other comparable work.

C. Attorneys with primary responsibility for handling a death penalty appeal shall have at least five years' criminal experience, preferably including at least one homicide trial and at least six appeals from felony convictions, and meet the requirements of SPRC 2.

RALJ Misdemeanor Appeals to Superior Court:

Each attorney who is counsel alone for a case on appeal to the Superior Court from a Court of Limited Jurisdiction should meet the minimum requirements as outlined in Section 1, and have had significant training or experience in either criminal appeals, criminal motions practice, extensive trial level briefing, clerking for an appellate judge, or assisting a more experienced attorney in preparing and arguing an RALJ appeal.

14.4 Legal Interns

A. Legal interns must meet the requirements set out in APR 9.

B. Legal interns shall receive training pursuant to APR 9 and in offices of more than seven attorneys, an orientation and training program for new attorneys and legal interns should be held.

¹ Attorneys working toward qualification for a particular category of cases under this standard may associate with lead counsel who is qualified under this standard for that category of cases.

² SPRC 2 APPOINTMENT OF COUNSEL

At least two lawyers shall be appointed for the trial and also for the direct appeal. The trial court shall retain responsibility for appointing counsel for trial. The Supreme Court shall appoint counsel for the direct appeal. Notwithstanding RAP 15.2 (f) and (h), the Supreme Court will determine all motions to withdraw as counsel on appeal.

³ RCW 10.101.060 (1)(a)(iii) provides that counties receiving funding from the state Office of Public Defense under that statute must require "attorneys who handle the most serious cases to meet specified qualifications as set forth in the Washington state bar association endorsed standards for public defense services or participate in at least one case consultation per case with office of public defense resource attorneys who are so qualified. The most serious cases include all cases of murder in the first or second degree, persistent offender cases, and class A felonies."

CERTIFICATION OF COMPLIANCE

"Applicable Standards" required by CrR 3.1/CrRLJ 3.1/JuCR 9.2

For criminal and juvenile offender cases, a signed certification of compliance with Applicable Standards must be filed by an appointed attorney by separate written certification on a quarterly basis in each court in which the attorney has been appointed as counsel.

The certification must be in substantially the following form:

SEPARATE CERTIFICATION FORM

_____ Court of Washington for	Certification of Appointed Counsel of Compliance with Standards Required by CrR 3.1/CrRLJ 3.1/JuCR 9.2
----------------------------------	---

The undersigned attorney hereby certifies:

1. Approximately ___% of my total practice time is devoted to indigent defense cases.
2. I am familiar with the applicable Standards adopted by the Supreme Court for attorneys appointed to represent indigent persons and that:
 - a. **Basic Qualifications:** I meet the minimum basic professional qualifications in Standard 14.1.
 - b. **Office:** I have access to an office that accommodates confidential meetings with clients, and I have a postal address and adequate telephone services to ensure prompt response to client contact, in compliance with Standard 5.2.
 - c. **Investigators:** I have investigators available to me and will use investigation services as appropriate, in compliance with Standard 6.1.
 - d. **Caseload:** I will comply with Standard 3.2 during representation of the defendant in my cases. [Effective 9/1/13: I should not accept a greater number of cases (or a proportional mix of different case types) than specified in Standard 3.4, prorated if the amount of time spent for indigent defense is less than full time, and taking into account the case counting and weighting system applicable in my jurisdiction.]

Defendant's Lawyer, WSBA# _____	Date _____
---------------------------------	------------

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

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

WSR 12-14-002

PUBLIC RECORDS OFFICER
CENTRAL WASHINGTON UNIVERSITY

[Filed June 21, 2012, 8:59 a.m.]

Pursuant to RCW 42.56.580, the public records officer for the Central Washington University is Sandra Colson, 400 East University Way, Ellensburg, WA 98926-7501, phone (509) 963-2156, fax (509) 963-3206, e-mail colsons@cwu.edu.

James L. Gaudino
President

WSR 12-14-008

NOTICE OF PUBLIC MEETINGS
SHORELINE COMMUNITY COLLEGE

[Filed June 21, 2012, 11:11 a.m.]

In compliance with the Open Public Meetings Act, the Shoreline Community College board of trustees will participate in a training event offered by the Trustees Association of Community and Technical Colleges (TACTC) from 1:00 p.m. on Sunday, June 24, 2012, through approximately 1:00 p.m. on Tuesday, June 26, 2012. No official action will be taken during this event (session) as it is for training purposes only.

The training event will take place at Big Bend Community College, 7662 Chanute Street N.E., Moses Lake, WA 98837.

Please call (206) 546-4552 or e-mail Lori Y. Yonemitsu at lyonemitsu@shoreline.edu if you need further information.

WSR 12-14-009

NOTICE OF PUBLIC MEETINGS
RECREATION AND CONSERVATION
OFFICE

(Salmon Recovery Funding Board)

[Filed June 21, 2012, 11:28 a.m.]

The salmon recovery funding board is changing the location of the following regular meeting:

FROM: August 23, 2012, conference call.

TO: August 23, 2012, Natural Resources Building Room 172, Olympia, Washington, meeting time: 9:00 a.m. until noon.

For further information, please contact Rebecca Connolly at (360) 902-2637 or check recreation and conservation office's (RCO) web page at http://www.rco.wa.gov/boards/srfb_meetings.shtml.

The RCO schedules all public meetings at barrier free sites. Persons who need special assistance may contact Leslie Frank at (360) 902-0220 or by e-mail at leslie.frank@rco.wa.gov.

WSR 12-14-014
NOTICE OF PUBLIC MEETINGS
BATES TECHNICAL COLLEGE
 [Filed June 21, 2012, 2:17 p.m.]

Following is the schedule of regular meetings for the Bates Technical College board of trustees for fiscal year 2012-2013:

Date	Time	Location
July 31, 2012	3:00 p.m.	Bates Downtown Campus 1101 South Yakima Avenue Tacoma, WA 98405
September 25, 2012	3:00 p.m.	Bates Downtown Campus 1101 South Yakima Avenue Tacoma, WA 98405
October 30, 2012	3:00 p.m.	Bates Mohler Campus 2320 South 19th Street Tacoma, WA 98405
November 27, 2012	3:00 p.m.	Bates Downtown Campus 1101 South Yakima Avenue Tacoma, WA 98405
December 18, 2012	3:00 p.m.	Bates Downtown Campus 1101 South Yakima Avenue Tacoma, WA 98405
January 29, 2013	3:00 p.m.	Bates Downtown Campus 1101 South Yakima Avenue Tacoma, WA 98405
February 26, 2013	3:00 p.m.	Bates Downtown Campus 1101 South Yakima Avenue Tacoma, WA 98405
March 26, 2013	3:00 p.m.	Bates Downtown Campus 1101 South Yakima Avenue Tacoma, WA 98405
April 30, 2013	3:00 p.m.	Bates South Campus 2201 South 78th Street Tacoma, WA 98409
May 28, 2013	3:00 p.m.	Bates Downtown Campus 1101 South Yakima Avenue Tacoma, WA 98405
June 25, 2013	3:00 p.m.	Bates Downtown Campus 1101 South Yakima Avenue Tacoma, WA 98405

If you need further information contact Bates Technical College, attn: Geof Kaufman, 1101 South Yakima Avenue, Tacoma, WA 98405-4895, office (253) 680-7105, fax (253) 680-7101, gkaufman@bates.ctc.edu, www.bates.ctc.edu.

WSR 12-14-015
INTERPRETIVE OR POLICY STATEMENT
HEALTH CARE AUTHORITY
 [Filed June 21, 2012, 2:29 p.m.]

Notice of Interpretive or Policy Statement

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the health care authority (HCA).

HCA

Legal and Administrative Services

Document Title: Provider Notice #12-39.

Subject: Medicaid program of the HCA will require hospitals, kidney centers, home health agencies, and hospice agencies to identify an attending, operating, or other provider.

Effective Date: July 1, 2012.

Effective for dates of service on and after September 4, 2012, the Medicaid program of HCA will require hospitals, kidney centers, home health agencies, and hospice agencies to identify an attending, operating, or other provider in agreement with recent guidelines published by the National Uniform Billing Committee on the institutional claim form submitted to the agency for payment.

For additional information, contact Amber Dassow, HCA, P.O. Box 45504, phone (360) 725-1349, TDD/TTY 1-800-848-5429, fax (360) 586-9727, e-mail dassoal@hca.wa.gov, web site <http://www.hca.wa.gov/>.

WSR 12-14-016
INTERPRETIVE OR POLICY STATEMENT
HEALTH CARE AUTHORITY
 [Filed June 21, 2012, 2:32 p.m.]

Notice of Interpretive or Policy Statement

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the health care authority (HCA).

HCA

Legal and Administrative Services

Document Title: Provider Notice #12-35.

Subject: Wheelchairs, durable medical equipment (DME) and supplies.

Effective Date: July 1, 2012.

Effective July 1, 2012, changes to the wheelchairs, durable medical equipment, and supplies Medicaid provider guide include:

In the coverage table, updating code E0966, manual wheelchair accessory with headrest extension, now covered with prior authorization.

In the expedited prior authorization criteria coding list, correcting EPA number 720, hospitable [hospital] bed with mattress with or without bed rails, to *include* full-time caregivers (#5). (This change reflects the current WAC.)

For additional information, contact Amber Dassow, HCA, P.O. Box 45504, phone (360) 725-1349, TDD/TTY 1-

800-848-5429, fax (360) 586-9727, e-mail dassoal@hca.wa.gov, web site <http://www.hca.wa.gov/>.

WSR 12-14-019
NOTICE OF PUBLIC MEETINGS
BELLEVUE COLLEGE
 [Filed June 22, 2012, 2:13 p.m.]

The tentative meeting of the board of trustees of Community College District VIII, state of Washington, 3000 Landerholm Circle S.E., Bellevue, WA, called for Wednesday, June 27, 2012, in Room B201 at 12:00 p.m. has been cancelled.

WSR 12-14-021
AGENDA
ATTORNEY GENERAL'S OFFICE
 [Filed June 22, 2012, 3:50 p.m.]

Semi-Annual Rule-Making Agenda
July 1 through December 31, 2012

This is the office of the attorney general's semi-annual rule-making agenda for publication in the Washington State Register pursuant to RCW 34.05.314.

If you have questions about this rule-making agenda, please contact Rebecca Podszus, Rules Coordinator, P.O. Box 40100, Olympia, WA 98504-0100, phone (360) 586-2683, fax (360) 664-0228, e-mail rebeccap3@atg.gov.

WAC Citation	Subject Matter	Current Activity		
		Preproposal (CR-101)	Proposed (CR-102) or Expedited (CR-105)	Permanent (CR-103)
44-06	Amendment to the AGO rules on public records	Filed March 12, 2008, WSR 08-07-032		

Additional activity on the proposed amendment to the attorney general's office rules on public records is currently suspended. Action may be pursued in the future.

Rebecca Podszus
 Rules Coordinator

WSR 12-14-023
AGENDA
DEPARTMENT OF CORRECTIONS
 [Filed June 25, 2012, 11:11 a.m.]

Following is the department of corrections' semi-annual rule development agenda for publication in the Washington State Register pursuant to RCW 34.05.314.

There may be additional rule-making activity not on the agenda as conditions warrant.

RULE DEVELOPMENT CALENDAR
JULY 1-DECEMBER 31, 2012

WAC Chapter or Section	Purpose
137-04	Introductory information.
137-56	Community residential programs, work/training release.
137-58	Guideline for implementing the State Environmental Policy Act.
137-67	Transfer of citizens of foreign countries.

WAC Chapter or Section	Purpose
137-104	Community custody violation hearings.
137-30	Earned release time.

In accordance with Executive Order 11-03, the governor's continuing moratorium on rule making, pursuing rule making on any of the items listed above is contingent upon the department's determination that the rule making is critical to the department's mission.

John Nispel
 Rules Coordinator

WSR 12-14-024
AGENDA
EASTERN WASHINGTON UNIVERSITY

[Filed June 25, 2012, 12:55 p.m.]

Semi-Annual Agenda for Rules Under Development

July 2012

Pursuant to RCW 34.05.314, the following is Eastern Washington University's semi-annual agenda for Washington Administrative Code (WAC) rules under development for July through December 2012. Additional rule-making activity, not on the agenda, may occur as conditions warrant.

1. Rule making for a revision to chapter 172-06 WAC, Organization and operation, is anticipated during the second half of 2012.
2. Rule making for a revision to chapter 172-09 WAC, Administration of duties and obligations required by Initiative 276 — Academic transcripts of Eastern Washington State College students, is anticipated during the second half of 2012.
3. Rule making concerning a revision to chapter 172-144 WAC, Special charges—Financial responsibility, is anticipated during the second half of 2012.
4. Rule making concerning a revision to chapter 172-124 WAC, Disposition of obligations owed to university by students, is anticipated during the second half of 2012.
5. Rule making concerning a revision to chapter 172-66 WAC, Application for a liquor license permitting beer to be sold for on-campus premises consumption, is anticipated during the second half of 2012.

For more information concerning the above rules under review or development, please contact Trent Lutey, University Policy Administrator, Eastern Washington University, 214 Showalter Hall, Cheney, WA 99004, phone (509) 359-6322, fax (509) 359-7036, or e-mail tlutey@ewu.edu.

WSR 12-14-028
NOTICE OF PUBLIC MEETINGS
BOARD OF
PILOTAGE COMMISSIONERS

[Filed June 26, 2012, 10:21 a.m.]

2012 MEETING SCHEDULE

(Revised on June 21)

The Washington state board of pilotage commissioners meets on the second Thursday of each month unless otherwise rescheduled or canceled. Meetings are held at 9:30 a.m., at 2901 Third Avenue, Seattle, WA. Following is the schedule of 2012 regular session board meetings:

- | | |
|---------------------|-----------------|
| January 12 | |
| February 9 | |
| March 8 | March 27 |
| April 12 | Canceled |
| May 10 | May 3 |

- | | |
|-----------------------|--------------------|
| June 14 | June 21 |
| July 12 | Canceled |
| August 9 | |
| September 13 | |
| October 11 | October 24 |
| November 8 | November 15 |
| December 13 | |

In accordance with RCW 42.30.075, this schedule of regular meeting dates for the board of pilotage commissioners is filed with the office of the code reviser for publication in the Washington State Register.

WSR 12-14-030
NOTICE OF PUBLIC MEETINGS
DEPARTMENT OF HEALTH

(Board of Physical Therapy)

[Filed June 26, 2012, 11:41 a.m.]

In accordance with the Open Public Meeting[s] Act (chapter 42.30 RCW) and the Administrative Procedure Act (chapter 34.05 RCW), the following is the schedule of regular meetings for the department of health, board of physical therapy, for the year 2012. The board of physical therapy meetings are open to the public, and access for persons with disabilities may be arranged with advance notice; please contact the staff person below for more information.

Agendas for the meetings listed below are made available in advance via listserv and the department of health web site (see below). Every attempt is made to ensure that the agenda is up-to-date. However, the board of physical therapy reserves the right to change or amend agendas at the meeting.

Date	Time	Location
January 30, 2012	10:00 a.m.	Kent
March 21, 2012	10:00 a.m.	Tumwater
May 21, 2012	10:00 a.m.	Kent
July 23, 2012	10:00 a.m.	Kent <u>Conference Call</u>
September 24, 2012	10:00 a.m.	Kent
December 3, 2012	10:00 a.m.	Kent

If you need further information, please contact Kris Waidely, Program Manager, Board of Physical Therapy, Washington Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, (360) 236-4847, (360) 236-2901, kris.waidely@doh.wa.gov, www.doh.wa.gov.

Please be advised the board of physical therapy is required to comply with the Public Disclosure Act, chapter 42.56 RCW. This act establishes a strong state mandate in favor of disclosure of public records. As such, the information you submit to the board, including personal information, may ultimately be subject to disclosure as a public record.

WSR 12-14-031
RULES COORDINATOR
COMMISSION ON
HISPANIC AFFAIRS

[Filed June 26, 2012, 11:46 a.m.]

Pursuant to RCW 34.05.312, the rules coordinator for the Washington state commission on Hispanic affairs is Marena Lear, 210 11th Avenue, Suite 301A, Olympia, WA 98504, phone (360) 725-5661, fax (360) 586-9501, e-mail mlear@cha.wa.gov.

Uriel Iniguez
 Executive Director

WSR 12-14-032
CLEMENCY AND PARDONS BOARD

[Filed June 26, 2012, 11:53 a.m.]

Notice of September 2012 Quarterly Hearing

The Washington state clemency and pardons Board hereby gives notice of its quarterly hearing scheduled for September 7, 2012, at 10:00 a.m., in Senate Hearing Room 3, of the John A. Cherberg Building, Olympia, Washington. The following petitions will be considered by the board¹:

¹ At the board's discretion, the order of the petitions to be called for hearing is subject to change.

<u>Petitioner:</u>	<u>Relief Requested:</u>
Longworth, Arthur	Commutation
Pritchard, Michael	Commutation
Le, Robert	Pardon
Walker, Kevin	Pardon
Hough, Kelly	Pardon
Nevers, Peter	Pardon

WSR 12-14-038
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed June 26, 2012, 4:10 p.m.]

Notice of Interpretive or Policy Statement

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the department of social and health services.

Economic Services Administration
Division of Child Support (DCS)

Document Title: Policy Clarification Memo 12-004: Proper Use of the Order to Withhold and Deliver, DSHS 09-286.

Subject: Proper use of the order to withhold and deliver, DSHS 09-286.

Effective Date: June 22, 2012.

Document Description: This policy clarification memo explains how DCS procedures for withholding from bank accounts have been affected by changes to the way federal benefits are paid to recipients.

To receive a copy of the interpretive or policy statements, contact Jeff Kildahl, DCS, P.O. Box 11520, Tacoma, WA 98411-5520, phone (360) 664-5278, TDD/TTY (360) 753-9122, fax (360) 586-3274, e-mail Kildaja@dshs.wa.gov, web site <http://www.dshs.wa.gov/dcs/>.

WSR 12-14-043
RULES COORDINATOR
WASHINGTON STATE LOTTERY

[Filed June 27, 2012, 11:14 a.m.]

Pursuant to RCW 34.05.312, the rules coordinator for the lottery is Jana Jones, 814 East 4th Avenue, Olympia, WA 98504, phone (360) 664-4833, fax (360) 586-1039, e-mail jjones@walottery.com.

Jana Jones
 Director of
 Legal Services

WSR 12-14-046
AGENDA
UTILITIES AND TRANSPORTATION
COMMISSION
ENERGY FACILITY SITE
EVALUATION COUNCIL

[Filed June 27, 2012, 2:53 p.m.]

The Washington utilities and transportation commission submits its semi-annual rule development agenda report for publication in the Washington State Register pursuant to RCW 34.05.314. This report also includes the rule development agenda for the energy facility site evaluation council (EFSEC).

Please direct any questions to Kippi Walker at (360) 664-1139 or kwalker@utc.wa.gov.

Utilities and Transportation Commission
Semi-Annual Rules Development Agenda
(July 1 - December 31, 2012)

This report is the utilities and transportation commission's (UTC) semi-annual report rule development agenda for publication in the Washington State Register pursuant to RCW 34.05.314.

Additional rule-making activity not on the agenda may be undertaken to meet conditions not now anticipated.

Dates that are in "bold" print, indicate that filing has occurred. All other dates are projected. The commission maintains a schedule of rule-making activity that is updated several times per month. See <www.utc.wa.gov>.

WAC CHAPTER	TITLE	AGENCY CONTACT	PROPOSED TIMELINE AND STATUS			DESCRIPTION OF POSSIBLE CHANGES
			CR-101	CR-102 OR CR-105	CR-103 HEARING	
CURRENT:						
WAC 480-07 480-120 480-123	Telecom regulatory fee rule making.	Tim Zawislak (360) 664-1294	10/5/11	To be determined	To be determined	As authorized in the 2011-2013 state biennial budget, consider the need to establish fees to recover the costs of performing Telecom Act services from telecommunications companies who receive these services.
WAC 480-108	Interconnection with electric generators.	Ann Rendahl (360) 664-1144	12/21/11	10/24/12	12/13/12	Consider amending existing rules in chapter 480-108 WAC to address issues raised by stakeholders in Docket UE-110667, and identified in UTC report to the legislature in that docket.
New WAC chapter	Wastewater companies.	Chris Rose (360) 664-1303	6/22/11 (This rule making is on hold until stakeholders fund the rule making)	To be determined	To be determined	Consider new rules requiring wastewater companies to obtain a certificate of public convenience and necessity prior to owning or developing a "system of sewerage" that provides service to one hundred or more customers for compensation to implement SSB 5034.
WAC 480-75-200 480-93-200	Pipeline damage reporting rule making.	Dave Lykken (360) 664-1219	3/21/12	10/24/12	12/13/12	Consider new rules requiring intrastate pipeline companies to report damage to their pipelines. These rules are necessary to implement E2SHB 1634.
	Investigation into the need to enhance the safety of natural gas distribution systems.	Mark Vasconi (360) 664-1308	5/18/12	To be determined	To be determined	Consider the need to enhance the safety of natural gas distribution systems and develop appropriate requirements or incentives to accomplish that goal.
WAC 480-110-205 480-110-255	Water threshold rule making.	Penny Ingram (360) 664-1242	N/A - In accordance with RCW 34.05.330 (1) (b)	5/23/12	7/27/12	Consider amending WAC 480-110-205 Application of rules and 480-110-255 Jurisdiction, to increase the maximum average annual revenue per customer used to determine commission jurisdiction over water companies.
WAC 480-120-251	White pages directory rule making.	John Cupp (360) 664-1113	4/18/12	To be determined	To be determined	Consider modification to, or elimination of, the requirement that local exchange companies provide each customer a copy of a telephone directory for the customer's exchange area.

WAC CHAPTER	TITLE	AGENCY CONTACT	PROPOSED TIMELINE AND STATUS			DESCRIPTION OF POSSIBLE CHANGES
			CR-101	CR-102 OR CR-105	CR-103 HEARING	
PROPOSED:						
WAC 480-14 480-15	Motor carriers and household goods carriers.	Dave Pratt (360) 664-1100	To be determined	To be determined	To be determined	Consider updating insurance rules to be consistent with insurance requirements in other transportation industries and clarify that the commission may deny a permit application or cancel a permit if the carrier is put out of service.
WAC 480-90 480-100	Correcting gas and electric meter and billing problems.	Roger Kouchi (360) 664-1101	To be determined	To be determined	To be determined	Consider the need to modify existing rules in chapter 480-90 WAC (gas) and chapter 480-100 WAC (electric) to establish standard time frames in which energy companies must correct meter and billing problems.
"999" sections in various chapters of Title 480 WAC	Adoption by reference expedited rule making.	Mark Vasconi (360) 664-1308		(CR-105) To be determined	N/A	Annual update of the citations to material that's incorporated by reference.
ON-HOLD (Per Executive Orders 10-06 and 11-03):						
WAC 480-120	E911 excise tax clean-up expedited rule making.	William Weinman (360) 664-1109		(CR-105) To be determined	N/A	Amend existing rules and statute references in chapter 480-120 WAC in response to SB 6846.
WAC 480-75 480-93	Pipeline GIS data submission standards.	Dave Lykken (360) 664-1219	To be determined	To be determined	To be determined	Consider the need to establish rules specifying the geographic and pipeline-related data pipeline operators must report to the commission under RCW 80.88.080.
WITHDRAWN (Per Executive Orders 10-06 and 11-03):						
WAC 480-70-016(3)	Solid waste—Definitions rule making.	Penny Ingram (360) 664-1242	5/7/08 Withdrawn 12/8/10 WSR 11-01-059			Consider the circumstances under which a hauler of construction and demolition waste is not required to have a solid waste certificate.
WAC 480-04	Public access to information and records.	Adam Torem (360) 664-1138	9/22/10 Withdrawn 12/7/10 WSR 11-01-049			Review of rules in chapter 480-04 WAC relating to public access to information and records.

**Energy Facility Site Evaluation Council
Semi-annual Rules Development Agenda
(July 1 - December 31, 2012)**

WAC CHAPTER	TITLE	AGENCY CONTACT	PROPOSED TIMELINE AND STATUS			DESCRIPTION OF POSSIBLE CHANGES
			CR-101	CR-102 OR CR-105	CR-103 HEARING	
CURRENT:						
PROPOSED:						
WAC 463-78	Air quality permitting.	Tammy Talburt (360) 664-1359		(CR-105) 8/2012	9/2012	Amend existing rule: 1. In response to EPA rule revisions in 40 C.F.R. Parts 51, 52, 70 and 71 - Greenhouse gas permitting deferment for biomass-fired emission sources.

WAC CHAPTER	TITLE	AGENCY CONTACT	PROPOSED TIMELINE AND STATUS			DESCRIPTION OF POSSIBLE CHANGES
			CR-101	CR-102 OR CR-105	CR-103 HEARING	
						2. To be consistent with department of ecology rule revisions addressing new source review and additional prevention of significant deterioration issues in chapters 173-400 and 173-301 WAC.
ON-HOLD (Per Executive Orders 10-06 and 11-03):						
WAC 463-58	Charges for EFSEC services.	Al Wright (360) 664-1360	To be determined	To be determined	To be determined	Amend existing rule in response to SHB 2527. (Revisions to EFSEC jurisdiction and charges for EFSEC services.)
WAC 463-06 463-58	Administrative rules.	Al Wright (360) 664-1360	To be determined	To be determined	To be determined	Amend existing rules in response to E2SHB 2658. (Administrative revisions resulting from transfer of EFSEC to UTC.)

David W. Danner
Executive Director
and Secretary

WSR 12-14-047
HEALTH CARE AUTHORITY
[Filed June 28, 2012, 8:08 a.m.]

NOTICE

Document Title: Title XIX State Plan Amendment (SPA) 12-022.

Subject: Medicaid state plan changes related to hospital inpatient outlier payment methodology.

Effective Date: August 1, 2012.

Description: The medicaid agency proposes to update its hospital inpatient outlier payment methodology to reflect current agency policy. The agency will be updating the outlier threshold factor and the percent of outlier adjustment factor for both per diem and DRG methods, and also maintain the differentiation between children's and pediatric DRG from all other types of payments.

For additional information, contact Sandy Stith, Office of Hospital Finance, P.O. Box 45500, Olympia, WA 98504, phone (360) 725-1949, TDD/TTY 1-800-848-5429, fax (360) 753-9152, e-mail sandy.stith@hca.wa.gov.

WSR 12-14-049
NOTICE OF PUBLIC MEETINGS
WESTERN WASHINGTON UNIVERSITY
[Filed June 28, 2012, 11:11 a.m.]

Pursuant to RCW 42.30.075, following is a **revised** 2012 schedule of regular meetings of Western Washington University's board of trustees:

Western Washington University's board of trustees approved the following schedule of regular meetings for 2012:

- February 9, 10, 2012
- April 12, 13, 2012
- June 7, 8, 2012
- *August 16, 17, 2012
- October 11, 12, 2012
- December 13, 14, 2012

* August 16 meeting will be held at Lakewood on Lake Whatcom.

With the exception of the August 16 meeting that will be held at Lakewood on Lake Whatcom, all meetings will be held at Western Washington University, 516 High Street, Board Room, Old Main 340, Bellingham, WA, and will begin at 3 p.m. on Thursday and resume at 8 a.m. on Friday, unless otherwise publicly noted. Any questions regarding the meeting schedule can be directed to Elizabeth Sipes, secretary to the board of trustees, at (360) 650-3998.

WSR 12-14-050
DEPARTMENT OF COMMERCE
[Filed June 28, 2012, 11:36 a.m.]

The Washington state department of commerce plans to hold a public hearing on the proposed Washington state plan for the 2013-2014 community services block grant (CSBG).

The plan can be viewed as of July 6, 2012, at <http://www.commerce.wa.gov/site/280/default.aspx>.

The hearing will be held on Monday, August 6, 2012, from 10:00 a.m. - 12:00 p.m. at the Department of Commerce, 2nd Floor Conference Room #230, 1011 Plum Street S.E., Olympia, WA 98504-2525.

Two typewritten copies of all oral testimony are requested. There will be a question and answer period. Written testimony will be accepted until 5:00 p.m., July 10, 2012.

Written testimony for the CSBG hearing should be sent to the attention of Diane Fay, Department of Commerce, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504-2525.

The CSBG plan is available in an alternate format upon request. Meetings sponsored by commerce shall be accessible to persons with disabilities. Accommodations may be arranged with a minimum of ten working days notice, to Monica Bhavnani at (360) 725-2854.

WSR 12-14-055

AGENDA

WASHINGTON STATE UNIVERSITY

[Filed June 29, 2012, 8:38 p.m.]

Semi-Annual Agenda for Rules Under Development
July 2012

Pursuant to RCW 34.05.314, the following is Washington State University's semi-annual agenda for Washington Administrative Code (WAC) rules under development for the period of July 1 through December 31, 2012. Additional rule-making activity not now anticipated may also be added as conditions warrant between semi-annual agendas.

1. WAC 504-36-030 Health and safety regulations—Spectator events—Safety rules, rule-making amendments to the safety rules for spectator events. Filed CR-102 in June 2012. Anticipate filing CR-103 at the end of August 2012.

2. Chapter 504-26 WAC, Standards of conduct for students, rule-making amendments to WSU's standards of conduct for students WACs.

For more information regarding the semi-annual agenda, contact Ralph Jenks, Rules Coordinator, Washington State University, P.O. Box 641225, Pullman, WA 99164-1225, phone (509) 335-2004, e-mail prf.forms@wsu.edu.

Ralph Jenks
Rules Coordinator

WSR 12-14-062

AGENDA

**RECREATION AND CONSERVATION
OFFICE**

(Recreation and Conservation Funding Board)

(Salmon Recovery Funding Board)

[Filed June 29, 2012, 11:14 a.m.]

SEMI-ANNUAL RULE DEVELOPMENT AGENDA

To comply with RCW 34.05.314, the recreation and conservation office (RCO), on behalf of the recreation and conservation funding board (RCFB) and salmon recovery funding board, has prepared the following agenda for rules under development. As required, filing will be made with the code reviser for publication in the State Register by January 31 and July 31 each year. Within three days of publication, the RCO will provide copies to each person so requesting, the director of office of financial management, the rules review committee, and other state agencies that may reasonably be expected to have an interest in this subject.

Contact Dominga Soliz, rules coordinator, (360) 725-3937, Dominga.Soliz@rco.wa.gov.

Rules Development Agenda July 2012 - January 2013		
Subject of possible rule making	Reasons why rules on this subject may be needed and what might be accomplished	Status in response to EO 11-03
Title 286 WAC	Change the agency's name from inter-agency committee for outdoor recreation's to the RCFB and RCO as required in HB 1813 (2007).	Delayed until 2013
Title 286 WAC	Update code references such as the state's public disclosure law, recently changed from chapter 42.17 RCW to chapter 42.56 RCW.	Delayed until 2013
Title 286 WAC	Update section titles to an easier to understand format. Many titles have already been improved to this new format.	Delayed until 2013
WAC 286-04-010	Update definitions.	Delayed until 2013
WAC 286-06-045	Move to a more logical location and clarify the text.	Delayed until 2013

Subject of possible rule making	Reasons why rules on this subject may be needed and what might be accomplished	Status in response to EO 11-03
WAC 286-13-060	Identify accurate sequence for agreement signatures.	Delayed until 2013
Title 286 WAC	Ensure that all language referencing conversions is consistent throughout the WAC.	Delayed until 2013
WAC 286-26-080 and 286-27-040	Update language regarding planning requirements; provide more general guidance.	Delayed until 2013

June 29, 2012
 Dominga Soliz
 Rules Coordinator

WSR 12-14-070
INTERPRETIVE OR POLICY STATEMENT
HEALTH CARE AUTHORITY

[Filed July 2, 2012, 11:12 a.m.]

Notice of Interpretive or Policy Statement

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the health care authority (HCA).

HCA
Legal and Administrative Services

Document Title: Provider Notice #12-38.

Subject: Prosthetic-orthotic devices medicaid provider guide.

Effective Date: July 1, 2012.

Updating the coverage table-

- o For consistency with other shoe codes, adding the limit of one pair every twelve months to codes **A5501, A5503, A5504, A5505, A5506** (related to shoes for diabetics).
- o For consistency with the EPA criteria coding table, adding the limit of one pair of oxford shoes every twelve months to **L3215** and **L3219**.
- o Correcting **L6700**, terminal device hook, by adding prior authorization. (No policy change.)

Updating instructions for the CMS-1500 Claim Form.

For additional information, contact Amber Dassow, HCA, P.O. Box 45504, phone (360) 725-1349, TDD/TTY 1-800-848-5429, fax (360) 586-9727, e-mail dassoal@hca.wa.gov, web site <http://www.hca.wa.gov/>.

WSR 12-14-075
AGENDA
UNIVERSITY OF WASHINGTON

[Filed July 2, 2012, 2:01 p.m.]

Semi-Annual Agenda for Rules Under Development
 (Per RCW 34.05.314)
 July 2012

Rule-making activity not now anticipated may also be added as conditions warrant between semiannual agendas.

1. Rule making for chapter 478-156 WAC, Rules for the University of Washington residence halls and family housing apartments, is anticipated to continue during the second half of 2012 (a CR-101 was filed as WSR 11-20-075, a CR-102 was filed as WSR 11-23-139, and a withdrawal of the CR-102 was filed as WSR 12-05-020).

2. Rule making for chapter 478-276 WAC, Governing access to public records, is anticipated to continue during the second half of 2012 (a CR-101 was filed as WSR 10-04-104).

3. Rule making for chapter 478-140 WAC, Rules and regulations for the University of Washington governing student education records, is anticipated to continue during the second half of 2012 (a CR-101 was filed as WSR 09-17-078).

For more information concerning the above rules, please contact is Rebecca Goodwin Deardorff, Director of Rules Coordination, University of Washington, Box 351210, Seattle, WA 98195-1210, phone (206) 543-9219, fax (206) 685-3825, e-mail rules@uw.edu, web www.washington.edu/admin/rules/.

WSR 12-14-076
NOTICE OF PUBLIC MEETINGS
CASCADIA COMMUNITY COLLEGE

[Filed July 2, 2012, 2:09 p.m.]

Following is the 2012-2013 meeting schedule for the Cascadia Community College board of trustee meetings.

Approved at the June 20, 2012, board of trustees meeting.

2012-2013 Board of Trustees - Meeting Dates
Third Wednesday of Each Month
(unless otherwise noted)

All meetings will begin at 4:00 p.m. and will take place in the Board Room (Room 260) at Cascadia Community College, 18345 Campus Way N.E., Bothell, WA 98011.

2012-13 Board Meeting Dates

Wednesday, September 19, 2012, approved June 20, 2011

- Wednesday, October 17, 2012
- *Wednesday, November 14, 2012 (second Wednesday)
- *Wednesday, December 12, 2012 (second Wednesday)
- Wednesday, January 16, 2013
- Wednesday, February 20, 2013
- Wednesday, March 20, 2013
- Wednesday, April 17, 2013

Wednesday, May 15, 2013
 Wednesday, June 19, 2013
 No regular meeting scheduled for July 2013
 No regular meeting scheduled for August 2013
 Wednesday, September 18, 2013

*These meetings will take place on the second Wednesday of the month.

WSR 12-14-077

INTERPRETIVE OR POLICY STATEMENT HEALTH CARE AUTHORITY

[Filed July 2, 2012, 2:23 p.m.]

Notice of Interpretive or Policy Statement

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the health care authority (HCA).

HCA

Legal and Administrative Services

Document Title: Provider Notice #12-36.

Subject: Medical supplies and equipment (MSE) fee schedule updates and procedure code changes.

Effective Date: July 1, 2012.

Effective for dates of service on and after July 1, 2012, the medicaid program of the HCA will:

Update the maximum allowable fees in the *Medical Supplies and Equipment (MSE)* fee schedule.

Change the following procedure codes to noncovered: A6228, A6239, A4420, and A9180.

Change the following procedure code to require prior authorization: A6010.

Remove the "RB" modifier option from the following procedure codes: A5113 and A5114.

For additional information, contact Amber Dassow, HCA, P.O. Box 45504, phone (360) 725-1349, TDD/TTY 1-800-848-5429, fax (360) 586-9727, e-mail dassoal@hca.wa.gov, web site <http://www.hca.wa.gov/>.

WSR 12-14-078

INTERPRETIVE OR POLICY STATEMENT HEALTH CARE AUTHORITY

[Filed July 2, 2012, 2:26 p.m.]

Notice of Interpretive or Policy Statement

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the health care authority (HCA).

HCA

Legal and Administrative Services

Document Title: Provider Notice #12-40.

Subject: July fee schedule updates.

Effective Date: July 1, 2012.

July 2012 fee schedule updates will be available from the medicaid program of the HCA's web site no later than their

effective date, which is July 1, 2012. Contained within this provider notice is a list of programs that will receive changes only to fee schedules and not to medicaid provider guides. Prior to July 1, 2012, the agency will also publish separate provider notices for programs that are receiving changes effective July 1, 2012, to fee schedules and medicaid provider guides.

For additional information, contact Amber Dassow, HCA, P.O. Box 45504, phone (360) 725-1349, TDD/TTY 1-800-848-5429, fax (360) 586-9727, e-mail dassoal@hca.wa.gov, web site <http://www.hca.wa.gov/>.

WSR 12-14-079

INTERPRETIVE OR POLICY STATEMENT HEALTH CARE AUTHORITY

[Filed July 2, 2012, 2:27 p.m.]

Notice of Interpretive or Policy Statement

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the health care authority (HCA).

HCA

Legal and Administrative Services

Document Title: Provider Notice #12-41.

Subject: Rural health clinic medicaid provider guide.

Effective Date: July 1, 2012.

For this effective date, specific changes to the guide include:

- Adding new recipient aid category (RAC) codes for clients not eligible for encounters. This includes some clients who may be eligible retroactive to January 1, 2012.
- Updating some current RAC codes for clients not eligible for encounters.
- *Clarifying that administration fees for drugs and vaccines given in the provider's office are not paid separately when performed on the same day as an encounter.
- Making minor housekeeping changes and edits for clarity.

For additional information, contact Amber Dassow, HCA, P.O. Box 45504, phone (360) 725-1349, TDD/TTY 1-800-848-5429, fax (360) 586-9727, e-mail dassoal@hca.wa.gov, web site <http://www.hca.wa.gov/>.

WSR 12-14-080

INTERPRETIVE OR POLICY STATEMENT HEALTH CARE AUTHORITY

[Filed July 2, 2012, 2:29 p.m.]

Notice of Interpretive or Policy Statement

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the health care authority (HCA).

HCA
Legal and Administrative Services

Document Title: Provider Notice #12-42.

Subject: Federally qualified health center medicaid provider guide.

Effective Date: July 1, 2012.

For this effective date, specific changes to the guide include:

- Adding new recipient aid category (RAC) codes for clients not eligible for encounters. This includes some clients who may be eligible retroactive to January 1, 2012.
- Updating some current RAC codes for clients not eligible for encounters.
- Making housekeeping changes, including those related to the HCA merger.

For additional information, contact Amber Dassow, HCA, P.O. Box 45504, phone (360) 725-1349, TDD/TTY 1-800-848-5429, fax (360) 586-9727, e-mail dassoal@hca.wa.gov, web site <http://www.hca.wa.gov/>.

WSR 12-14-081
INTERPRETIVE OR POLICY STATEMENT
HEALTH CARE AUTHORITY

[Filed July 2, 2012, 2:30 p.m.]

Notice of Interpretive or Policy Statement

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the health care authority (HCA).

HCA
Legal and Administrative Services

Document Title: Provider Notice #12-43.

Subject: Home infusion therapy fee schedule and medicaid provider guide.

Effective Date: July 1, 2012.

Effective for dates of service on and after July 1, 2012, the medicaid program of the HCA will: Update the maximum allowable fees in the *home infusion therapy* fee schedule. Update the *Home Infusion Therapy/Parenteral Nutrition Medicaid Provider Guide* to: Clarify specific provider requirements for claims billed with procedure code A4223. Delete procedure code E0784 with modifier NU. Revise comments for procedure code E0784 with modifier RR. Add the words "Invoice required" to procedure codes E1399 and B9999.

For additional information, contact Amber Dassow, HCA, P.O. Box 45504, phone (360) 725-1349, TDD/TTY 1-800-848-5429, fax (360) 586-9727, e-mail dassoal@hca.wa.gov, web site <http://www.hca.wa.gov/>.

WSR 12-14-082

INTERPRETIVE OR POLICY STATEMENT
HEALTH CARE AUTHORITY

[Filed July 2, 2012, 2:31 p.m.]

Notice of Interpretive or Policy Statement

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the health care authority (HCA).

HCA
Legal and Administrative Services

Document Title: Provider Notice #12-44.

Subject: Physician-related services/healthcare professional services medicaid provider guide.

Effective Date: July 1, 2012.

Specific changes to the guide include:

- Update to CPT codes for prolonged care and oral maxillofacial surgery.
- Add new section for "dental services billable by primary care medical provider."
- Add new limits to "vision coverage table" for codes 92071 and 92072.
- Move all instructions regarding mental health to a new *Mental Health for Children, Psychiatric and Psychological Services Medicaid Provider Guide*.
- Add prior authorization (PA) requirement to procedure codes for spinal cord stimulation and pain management.
- Clarify that providers are eligible to receive enhanced rates for trauma care services provided to managed care enrollees, beginning July 1, 2012.
- Add procedure code S3854 to cover genetic counseling and genetic testing.
- Clarify physician assistants-certified billing for assisting in C-section.
- Update with information regarding agency review for medical necessity for hysterectomies in certain cases.
- Add procedure codes for services that require PA.
- Clarify information for requesting PA for intensity-modulated radiation therapy.
- Add PA requirements to procedure codes for spinal cord stimulation for chronic pain.
- Add Q2047 to the list of miscellaneous drugs that require PA.
- Replace J3490 with J0897 the "list of miscellaneous drugs that require PA."
- Revise information regarding modifiers 57, 59, and 80.

For additional information, contact Amber Dassow, HCA, phone (360) 725-1349, TDD/TTY 1-800-848-5429, e-mail dassoal@hca.wa.gov, web site <http://www.hca.wa.gov/>.

WSR 12-14-083
INTERPRETIVE OR POLICY STATEMENT
HEALTH CARE AUTHORITY

[Filed July 2, 2012, 2:32 p.m.]

Notice of Interpretive or Policy Statement

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the health care authority (HCA).

HCA
Legal and Administrative Services

Document Title: Provider Notice #12-45.

Subject: Mental health services for children, psychiatric and psychological services medicaid provider guide (MPG).

Effective Date: July 1, 2012.

Specific changes to the guide include:

This new MPG combines the *mental health services for children MPG*, *psychologist MPG* and portions of the *physician-related services/healthcare professional services MPG* related to mental health.

For additional information, contact Amber Dassow, HCA, phone (360) 725-1349, TDD/TTY 1-800-848-5429, e-mail dassoal@hca.wa.gov, web site <http://www.hca.wa.gov/>.

WSR 12-14-084
INTERPRETIVE OR POLICY STATEMENT
HEALTH CARE AUTHORITY

[Filed July 2, 2012, 2:34 p.m.]

Notice of Interpretive or Policy Statement

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the health care authority (HCA).

HCA
Legal and Administrative Services

Document Title: Provider Notice #12-46.

Subject: Kidney center services medicaid provider guide (MPG).

Effective Date: July 1, 2012.

Specific changes to the guide include:

- Update the *kidney center services* fee schedule.
- Add procedure code Q2047 injection, Peginesatide, 0.1mg with prior authorization (PA) required.
- Clarify the requirements to be met prior to submitting a PA request for Omontys.
- Effective retroactive to May 9, 2012, add revenue code 300, laboratory.
- Effective for dates of service on and after September 4, 2012, require institutional providers to identify attending providers on claims submitted for payment.

For additional information, contact Amber Dassow, HCA, P.O. Box 45504, phone (360) 725-1349, TDD/TTY 1-800-848-5429, fax (360) 586-9727, e-mail dassoal@hca.wa.gov, web site <http://www.hca.wa.gov/>.

WSR 12-14-085
INTERPRETIVE OR POLICY STATEMENT
HEALTH CARE AUTHORITY

[Filed July 2, 2012, 2:35 p.m.]

Notice of Interpretive or Policy Statement

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the health care authority (HCA).

HCA
Legal and Administrative Services

Document Title: Provider Notice #12-47.

Subject: Orthodontic services medicaid provider guide.

Effective Date: July 1, 2012.

Effective for dates of service on and after July 1, 2012, the medicaid program of the HCA is publishing a revised orthodontic services medicaid provider guide.

For additional information, contact Amber Dassow, HCA, P.O. Box 45504, phone (360) 725-1349, TDD/TTY 1-800-848-5429, fax (360) 586-9727, e-mail dassoal@hca.wa.gov, web site <http://www.hca.wa.gov/>.

WSR 12-14-086
INTERPRETIVE OR POLICY STATEMENT
HEALTH CARE AUTHORITY

[Filed July 2, 2012, 2:36 p.m.]

Notice of Interpretive or Policy Statement

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the health care authority (HCA).

HCA
Legal and Administrative Services

Document Title: Provider Notice #12-48.

Subject: Inpatient hospital services medicaid provider guide.

Effective Date: July 1, 2012.

For this effective date, specific changes to the guide include:

- Update inpatient hospital rates for the quality incentive initiative as required by RCW 74.60.130.
- Update the inpatient hospital services medicaid provider guide to:

Clarify information regarding the trauma care fund. Remove principal diagnosis codes 303.92, 304.00-302.92 and 305.0.

Clarify requirements for requesting an extension for the medical inpatient detoxification (MID) three or five days' length of stay and payment methods.

Add table of agency approved hospitals for ventricular assist device (VAD) services.

Provide guidance about how to bill when a client elects hospice and during an inpatient stay.

For additional information, contact Amber Dassow, HCA, P.O. Box 45504, phone (360) 725-1349, TDD/TTY 1-

800-848-5429, fax (360) 586-9727, e-mail dassoal@hca.wa.gov, web site <http://www.hca.wa.gov/>.

For additional information, contact Amber Dassow, HCA, P.O. Box 45504, phone (360) 725-1349, TDD/TTY 1-800-848-5429, fax (360) 586-9727, e-mail dassoal@hca.wa.gov, web site <http://www.hca.wa.gov/>.

WSR 12-14-087

INTERPRETIVE OR POLICY STATEMENT HEALTH CARE AUTHORITY

[Filed July 2, 2012, 2:37 p.m.]

Notice of Interpretive or Policy Statement

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the health care authority (HCA).

HCA

Legal and Administrative Services

Document Title: Provider Notice #12-49.

Subject: Hearing hardware for clients twenty years of age and younger fee schedule updates.

Effective Date: July 1, 2012.

Effective for dates of service on and after July 1, 2012, the medicaid program of the HCA will make the following changes to the *hearing hardware for clients twenty years of age and younger fee schedule*: Update the fee schedule with new maximum allowable fees. Remove procedure code L8690, auditory osseointegrated device. This procedure code is found under the *physician and related services fee schedule*.

For additional information, contact Amber Dassow, HCA, P.O. Box 45504, phone (360) 725-1349, TDD/TTY 1-800-848-5429, fax (360) 586-9727, e-mail dassoal@hca.wa.gov, web site <http://www.hca.wa.gov/>.

WSR 12-14-088

INTERPRETIVE OR POLICY STATEMENT HEALTH CARE AUTHORITY

[Filed July 2, 2012, 2:38 p.m.]

Notice of Interpretive or Policy Statement

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the health care authority (HCA).

HCA

Legal and Administrative Services

Document Title: Provider Notice #12-50.

Subject: Long-term acute care program medicaid provider guide (MPG).

Effective Date: July 1, 2012.

For this effective date, specific changes to the guide include:

- Clarify requirements for submitting prior authorization request before admission to an LTAC hospital.
- Clarify requirements for submitting requests for extension of LTAC days.

WSR 12-14-089

INTERPRETIVE OR POLICY STATEMENT HEALTH CARE AUTHORITY

[Filed July 2, 2012, 2:40 p.m.]

Notice of Interpretive or Policy Statement

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the health care authority (HCA).

HCA

Legal and Administrative Services

Document Title: Provider Notice #12-51.

Subject: Outpatient hospitals and outpatient prospective payment system (OPPS).

Effective Date: July 1, 2012.

For this effective date, specific changes to the guide include:

- Revise the "outpatient hospitals and outpatient prospective payment system fee schedule[""] with: Updated fees; current procedural terminology (CPT) codes; and healthcare common procedure coding system (HCPCS) codes.
- Implement updates to outpatient prior authorization and coverage requirements.
- Implement revised maximum units.
- Effective dates of service on and after September 4, 2012, require reporting of enrolled attending providers on all outpatient claims.

For additional information, contact Amber Dassow, HCA, P.O. Box 45504, phone (360) 725-1349, TDD/TTY 1-800-848-5429, fax (360) 586-9727, e-mail dassoal@hca.wa.gov, web site <http://www.hca.wa.gov/>.

WSR 12-14-090

INTERPRETIVE OR POLICY STATEMENT HEALTH CARE AUTHORITY

[Filed July 2, 2012, 2:43 p.m.]

Notice of Interpretive or Policy Statement

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the health care authority (HCA).

HCA

Legal and Administrative Services

Document Title: Provider Notice #12-53.

Subject: Maximum allowable costs update.

Effective Date: July 1, 2012.

Effective for dates of service on and after July 1, 2012 (unless otherwise noted), the medicaid program of the HCA will update the maximum allowable costs in the prescription drug program.

For additional information, contact Amber Dassow, HCA, P.O. Box 45504, phone (360) 725-1349, TDD/TTY 1-800-848-5429, fax (360) 586-9727, e-mail dassoal@hca.wa.gov, web site <http://www.hca.wa.gov/>.

WSR 12-14-091

INTERPRETIVE OR POLICY STATEMENT HEALTH CARE AUTHORITY

[Filed July 2, 2012, 2:45 p.m.]

Notice of Interpretive or Policy Statement

In accordance with RCW 34.05.230(12), following is a list of policy and interpretive statements issued by the health care authority (HCA).

HCA

Legal and Administrative Services

Document Title: Provider Notice #12-55.

Subject: Indian health services (IHS) encounter rate increase.

Effective Date: July 1, 2012.

Effective July 1, 2012, the agency will pay the increased IHS encounter rate of \$316.00 for medicaid-covered encounter services provided on and after January 1, 2012, if the billed amount on the claim is \$316.00. Effective no later than September 15, 2012, the agency will mass adjust previously paid claims that were paid at the \$294.00 rate. Providers do not need to adjust claims previously paid by the agency.

For additional information, contact Amber Dassow, HCA, phone (360) 725-1349, TDD/TTY 1-800-848-5429, e-mail dassoal@hca.wa.gov, web site <http://www.hca.wa.gov/>.

WSR 12-14-092

POLICY STATEMENT UNIVERSITY OF WASHINGTON

[Filed July 2, 2012, 3:38 p.m.]

The University of Washington has recently created or revised the following policy statements, orders, and codes:

- "Mobile Device Use and Allowance Policy," new effective February 2, 2012 (Administrative Policy Statement 55.1).
- "Facilities and Spaces Naming Policy," revised effective February 9, 2012 (*Board of Regents Governance*, Regent Policy No. 6).
- "Professional Leave Policy," revised effective April 20, 2012 (Executive Order No. 33).
- "University Organization Chart," revised effective May 3, 2012 (Administrative Policy Statement 1.1).
- "Policy Regarding Regent Conflicts of Interest," new effective June 7, 2012 (*Board of Regents Governance*, Regent Policy No. 13).

- "Statement of Ethical Principles," new effective June 7, 2012 (*Board of Regents Governance*, Regent Policy No. 14).
- "Appointment and Promotion of Faculty Members," multiple sections revised effective June 11, 2012 (*Faculty Code*, Chapter 24).
- "Ensuring Business, Academic, and Research Continuity (BARC)," revised effective June 13, 2012 (Administrative Policy Statement 13.2).
- "Authorization for the Faculty to Share in the Formulation of Rules," revised effective June 14, 2012 (Executive Order No. II).
- "The Office of the President," revised effective June 14, 2012 (Executive Order No. 1).
- "Information Security Controls and Operational Practices," new effective June 20, 2012 (Administrative Policy Statement 2.6).
- "Personnel Actions," revised effective July 2, 2012 (Administrative Order No. 6).

To view any item noted above, see the UW policy directory: <http://www.washington.edu/admin/rules/policies/>. For more information on these materials contact Rebecca Goodwin Deardorff, Director of Rules Coordination, University of Washington, Box 351210, Seattle, WA 98195-1210, e-mail rules@uw.edu, or fax (206) 685-3825.

WSR 12-14-094

INTERPRETIVE OR POLICY STATEMENT DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed July 3, 2012, 8:15 a.m.]

Notice of Interpretive or Policy Statement

In accordance with RCW 34.05.230, following is a list of policy and interpretive statements issued by the department of social and health services.

Aging and Disability Services Administration Division of Management Services

Document Title: SPA Notice.

Subject: Preliminary notice of changes to state of Washington nursing facility medicaid payment rate methodology.

Effective Date: July 2, 2012.

Document Description: To comply with 42 U.S.C. 1396a (a)(13)(A), for all material changes to the methodology for determining nursing facility medicaid payment rates and requiring a Title XIX state plan amendment submitted to and approved by the Centers for Medicare and Medicaid Services (CMS), the department of social and health services (hereafter, department) must publish the proposed new methodologies for determining the payment rates and the underlying justifications.

On May 2, 2012, the governor signed 3ESHB 2127, the state's supplemental operating budget. 3ESHB 2127 became chapter 7, Laws of 2012 2nd sp. sess. The bill had an emergency clause, and was effective on May 2, 2012.

Section 206 of 3ESHB 2127 clarified how the department is to calculate both the "comparative add-on" and the

"acuity add-on" when setting July 1, 2012, medicaid rates for nursing facilities. The legislation directed the department to exclude the "comparative add-on" and the "acuity add-on" themselves, as well as the "safety net assessment" reimbursement when computing the July 1, 2012, rates of facilities under chapter 74.46 RCW as part of the comparison of that rate to the rate in effect June 30, 2010.

This clarification is part of an amendment to the state medicaid plan that the department is filing with the federal CMS. In addition to this clarification, the state plan amendment will include other changes to the state medicaid plan:

- Updating the "effective date" of the plan, and the reference date for state laws and rules, from July 1, 2011, to July 1, 2012.
- Deleting references based on the possibility that the state's request for a waiver in relation to the "safety net assessment" might be denied. The waiver was granted.
- Adding a reference to the new "swing bed" rate of \$173.38 for SFY 2013.
- Deleting material that is now superfluous, including references to previously-repealed statutes, references to rates paid in prior years, and a reference in the section on Proportionate Share Payments for Nursing Facilities Operated by Public Hospital Districts (ProShare). The latter reference is to be removed to clarify that ProShare is an ongoing, open-ended program.

Persons or organizations that have comments on these changes may contact Edward Southon, Manager, Nursing Home Rates, Aging and Disability Services Administration, P.O. Box 45600, Olympia, WA 98504-5600, or edward.southon@dshs.wa.gov.

To receive a copy of the interpretive or policy statements, contact Edward Southon, Nursing Home Rates, Aging and Disability Services Administration, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2469, TDD/TTY 1-800-422-3263, fax (360) 725-2641, e-mail Edward.Southon@dshs.wa.gov.

WSR 12-14-096
AGENDA
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed July 3, 2012, 10:29 a.m.]

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 12-15 issue of the Register.

WSR 12-14-097
NOTICE OF PUBLIC MEETINGS
WASHINGTON STATE
REHABILITATION COUNCIL

[Filed July 3, 2012, 11:45 a.m.]

THE WASHINGTON STATE REHABILITATION COUNCIL WANTS TO LEARN FROM YOU...

Join us if you wish:

Thursday, July 19, 2012
 The "M" Hotel
 1515 George Washington Way
 Richland, WA 99352
 3:00 p.m. - 5:00 p.m.

American sign language interpretation provided.
 Spanish language interpretation provided.

The Washington state rehabilitation council (WSRC) is a board of fifteen governor-appointed volunteer, system advocates. Our goal is to help the division of vocational rehabilitation (DVR) deliver effective, equitable, and timely services to increase the numbers of people with disabilities who become employed. You are receiving this notice because at some point you applied for or received services from DVR.

We learn how well DVR services are working by listening to those being served, their families, and other local partners.

Your attendance is optional. This is not a regular DVR appointment with your counselor. We will take comment for ninety minutes. The last half hour will leave time for mingling and individual follow-up.

To request reasonable accommodation, a spoken language interpreter, or to provide written comment please contact JoAnne Lang at langjk@dshs.wa.gov or 1-866-252-2939.

Public Transportation and Parking: If you ride the bus and need help planning your trip call Ben Franklin Transit at (509) 735-413 [735-4131]. Route 26 stops across the street from the meeting location. If you will be driving and parking, the hotel charges no fee to park.

WSR 12-14-099
NOTICE OF PUBLIC MEETINGS
HEALTH CARE AUTHORITY
 (Pharmacy and Therapeutics Committee)
 (Drug Utilization Review Board)

[Filed July 3, 2012, 11:51 a.m.]

Contact Regina Chacon, program coordinator, (206) 521-2027, regina.chacon@hca.wa.gov.

<p>August 15, 2012 9:00 a.m. - 4:00 p.m.</p>	<p>MEETING CANCELED</p>	<p>International A Conference Room In SeaTac Airport Conference Center 17801 International Boulevard Seattle, WA 98158</p>
--	--	---

WSR 12-14-101
NOTICE OF PUBLIC MEETINGS
HUMAN RIGHTS COMMISSION
 [Filed July 3, 2012, 12:36 p.m.]

Human Rights Commission, 711 South Capitol Way, Suite 402, Olympia, WA 98504.

The following is a revised commission meeting date:
 December 13, 2012, at 9:30 a.m., at the Washington State

WSR 12-14-102
AGENDA
DEPARTMENT OF
EARLY LEARNING
 [Filed July 3, 2012, 12:38 p.m.]

Semi-Annual Rule-Making Agenda under RCW 34.05.314
 July 1 through December 31, 2012

The department of early learning (DEL) prepares a semi-annual rule-making agenda in January and July each year to let the public know about DEL rule changes that are underway or planned. The current agenda also: (1) Reports rule making suspended, eliminated or proceeding under the Governor's Executive Order (EO) 10-06 suspending noncritical rule making,* and (2) updates the 2007 child care provider rule review plan prepared under RCW 43.215.502. DEL rules are part of the Washington Administrative Code (WAC) and permanent DEL rules can be found on-line at Title 170 WAC. Find current information about department rule-making activity on-line at DEL Rules Under Development. See additional notes following the table.

Subject Matter and Authority	WAC Chapter or Sections	Description <u>DEL Rules Under Development</u> on the DEL web site has current information on these rules.	Emergency Rules (CR-103E)	Preproposal Notice (CR-101)	Proposed Rule (CR-102) and Public Hearings or Expedited Rule (CR-105)	Permanent Rule (CR-103P)
Common terms, definitions and standards. RCW 43.215.060, 43.215.070, and chapter 43.215 RCW.	New WAC chapter, and possible revisions of other DEL rules in Title 170 WAC	Adopting a new DEL WAC chapter of Title 170 WAC to include terms, definitions or standards that apply to more than one DEL WAC chapter or program. Other DEL WAC chapters may be revised to eliminate duplication. EO 10-06 impact: Rule development suspended.	None	Filed 12/24/08 as WSR 09-01-185	Suspended	Suspended
DEL hearing rules. RCW 34.05.220, 43.215.070, and chapter 43.215 RCW.	Chapter 170-03	Adopting technical changes needed to make the rules consistent with other DEL WAC chapters and to revise hearing procedures. EO 10-06 impact: Rule development suspended this period, but DEL may review rules for	None	Suspended	Suspended	Suspended

Subject Matter and Authority	WAC Chapter or Sections	Description <u>DEL Rules Under Development</u> on the DEL web site has current information on these rules.	Emergency Rules (CR-103E)	Preproposal Notice (CR-101)	Proposed Rule (CR-102) and Public Hearings or Expedited Rule (CR-105)	Permanent Rule (CR-103P)
		potential budget-related revisions.				
DEL background checks rules. Chapter 295, Laws of 2011, RCW 43.215.060, 43.215.070, 43.215.200, 43.215.205, 43.215.215, 43.43.832(6), and chapter 43.215 RCW.	Chapter 170-06 and related sections of chapters 170-151, 170-295, 170-296A	<ul style="list-style-type: none"> •Implementing 2011 HB 1903 creating an individual based/portable background check registry and new background check requirements; •Updating the list of crimes or negative actions that may disqualify a person from obtaining a DEL clearance; and •Revising rules on disqualification, reconsideration and due process, and to be consistent with current law. EO 10-06 impact: Rules are necessary to implement new state law and to protect public health, safety and welfare. Rule development to proceed in 2012.	Filed 3/15/12 as WSR 12-07-044	Filed 5/31/11 as WSR 11-12-076 See also WSR 09-01-184 filed 12/24/08	Filed 3/21/12 as WSR 12-07-088	Filed 5/30/12 as WSR 12-12-040
Syrup of Ipecac use in DEL-licensed child care facilities. RCW 43.215.060, 43.215.070, 43.215.200, and chapter 43.215 RCW.	Chapters 170-151, 170-295	Revising requirements on keeping syrup of ipecac available in a licensed child care facility for emergency treatment of children suspected of swallowing a poison. Changes will be based on current research and advice from health professionals and Washington Poison Center. EO 10-06 impact: Rules are beneficial to and likely supported by regulated entities. Rule development may continue in 2012.	None	To be determined	To be determined	To be determined

Subject Matter and Authority	WAC Chapter or Sections	Description <u>DEL Rules Under Development</u> on the DEL web site has current information on these rules.	Emergency Rules (CR-103E)	Preproposal Notice (CR-101)	Proposed Rule (CR-102) and Public Hearings or Expedited Rule (CR-105)	Permanent Rule (CR-103P)
School-age child care center programs. Chapter 359, Laws of 2011, RCW 43.215.060, 43.215.070, 43.43.832(6), and chapter 43.215 RCW.	Chapter 170-151	<ul style="list-style-type: none"> •Implementing HB 1776 related to licensed child care centers located in public or private school buildings; •General chapter review. School-age program rules have not been updated since 1997 and are not consistent with current law or practice. <p>School's Out Washington (SOWA), a non-profit group, has gathered stakeholder input and recommended comprehensive WAC changes.</p> <p>EO 10-06 impact: Rules are needed to implement new state law and to protect public health, safety and welfare, and are requested by regulated entities. Rule development to continue in 2012.</p>	None	Filed 4/23/09 as WSR 09-10-009 Public forums held, 3/15, 3/16, 3/26, 3/27, informal input period March -April 2012	Proposed rules anticipated this period.	Permanent rule adoption anticipated this period.
Working connections child care (WCCC) and seasonal child care (SCC) subsidy programs. SB 6226, 3ESHB 2127, RCW 43.215.060, 43.215.135.	Chapter 170-290	<p>Implementing applicable provisions of SB 6226 and 3ESHB 2127.</p> <ul style="list-style-type: none"> •Regarding raising the cutoff of eligibility for WCCC subsidies from one hundred seventy-five percent of the federal poverty level, to two hundred percent of the federal poverty level. •Regarding increasing the authorization period for WCCC from six months to twelve months. 	Filed 5/25/12 as WSR 12-12-023	Filed 6/15/12 as WSR 12-13-059	Proposed rules anticipated this period.	Permanent rule adoption anticipated this period.

Subject Matter and Authority	WAC Chapter or Sections	Description <u>DEL Rules Under Development</u> on the DEL web site has current information on these rules.	Emergency Rules (CR-103E)	Preproposal Notice (CR-101)	Proposed Rule (CR-102) and Public Hearings or Expedited Rule (CR-105)	Permanent Rule (CR-103P)
		EO 10-06 impact: Rules are required by new state law and to maintain federally delegated or authorized programs. Rule development to continue in 2012.				
Minimum licensing requirements for child care centers. RCW 43.215.060, 43.215.070, chapter 43.215 RCW.	Chapter 170-295	Review and update of rules for DEL-licensed child care centers. Rules have not been comprehensively updated since 2003 and do not reflect current law. Rules need to be updated for current child care health, safety and development research and practice. EO 10-06 impact: Rules are necessary to protect public health, safety and welfare. Rule review planned to be initiated in 2012.	None	Filed 8/18/10 as WSR 10-18-006 First informal input period 12/11 through 3/31/12	To be determined	To be determined
Child care centers, family home child care. RCW 43.215.070 and chapter 43.215 RCW.	Chapters 170-295, 170-296A	Revising DEL rules on infant and toddler cribs and other sleeping equipment, consistent with new rules of the United States Consumer Product Safety Commission. By December 28, 2012, all cribs used in child care facilities must meet new national safety standards. EO 10-06 impact: Rules are necessary to protect public health, safety and welfare. Rule development to proceed in 2012.	None	Anticipated filing in this period.	To be determined	To be determined for chapter 170-295 WAC. Crib rules for family child care homes adopted in new chapter 170-296A WAC, WSR 11-23-068.

Subject Matter and Authority	WAC Chapter or Sections	Description <u>DEL Rules Under Development</u> on the DEL web site has current information on these rules.	Emergency Rules (CR-103E)	Preproposal Notice (CR-101)	Proposed Rule (CR-102) and Public Hearings or Expedited Rule (CR-105)	Permanent Rule (CR-103P)
Exclusion of ill children or staff in child care centers. RCW 43.215.070, chapter 43.215 RCW.	WAC 170-295-3030	Possible rule-making due to a public petition, under RCW 34.05.330, to amend WAC 170-295-3030 When is a child or staff member too ill to be at child care. EO 10-06 impact: Rules are necessary to protect public health, safety and welfare. Rule development may proceed in 2012.	None	Filed 8/18/10 as WSR 10-18-006 Informal input period 12/11 through 1/31/12	To be determined	To be determined
DEL rules RCW 43.215.060, 43.215.070.	All chapters of Title 170 WAC	DEL may revise its rules to update names, cross references or other information to keep DEL rules current. EO 10-06 impact: Rules suspended unless specific rules are deemed necessary to protect the public health, safety and welfare.	N/A	Suspended	Suspended	Suspended

Permanent rules adopted in the twelve months prior to this report:

- WSR 12-11-025. WCCC and SCC subsidy program rules. Permanent rules filed May 8, 2012, and effective June 8, 2012. Amending rules to implement applicable provisions of ESSB 5921 (chapter 42, Laws of 2011 1st sp. sess.), strengthening background check requirements, copayments, and attendance records.
- WSR 12-09-061. Dealing with civil fines. Permanent rules filed on April 17, 2012, and effective May 18, 2012. Amending sections of chapters 170-295 and 170-151 WAC to increase maximum civil fines when an individual or entity is suspected of providing child care without a license, when a license is required by law, and implementing section of SB 5504.
- WSR 12-09-035. Adopting new chapter 170-01 WAC, public disclosure rules. Permanent rules filed April 11, 2012, and effective May 12, 2012. Adopting new public disclosure and related rules as they pertain to describing DEL's organization and to give

the public information about requesting DEL records.

- WSR 11-23-068. Adopting new chapter 170-296A WAC, Licensed family home child care standards, and repealing all sections of chapter 170-296 WAC. Permanent rules filed November 14, 2011, and effective March 31, 2012. Revising family home child care licensing rules using negotiated rule making as provided by RCW 43.215.350 and 34.05.310, and a process inclusive of licensees, the Services Employees International Union Local 925, parent and licensee advocates, the statewide child care resource and referral network and DEL staff.

***Governor's Executive Order 10-06 Suspending Noncritical Rule Development and Adoption**

EO 10-06, signed November 17, 2010, directs state executive agencies to suspend or eliminate "noncritical" rule development and adoption (extended through December 31, 2012, by EO 11-03). Guidance prepared by the state office of financial management on implementing EO 10-06, says in part:

- Rule proceedings are noncritical unless the rule is:
 - a. Required by federal or state law or required to maintain a federally delegated or authorized program;
 - b. Required by court order;
 - c. Necessary to manage budget shortfalls, maintain fund solvency, or for revenue generating activities;
 - d. Necessary to protect health, safety, and welfare or necessary to avoid an immediate threat to the state's natural resources; or
 - e. Beneficial or requested or supported by the regulated entities, local governments, or small businesses that (the rule) affects.
- Agencies may continue to adopt rules that have been the subject of negotiated rule making or pilot rule making that involved substantial participation by interested parties before development of the proposed rule. Agencies may also proceed to finalize permanent rule making that has previously been covered by emergency rules.
- Agencies may continue to adopt expedited rules under RCW 34.05.353 where proposed rules relate only to internal government operations.

Find the complete OFM guidance on implementing EO 10-06 at the governor's office of regulatory assistance web site http://www.governor.wa.gov/news/20101116_memo_eo_10-06.pdf.

Notes:

The DEL semi-annual rule-making agenda is prepared for information purposes only, and future dates or periods noted in this agenda are planning estimates that are subject to change. This agenda does not constitute a rule or rule-making action. Any errors or omissions in this agenda do not affect the actual DEL rules or rule-making notices filed with the office of the code reviser and published in the Washington State Register.

There may be additional DEL rule making that cannot be forecasted as the department adopts rules to implement new state laws, to meet federal requirements, or to meet unforeseen circumstances. Emergency rules noted, if any, are those in effect at the time this agenda was filed with the code reviser or were the last emergency rules filed prior to this agenda on the particular subject.

For more information about DEL rule making, or to join a mailing list to receive DEL rule notices and draft materials, please e-mail Rules@del.wa.gov, or write to the DEL Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970.

CR means "code reviser." The legislature's office of the code reviser creates the rule-making notice forms used and filed by all state agencies.

CR-101 is a Preproposal statement of inquiry notice filed under RCW 34.05.310.

CR-102 may be a proposed rule-making notice filed under RCW 34.05.320; a continuance notice under RCW 34.05.325, or a supplemental proposed rule-making notice under RCW 34.05.340.

CR-103E is an emergency rule-making order filed under RCW 34.05.350.

CR-103P is a permanent rule-making order filed under RCW 34.05.360.

CR-105 is an expedited rule-making notice filed under RCW 34.05.353.

WSR means "*Washington State Register*." The WSR numbers noted throughout this rules agenda are the official filing numbers assigned by the office of the code reviser and entered on materials filed for legal publication in the State Register.

The DEL semi-annual rule-making agenda is prepared for information purposes only, and future dates or periods noted in this agenda are planning estimates that are subject to change. This agenda does not constitute a rule or rule-making action. Any errors or omissions in this agenda do not affect the actual DEL rules or rule-making notices filed with the office of the code reviser and published in the Washington State Register. There may be additional DEL rule making that cannot be forecasted as the department adopts rules to implement new state laws, to meet federal requirements, or to meet unforeseen circumstances.

WSR 12-14-103

**NOTICE OF PUBLIC MEETINGS
HUMAN RIGHTS COMMISSION**

[Filed July 3, 2012, 12:41 p.m.]

The following is a cancelled commission meeting date: November 15, 2012, at 9:30 a.m., at the Washington State Human Rights Commission, 711 South Capitol Way, Suite 402, Olympia, WA 98504.

WSR 12-14-106

**AGENDA
DEPARTMENT OF COMMERCE**

[Filed July 3, 2012, 2:38 p.m.]

Following please find the department of commerce's semi-annual rules development agenda for publication in the Washington State Register, pursuant to RCW 34.05.314. There may be additional rule-making activity not on the agenda as conditions warrant.

Please contact Nick Demerice if you have questions, nick.demerice@commerce.wa.gov or (360) 725-4010.

Semi-Annual Rule-Making Agenda
July 1 through December 31, 2012

WAC Citation	Subject Matter/Purpose of Rule	Current Activity/ Approximate Filing Date
Chapter 130-02 WAC	Per RCW 43.365.020, commerce intends to update rules pertaining to the motion picture competitiveness program in order to	Anticipated completion in fall of 2012

WAC Citation	Subject Matter/Purpose of Rule	Current Activity/ Approximate Filing Date
	align rules with changes made to the underlying statutes during the 2012 legislative session.	
Chapter 365-230 WAC	Update lead-based paint accreditation to be consistent with EPA due out this July around dust wipe sampling. Changes may make current rules obsolete.	Anticipated completion in winter 2012
Chapter 365-120 WAC	Repeal chapter 365-120 WAC, State funding of local emergency shelter and transitional housing, operating and rent. These rules are no longer necessary due to the enactment of chapter 43.185C RCW that governs the operation of commerce homeless programs.	Anticipated completion in fall 2012

Nick Demerice
Rules Coordinator