

WSR 16-04-020
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed January 22, 2016, 11:27 a.m., effective February 22, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of the proposed WAC is to add the community first choice (CFC) program to the array of programs and services offered by the department. New WAC 388-106-0270 through 388-106-0295 define CFC services, including the scope, limitations, qualified providers, and eligibility.

In addition, WAC 388-106-0047 clarifies the department's ability to terminate services if the plan of care is not approved in writing and WAC 388-106-0050 amends and clarifies the department's assessment and home visit requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0015, 388-106-0020, 388-106-0033, 388-106-0045, 388-106-0047, 388-106-0050, 388-106-0055, 388-106-0070, and 388-106-0120.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, 74.39A.400.

Other Authority: 42 C.F.R. § 441.500-590.

Adopted under notice filed as WSR 15-23-052 on November 12, 2015.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-106-0047(3), changed the language of "two months" to "sixty days."

WAC 388-106-0015(3), added adult family homes.

WAC 388-106-0020(5), language was changed to "Services to any person who has not been authorized by the department to receive them."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 13, Amended 9, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 13, Amended 9, Repealed 0.

Date Adopted: January 20, 2016.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-01-085, filed 12/16/14, effective 1/16/15)

WAC 388-106-0015 What long-term care services does the department provide? The department provides

long-term care services through programs that are designed to help you remain in the community. These programs offer an alternative to nursing home care (which is described in WAC 388-106-0350 through 388-106-0360). You may receive services from any of the following:

(1) **Medicaid personal care (MPC)** is a medicaid state plan program authorized under RCW 74.09.520. Clients eligible for this program may receive personal care in their own home, adult family home, or in ~~((a))~~ adult residential care ((facility)) as defined in WAC 388-110-020.

(2) **Community options program entry system (COPEs)** is a medicaid waiver program authorized under RCW 74.39A.030. Clients eligible for this program may receive personal care in their own home or in a residential facility.

(3) **Community first choice (CFC)** is a medicaid state plan program authorized under RCW 74.39A.400. Clients eligible for this program may receive services in their own home, in an adult family home, in adult residential care, enhanced adult residential care, or assisted living as defined in WAC 388-110-020.

(4) **Chore** is a state-only funded program authorized under RCW 74.39A.110. Grandfathered clients may receive assistance with personal care in their own home.

~~((4))~~ (5) **Volunteer chore** is a state-funded program that provides volunteer assistance with household tasks to eligible clients.

~~((5))~~ (6) **Program of all-inclusive care for the elderly (PACE)** is a medicaid/medicare managed care program authorized under 42 CFR 460.2. Clients eligible for this program may receive personal care and medical services in their own home, in residential facilities, and in adult day health centers.

~~((6))~~ (7) **Adult day health** is a supervised daytime program providing skilled nursing and rehabilitative therapy services in addition to core services outlined in WAC 388-106-0800.

~~((7))~~ (8) **Adult day care** is a supervised daytime program providing core services, as defined under WAC 388-106-0800.

~~((8))~~ (9) **Medical care services** is a state-funded program authorized under RCW 74.09.035. Clients eligible for this program may receive personal care services in an adult family home or an adult residential care facility.

~~((9))~~ (10) **Residential care discharge allowance** is a service that helps eligible clients to establish or resume living in their own home.

~~((10))~~ (11) **Private duty nursing** is a medicaid service that provides an alternative to institutionalization in a hospital or nursing facility setting. Clients eligible for this program may receive at least four continuous hours of skilled nursing care on a day to day basis in their own home.

~~((11))~~ (12) **Senior Citizens Services Act (SCSA)** is a program authorized under chapter 74.38 RCW. Clients eligible for this program may receive community-based services as defined in RCW 74.38.040.

~~((12))~~ (13) **Respite program** is a program authorized under RCW 74.41.040 and WAC 388-106-1200. This program provides relief care for unpaid family or other caregivers of adults with a functional disability.

~~((13))~~ (14) **Programs for persons with developmental disabilities** are discussed in chapter 388-823 through 388-850 WAC.

~~((14))~~ (15) **Nursing facility.**

~~((15))~~ (16) **New Freedom consumer directed services (NFCDS)** is a medicaid waiver program authorized under RCW 74.39A.030.

~~((16))~~ (17) **Residential support** is a medicaid waiver program authorized under RCW 74.39A.030. Clients eligible for this program may receive personal care in a licensed and contracted enhanced services facility or in a licensed adult family home with a contract to provide specialized behavior services.

AMENDATORY SECTION (Amending WSR 12-16-026, filed 7/25/12, effective 8/25/12)

WAC 388-106-0020 Under the MPC, CFC, COPEs, and chore programs, what services are not covered? The following types of services are not covered under MPC, CFC, COPEs, and chore:

- (1) Child care.
- (2) Individual providers must not provide:
 - (a) Sterile procedures unless the provider is a family member or the client self directs the procedure;
 - (b) Administration of medications or other tasks requiring a licensed health professional unless these tasks are provided through nurse delegation, self-directed care, or the provider is a family member.
- (3) Agency providers must not provide:
 - (a) Sterile procedures;
 - (b) Self-directed care;
 - (c) Administration of medications or other tasks requiring a licensed health care professional unless these tasks are provided through nurse delegation.
- (4) Services provided over the telephone.
- (5) Services to ~~((assist other household members not eligible for services.))~~ any person who has not been authorized by the department to receive them.
- (6) Development of social, behavioral, recreational, communication, or other types of community living skills.
- (7) Nursing care.
- (8) Pet care.
- (9) Assistance with managing finances.
- (10) Respite.
- (11) Yard care.

AMENDATORY SECTION (Amending WSR 14-15-071, filed 7/15/14, effective 8/15/14)

WAC 388-106-0033 When may I receive services in a facility contracted to provide specialized dementia care services? (1) You may be eligible to receive services in a licensed assisted living facility that has a DSHS "enhanced adult residential care-specialized dementia care ("EARC-SDC")," which is defined in WAC 388-110-220. You may be eligible to receive EARC-SDC services in a licensed assisted living facility under the following circumstances:

(a) You are enrolled in ~~((COPEs))~~ CFC, as defined in WAC 388-106-0015;

(b) The department has received written or verbal confirmation from a health care practitioner that you have an irreversible dementia (such as Alzheimer's disease, multi-infarct or vascular dementia, Lewy body dementia, Pick's disease, alcohol-related dementia);

(c) You are receiving services in an assisted living facility that has a current EARC-SDC contract, and you are living in the part of the facility that is covered by the contract;

(d) The department has authorized you to receive EARC-SDC services in the assisted living facility; and

(e) You are assessed by the comprehensive assessment reporting evaluation tool ("CARE") as having a cognitive performance score of 3 or above; and any one or more of the following:

- (i) An unmet need for assistance with supervision, limited, extensive or total dependence with eating/drinking;
- (ii) Inappropriate toileting/menses activities;
- (iii) Rummages/takes others belongings;
- (iv) Up at night when others are sleeping and requires intervention(s);
- (v) Wanders/exit seeking;
- (vi) Wanders/not exit seeking;
- (vii) Has left home and gotten lost;
- (viii) Spitting;
- (ix) Disrobes in public;
- (x) Eats non-edible substances;
- (xi) Sexual acting out;
- (xii) Delusions;
- (xiii) Hallucinations;
- (xiv) Assaultive;
- (xv) Breaks, throws items;
- (xvi) Combative during personal care;
- (xvii) Easily irritable/agitated;
- (xviii) Obsessive regarding health/body functions;
- (xix) Repetitive movement/pacing;
- (xx) Unrealistic fears or suspicions;
- (xxi) Repetitive complaints/questions;
- (xxii) Resistive to care;
- (xxiii) Verbally abusive;
- (xxiv) Yelling/screaming;
- (xxv) Inappropriate verbal noises; or
- (xxvi) Accuses others of stealing.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0045 When will the department authorize my long-term care services? The department will authorize long-term care services when you:

- (1) Are assessed using CARE;
- (2) Are found financially and functionally eligible for services including, if applicable, the determination of the amount of participation toward the cost of your care and/or the amount of room and board that you must pay;
- (3) Have given written consent for services and approved your plan of care; and
- (4) Have chosen a provider(s), qualified for payment.

AMENDATORY SECTION (Amending WSR 15-03-038, filed 1/12/15, effective 2/12/15)

WAC 388-106-0047 When can the department terminate or deny long-term care services to me? (1) The department will deny or terminate long-term care services if you are not eligible for long-term care services pursuant to WAC 388-106-0210, 388-106-0310, or 388-106-0610.

(2) The department may deny or terminate long-term care services to you if, after exhaustion of standard case management activities and the approaches delineated in the department's challenging cases protocol, which must include an attempt to reasonably accommodate your disability or disabilities, any of the following conditions exist:

(a) After a department representative reviews with you your rights and responsibilities as a client of the department, per WAC 388-106-1300 and 388-106-1303, you refuse to accept those long-term care services identified in your plan of care that are vital to your health, welfare or safety;

(b) You choose to receive services in your own home and you or others in your home demonstrate behaviors that are substantially likely to cause serious harm to you or your care provider;

(c) You choose to receive services in your own home and hazardous conditions in or immediately around your home jeopardize the health, safety, or welfare of you or your provider. Hazardous conditions include but are not limited to the following:

- (i) Threatening, uncontrolled animals (e.g., dogs);
- (ii) The manufacture, sale, or use of illegal drugs;
- (iii) The presence of hazardous materials (e.g., exposed sewage, evidence of a methamphetamine lab).

(3) The department will terminate long-term care services if you do not sign and return your service summary document within sixty days of your assessment completion date.

AMENDATORY SECTION (Amending WSR 13-18-039 and 13-17-125, filed 8/29/13 and 8/21/13, effective 10/1/13)

WAC 388-106-0050 What is an assessment? (1) An assessment is an in-person interview in your home, ~~(or your place of)~~ current residence, or another location that is convenient to you that is conducted by the department, to inventory and evaluate your ability to care for yourself. The department will assess you at least ~~((annually))~~ every twelve months, or more often when there are significant changes ~~((to your ability to care for yourself))~~ neecessitating revisions to your CARE plan, or at your request. If your assessment did not take place in the residence where you receive services, the department must visit that residence to evaluate your living situation and environment, for you to continue to receive services.

(2) Between assessments, the department may modify your current assessment without an in-person interview in your home or place of residence. The reasons that the department may modify your current assessment without conducting an in-person interview in your home or place of residence include but are not limited to the following:

(a) Errors made by department staff in coding the information from your in-person interview;

(b) New information requested by department staff at the time of your assessment and received after completion of the in-person interview (e.g. medical diagnosis);

(c) Changes in the level of informal support available to you; or

(d) Clarification of the coding selected.

(3) When the department modifies your current assessment, it will notify you using a Planned Action Notice of the modification regardless of whether the modification results in a change to your benefits. You will also receive a new service summary and assessment details, if requested.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

WAC 388-106-0055 What is the purpose of an assessment? The purpose of an assessment is to:

- (1) Determine eligibility for long-term care programs;
- (2) Identify your strengths, limitations, goals, and preferences;
- (3) Evaluate your living situation and environment;
- (4) Evaluate your physical health, functional and cognitive abilities;
- (5) Determine availability of informal supports, shared benefits, and other nondepartment paid resources;
- (6) Determine need for intervention;
- (7) Determine need for case management activities;
- (8) Determine your classification group that will set your payment rate for residential care or number of hours of in-home care;
- (9) Determine need for referrals; and
- (10) Develop a plan of care, as defined in WAC 388-106-0010.
- (11) In the case of New Freedom consumer directed services, the purpose of an assessment is to determine functional eligibility and for the participant to develop the New Freedom spending plan, as defined in WAC 388-106-0010.

AMENDATORY SECTION (Amending WSR 14-15-092, filed 7/18/14, effective 8/18/14)

WAC 388-106-0070 Will I be assessed in CARE? You will be assessed in CARE if you are applying for or receiving DDA services, CFC, COPEs, MPC, chore, respite, adult day health, medical care services, PACE, private duty nursing, residential support, and new freedom.

If you are under the age of eighteen and within thirty calendar days of your next birthday, CARE determines your assessment age to be that of your next birthday.

AMENDATORY SECTION (Amending WSR 15-01-085, filed 12/16/14, effective 1/16/15)

WAC 388-106-0120 What is the payment rate that the department will pay the provider if I receive personal care services in a residential facility? The department publishes rates and/or adopts rules to establish how much the department pays toward the cost of your care in a residential facility.

(1) For CFC, COPEs, MPC, medical care services, RCL, and new freedom programs, the department assigns payment

rates to the CARE classification group. Under these programs, payment for care in a residential facility corresponds to the payment rate assigned to the classification group in which the CARE tool has placed you.

(2) The enhanced services facility rate is determined by legislative action and appropriation.

(3) The rate for adult family homes with a specialized behavior support contract is based on the CARE classification group and an add-on amount, which is negotiated through the collective bargaining process.

Community First Choice

NEW SECTION

WAC 388-106-0270 What services are available under community first choice (CFC)? The services you may receive under the community first choice program include:

(1) Personal care services, as defined in WAC 388-106-0010.

(2) Relief care, which is personal care services by a second individual or agency provider as a back-up to your primary paid personal care provider.

(3) Skills acquisition training, which is training that allows you to acquire, maintain, and enhance skills necessary to accomplish ADLs, IADLs, or health related tasks more independently. Health related tasks are specific tasks related to the needs of an individual, which under state law licensed health professionals can delegate or assign to a qualified health care practitioner.

(4) Personal emergency response systems (PERS), which is a basic electronic device that enables you to secure help in an emergency when:

(a) You live alone in your own home; or

(b) You are alone in your own home for significant parts of the day and have no provider for extended periods of time; or

(c) No one in your home, including you, is able to secure help in an emergency.

(5) Assistive technology, which are items that increase your independence or substitute for human assistance specifically with ADL, IADL, or health related tasks, including but not limited to:

(a) Additions to the standard PERS unit, such as fall detection, GPS, or medication delivery with or without reminder systems. For cost allocation purposes, the cost of additions to the standard PERS unit will be considered assistive technology; or

(b) Department approved devices, which include but are not limited to: visual alert systems, voice activated systems, switches and eyegazes, and timers or electronic devices that monitor or sense movement and react in a prescribed manner such as turning on or off an appliance.

(6) Nurse delegation services, as defined in WAC 246-840-910 through 246-840-970.

(7) Nursing services, when you are not already receiving this type of service from another source. A registered nurse may visit you and perform any of the following activities:

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, which is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, including but not limited to, medication administration or wound care such as debridement. Nursing services will only provide skilled treatment in the event of an emergency. In nonemergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, home health agency, or other appropriate resource.

(e) File review; and

(f) Evaluation of health-related care needs affecting service plan and delivery.

(8) Community transition services, which are non-recurring, set-up items or services to assist you with being discharged from a nursing facility, institution for mental diseases, or intermediate care facility for individuals with intellectual disabilities, when these items or services are necessary for you to set up your own home. Community transition services may include:

(a) Security deposits that are required to lease an apartment or home, including first month's rent;

(b) Essential household furnishings required to occupy and use a community domicile, including furniture, window coverings, food preparation items, and bath and linen supplies;

(c) Set-up fees or deposits for utilities, including telephone, electricity, heating, water, and garbage;

(d) Services necessary for your health and safety such as pest eradication and one-time cleaning prior to occupancy;

(e) Moving expenses; and

(f) Activities to assess need, arrange for, and procure necessary resources.

(9) Caregiver management training on how to select, manage and dismiss personal care providers. Training is provided in written, DVD, and web-based formats.

NEW SECTION

WAC 388-106-0271 Are there limits to the skills acquisition training I may receive? Skills acquisition training:

(1) Shall not replace any training or therapy otherwise provided under medicaid, medicare, or any private insurance;

(2) Does not include therapy or nursing services that must be performed by a licensed therapist or nurse, but may be used to complement therapy or nursing goals coordinated through the care plan;

(3) For children, must be related to the child's disability and will not be provided for tasks that are determined to be age appropriate as described in WAC 388-106-0130(7); and

(4) In combination with assistive technology purchases, is limited to a yearly amount determined by the department per fiscal year.

NEW SECTION

WAC 388-106-0272 Who are qualified providers for skills acquisition training? (1) Long term care workers, who must only provide skills acquisition training on IADLs and the following ADL tasks: dressing, application of deodorant, washing hands and face, hair washing, hair combing and styling, application of make-up, menses care, shaving with an electric razor, tooth brushing or denture care, and bathing tasks excluding any transfers in or out of the bathing area; and

(2) Contracted home health agencies, which may provide skills acquisition training on ADLs, IADLs or health related tasks that are within the profession's scope of practice.

NEW SECTION

WAC 388-106-0273 May I receive additional personal emergency response services? Under the assistive technology benefit, you may be eligible to receive:

(1) A fall detection system, if:

(a) You are eligible for a standard PERS unit; and

(b) You have a recent documented history of falls.

(2) A global positioning system (GPS) tracking device with locator capabilities if:

(a) You have a recent documented history of short-term memory loss; and a recent documented history of wandering with exit seeking behavior; or

(b) A recent documented history of getting lost in a familiar surrounding and being unaware of the need or unable to ask for assistance; and

(c) In addition, if you are under the age of 12, there must be information presented at your assessment that due to your disability the support you are provided for memory or decision making is greater than is typical for a person of your age.

(3) A medication reminder if:

(a) You are eligible for a standard PERS unit;

(b) You do not have a caregiver available to provide the service; and

(c) You are able to use the reminder to take your medications.

NEW SECTION

WAC 388-106-0274 Are there limits to the assistive technology I may receive? (1) Assistive technology excludes:

(a) Any purchase that is solely for recreational purposes;

(b) Applications for devices that are sold separately from the device, subscriptions, and data plan charges, or items that require a monthly recurring fee;

(c) Medical supplies and medical equipment;

(d) Home modifications; and

(e) Any item that would otherwise be covered under any other payment source, including but not limited to, medicare, medicaid, and private insurance.

(2) In combination with skills acquisition training, assistive technology purchases are limited to a yearly amount determined by the department per fiscal year.

(3) To help decide whether to authorize this service, the department may require a treating professional's written rec-

ommendation regarding the need for the assistive technology evaluation. The treating professional making this recommendation must:

- (a) Have personal knowledge of or experience with the requested assistive technology; and
- (b) Have examined you, reviewed your medical records, and have knowledge of your level of functioning, and ability to use the technology.
- (4) Your choice of services is limited to the most cost effective option that meets your health and welfare needs.

NEW SECTION

WAC 388-106-0275 Are there limits to the community transition services I may receive? Community transition services:

- (1) Do not include recreational or diverting items, such as a television, cable or VCR;
- (2) Do not include room and board; and
- (3) May not exceed eight hundred fifty dollars per discharge.

NEW SECTION

WAC 388-106-0276 Where can I receive CFC services? You may receive CFC services;

- (1) In your own home; or
- (2) In a residential facility, which include licensed and contracted:
- (a) Adult family homes, as defined in RCW 70.128.010; or
- (b) Assisted living facilities as defined in RCW 18.20.020.
- (3) As applicable, while you are out of the home accessing the community or working.

NEW SECTION

WAC 388-106-0277 Am I eligible for CFC services? You are eligible for CFC services if you meet the following criteria:

- (1) Your CARE assessment shows you need the level of care provided in a hospital, nursing facility, intermediate care facility for the intellectually disabled (ICF/ID), institution providing psychiatric services for individuals under age twenty-one, or an institution for mental diseases for individuals age sixty-five or over (or will likely need the level of care within thirty days unless CFC services are provided); and
- (2) You are eligible for a categorically needy (CN) or the alternative benefit plan (ABP) Washington apple health program. Financial eligibility rules for CFC are described in WAC 182-513-1210 through WAC 182-513-1220; or
- (3) If you are not financially eligible for a non-institutional CN or ABP program, but are financially eligible for a home and community based waiver, you are eligible for CFC as long as you continue to receive at least one monthly waiver service.

NEW SECTION**WAC 388-106-0280 When do CFC services begin?**

Your services begin on the date the department authorizes services.

NEW SECTION

WAC 388-106-0283 How do I remain eligible for CFC services? (1) In order to remain eligible for CFC, you must remain financially eligible and be in need of services in accordance with WAC 388-106-0310 as determined through a CARE assessment. The assessment in CARE must be completed at least annually or more often when there are significant changes in your functional or financial circumstances; or

(2) If you receive services through DDA, you must remain financially eligible and eligible for ICF/ID or nursing facility level of care as described in WAC 388-828-4400, 388-828-3080 and 388-106-0355.

(3) When your eligibility is dependent on your eligibility for a home and community based waiver, you must receive at least one waiver service every month. If you do not receive a waiver service for more than thirty calendar days, you will no longer be eligible for CFC and the department will terminate your CFC services.

(4) If eligibility laws, regulations, or rules for CFC change, and if you do not meet the changed eligibility requirements, the department will terminate your CFC services, even if your functional or financial circumstances have not changed.

NEW SECTION

WAC 388-106-0285 What do I pay for if I receive CFC services? (1) If you are receiving services through CFC only, you may be required to pay toward the cost of your care as outlined in WAC 182-513-1215. If you are receiving services in:

(a) Your own home, you will not have to pay toward the cost of your care.

(b) A residential facility, you must pay for your room and board. You are allowed to keep some of your income for personal needs allowance (PNA). Depending on your financial eligibility group and income, you may also be responsible to pay an additional amount towards the cost of your care.

(2) If you are receiving services through CFC and a home and community based waiver, you may be required to pay toward the cost of your care as outlined in WAC 182-515-1509. If you are receiving services in:

(a) Your own home, you are allowed to keep some of your income for a maintenance allowance.

(b) If you are living in a residential facility, you must pay for your room and board and may have to pay an additional amount towards the cost of services. You are allowed to keep some of your income for PNA.

NEW SECTION

WAC 388-106-0290 What does the department pay towards the cost of care when you are receiving CFC services and live in a residential facility? When you receive

CFC services and live in a residential facility, the department pays the facility the difference between what you are required to pay the facility and the department-set rate for the facility. The department pays the residential facility from the first day of service through the:

- (1) The day before your discharge date; or
- (2) The last day of service if you die while living at the facility.

NEW SECTION

WAC 388-106-0295 May I be employed and receive CFC services? You may be employed and continue to receive CFC services as long as you remain medicaid eligible under the categorically needy (CN) or alternative benefit plan (ABP) program.

WSR 16-05-003**PERMANENT RULES****DEPARTMENT OF ECOLOGY**

[Order 13-12—Filed February 3, 2016, 2:10 p.m., effective March 5, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of this rule making is to amend chapter 173-401 WAC, Operating permit regulation. The amendments:

- Update language for the complexity portion of ecology's air operating permit (AOP) fees to allow for fair fee distribution to ecology AOP sources.
- Revise audit provisions.
- Clarify applicability requirements.
- Clarify rule provisions, update language to be consistent with state and federal rules, and correct errors.

Citation of Existing Rules Affected by this Order: Amending chapter 173-401 WAC, Operating permit regulation.

Statutory Authority for Adoption: RCW 70.94.011, 70.94.161, 70.94.162, 70.94.331, 70.94.510.

Adopted under notice filed as WSR 15-16-112 on August 4, 2015.

Changes Other than Editing from Proposed to Adopted Version: RCW 34.05.325 (6)(a)(ii) requires ecology to describe the differences between the text of the proposed rule as published in the Washington State Register and the text of the rule as adopted, other than editing changes, stating the reasons for the differences.

There are some differences between the proposed rule filed on August 4, 2015, and the adopted rule. Ecology made these changes for all or some of the following reasons:

- In response to comments we received.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute [statute].

The following content describes the changes and ecology's reasons for making them:

Section	Change(s)	Purpose/Effect
200(35)	Changed July 1, 2011, to January 2, 2011.	Changed to align with date Environmental Protection Agency (EPA) required permitting agencies to include greenhouse gas emissions. July 1 no longer valid due to United States Supreme Court decision invalidating part of the EPA rule that required AOPs for otherwise minor sources with 100,000 tpy CO ² e emissions.
510(1)	Deleted proposed text "and unregulated emission units at nonmajor sources as described in." Added text "or units not regulated under."	Ecology received comment that "unregulated emission units" is not a defined term. Text has been corrected for clarity of the intent.

A final cost-benefit analysis is available by contacting Air Quality Program, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6800, fax (360) 407-7534, e-mail AQComments@ecy.wa.gov.

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Date Adopted: February 3, 2016.

Maia D. Bellon
Director

AMENDATORY SECTION (Amending WSR 11-17-037, filed 8/10/11, effective 9/10/11)

WAC 173-401-200 Definitions. The definitions of terms contained in chapter 173-400 WAC are incorporated by reference, unless otherwise defined here. Unless a different meaning is clearly required by context, the following

words and phrases, as used in this chapter, shall have the following meanings:

(1) **"Affected source"** means a source that includes one or more affected units.

(2) **"Affected states"** are the states or federally recognized Tribal Nations:

(a) Whose air quality may be affected when a chapter 401 permit, permit modification, or permit renewal is being proposed; or

(b) That are within fifty miles of the permitted source.

(3) **"Affected unit"** means a fossil-fuel fired combustion device or a source that opts-in under 40 C.F.R. part 74, that is subject to any emission reduction requirement or limitation under the Acid Rain Program.

(4) **"Applicable requirement"** means all of the following as they apply to emissions units in a chapter 401 source (including requirements that have been promulgated or approved by EPA, ecology or a local authority through rule making at the time of permit issuance but have future-effective compliance dates):

(a) The following provisions of the Federal Clean Air Act (FCAA):

(i) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rule making under Title I of the FCAA (Air Pollution Prevention and Control) that implements the relevant requirements of the FCAA, including any revisions to that plan promulgated in 40 C.F.R. 52;

(ii) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rule making under Title I, including parts C (Prevention of Significant Deterioration) or D (Plan Requirements for Nonattainment Areas), of the FCAA;

(iii) Any standard or other requirement under section 111 (New Source Performance Standards) of the FCAA, including section 111(d);

(iv) Any standard or other requirement under section 112 (Hazardous Air Pollutants) of the FCAA, including any requirement concerning accident prevention under section 112 (r)(7) of the FCAA;

(v) Any standard or other requirement of the acid rain program under Title IV of the FCAA (Acid Deposition Control) or the regulations promulgated thereunder;

(vi) Any requirements established pursuant to section 504(b) or section 114 (a)(3) of the FCAA;

(vii) Any standard or other requirement governing solid waste incineration, under section 129 of the FCAA;

(viii) Any standard or other requirement for consumer and commercial products, under section 183(e) of the FCAA;

(ix) Any standard or other requirement for tank vessels, under section 183(f) of the FCAA;

(x) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the FCAA;

(xi) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the FCAA, unless the administrator has determined that such requirements need not be contained in a Title V permit; and

(xii) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the

FCAA, but only as it would apply to temporary sources permitted pursuant to WAC 173-401-635.

(b) Chapter 70.94 RCW and rules adopted thereunder. This includes requirements in regulatory orders issued by the permitting authority.

(c) In permits issued by local air pollution control authorities, the requirements of any order or regulation adopted by the authority.

(d) Chapter 70.98 RCW and rules adopted thereunder.

(e) Chapter 80.50 RCW and rules adopted thereunder.

(5) **"Chapter 401 permit"** or **"permit"** means any permit or group of permits covering a chapter 401 source that is issued, renewed, amended, or revised pursuant to this chapter.

(6) **"Chapter 401 source"** means any source subject to the permitting requirements of this chapter.

(7) **"Continuous compliance"** means collection of all monitoring data required by the permit under the data collection frequency required by the permit, with no deviations, and no other information that indicates deviations, except for unavoidable excess emissions or other operating conditions during which compliance is not required. Monitoring data includes information from instrumental (e.g., CEMS, COMS, or parameter monitors) and noninstrumental (e.g., visual observation, inspection, recordkeeping) forms of monitoring.

(8) **"Delegated authority"** means an air pollution control authority that has been delegated the permit program pursuant to RCW 70.94.161 (2)(b).

(9) **"Designated representative"** shall have the meaning given to it in section 402(26) of the FCAA and the regulations promulgated thereunder and in effect on April 7, 1993.

(10) **"Draft permit"** means the version of a permit for which the permitting authority offers public participation or affected state review.

(11) **"Emissions allowable under the permit"** means an enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or an enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

(12) **"Emissions unit"** means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 112(b) of the FCAA. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the FCAA.

(13) The **"EPA"** or the **"administrator"** means the administrator of the U.S. Environmental Protection Agency or her/his designee.

(14) **"Federal Clean Air Act"** or **"FCAA"** means the Federal Clean Air Act, also known as Public Law 88-206, 77 Stat. 392, December 17, 1963, 42 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

(15) **"Final permit"** means the version of a chapter 401 permit issued by the permitting authority that has completed all review procedures required by this chapter and 40 C.F.R. §§ 70.7 and 70.8.

(16) **"General permit"** means a permit which covers multiple similar sources or emissions units in lieu of individual permits being issued to each source.

(17) **"Insignificant activity"** or **"insignificant emissions unit"** means any activity or emissions unit located at a chapter 401 source which qualifies as insignificant under the criteria listed in WAC 173-401-530. These units and activities are exempt from permit program requirements except as provided in WAC 173-401-530.

(18) **"Intermittent compliance"** means any form of compliance other than continuous compliance. A certification of intermittent compliance under WAC 173-401-630(5) shall be filed where the monitoring data or other information available to the permittee shows either there are periods of noncompliance, or periods of time during which the monitoring required by the permit was not performed or recorded.

(19) **"Major source"** means any stationary source (or any group of stationary sources) that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control) belonging to a single major industrial grouping and that are described in (a), (b), or (c) of this subsection. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the *Standard Industrial Classification Manual*, 1987.

(a) A major source under section 112 of the FCAA, which is defined as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the FCAA, or twenty-five tpy or more of any combination of such hazardous air pollutants. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(b) A major stationary source of air pollutants, as defined in section 302 of the FCAA, that directly emits or has the potential to emit, one hundred tpy or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of this section, unless the source belongs to one of the following categories of stationary source:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;

- (viii) Municipal incinerators capable of charging more than two hundred fifty tons of refuse per day;
 - (ix) Hydrofluoric, sulfuric, or nitric acid plants;
 - (x) Petroleum refineries;
 - (xi) Lime plants;
 - (xii) Phosphate rock processing plants;
 - (xiii) Coke oven batteries;
 - (xiv) Sulfur recovery plants;
 - (xv) Carbon black plants (furnace process);
 - (xvi) Primary lead smelters;
 - (xvii) Fuel conversion plants;
 - (xviii) Sintering plants;
 - (xix) Secondary metal production plants;
 - (xx) Chemical process plants;
 - (xxi) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units per hour heat input;
 - (xxii) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;
 - (xxiii) Taconite ore processing plants;
 - (xxiv) Glass fiber processing plants;
 - (xxv) Charcoal production plants;
 - (xxvi) Fossil-fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input; or
 - (xxvii) All other stationary source categories, which as of August 7, 1980, were being regulated by a standard promulgated under section 111 or 112 of the FCAA;
- (c) A major stationary source as defined in part D of Title I of the FCAA, including:
- (i) For ozone nonattainment areas, sources with the potential to emit one hundred tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," fifty tpy or more in areas classified as "serious," twenty-five tpy or more in areas classified as "severe," and ten tpy or more in areas classified as "extreme"; except that the references in this paragraph to one hundred, fifty, twenty-five, and ten tpy of nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding, under section 182 (f)(1) or (2) of the FCAA, that requirements under section 182(f) of the FCAA do not apply;
 - (ii) For ozone transport regions established pursuant to section 184 of the FCAA, sources with the potential to emit fifty tpy or more of volatile organic compounds;
 - (iii) For carbon monoxide nonattainment areas (A) that are classified as "serious," and (B) in which stationary sources contribute significantly to carbon monoxide levels, sources with the potential to emit fifty tpy or more of carbon monoxide; and
 - (iv) For particulate matter (PM-10) nonattainment areas classified as "serious," sources with the potential to emit seventy tpy or more of PM-10.
- (20) "**Permit modification**" means a revision to a chapter 401 permit that meets the requirements of WAC 173-401-725.
- (21) "**Permit program costs**" means all reasonable (direct and indirect) costs required to develop and administer a permit program (whether such costs are incurred by the permitting authority or other state or local agencies that do not

issue permits directly, but that support permit issuance or administration).

(22) "**Permit revision**" means any permit modification or administrative permit amendment.

(23) "**Permitting authority**" means the department of ecology, local air authority, or other agency authorized under RCW 70.94.161 (3)(b) and approved by EPA to carry out a permit program under this chapter.

(24) "**Potential to emit**" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the administrator. This term does not alter or affect the use of this term for any other purposes under the FCAA, or the term "capacity factor" as used in Title IV of the FCAA or the regulations promulgated thereunder.

(25) "**Proposed permit**" means the version of a permit that the permitting authority proposes to issue and forwards to the administrator for review in compliance with 40 C.F.R. 70.8.

(26) "**Regulated air pollutant**" means the following:

- (a) Nitrogen oxides or any volatile organic compounds;
- (b) Any pollutant for which a national ambient air quality standard has been promulgated;
- (c) Any pollutant that is subject to any standard promulgated under section 111 of the FCAA;
- (d) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the FCAA; or
- (e) Any pollutant subject to a standard promulgated under section 112 or other requirements established under section 112 of the FCAA, including sections 112 (g), (j), and (r), including the following:

(i) Any pollutant subject to requirements under section 112(j) of the FCAA. If the administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the FCAA, any pollutant for which a subject source would be major shall be considered to be regulated on the date eighteen months after the applicable date established pursuant to section 112(e) of the FCAA; and

(ii) Any pollutant for which the requirements of section 112 (g)(2) of the FCAA have been met, but only with respect to the individual source subject to section 112 (g)(2) requirement; and

(f) Any air pollutant for which numerical emission standards, operational requirements, work practices, or monitoring requirements applicable to the source have been adopted under RCW 70.94.331, 70.94.380, and 70.94.395.

(27) "**Regulated pollutant (for fee calculation)**," which is used only for purposes of WAC 173-401-900, means any "regulated air pollutant" except the following:

- (a) Carbon monoxide;
- (b) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated under or established by Title VI of the FCAA; or

(c) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the FCAA.

(d) Any regulated air pollutant emitted from an insignificant activity or emissions unit as determined under WAC 173-401-530.

(28) "**Renewal**" means the process by which a permit is reissued at the end of its term.

(29) "**Responsible official**" means one of the following:

(a) For a corporation: A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than two hundred fifty persons or have gross annual sales or expenditures exceeding forty-three million in 1992 dollars; or

(ii) The delegation of authority to such representative is approved in advance by the permitting authority;

(b) For a partnership or sole proprietorship: A general partner or the proprietor, respectively;

(c) For a municipality, state, federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA); or

(d) For affected sources:

(i) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the FCAA or the regulations promulgated thereunder and in effect on April 7, 1993 are concerned; and

(ii) The designated representative for any other purposes under 40 C.F.R. Part 70.

(30) "**Section 502 (b)(10) changes**" are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(31) "**Small business stationary source**" means a stationary source that:

(a) Is owned or operated by a person that employs one hundred or fewer individuals;

(b) Is a small business concern as defined in the Federal Small Business Act;

(c) Is not a major source;

(d) Does not emit fifty tons or more per year of any regulated pollutant; and

(e) Emits less than seventy-five tons per year of all regulated pollutants.

(32) "**Solid waste incineration unit**" (for purposes of this chapter) means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels). Such term

does not include incinerators or other units required to have a permit under section 3005 of the Solid Waste Disposal Act (42 U.S.C. 6925). The term "solid waste incineration unit" does not include:

(a) Materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals;

(b) Qualifying small power production facilities, as defined in section (3)(17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)) or qualifying cogeneration facilities as defined in section (3)(18)(B) of the Federal Power Act (16 U.S.C. 796 (18)(B)), which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes; or

(c) Air curtain incinerators provided that such incinerators only burn wood wastes, yard wastes, and clean lumber and that such air curtain incinerators comply with opacity limitations to be established by the administrator by rule.

(33) "**State**" means any nonfederal permitting authority, including any local agency, interstate association, or state-wide program.

(34) "**Stationary source**" means any building, structure, facility, or installation that emits or may emit any air contaminant. For purposes of this chapter, air contaminants include any regulated air pollutant or any pollutant listed under section 112(b) of the FCAA.

(35) "**Subject to regulation**" means, for any air pollutant, that the pollutant is subject to either a provision in the FCAA, or a nationally applicable regulation codified by EPA in subchapter C of 40 C.F.R. chapter 1 (in effect on October 6, 2010), that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(a) Greenhouse gases (GHGs), the air pollutant defined in 40 C.F.R. 86.1818-12(a) as the aggregate group of six greenhouse gases: Carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation under this chapter unless, as of (~~July 1~~) January 2, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO₂ equivalent emissions and the source is otherwise required to have an operating permit.

(b) The term "tpy (tons per year) CO₂ equivalent emissions" (CO₂e) shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions (tpy), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40 C.F.R. part 98 - Global Warming Potentials, and summing the resultant value for each to compute a tpy CO₂e. For purposes of this subsection (b), prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposi-

tion of nonfossilized and biodegradable organic material originating from plants, animals, or microorganisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the nonfossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material).

(36) **"Title I modification"** or **"modification under any provision of Title I of the FCAA"** means any modification under Sections 111 (Standards of Performance for New Stationary Sources) or 112 (Hazardous Air Pollutants) of the FCAA and any physical change or change in the method of operations that is subject to the preconstruction review regulations promulgated under Parts C (Prevention of Significant Deterioration) and D (Plan Requirements for Nonattainment Areas) of Title I of the FCAA.

AMENDATORY SECTION (Amending WSR 02-19-078, filed 9/16/02, effective 10/17/02)

WAC 173-401-300 Applicability. (1) Chapter 401 sources. The provisions of this chapter apply in all areas of the state of Washington to the following sources:

(a) Any source required by the FCAA to have an operating permit. These include the following sources:

(i) Any major source as defined in WAC 173-401-200.

(ii) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 (Standards of Performance for New Stationary Sources) of the FCAA. A small municipal waste combustion unit constructed on or before August 30, 1999, and regulated under WAC 173-400-050(5) becomes subject to this chapter on July 1, 2002.

(iii) Any source, including an area source, subject to a standard or other requirement under section 112 of the FCAA, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) (Prevention of Accidental Releases) of the FCAA.

(iv) Any solid waste incineration units required to obtain permits under section 129 of the FCAA.

A commercial and industrial solid waste incineration unit constructed on or before November 30, 1999, and regulated under WAC 173-400-050(4) becomes subject to this chapter on July 1, 2002.

(v) Any "affected source" regulated under Title IV (Acid Deposition Control) of the FCAA.

(vi) Any source in a source category designated by the EPA pursuant to 40 C.F.R. Part 70, as amended through April 7, 1993.

(b) Any source that the permitting authority determines may cause or contribute to air pollution in such quantity as to create a threat to the public health or welfare under RCW 70.94.161(4) using the procedures in subsection (5) of this section.

(c) Any other source which chooses to apply for a permit.

(d) ~~((Deferral. A source subject to the secondary aluminum production requirements in 40 C.F.R. Part 63, Subpart~~

~~RRR (in effect on July 1, 2000) that is not a major source and is not located at a major source as defined under 40 C.F.R. 63.2 and is not otherwise required to obtain a chapter 401 permit is deferred from chapter 173-401 WAC until December 4, 2004. This category includes sweat furnaces, aluminum scrap shredders, thermal chip dryers, scrap dryers/delacquering kilns/decoating kilns, group 2 furnaces (processing clean charge only and no reactive fluxing), dross-only furnaces, and rotary dross coolers.~~

(e)) A municipal solid waste landfill constructed, reconstructed or modified before May 30, 1991, and regulated under WAC 173-400-070(9) becomes subject to this chapter on September 20, 2001.

Note: Under 40 C.F.R. 62.14352(e) (in effect on July 1, 2000), an affected landfill must have submitted its chapter 401 application so that by April 6, 2001, the permitting agency was able to determine that it was timely and complete. Under 40 C.F.R. 70.7(b), an affected source may not operate if it has not submitted a timely and complete application.

(2) Source category exemptions.

(a) All sources listed in subsection (1)(a) of this section that are not major sources, affected sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the FCAA, are exempted from the obligation to obtain a chapter 401 permit until such time that: ~~((i) Ecology completes a rulemaking to determine whether nonmajor sources should be required to obtain permits. During this rulemaking, ecology will consider the compliance information contained in individual permit applications when evaluating the regulatory effectiveness and administrative feasibility of issuing operating permits to nonmajor sources relative to other regulatory options. This rulemaking must be completed no later than three years after the effective date of the permit program; or~~

~~((ii)) The administrator completes a ((rulemaking)) rule making to determine how the program should be structured for nonmajor sources and determines that such sources must obtain operating permits and ecology completes a rule making to adopt EPA's revised applicability criteria.~~

(b) Subsection (2)(a) of this section shall not apply to nonmajor sources subject to a standard or other requirement established under either section 111 or section 112 of the FCAA after July 21, 1992, if, during those ~~((rulemakings)) rule makings~~, the administrator determines that such sources must obtain a permit at an earlier date and, subsequently, ecology completes a rule making to adopt ~~((EPS's)) EPA's~~ applicability criteria.

(c) Any source listed in (a) of this subsection exempt from the requirement to obtain a permit under this section may opt to apply for a permit under this chapter.

(d) The following source categories are exempt from the obligation to obtain permit:

(i) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 C.F.R. Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters; and

(ii) All sources and source categories that would be required to obtain a permit solely because they are subject to part 61, Subpart M - National Emission Standard for Hazard-

ous Air Pollutants for Asbestos, section ~~((61.145))~~ 61.145, Standard for Demolition and Renovation.

(3) Emissions units and chapter 401 sources.

(a) ~~For major sources, the~~ permitting authority shall include in the permit all applicable requirements for all relevant emissions units in the major source.

(b) ~~For any nonmajor source, the permitting authority shall include in the permit all applicable requirements applicable to the emission units that cause the source to be subject to this chapter.~~

(4) Fugitive emissions. Fugitive emissions from a chapter 401 source shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

(5) Process for determining threat to public health or welfare. The following criteria shall be used to identify sources that are covered pursuant to subsection (1)(b) of this section:

(a) The source may cause or ~~((to))~~ contribute to air pollution in such quantity as to create a violation of any ambient air quality standard as demonstrated by a dispersion modeling analysis performed in accordance with EPA's dispersion modeling guidelines, monitoring, or other appropriate methods; or

(b) The source may cause or contribute to air pollution in such quantity as to create a significant ambient level of any ~~((class A or class B))~~ toxic air pollutant contained in chapter 173-460 WAC as demonstrated by a dispersion modeling analysis done in accordance with EPA's dispersion modeling guidelines, monitoring, or other appropriate methods.

(c) Small business stationary sources otherwise covered under (a) and (b) of this subsection are exempt except when all of the following requirements are satisfied:

(i) The source is in an area that currently exceeds or has been projected by ecology to exceed within five years any federal or state air quality standard. Prior to determining that any area threatens to exceed a standard, ecology shall hold a public hearing or hearings within the threatened area.

(ii) Ecology provides justification that requiring a source to have a permit is necessary to meet or to prevent exceeding a federal or state air quality standard.

(6) Permitting authorities shall develop and maintain a list of names of chapter 401 sources within their jurisdictions. This list shall be made available to the public. A chapter 401 source inadvertently omitted from this list is not exempted from the requirement to obtain a permit under this chapter.

(7) ~~((Federally))~~ Legally and practicably enforceable limits. Any source which is defined as a chapter 401 source solely because its potential to emit exceeds the annual tonnage thresholds defined in WAC 173-401-200 shall be exempt from the requirement to obtain an operating permit when ~~((federally))~~ legally and practicably enforceable conditions which limit that source's potential to emit to levels below the relevant tonnage thresholds have been established for that source.

(a) In applying for an exemption under this subsection, the owner or operator of the source shall demonstrate to the permitting authority that the source's potential to emit, taking into account any ~~((federally))~~ legally and practicably enforce-

able restrictions assumed by the source, does not exceed the tonnage thresholds defined in WAC 173-401-200. Such demonstrations shall be in accordance with WAC 173-401-520 and shall contain emissions measurement and monitoring data, location of monitoring records, and other information necessary to support the source's emission calculations.

(b) Permitting authorities may use the following approaches to establish ~~((federally))~~ legally and practicably enforceable limitations:

(i) Regulatory orders. At the request of the owner or operator of a source, the permitting authority may establish source-specific conditions in a regulatory order issued pursuant to WAC ~~((173-400-090))~~ 173-400-091.

(ii) Notice of construction approvals. The permitting authority may establish source-specific conditions in a notice of construction approval issued pursuant to state or local regulations ~~((contained in an EPA approved state implementation plan));~~ or

(iii) General permits. The permitting authority may establish source-category requirements which limit a source's potential to emit through a general permit issued pursuant to RCW 70.94.161(11). ~~((Following EPA approval of the general permit, limitations on potential to emit become federally enforceable against a particular source after that source applies for, and receives coverage under the general permit.))~~

(c) A source receiving a ~~((federally))~~ legally and practicably enforceable limit on its potential to emit shall annually certify that its potential to emit is less than that which would require the source to obtain an operating permit. Such certifications shall contain the information specified in (a) of this subsection.

(d) Notice of issuance of any order or permit which limits a source's potential to emit shall be published in the permit register pursuant to WAC 173-401-805 (2)(e).

AMENDATORY SECTION (Amending WSR 94-11-105, filed 5/17/94, effective 6/17/94)

WAC 173-401-510 Permit application form. (1) Standard application form and required information. Ecology shall develop a standard application form or forms to be used by each permitting authority. The application shall include information as described below for each emissions unit at a chapter 401 source other than insignificant emissions units ~~((shall be included in the application))~~ or units not regulated under WAC 173-401-300 (3)(b). However, an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the permitting authority's fee schedule.

(2) Required data elements for individual permit applications. The application forms developed under subsection (1) of this section shall contain the data elements specified below:

(a) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, responsible official name and address, and telephone number and names of plant site manager/contact.

(b) A description of the source's processes and products (by Standard Industrial Classification Code) including any associated with each alternative operating scenario identified by the source pursuant to WAC 173-401-650.

(c) The following emissions-related information:

(i) All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except emissions from insignificant emission units or activities as defined in WAC 173-401-530. The permitting authority shall require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the permitting authority's fee schedule;

(ii) Identification and description of all points of emissions described in (c)(i) of this subsection in sufficient detail to establish the basis for fees and applicability of applicable requirements;

(iii) Emissions rates in tons per year (tpy) and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method;

(iv) The following information to the extent it is needed to determine or regulate emissions: Fuels, fuel use, raw materials, production rates, and operating schedules;

(v) Identification and description of all air pollution control equipment and compliance monitoring devices or activities;

(vi) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the chapter 401 source;

(vii) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to section 123 of the FCAA); and

(viii) Calculations on which the information in (c)(i) through (vii) of this subsection are based.

(d) The following air pollution control requirements:

(i) Citation and description of all applicable requirements; and

(ii) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(e) Other specific information that may be necessary to implement and enforce other applicable requirements or this chapter or to determine the applicability of such requirements.

(f) An explanation of any proposed exemptions from otherwise applicable requirements.

(g) Additional information as determined to be necessary by the permitting authority to define alternative operating scenarios identified by the source pursuant to WAC 173-401-650(1) or to define permit terms and conditions implementing WAC 173-401-650((~~e~~)) (1) and 173-401-722.

(h) A compliance plan for all chapter 401 sources that contains all the following:

(i) A description of the compliance status of the source with respect to all applicable requirements;

(ii) A description as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements;

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis; and

(C) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements;

(iii) A compliance schedule as follows:

(A) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements;

(B) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis;

(C) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in non-compliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based;

(iv) For those sources required to have a schedule of compliance to remedy a violation, a schedule for submission of certified progress reports every six months or at a more frequent period specified in an applicable requirement.

(v) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the FCAA with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(i) Requirements for compliance certification, including the following:

(i) A certification of compliance with all applicable requirements by a responsible official consistent with WAC 173-401-520 and section 114 (a)(3) of the FCAA;

(ii) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(iii) A schedule for submission of compliance certifications during the permit term, to be submitted annually, or more frequently if specified by the underlying applicable requirement; and

(iv) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the FCAA.

(j) The use of nationally standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the FCAA and in effect on April 7, 1993.

(k) Requirements which the source believes are inapplicable pursuant to WAC 173-401-640(2) and a request to extend the permit shield to those requirements.

AMENDATORY SECTION (Amending WSR 94-11-105, filed 5/17/94, effective 6/17/94)

WAC 173-401-531 Thresholds for hazardous air pollutants. General. The following tables provide thresholds for hazardous air pollutants:

(1) Carcinogens:

CAS Number	Chemical Name	Threshold Levels (tons/year)
189-55-9	1, 2, 7, 8-dibenzopyrene	0.005
107-06-2	1, 2-dichloroethane	0.4
78-87-5	1, 2-dichloropropane	0.5
540-73-8	1, 2-dimethylhydrazine	0.004
122-66-7	1, 2-diphenylhydrazine	0.045
106-99-0	1, 3-butadiene	0.035
1120-71-4	1, 3-propane sultone	0.003
106-46-7	1, 4-dichlorobenzene (p)	0.5
123-91-1	1, 4-dioxane (1, 4-diethyleneoxide)	0.5
94-75-7	2, 4-d salts & esters	0.5
95-80-7	2, 4-toluene diamine	0.01
584-84-9	2, 4-toluene diisocyanate	0.05
53-96-3	2-acetylaminofluorene	0.0025
119-90-4	3, 3'-dimethoxybenzidine	0.5
119-93-7	3, 3'-dimethyl benzidine	0.004
101-14-4	4, 4'-methylenebis (2-chloroaniline)	0.5
75-07-0	acetaldehyde	0.5
107-13-1	acrylonitrile	0.15
62-53-3	aniline	0.5
C7440-38-2	arsenic and inorganic arsenic compounds	0.002
1332-21-4	asbestos (fibers/ml)	0.00004
71-43-2	benzene	0.5
92-87-5	benzidine (and its salts)	0.00015
56-55-3	benzo(a)anthracene	0.005
50-32-8	benzo(a)pyrene	0.005
205-99-2	benzo(b)fluoranthene	0.005
7440-41-7	beryllium and compounds (except salts)	0.004
117-81-7	bis (2-ethylhexyl) phthalate	0.5
542-88-1	bis (chloromethyl) ether	0.00015
75-25-2	bromoform	0.5
7440-43-9	cadmium and compounds	0.005
56-23-5	carbon tetrachloride	0.5
57-74-9	chlordane	0.005
510-15-6	chlorobenzilate	0.2
67-66-3	chloroform	0.45
107-30-2	chloromethyl methyl ether	0.1
126-99-8	chloroprene	0.5
C7440-47-3	chromium, hexavalent metal	0.001
218-01-9	chrysene	0.005
—	coke oven emissions	0.015

CAS Number	Chemical Name	Threshold Levels (tons/year)
3547-04-4	DDE	0.005
53-70-3	dibenz(a, h)anthracene	0.005
132-64-9	dibenzofuran	0.5
111-44-4	dichloroethyl ether	0.03
75-09-2	dichloromethane	0.5
77-78-1	dimethyl sulfate	0.1
—	dioxins & furans (tedd equivalent)	3e-07
106-89-8	epichlorohydrin	0.5
107-06-2	ethylene dichloride	0.4
106-93-4	ethylene dibromide (dibromethane)	0.05
75-21-8	ethylene oxide	0.1
96-45-7	ethylene thiourea	0.3
76-44-8	heptachlor	0.01
118-74-1	hexachlorobenzene	0.005
58-89-9	hexachlorocyclohexane, gamma	0.005
302-01-2	hydrazine	0.002
193-39-5	indeno (1, 2, 3-cd) pyrene	0.005
—	lead & compounds (except those listed)	0.005
58-89-9	lindane	0.005
75-09-2	methylene chloride	0.5
62-75-9	n-nitrosodimethylamine	0.0005
C7440-02-0	nickel and compounds (except those listed)	0.02
13463-39-3	nickel carbonyl	0.1
95-53-4	o-toluidine	0.5
87-86-5	pentachlorophenol	0.35
127-18-4	perchloroethylene	0.5
1336-36-3	polychlorinated biphenyls	0.0045
75-56-9	propylene oxide	0.5
8001-35-2	toxaphene	0.005
79-01-6	trichloroethylene	0.5
75-01-4	vinyl chloride	0.1
79-34-5	1, 1, 2, 2-tetrachloroethane	0.15
79-00-5	1, 1, 2-trichloroethane	0.5
57-14-7	1, 1-dimethyl hydrazine	0.004
96-12-8	1, 2-dibromo-3-chloropropane	0.004
79-06-1	acrylamide	0.01
98-07-7	benzotrithloride	0.003
62-73-7	dichlorvos	0.1
79-44-7	dimethyl carbamoyl chloride	0.5
140-88-5	ethyl acrylate	0.5
51-79-6	ethyl carbamate	0.5
151-56-4	ethylene imine	0.5
87-68-3	hexachlorobutadiene	0.5
67-72-1	hexachloroethane	0.5
60-34-4	methyl hydrazine	0.03
684-93-5	n-nitroso-n-methylurea	0.5
12035-72-2	nickel refinery dust	0.08
—	nickel subsulfide	0.02

CAS Number	Chemical Name	Threshold Levels (tons/year)
82-68-8	pentachloronitrobenzene	0.15
91-22-5	quinoline	0.003
1582-09-8	trifluralin	0.5
593-60-2	vinyl bromide	0.5
75-35-4	vinylidene chloride	0.2
189559	1, 2: 7, 8-dibenzopyrene	0.005
121142	2, 4-dinitrotoluene	0.01
88062	2, 4, 6-trichlorophenol	0.5
91941	3, 3-dichlorobenzidene	0.1
57596	7, 12-dimethylbenz(a)anthracene	0.005
50000	formaldehyde	0.5

(2) Noncarcinogens:

CAS Number	Chemical Name	Threshold Levels (tons/year)
75-34-3	ethylidene dichloride (1, 1-dichloroethane)	0.5
75-55-8	1, 2 propylenimine (2-methyl aziridine)	0.003
120-82-1	1, 2, 4-trichlorobenzene	0.5
106-88-7	1, 2-epoxybutane	0.5
542-75-6	1, 3-dichloropropene (dichloropropene)	0.5
51-28-5	2, 4-dinitrophenol	0.5
111-76-2	2-butoxyethanol	0.5
110-80-5	2-ethoxyethanol	0.5
109-86-4	2-methoxyethanol	0.5
92-93-3	4-nitrobiphenol	0.5
100-02-7	4-nitrophenol	0.5
75-05-8	acetonitrile	0.5
98-86-2	acetophenone	0.5
107-02-8	acrolein	0.04
79-10-7	acrylic acid	0.5
107-05-1	allyl chloride	0.5
C7440-36-0	antimony & compounds as sb	0.5
1309-64-4	antimony trioxide, as sb	0.5
7784-42-1	arsine	0.1
100-44-7	benzyl chloride	0.1
92-52-4	biphenyl	0.5
156-62-7	calcium cyanamide	0.5
105-60-2	caprolactam, dust	0.5
105-60-2	caprolactam, vapor	0.5
133-06-2	captan	0.5
63-25-2	carbaryl	0.5
75-15-0	carbon disulfide	0.5
463-58-1	carbonyl sulfide	0.5
120-80-9	catechol	0.5
7782-50-5	chlorine	0.1
79-11-8	chloroacetic acid	0.1
532-27-4	chloroacetophenone, alpha-	0.06
108-90-7	chlorobenzene	0.5
C7440-47-3	chromium (ii) compounds, as cr	0.5

CAS Number	Chemical Name	Threshold Levels (tons/year)
C7440-47-3	chromium (iii) compounds, cr	0.5
10210-68-1	cobalt carbonyl, as co	0.1
7440-48-4	cobalt, as co metal dust, fume	0.1
1319-77-3	cresols/cresylic acid, (isomers and mixture)	0.5
95-48-7	o-cresol	0.5
108-39-4	m-cresol	0.5
106-44-5	p-cresol	0.5
98-82-8	cumene	0.5
51-12-5	cyanides, as cn	0.5
84-74-2	dibutyl phthalate	0.5
111-42-2	diethanolamine	0.5
60-11-7	dimethyl aminoazobenzene	0.5
121-69-7	dimethylaniline	0.5
68-12-2	dimethylformamide	0.5
131-11-3	dimethylphthalate	0.5
100-41-4	ethyl benzene	0.5
75-00-3	ethyl chloride	0.5
107-21-1	ethylene glycol	0.5
111-76-2	ethylene glycol monobutyl ether	0.5
—	glycol ethers (except for listed ones)	0.5
77-47-4	hexachlorocyclopentadiene	0.1
822-06-0	hexamethylene, 1, 6-diisocyanate	0.02
110-54-3	hexane (n-hexane)	0.5
110-54-3	hexane, other isomers	0.5
7647-01-0	hydrogen chloride	0.5
7664-39-3	hydrogen fluoride, as f	0.1
123-31-9	hydroquinone	0.5
78-59-1	isophorone	0.5
108-31-6	maleic anhydride	0.5
C7439-96-5	manganese dust & compounds (except listed)	0.5
748-79-4	mercuric chloride	0.01
10045-94-0	mercuric nitrate	0.01
C7439-97-6	mercury, elemental	0.01
72-43-5	methoxychlor	0.5
67-56-1	methyl alcohol	0.5
74-83-9	methyl bromide	0.5
74-87-3	methyl chloride	0.5
71-55-6	methyl chloroform (1, 1, 1-trichloroethane)	0.5
78-93-3	methyl ethyl ketone (mek)	0.5
74-88-4	methyl iodide	0.06
108-10-1	methyl isobutyl ketone	0.5
624-83-9	methyl isocyanate	0.1
80-62-6	methyl methacrylate	0.5
1634-04-4	methyl tert-butyl ether	0.5
12108-13-3	methylcyclopentadienyl manganese tricarbonyl	0.1
101-68-8	methylene bisphenyl isocyanate	0.1

CAS Number	Chemical Name	Threshold Levels (tons/year)
91-20-3	naphthalene	0.5
98-95-3	nitrobenzene	0.5
106-50-3	p-phenylenediamine	0.5
56-38-2	parathion	0.1
108-95-2	phenol	0.1
62-38-4	phenyl mercuric acetate	0.01
75-44-5	phosgene	0.1
7803-51-2	phosphine	0.5
7723-14-0	phosphorus	0.1
85-44-9	phthalic anhydride	0.5
57-57-8	propiolactone, beta-	0.1
123-38-6	propionaldehyde	0.5
114-26-1	propoxur	0.5
106-51-4	quinone	0.5
C7782-49-2	selenium compounds, as se	0.5
7783-79-1	selenium hexafluoride, as se	0.5
7488-56-4	selenium sulfides (mono and di)	0.5
100-42-5	styrene monomer	0.5
78-00-2	tetraethyl lead, as pb	0.01
75-74-1	tetramethyl lead, as pb	0.01
7550-45-0	titanium tetrachloride	0.1
108-88-3	toluene	0.5
121-44-8	triethylamine	0.5
108-05-4	vinyl acetate	0.5
593-60-2	vinyl bromide	0.5
1330-20-7	xylenes (m-,o-,p-isomers)	0.5
79469	2-nitropropane	0.5
540841	2, 2, 4-trimethylpentane	0.5
95954	2, 4, 5-trichlorophenol	0.5
92671	4-aminobiphenyl	0.5
101779	4, 4'-methylenedianiline	0.5
534521	4, 6-dinitro-o-cresol and salts	0.1
60355	acetamide	0.5
1345046	antimony trisulfide	0.1
7783702	antimony pentafluoride	0.1
28300745	antimony potassium tartrate	0.5
133904	chloramben	0.5
((2)) ———	chromium compounds, except hexavalent and trivalent	0.5
10025737	chromic chloride	0.1
334883	diazomethane	0.5
64675	diethyl sulfate	0.5
62207765	fluomine	0.1
680319	hexamethylphosphoramide	0.01
12108133	methylcyclopentadienyl manganese	0.1
101688	methylene diphenyl diisocyanate	0.1
69892	N-nitrosomorpholine	0.5
90040	o-anisidine	0.5
—————	polycyclic organic matter	0.01

CAS Number	Chemical Name	Threshold Levels (tons/year)
151508	potassium cyanide	0.1
14339	sodium cyanide	0.1
10102188	sodium selenite	0.1
13410010	sodium selenate	0.1
96093	styrene oxide	0.5

AMENDATORY SECTION (Amending WSR 93-20-075, filed 10/4/93, effective 11/4/93)

WAC 173-401-630 Compliance requirements. (1) General. Consistent with WAC 173-401-615, all chapter 401 permits shall contain compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a chapter 401 permit shall contain a certification by a responsible official that meets the requirements of WAC 173-401-520.

(2) Inspection and entry. Each permit shall contain inspection and entry requirements that require, that upon presentation of credentials and other documents as may be required by law, the permittee shall allow the permitting authority or an authorized representative to perform the following:

(a) Enter upon the permittee's premises where a chapter 401 source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(d) As authorized by WAC 173-400-105 and the FCAA, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

(3) Schedule of compliance. Each permit shall contain a schedule of compliance consistent with WAC 173-401-510 (2)(h)(iii).

(4) Progress reports. For those sources required to have a schedule of compliance, the permit shall require progress reports consistent with an applicable schedule of compliance and WAC 173-401-510 (2)(h) to be submitted at least semi-annually, or at a more frequent period if specified in the applicable requirement or by the permitting authority. Such progress reports shall contain the following:

(a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones, or compliance were achieved; and

(b) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(5) Compliance certification. Each permit shall contain requirements for compliance certification with terms and conditions contained in the permit, including emission limita-

tions, standards, or work practices. Permits shall include each of the following:

(a) A requirement that compliance certifications be submitted once per year. Permitting authorities may require that compliance certifications be submitted more frequently for those emission units not in compliance with permit terms and conditions or where more frequent certification is specified in the applicable requirement;

(b) In accordance with WAC 173-401-615(1), a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(c) A requirement that the compliance certification include the following:

(i) The identification of each term or condition of the permit that is the basis of the certification;

(ii) The compliance status;

(iii) Whether compliance was continuous or intermittent;

(iv) The method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with WAC 173-401-615 (3)(a); ~~(and)~~

(v) If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with Section 113 (c)(2) of the FCAA, which prohibits knowingly making a false certification or omitting material information; and

(vi) Such other facts as the authority may require to determine the compliance status of the source.

(d) A requirement that all compliance certifications be submitted to the administrator as well as to the permitting authority; and

(e) Such additional requirements as may be specified pursuant to sections 114 (a)(3) and 504(b) of the FCAA.

AMENDATORY SECTION (Amending WSR 93-20-075, filed 10/4/93, effective 11/4/93)

WAC 173-401-724 Off-permit changes. (1) The source shall be allowed to make changes not specifically addressed or prohibited by the permit terms and conditions without requiring a permit revision, provided that the proposed changes do not weaken the enforceability of existing permit conditions. Any change that is a Title I modification or is a change subject to the acid rain requirements under Title IV of the FCAA must be submitted as a permit revision.

(2) Each such change shall meet all applicable requirements and shall not violate any existing permit term or condition.

(3) Sources must provide contemporaneous written notice to the permitting authority and EPA of each such change, except for changes that qualify as insignificant under ~~((Appendix A of this chapter))~~ WAC 173-401-530. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted, and any applicable requirement that would apply as a result of the change.

(4) The change shall not qualify for the permit shield under WAC 173-401-640.

(5) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not other-

wise regulated under the permit, and the emissions resulting from those changes.

(6) A source making a change under this section shall comply with applicable preconstruction review requirements established pursuant to RCW 70.94.152.

AMENDATORY SECTION (Amending WSR 93-20-075, filed 10/4/93, effective 11/4/93)

WAC 173-401-800 Public involvement. (1) Purpose. It is ecology's and local air authorities' goal to ensure that accurate permitting information is made available to the public in a timely manner. The permitting authority is responsible for providing notice of permitting actions that allows sufficient time for comment and for providing enough information to inform the public of the extent of the actions proposed. These public involvement regulations establish a statewide process to be followed by all permitting authorities.

(2) Public notice.

(a) The permitting authority shall provide public notice for the following actions:

(i) Issuance of a draft permit or permit renewal;

(ii) Intended denial of a permit application;

(iii) Issuance of a draft permit modification;

(iv) Issuance of a draft general permit;

(v) Scheduling of a public hearing under subsection (4) of this section; and

(vi) Any other related activities that the permitting authority considers to involve substantial public interest.

(b) Public notice shall be provided by the permitting authority ~~((in the newspaper of largest general circulation))~~ by prominent advertisement in the area ((of)) affected by the facility applying for a permit. Publication ((includes paid advertisement, legal notice, or other appropriate format,)) in Ecology's Operating Permit Register does not satisfy this requirement. Prominent advertisement may be by publication in a newspaper of general circulation in the area affected by the facility applying for a permit as determined by the permitting authority. The permitting authority may provide additional notice to the public through other methods, such as newsletters and press releases. Notice shall also be published in the *Ecology Permit Register*. The permitting authority shall send information on any action requiring publication in the *Permit Register* to ecology within three days of the action.

(c) Notice of the activities described in (a) of this subsection shall also be provided to persons requesting to receive such notice. The permitting authority shall maintain a mailing list of persons requesting notice, and may maintain more than one list, such as lists based on geographical location. No request shall require the extension of the comment period associated with the notice. The permitting authority may from time to time inform the public of the opportunity to be on the list and may also delete from the list persons who fail to respond to an inquiry of continued interest in receiving the notices.

(d) Public notice must include:

(i) Name and address of the permitting authority;

(ii) Name and address of the permit applicant, and if different, the name and address of the facility or activity regulated by the permit, unless it is a general permit;

(iii) A brief description of the business conducted at the facility and activity involved in the permit action;

(iv) Name, address, and telephone number of a person from whom interested persons may obtain further information such as copies of the draft permit, the application, and relevant supporting materials;

(v) A brief description of the comment procedures, including the procedures to request a hearing, and the time and place of any hearings scheduled for the permit; and

(vi) A description of the emission change involved in any permit modification.

(e) The permitting authority must make available for public inspection, in at least one location near the chapter 401 source, all nonproprietary information contained in the permit application, draft permit and supporting materials. Public inspections of materials for nonstationary sources or general permits may be located at the discretion of the permitting authority.

(3) Public comment. Except as otherwise provided in WAC 173-401-725, the permitting authority shall provide a minimum of thirty days for public comment on actions described in subsection (2)(a) of this section. This comment period begins on the date of publication of notice in the *Permit Register* or publication in the newspaper of largest general circulation in the area of the facility applying for the permit, whichever is later. No proposed permit shall be issued until the public comment period has ended and the permitting authority has prepared a response to the comments received.

(4) Public hearings. The applicant, any interested governmental entity, any group or any person may request a public hearing within the comment period required under subsection (3) of this section. Any such request shall indicate the interest of the entity filing it and why a hearing is warranted. The permitting authority may, in its discretion, hold a public hearing if it determines significant public interest exists. Any such hearing shall be held at a time(s) and place(s) as the permitting authority deems reasonable. The permitting authority shall provide at least thirty days prior notice of any hearing.

(5) The permitting authority shall keep a record of the commentors and issues raised during the public participation process. Such records shall be available to the public.

AMENDATORY SECTION (Amending WSR 93-20-075, filed 10/4/93, effective 11/4/93)

WAC 173-401-820 Review by affected states. (1) Notice. The permitting authority shall give notice of each draft permit, permit revision, or permit renewal to any affected state on or before the time that the permitting authority provides this or permit revision notice to the public under WAC 173-401-800 and 173-401-805, except to the extent WAC 173-401-725 (2) or (3) requires the timing of the notice to be different.

(2) Response. The permitting authority, as part of the submittal of the proposed permit to the administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under WAC 173-401-725 (2) and

(3)), shall notify the administrator and any affected state in writing of any refusal by the permitting authority to accept all recommendations for the proposed permit that the affected state submitted during the public or affected state review period. The notice shall include the permitting authority's reasons for not accepting any such recommendation. The permitting authority is not required to accept recommendations that are not based on applicable requirements or the requirements of this chapter.

(3) British Columbia notification. The permitting authority shall notify British Columbia of draft permits, permit revisions, or permit renewals at sources located within 100 kilometers of the Washington-British Columbia border. Such notice shall be concurrent with notification of EPA and affected states.

AMENDATORY SECTION (Amending WSR 94-02-041, filed 12/30/93, effective 1/30/94)

WAC 173-401-900 Fee determination—Ecology. (1) Fee determination. Ecology shall develop a fee schedule, consistent with the process outlined below, according to which it will collect fees from permit program sources under its jurisdiction. The fees shall be sufficient to cover ecology's permit administration costs and its share of ecology's development and oversight costs. The fee schedule shall also indicate the shares of ecology's development and oversight costs that are to be collected by each delegated local authority. Opportunities for public participation shall be afforded throughout the fee determination process, as provided in WAC 173-401-920(1).

(2) Fee eligible activities. The costs of the permit administration and development and oversight activities are fee eligible.

(a) Permit administration. Permit administration costs are those incurred by each permitting authority, including ecology, in administering and enforcing the operating permit program with respect to sources under its jurisdiction. Permit administration costs are those enumerated in WAC 173-401-940(1).

(b) Development and oversight. Development and oversight costs are those incurred by ecology in developing and administering the state operating permit program and in overseeing the administration of the program by the delegated local authorities. Development and oversight costs are those enumerated in WAC 173-401-940(2).

(3) Workload analysis. Ecology shall conduct a workload analysis projecting resource requirements, organized by categories of fee-eligible activities, for the purpose of preparing the budget. Ecology shall, for the two-year period corresponding to each biennium, identify the permit administration and development and oversight activities that it will perform during that biennium. The workload analysis shall include resource requirements for both the direct and indirect costs of the permit administration activities enumerated in WAC 173-401-940(1) and the development and oversight activities enumerated in WAC 173-401-940(2). Ecology shall publish a draft workload analysis together with the draft budget for the following biennium on or before February 28 of each even-numbered year and shall provide opportunity

for public comment thereon in accordance with WAC 173-401-920(1). Ecology shall publish a final workload analysis together with the final budget for the following biennium on or before June 30 of each even-numbered year.

(4) Budget development. Ecology shall, for the two-year period corresponding to each biennium, prepare an operating permit program budget for that biennium. The budget shall be based on the resource requirements identified in the workload analysis for the biennium and shall take into account the projected operating permit program account balance at the start of the biennium. Ecology shall publish a draft budget for the following biennium together with the draft workload analysis on or before February 28 of each even-numbered year and shall provide opportunity for public comment thereon in accordance with WAC 173-401-920(1). The draft budget shall include data on unit costs (e.g., salary schedules and the indirect cost rate) used in preparing budget projections. Ecology shall publish a final budget together with the final workload analysis for the following biennium on or before June 30 of each even-numbered year.

(5) Allocation methodology.

(a) Development and oversight costs. Ecology shall allocate its development and oversight costs among all permitting authorities, including ecology, based upon the number of permit program sources under the jurisdiction of each permitting authority, except that extraordinary costs or other costs readily attributable to a specific permitting authority may be assessed by that authority.

(b) Permit administration costs and ecology's share of development and oversight costs.

(i) Fee allocation. Ecology shall allocate its permit administration costs and its share of ecology's development and oversight costs among the permit program sources for whom it acts as permitting authority, according to a three-tiered structure based upon:

~~((+))~~ (A) Tier 1: The number of sources under its jurisdiction;

~~((+))~~ (B) Tier 2: The complexity of the sources under its jurisdiction; and

~~((+))~~ (C) Tier 3: The size of the sources under its jurisdiction, as measured by the quantity of each regulated pollutant (for fee calculation) emitted.

~~((The complexity of each source shall be determined based on a ranking system under which ecology assigns to each source a complexity value of 1, 2 or 3, corresponding to ecology's assessment of))~~ (ii) Each of the three tiers shall be equally weighted.

(iii) Complexity level determination in (b)(i)(B) of this subsection.

(A) Ecology must annually assign a complexity level to each source based on ecology's operating permit related work activity.

(B) A source's complexity level determination must correspond to the relative difficulty of issuing and maintaining an operating permit ((for that source)) and the time spent in permit related activities.

(C) Ecology must annually determine the complexity portion of the fee for each source.

(iv) Public process for complexity determination. Ecology must use the following process when determining the complexity portion of the fee:

(A) Ecology must post on ecology's web site on or about October 31st of each year the basis for the complexity level determination.

(B) Ecology must provide thirty days for public comment.

(C) Ecology has thirty days to respond to comments after the close of the public comment period.

(D) If ecology concludes adjustments are necessary, ecology will provide revised fee statements based on updated calculations.

(v) The quantity of each regulated pollutant emitted by a source shall be determined based on the annual emissions data during the most recent calendar year for which data is available. ((Each of the three tiers shall be equally weighted.))

(c) WAC 173-401-300(7) Sources. Ecology shall allocate to permit program sources that qualify for an exemption pursuant to WAC 173-401-300(7) after the effective date of the date of the state operating permit program the portion of ecology's permit administration costs and ecology's share of its development and oversight costs that results from including such sources in the first tier of the allocation structure described in (b)(i) of this subsection. After ~~((federally))~~ legally and practicably enforceable limits have been established and for so long as a source continues to meet the requirements for exemption under WAC 173-401-300(7), that source shall pay registration program fees pursuant to RCW 70.94.015(2) in lieu of paying operating permit program fees.

(6) Fee schedule. Ecology shall issue annually a fee schedule reflecting the permit administration fee and the share of the development and oversight fee to be paid by each permit program source under its jurisdiction and reflecting the development and oversight assessment to be paid by each permitting authority. The fee schedule shall be based on the information contained in the final source data statements, as provided in WAC 173-401-925(3), for each year; the final source data statements shall be issued after opportunity for petition and review has been afforded in accordance with WAC 173-401-925. Ecology shall publish the fee schedule for the following year on or before October 31 of each year.

AMENDATORY SECTION (Amending WSR 94-02-041, filed 12/30/93, effective 1/30/94)

WAC 173-401-920 Accountability—Ecology and delegated local authorities. (1) Public participation during fee determination process. Ecology shall provide for public participation in the fee determination process described under WAC 173-401-900, which provision shall include, but not be limited to, the following:

(a) Ecology shall provide opportunity for public review of and comment on each biennial workload analysis and budget.

(b) Ecology shall publish in the *Permit Register* notice of issuance of its draft biennial workload analysis and draft biennial budget and issuance of its annual fee schedule.

(c) Ecology shall make available for public review, on or before February 28 of each even-numbered year, copies of its draft biennial workload analysis and draft biennial budget. Ecology shall make available for public review, on or before October 31 of each year, copies of its annual fee schedule, including information on availability of the data used for the determination. Ecology shall maintain a mailing list of persons requesting opportunity for review under this subsection or under WAC 173-401-925(1). Ecology may, from time to time, inform the public of the opportunity to be placed on the mailing list and may delete from the list persons who fail to respond to an inquiry regarding continued interest in receiving materials.

(d) Ecology shall provide at least sixty days for public comment on the draft biennial workload analysis and draft biennial budget. Such sixty-day period for comment shall run from the date ecology mails the draft workload analysis and draft budget as provided in (c) of this subsection.

(2) Tracking of revenues, time and expenditures.

(a) Revenues. Ecology shall track revenues on a source-specific basis.

(b) Time and expenditures. Ecology shall track time and expenditures on the basis of source categories and functional categories, except that, as part of a demonstration project undertaken pursuant to RCW 70.94.162, ecology will track time and expenditures on a source-specific basis for at least three but no more than five sources.

(i) Sources will be grouped into five categories, as follows:

- (A) Kraft pulping mills;
- (B) Sulfite pulping mills;
- (C) Metal processing and related industries;
- (D) Sources located on the Hanford Reservation; and
- (E) Other sources, including those sources under the jurisdiction of ecology's central and eastern regional offices.

(ii) Functions will be grouped into several categories and subcategories, as follows:

- (A) Program management and support;
- (B) Program development;
- (C) Permit processing;
- (I) Application assistance and review;
- (II) Preparing draft and final permits;
- (D) Permit management and compliance activities;
- (E) Technical assistance; and
- (F) Outreach and education.

(c) Use of information obtained from tracking revenues, time and expenditures.

(i) Ecology shall use the information obtained from tracking revenues, time and expenditures to modify its workload analysis during the biennial review provided for under WAC 173-401-900.

(ii) The information obtained from tracking revenues, time and expenditures shall not provide a basis for challenge to the amount of an individual source's fee.

~~((3) Periodic fiscal audits, reports and performance audits. A system of regular, periodic fiscal audits, reports and performance audits shall be conducted in order to evaluate the implementation of the operating permit program by ecology and delegated local authorities. Ecology and each delegated local authority shall gather baseline data, where appro-~~

~~prate, to which the various evaluation criteria will be compared.~~

~~(a) Fiscal audits. Ecology and each delegated local authority shall contract with the state auditor to have the auditor perform a standard fiscal audit of ecology's and each delegated local authority's operating permit program every other year.~~

~~(b) Annual routine performance audits. Ecology and each local authority shall be subject to annual routine performance audits, except that the routine performance audit shall be incorporated into the extensive performance audit, conducted pursuant to subsection (3)(d) of this section, in each year during which an extensive performance audit is conducted. Ecology shall conduct the audits of each of the delegated local authorities. An individual from another state's environmental agency shall conduct the audit of ecology. In the event that no such individual is able to serve in this capacity, an independent contractor shall conduct the audit of ecology; the contractor is to be free of any conflicts of interest, to the extent possible, and is to be agreed upon by a committee comprised of one representative each from the environmental and regulated communities, and one representative of a delegated local authority. Any contractor applying to conduct the audit of ecology shall be required to disclose in its application any potential conflicts of interest. The annual routine performance audits shall incorporate by reference information contained in the relevant annual report and, every other year, in the relevant fiscal audit. The annual routine performance audits shall address the following questions and measures of performance:~~

~~(i) How many permits lapsed?~~

~~(A) Explanation of lapse;~~

~~(B) Comments;~~

~~(ii) What is the total number of permit applications or applications for permit modifications?~~

~~(A) Average application processing time;~~

~~(B) Number of disapproved applications and reason for disapproval;~~

~~(C) Number of permit applications regarding which permitting authority had to return to source to request additional information. Number of times permitting authority had to return to source before permit deemed complete;~~

~~(iii) To how many permits did the EPA object? To what percentage of permits did EPA object (including objection upon petition from public)?~~

~~(A) Grounds for objection;~~

~~(B) Agency response;~~

~~(I) Deficiency remedied;~~

~~(II) Timeliness (that is to say, within ninety days? Did administrator issue permit?)~~

~~(iv) How many permits were subject to legal/administrative challenge? What percentage of permits were subject to legal/administrative challenge?~~

~~(A) Challenging party;~~

~~(B) Grounds for challenge;~~

~~(I) Substantive;~~

~~(II) Procedural;~~

~~(C) Outcome of challenge/prevaling party;~~

~~(D) Agency response;~~

(v) How many administrative enforcement actions were taken for failure to meet permit requirements? How many notices of violation were issued?

(A) Date issued; time elapsed since violation discovered;
(B) Reason;

(C) Result (that is to say, penalties? Orders of agreement? Legal challenge?)

(D) Source returned to compliance; date; (if not, explain);

(vi) What was the frequency of inspections at each facility?

(A) Announced;

(B) Unannounced;

(C) Comparison with baseline data;

(vii) How many accidental releases, as defined in Section 112(r) of the Federal Clean Air Act, occurred?

(A) Reason identified;

(B) Agency response;

(C) Resulting changes to terms of permit, if any;

(D) Comparison with baseline data;

(viii) What was the amount of the expenditures per permit issuance?

(A) Average for program;

(B) Average for source category;

(e) Annual random individual permit review. Five percent of the permits issued by each permitting authority, or if five percent of the permits issued by a permitting authority is equal to or less than one, at least one permit issued by the permitting authority shall be subject to review each year in conjunction with the annual routine performance audit. The permit to be reviewed shall be selected at random. Ecology shall conduct the review in the case of each of the delegated local authorities. An individual from another state's environmental agency shall conduct the audit of ecology. In the event that no such individual is able to serve in this capacity, an independent contractor shall conduct the audit of ecology; the contractor is to be free of any conflicts of interest, to the extent possible and is to be agreed upon by a committee comprised of one representative each from the environmental and regulated communities, and one representative of a delegated local authority. Any contractor applying to conduct the audit of ecology shall be required to disclose in its application any potential conflicts of interest. The annual random individual permit review shall address the following questions and measures of performance:

(i) Can reviewer, from information available in permit, determine all requirements to which the source is subject?

(ii) Does permit include all applicable requirements?

(iii) Can reviewer, from information available in file, determine compliance status for each emission point? For facility?

(iv) Does the file include technical reviews, source tests, CEM performance specification tests, permit applications, record of citizen complaints, correspondence with facility and other supporting documentation?

(v) Are all major emissions points identified in permit?

(vi) Are all pieces of control equipment identified in permit?

(vii) Does the permit specify operation and maintenance requirements?

(viii) Does the permit specify all monitoring, recording, reporting and certification requirements to which source is subject?

(ix) Are alternative operating scenarios specified in permit? Are the conditions adequately specified?

(x) Is the permit expiration date noted?

(xi) Does the permit indicate which requirements are enforceable by federal/state mechanisms? Does the permit state the existence of opportunity for PCHB and other judicial review and opportunity to petition EPA?

(xii) Were all procedural requirements, including notice to public and affected states, satisfied in issuing/modifying permit?

(xiii) Did permit writer work with source to identify and consider opportunities for pollution prevention? Were any pollution prevention measures implemented?

(xiv) Evaluation of overall performance:

(A) Is permit complete and understandable? Assess completeness, clarity, etc.;

(B) Assess procedural adequacy of permit issuance process.

(d) Periodic extensive performance audits. Ecology and each local authority shall be subject to extensive performance audits every five years. In addition, ecology or a delegated local authority may be subject to an extensive performance audit more frequently under the conditions of WAC 173-401-920 (3)(e). Ecology shall conduct the audits of each of the delegated local authorities. An individual from another state's environmental agency shall conduct the audit of ecology. In the event that no such individual is able to serve in this capacity, an independent contractor shall conduct the audit of ecology; the contractor is to be free of any conflicts of interest, to the extent possible and is to be agreed upon by a committee comprised of one representative each from the environmental and regulated communities, and one representative of a delegated local authority. Any contractor applying to conduct the audit of ecology shall be required to disclose in its application any potential conflicts of interest. The extensive performance audits shall incorporate by reference the information contained in the annual reports and the routine performance audits for the relevant period and shall take the place of the routine performance audit every fifth year (that is to say, they gather the routine performance audit information in addition to the information indicated below). The extensive performance audits shall address the following questions and measures of performance:

(i) What was the number of modifications?

(A) Comparison with projection;

(B) Applicable to how many sources;

(ii) Did the permitting authority have personnel adequate to complete workload in timely fashion?

(iii) Were the total fees assessed adequate to fund program?

(A) Amount of shortfall or overcharge;

(B) Explanation;

(iv) Were the total fees collected equal to total fees assessed?

(A) Amount/percentage of shortfall;

(B) Reason for shortfall;

(v) Was there a program budget increase or decrease over period?

(A) Percentage increase or decrease;

(B) Explanation (for example, sources no longer part of operating permit program; new federal requirements implemented through permit program);

(vi) What was the number of instances of late fee payment?

(A) Agency response;

(B) Result (that is to say, was the fee paid? Penalty assessed? Time interval between payment and date fee amount due?)

(vii) How many sources were in compliance with all applicable requirements? What percentage of sources were in compliance with all applicable requirements? How do the number and percentage of sources in compliance with all applicable requirements compare with baseline compliance data?

(viii) What was the number of businesses availing themselves of services offered by state or local business assistance programs? What level of effort was required to provide assistance?

(ix) Were inspection results adequately documented?

(x) Were the methods used to ascertain compliance and the frequency of required reporting and related activities appropriate for each facility?

(A) Frequency of inspections appropriate for relevant facility;

(B) Monitoring requirements appropriate for relevant facility;

(xi) Were the operation and maintenance plans adequate?

(xii) Were public information efforts adequate?

(A) Public notice for actions relating to permitted sources meets/exceeds statutory requirements;

(B) Agency/permit writers accessible to regulated community, to environmental community, and to stakeholders and general public;

(C) Other outreach efforts;

(xiii) Evaluation of overall performance:

(A) Is permitting authority issuing quality permits?

(B) Is permitting authority issuing/renewing permits in timely fashion?

(C) Is permitting authority ensuring that sources are in compliance with terms and conditions of permit?

(D) Is permitting authority effectively using operating permit as a tool for securing environmental improvements?

(E) Is permitting authority efficiently administering program (includes, in the case of ecology, statewide program)? Indicate inefficiencies, where these exist;

(F) Evaluation of particular questions identified in annual report/routine performance audit for further examination;

(e) Finding of inadequate administration or need for further evaluation. If, in the process of conducting a fiscal audit, annual routine performance audit, or annual random individual permit review, the entity conducting the audit finds that ecology or a delegated local authority is inadequately administering the operating permit program or finds that further evaluation is immediately warranted, an extensive perfor-

mance audit shall be conducted, as provided in WAC 173-401-920 (4)(d).

(f) Preaudit public meeting with auditor. Ecology and each delegated local authority shall provide the opportunity for interested individuals to provide comment to the entity conducting an annual routine performance audit, annual random permit review or extensive performance audit prior to the audit. Such opportunity shall consist of a single, informal meeting at which at least one representative from the regulated community and at least one representative of the environmental community are present. Ecology and each delegated local authority shall provide notice of the preaudit meeting in the *Permit Register*.

(g) Annual reports. Ecology and each delegated local authority shall prepare an annual report evaluating its operating permit program administration. Such report shall include any findings resulting from the relevant fiscal audits, annual routine performance audits, annual random individual permit reviews or periodic extensive performance audits. Ecology shall submit its annual report to the appropriate standing committees of the legislature. Each delegated local authority shall submit its report to its board of directors and to ecology.) (3) Fiscal audits and reports.

(a) Ecology and each delegated local authority shall contract with the state auditor to have the auditor perform a fiscal audit of ecology's and each delegated local authority's operating permit program every other year.

(b) Fiscal audits shall address the following:

(i) Determine how much operating permit fee revenue was collected each fiscal year.

(ii) Determine whether operating permit fee revenue covered all authorized program expenses.

(iii) Determine whether the fees were computed correctly.

(iv) Determine whether invoices were sent out in a timely manner.

(v) Determine whether billed fees were collected.

(vi) Determine how fee revenues and expenses were accounted for, including amounts of shortfalls and overages and an explanation for them.

(vii) Determine if there was a program budget increase or decrease over the period being audited.

(viii) Determine whether operating permit fee revenues were used only for authorized activities.

(4) Performance audits and reports. Ecology and each local authority (the agencies) shall have a performance audit at least every three years.

(a) Overview performance audit. Every three years, the agencies shall:

(i) Conduct an overview audit using data collected in previous years. Each agency shall collect and analyze their data and provide a summary to the air operating permit performance audit advisory committee (the committee).

(ii) Consider program efficiencies that could reduce costs or improve performance of the operating permit program and report any identified efficiencies to the committee.

(b) Intensive performance audit.

(i) The committee, as established in subsection (5) of this section, may recommend an agency participate in a more intensive audit.

(ii) The public may submit a request for an intensive audit to the committee. The request must identify issues of concern and explain how the overview performance audit does not address them.

(iii) An intensive audit will not take place more frequently than every six years.

(iv) Ecology shall determine final recommendations for the requirements of the overview and intensive performance audits.

(c) Performance audit elements. The following are intended to serve as a guideline for operating permit program intensive performance audits.

Intensive performance audits may include, but are not limited to, assessing the following elements:

(i) Administration of program - Review of activities such as program administration, training, data management, fee administration, and clerical support.

(ii) Permit processing - Review of activities such as review of required permit elements, adequacy of statement of basis, adequacy of technical support document, timeliness of permit processing, permit modifications, permit amendments, and permit appeals.

(iii) Permit management - Review of activities such as inspections, stack test oversight, reports, complaint investigations, administrative enforcement, and compliance.

(iv) Technical assistance - Review of the operating permit technical assistance program.

(v) Education and outreach - Review of activities such as public notification, permit register maintenance, notifications to EPA and affected states, and publications.

(d) Reports on the overview and intensive audit results. Ecology shall publish a report for each audit. The report shall include:

(i) Recommendations from the committee members.
(ii) Ecology's final recommendations for performance audit requirements.

(iii) Audit results. Ecology shall distribute a copy of the report to the delegated local authorities and the committee members. Ecology shall also post the report on their web site.

(5) Air operating permit performance audit advisory committee (the committee).

(a) Ecology shall establish the committee.
(b) The committee shall operate under a written charter. In consultation with the committee, ecology shall establish the committee charter.

(c) The committee shall meet at least once every three years and begin the first overview performance audit no later than January 2017.

(d) Ecology shall appoint committee members.
(e) Committee membership shall include, at a minimum:

(i) Representation from ecology.
(ii) Representation from the regulated community.
(iii) Representation from a delegated local authority.

(iv) The following representation is desirable:
(A) Environmental group(s).
(B) General public.

(f) The committee shall:
(i) Develop a timeline for the schedule of agency reviews, collecting reports, reviewing reports, and submitting recommendations to ecology.

(ii) Every three years, review data reports prepared by the agencies.

(iii) Submit to ecology:

(A) Recommendations for evaluating and improving program performance statewide.

(B) Observations from the data review, including trends analysis (identifying trends).

(C) Recommendations for intensive audit content if an intensive audit is recommended.

(g) Public process. The committee meetings shall be open to the public. Ecology shall announce the public meeting and opportunity to comment on performance audit recommendations.

(6) Conducting intensive performance audits.

(a) If ecology determines that an intensive performance audit is needed, ecology shall establish the intensive audit schedule.

(b) Ecology shall audit the delegated local authorities. A delegated local authority shall audit ecology. An independent contractor may be used to conduct a required intensive audit.

(c) Performance audit contractor requirements.

(i) If an independent contractor is used to conduct an intensive performance audit, the contractor must have experience with the operating permit program.

(ii) To the extent possible, the contractor shall be free of any conflicts of interest. A contractor applying to conduct the audits shall disclose any potential conflicts of interest in its application.

AMENDATORY SECTION (Amending WSR 94-02-041, filed 12/30/93, effective 1/30/94)

WAC 173-401-925 Source data statements and petition for review of statements—Ecology and delegated local authorities. (1) Preliminary source data statements. Ecology shall provide to the permit program sources under its jurisdiction and to those persons on the mailing list, maintained in accordance with WAC 173-401-920 (1)(c), or to those requesting receipt of source data statements under this subsection a preliminary statement of emissions and other data from that source upon which ecology intends to base its allocation determination under WAC 173-401-900(5) as well as a preliminary statement of emissions and other data from each of the permit program sources under ecology's jurisdiction upon which ecology intends to base its allocation determination. Such preliminary statement shall be provided to the permit program sources and to other persons on the mailing list on or before July 31 of each year. Such preliminary statement shall indicate the name, address and telephone number of the person or persons to whom the source or other individual may direct inquiries and/or petitions for review under subsection (2) of this section regarding the accuracy of the data contained therein.

(2) Petition for review of statement. A permit program source or other individual may petition ecology to review for accuracy the data contained in any preliminary source data statement provided for under subsection (1) of this section. Such petition shall be lodged on or before August 31 of each year. Such petition shall be in writing, directed to the individual indicated on the statement of source data. Such petition

shall indicate clearly the data to be reviewed, the specific action that the source or petitioning individual is requesting be taken and may, if the source or petitioning individual desires, be accompanied by written documentation supporting the request for review. Such petition shall, in addition, state the name, address and telephone number of the person or persons to whom ecology may direct inquiries regarding the request. Upon receipt of such a petition, ecology must issue its written response to the petitioner and any other affected party on or before September 30 of each year. Such response shall state the ~~((conclusions))~~ observations of the review and the reasons therefore, and shall contain a new preliminary source data statement, revised to reflect any changes necessitated by ecology's response.

(3) Final source data statement. Ecology shall provide to the permit program sources under its jurisdiction and to those persons on the mailing list, maintained in accordance with WAC 173-491-920 (1)(c), or to those requesting receipt of source data statements under this subsection a final statement of emissions and other data from that source upon which ecology will base its allocation determination under WAC 173-401-900 on or before October 31 of each year. In addition, the final source data statements shall include a final statement of emissions and other data upon which ecology intends to base its allocation determination from each of the permit program sources under its jurisdiction. The final source data statement will be accompanied by a fee schedule reflecting the fee to be paid by each source. Ecology may include with the fee schedule an invoice, or a notice stating that fees listed in the fee schedule must be paid by February 28th of the following year.

(4) Delegated local authorities. Delegated local authorities shall establish procedures for administrative dispute resolution for disputes pertaining to fees.

AMENDATORY SECTION (Amending WSR 94-02-041, filed 12/30/93, effective 1/30/94)

WAC 173-401-935 Development and oversight remittance by local authorities—Ecology and delegated local authorities. (1) Collection. On or before October 31 of each year, ecology shall provide to each delegated local authority a statement of the share of ecology's development and oversight costs for which the authority is responsible for collecting from sources under its jurisdiction.

(2) Remittance. Each delegated local authority shall remit to ecology ~~((one-half of))~~ the share of ecology's development and oversight costs for which ~~((#))~~ the delegated local authority is responsible for collecting from sources under its jurisdiction on or before March 31 ~~((of each year and shall remit to ecology the balance of its share of ecology's development and oversight costs on or before June 30 of each year))~~.

AMENDATORY SECTION (Amending WSR 94-02-041, filed 12/30/93, effective 1/30/94)

WAC 173-401-940 Fee eligible activities—Ecology and delegated local authorities. (1) Permit administration activities shall include:

(a) Preapplication assistance and review of an application and proposed compliance plan for a permit, permit revision, or renewal;

(b) Source inspections, testing and other data-gathering activities necessary for the development of a permit, permit revision, or renewal;

(c) Acting on an application for a permit, permit revision, or renewal, including the costs of developing an applicable requirement as part of the processing of a permit, permit revision, or renewal, preparing a draft permit and fact sheet, and preparing a final permit, but excluding the costs of developing BACT, LAER, BART, or RACT requirements for criteria and toxic air pollutants;

(d) Notifying and soliciting, reviewing and responding to comment from the public and contiguous states and tribes, conducting public hearings regarding the issuance of a draft permit and other costs of providing information to the public regarding operating permits and the permit issuance process;

(e) Modeling necessary to establish permit limits or to determine compliance with permit limits;

(f) Reviewing compliance certifications and emissions reports and conducting related compilation and reporting activities;

(g) Conducting compliance inspections, complaint investigations, and other activities necessary to ensure that a source is complying with permit conditions;

(h) Administrative enforcement activities and penalty assessment, excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;

(i) The share attributable to permitted sources of the development and maintenance of emissions inventories;

(j) The share attributable to permitted sources of ambient air quality monitoring and associated recording and reporting activities;

(k) Training for permit administration and enforcement;

(l) Fee determination, assessment, and collection, including the costs of necessary administrative dispute resolution and penalty collection;

(m) Required fiscal audits, periodic performance audits, and reporting activities;

(n) Tracking of time, revenues and expenditures, and accounting activities;

(o) Administering the permit program including the costs of clerical support, supervision, and management; ~~((and))~~

(p) Other activities required by operating permit regulations issued by the United States Environmental Protection Agency under the Federal Clean Air Act; and

(q) Provision of assistance to small business consistent with RCW 70.94.162.

(2) Development and oversight activities shall include:

(a) Review and determinations necessary for delegation of authority to administer and enforce a permit program to a local air authority under RCW 70.94.161(2) and 70.94.860;

(b) Conducting fiscal audits and periodic performance audits of delegated local authorities, and other oversight functions required by the operating permit program;

(c) Administering enforcement actions taken by the department on behalf of a permitting authority, including

those actions taken by the department under RCW 70.94.785, but excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;

(d) Determination and assessment with respect to each permitting authority of the fees covering its share of the costs of development and oversight;

(e) Training and assistance for permit program administration and oversight, including training and assistance regarding technical, administrative, and data management issues;

(f) Development of generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;

(g) State codification of federal rules or standards for inclusion in operating permits;

(h) Preparation of delegation package and other activities associated with submittal of the state permit program to the United States Environmental Protection Agency for approval, including ongoing coordination activities;

(i) General administration and coordination of the state permit program, related support activities, and other agency indirect costs, including necessary data management and quality assurance;

(j) Required fiscal audits and periodic performance audits of the department, and reporting activities;

(k) Tracking of time, revenues and expenditures, and accounting activities;

(l) Public education and outreach related to the operating permit program, including the maintenance of a permit register;

(m) The share attributable to permitted sources of compiling and maintaining emissions inventories;

(n) The share attributable to permitted sources of ambient air quality monitoring, related technical support, and associated recording activities;

(o) Provision of assistance to small business as required under Section 507 of the Federal Clean Air Act as it exists on the effective date of this act or its later enactment as adopted by reference by the director by rule;

(p) Provision of services by the department of revenue and the office of the state attorney general and other state agencies in support of permit program administration;

(q) A one-time revision to the state implementation plan to make those administrative changes necessary to ensure coordination of the state implementation plan and the operating permit program; and

(r) Other activities required by operating permit regulations issued by the United States Environmental Protection Agency under the Federal Clean Air Act.

to determine when a complaint may be disposed of through an alternative resolution rather than the adjudicative process.

Citation of Existing Rules Affected by this Order: Amending WAC 390-12-200.

Statutory Authority for Adoption: RCW 42.17A.110.

Adopted under notice filed as WSR 15-23-022 on November 7, 2015.

Changes Other than Editing from Proposed to Adopted Version: The phrase "consistent with agency delegation of authority protocols as adopted by commission" inserted in WAC 390-12-200(7).

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

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

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

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

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

Date Adopted: January 28, 2016.

Lori Anderson
Communications and
Training Officer

AMENDATORY SECTION (Amending WSR 85-15-020, filed 7/9/85)

WAC 390-12-200 Public disclosure commission—Role of the executive director. ~~((The commission shall employ and fix the compensation of an executive director who shall perform the following duties under the general authority and supervision of the commission:~~

~~(1) Act as records officer and administrative arm of the commission.~~

~~(2) Coordinate the policies of the commission and the activities of all commission employees and other persons who perform ministerial functions for the commission.~~

(3)) The executive director acts as the commission's chief administrative officer and is accountable to the commission for agency administration. In addition, the executive director will:

(1) Act as the appointing authority for agency staff including the authority to hire, set salaries, promote, assign work, evaluate, take corrective action and, where appropriate, terminate staff.

(2) Exercise such other management oversight, decision-making and administrative action to provide timely and meaningful public access to accurate information about the financing of political campaigns, lobbyist expenditures, and the financial affairs of public officials and candidates, and to ensure compliance with and equitable enforcement of Washington's disclosure and campaign finance laws.

WSR 16-05-008

PERMANENT RULES

PUBLIC DISCLOSURE COMMISSION

[Filed February 4, 2016, 11:32 a.m., effective March 6, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Better clarify the duties delegated to the executive director by the commission. Also authorizes the director

(3) Determine when appropriate and authorize enforcement alternatives set out in chapter 390-37 WAC to resolve complaints filed with the commission.

(4) Act as liaison between the commission and other public agencies.

(5) Research, develop, and draft policy positions, administrative rules, interpretations and advisory options for presentation to the commission.

(6) Enter into contracts and agreements on behalf of the commission.

(7) The executive director may delegate authority to subordinates, consistent with agency delegation of authority protocols as adopted by the commission, to act for him or her as needed and appropriate.

WSR 16-05-012

PERMANENT RULES

ENVIRONMENTAL AND

LAND USE HEARINGS OFFICE

[Filed February 5, 2016, 9:14 a.m., effective March 7, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Clerical correction to our recently published update. WAC 242-03-260(3) erroneously had a strike-through. Our agency was not intending to make a correction to this subsection at all.

Citation of Existing Rules Affected by this Order: Amending WAC 242-03-260.

Statutory Authority for Adoption: RCW 36.70A.270 (4) and (7).

Adopted under notice filed as WSR 15-21-044 on October 16, 2015.

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

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

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

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

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

Date Adopted: January 6, 2016.

Paulette Yorke
Administrative Manager

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-260 Amendments to petitions for review. (1) A petition for review may be amended as a matter of right until (~~thirty~~) fourteen days after its date of filing.

Any such amendments shall be limited to amending the legal bases for challenging the matters raised in the original petition, but may not raise new challenges to the ordinance.

(2) Thereafter any amendments shall be requested in writing by motion, and will be made only after approval by the presiding officer. Amendments shall not be freely granted and may be denied upon a showing by the adverse party of unreasonable and unavoidable hardship, or by the presiding officer's finding that granting the same would adversely impact the board's ability to meet the time requirements of RCW 36.70A.300 for issuing a final order.

(3) At the prehearing conference the presiding officer will work with the parties to clarify the issues raised in the petition for review. The presiding officer may, upon motion of a party or upon its own motion, require a more complete or concise statement of the issues presented for resolution by the board.

WSR 16-05-021

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed February 8, 2016, 9:00 a.m., effective May 1, 2016]

Effective Date of Rule: May 1, 2016.

Purpose: WAC 246-980-990, this filing delays the effective date of the fee increases for application and certification renewal fees for home care aides. The department of health (department) is delaying the effective date of this rule, filed September 22, 2015, as WSR 15-19-150, from March 1 to May 1, 2016, in order to implement the adopted fees into the department's licensing system.

Citation of Existing Rules Affected by this Order: Amending WAC 246-980-990.

Statutory Authority for Adoption: RCW 43.70.110, 43.70.250, 43.70.280.

Adopted under notice filed as WSR 15-13-124 on June 16, 2015.

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

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

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

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

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

Date Adopted: January 26, 2016.

John Wiesman, DrPH, MPH
Secretary

WSR 16-05-022
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed February 8, 2016, 9:23 a.m., effective April 1, 2016]

Effective Date of Rule: April 1, 2016.

Purpose: The department is adding new sections to chapter 388-71 WAC, Home and community services and programs, to transfer and amend the rules for residential client protection program found in chapter 388-76 WAC, Adult family home minimum licensing requirements; chapter 388-78A WAC, Assisted living facility licensing rules; chapter 388-97 WAC, Nursing homes; chapter 388-101 WAC, Certified community residential services and supports; and chapter 388-111 WAC, Residential habilitation centers—Compliance standards, to the adult protective services program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-71-0100, 388-71-0105, 388-71-0110, 388-71-0115, 388-71-01201, 388-71-01205, 388-71-01210, 388-71-01220, 388-71-01225, 388-71-01230, 388-71-01235, 388-71-01240, 388-71-01245, 388-71-01250, 388-71-01255, 388-71-01260, 388-71-01265, 388-71-01270, 388-71-01275, and 388-71-01280.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 15-18-050 on August 27, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 20, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 20, Repealed 0.

Date Adopted: February 8, 2016.

Katherine I. Vasquez
 Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 16-06 issue of the Register.

WSR 16-05-028
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed February 9, 2016, 8:39 a.m., effective March 11, 2016]

Effective Date of Rule: March 11, 2016.

Purpose: The department is amending WAC 388-105-0005 The daily medicaid payment rates for clients assessed using the comprehensive assessment reporting evaluation (CARE) tool and that reside in adult family homes (AFH) and assisted living facilities contracted to provide assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC) services, to comply with the current budget.

Citation of Existing Rules Affected by this Order: Amending WAC 388-105-0005.

Statutory Authority for Adoption: RCW 74.39A.050 (3)(a).

Adopted under notice filed as WSR 15-23-002 on November 4, 2015.

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

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

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

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

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

Date Adopted: February 8, 2016.

Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-03-113, filed 1/21/14, effective 2/21/14)

WAC 388-105-0005 The daily medicaid payment rates for clients assessed using the comprehensive assessment reporting evaluation (CARE) tool and that reside in adult family homes (AFH) and assisted living facilities contracted to provide assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC) services. For contracted AFH and assisted living facilities contracted to provide AL, ARC, and EARC services, the department pays the following daily rates for care of a medicaid resident:

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
KING COUNTY					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low	\$((65.58)) <u>67.22</u>	\$((71.00)) <u>72.64</u>	\$((46.51)) <u>47.67</u>	\$((46.51)) <u>47.67</u>	\$((47.59)) <u>49.97</u>
A Med	\$((70.97)) <u>72.74</u>	\$((76.39)) <u>78.16</u>	\$((52.71)) <u>54.03</u>	\$((52.71)) <u>54.03</u>	\$((53.84)) <u>56.53</u>
A High	\$((79.58)) <u>81.57</u>	\$((85.00)) <u>86.99</u>	\$((57.85)) <u>59.30</u>	\$((57.85)) <u>59.30</u>	\$((60.10)) <u>63.11</u>
B Low	\$((65.58)) <u>67.22</u>	\$((71.00)) <u>72.64</u>	\$((46.51)) <u>47.67</u>	\$((46.51)) <u>47.67</u>	\$((47.82)) <u>50.21</u>
B Med	\$((73.13)) <u>74.96</u>	\$((78.55)) <u>80.39</u>	\$((58.92)) <u>60.39</u>	\$((58.92)) <u>60.39</u>	\$((60.39)) <u>63.41</u>
B Med-High	\$((82.76)) <u>84.83</u>	\$((88.18)) <u>90.25</u>	\$((62.62)) <u>64.19</u>	\$((62.62)) <u>64.19</u>	\$((64.62)) <u>67.85</u>
B High	\$((87.10)) <u>89.28</u>	\$((92.52)) <u>94.70</u>	\$((71.52)) <u>73.31</u>	\$((71.52)) <u>73.31</u>	\$((73.71)) <u>77.40</u>
C Low	\$((70.97)) <u>72.74</u>	\$((76.39)) <u>78.16</u>	\$((52.71)) <u>54.03</u>	\$((52.71)) <u>54.03</u>	\$((53.84)) <u>56.53</u>
C Med	\$((79.58)) <u>81.57</u>	\$((85.00)) <u>86.99</u>	\$((66.05)) <u>67.70</u>	\$((66.05)) <u>67.70</u>	\$((68.42)) <u>71.84</u>
C Med-High	\$((98.96)) <u>101.43</u>	\$((104.38)) <u>106.85</u>	\$((87.89)) <u>90.09</u>	\$((87.89)) <u>90.09</u>	\$((89.26)) <u>93.72</u>
C High	\$((99.94)) <u>102.44</u>	\$((105.36)) <u>107.86</u>	\$((88.73)) <u>90.95</u>	\$((88.73)) <u>90.95</u>	\$((90.49)) <u>95.01</u>
D Low	\$((73.13)) <u>74.96</u>	\$((78.55)) <u>80.38</u>	\$((71.09)) <u>72.87</u>	\$((71.09)) <u>72.87</u>	\$((69.72)) <u>73.21</u>
D Med	\$((81.20)) <u>83.23</u>	\$((86.62)) <u>88.65</u>	\$((82.29)) <u>84.35</u>	\$((82.29)) <u>84.35</u>	\$((85.07)) <u>89.32</u>
D Med-High	\$((104.87)) <u>107.49</u>	\$((110.29)) <u>112.91</u>	\$((104.52)) <u>107.13</u>	\$((104.52)) <u>107.13</u>	\$((102.12)) <u>107.23</u>
D High	\$((112.97)) <u>115.79</u>	\$((118.39)) <u>121.21</u>	\$((112.97)) <u>115.79</u>	\$((112.97)) <u>115.79</u>	\$((116.10)) <u>121.91</u>
E Med	\$((136.43)) <u>139.84</u>	\$((141.85)) <u>145.26</u>	\$((136.43)) <u>139.84</u>	\$((136.43)) <u>139.84</u>	\$((140.04)) <u>147.04</u>
E High	\$((159.89)) <u>163.89</u>	\$((165.31)) <u>169.31</u>	\$((159.89)) <u>163.89</u>	\$((159.89)) <u>163.89</u>	\$((163.99)) <u>172.19</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
METROPOLITAN COUNTIES*					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low	\$((60.19)) <u>61.69</u>	\$((65.11)) <u>66.61</u>	\$((46.51)) <u>47.67</u>	\$((46.51)) <u>47.67</u>	\$((47.59)) <u>49.97</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE
METROPOLITAN COUNTIES*

CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Med	\$((63.43)) <u>65.02</u>	\$((68.35)) <u>69.94</u>	\$((50.64)) <u>51.91</u>	\$((50.64)) <u>51.91</u>	\$((51.75)) <u>54.34</u>
A High	\$((77.43)) <u>79.37</u>	\$((82.35)) <u>84.29</u>	\$((55.18)) <u>56.56</u>	\$((55.18)) <u>56.56</u>	\$((56.96)) <u>59.81</u>
B Low	\$((60.19)) <u>61.69</u>	\$((65.11)) <u>66.61</u>	\$((46.51)) <u>47.67</u>	\$((46.51)) <u>47.67</u>	\$((47.82)) <u>50.21</u>
B Med	\$((68.80)) <u>70.52</u>	\$((73.72)) <u>75.44</u>	\$((55.82)) <u>57.22</u>	\$((55.82)) <u>57.22</u>	\$((57.24)) <u>60.10</u>
B Med-High	\$((77.88)) <u>79.83</u>	\$((82.80)) <u>84.75</u>	\$((59.33)) <u>60.81</u>	\$((59.33)) <u>60.81</u>	\$((61.30)) <u>64.37</u>
B High	\$((84.95)) <u>87.07</u>	\$((89.87)) <u>91.99</u>	\$((69.51)) <u>71.25</u>	\$((69.51)) <u>71.25</u>	\$((71.66)) <u>75.24</u>
C Low	\$((63.43)) <u>65.02</u>	\$((68.35)) <u>69.94</u>	\$((50.85)) <u>52.12</u>	\$((50.85)) <u>52.12</u>	\$((52.13)) <u>54.74</u>
C Med	\$((77.43)) <u>79.37</u>	\$((82.35)) <u>84.29</u>	\$((65.21)) <u>66.84</u>	\$((65.21)) <u>66.84</u>	\$((66.78)) <u>70.12</u>
C Med-High	\$((95.71)) <u>98.10</u>	\$((100.63)) <u>103.02</u>	\$((81.69)) <u>83.73</u>	\$((81.69)) <u>83.73</u>	\$((83.02)) <u>87.17</u>
C High	\$((96.67)) <u>99.09</u>	\$((101.59)) <u>104.01</u>	\$((86.87)) <u>89.04</u>	\$((86.87)) <u>89.04</u>	\$((88.01)) <u>92.41</u>
D Low	\$((68.80)) <u>70.52</u>	\$((73.72)) <u>75.44</u>	\$((70.12)) <u>71.87</u>	\$((70.12)) <u>71.87</u>	\$((68.21)) <u>71.62</u>
D Med	\$((79.00)) <u>80.98</u>	\$((83.92)) <u>85.90</u>	\$((80.65)) <u>82.67</u>	\$((80.65)) <u>82.67</u>	\$((82.81)) <u>86.95</u>
D Med-High	\$((101.44)) <u>103.98</u>	\$((106.36)) <u>108.90</u>	\$((101.95)) <u>104.50</u>	\$((101.95)) <u>104.50</u>	\$((99.04)) <u>103.99</u>
D High	\$((109.88)) <u>112.63</u>	\$((114.80)) <u>117.55</u>	\$((109.88)) <u>112.63</u>	\$((109.88)) <u>112.63</u>	\$((112.36)) <u>117.98</u>
E Med	\$((132.21)) <u>135.52</u>	\$((137.13)) <u>140.44</u>	\$((132.21)) <u>135.52</u>	\$((132.21)) <u>135.52</u>	\$((135.15)) <u>141.91</u>
E High	\$((154.54)) <u>158.40</u>	\$((159.46)) <u>163.32</u>	\$((154.54)) <u>158.40</u>	\$((154.54)) <u>158.40</u>	\$((157.94)) <u>165.84</u>

*Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, and Yakima counties.

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE
NONMETROPOLITAN COUNTIES**

CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low	\$((59.13)) <u>60.61</u>	\$((64.37)) <u>65.85</u>	\$((46.51)) <u>47.67</u>	\$((46.51)) <u>47.67</u>	\$((47.59)) <u>49.97</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE
NONMETROPOLITAN COUNTIES**

CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Med	\$((63.43)) <u>65.02</u>	\$((68.67)) <u>70.26</u>	\$((49.62)) <u>50.86</u>	\$((49.62)) <u>50.86</u>	\$((50.72)) <u>53.26</u>
A High	\$((77.43)) <u>79.37</u>	\$((82.67)) <u>84.61</u>	\$((54.30)) <u>55.66</u>	\$((54.30)) <u>55.66</u>	\$((55.93)) <u>58.73</u>
B Low	\$((59.13)) <u>60.61</u>	\$((64.37)) <u>65.85</u>	\$((46.51)) <u>47.67</u>	\$((46.51)) <u>47.67</u>	\$((47.82)) <u>50.21</u>
B Med	\$((68.80)) <u>70.52</u>	\$((74.04)) <u>75.76</u>	\$((54.79)) <u>56.16</u>	\$((54.79)) <u>56.16</u>	\$((56.20)) <u>59.01</u>
B Med-High	\$((77.88)) <u>79.83</u>	\$((83.12)) <u>85.07</u>	\$((58.22)) <u>59.68</u>	\$((58.22)) <u>59.68</u>	\$((60.12)) <u>63.13</u>
B High	\$((84.95)) <u>87.07</u>	\$((90.19)) <u>92.31</u>	\$((65.77)) <u>67.41</u>	\$((65.77)) <u>67.41</u>	\$((67.84)) <u>71.23</u>
C Low	\$((63.43)) <u>65.02</u>	\$((68.67)) <u>70.26</u>	\$((49.62)) <u>50.86</u>	\$((49.62)) <u>50.86</u>	\$((50.72)) <u>53.26</u>
C Med	\$((77.43)) <u>79.37</u>	\$((82.67)) <u>84.61</u>	\$((61.66)) <u>63.20</u>	\$((61.66)) <u>63.20</u>	\$((64.27)) <u>67.48</u>
C Med-High	\$((95.71)) <u>98.10</u>	\$((100.95)) <u>103.34</u>	\$((78.58)) <u>80.54</u>	\$((78.58)) <u>80.54</u>	\$((79.90)) <u>83.90</u>
C High	\$((96.67)) <u>99.09</u>	\$((101.91)) <u>104.33</u>	\$((82.13)) <u>84.18</u>	\$((82.13)) <u>84.18</u>	\$((83.30)) <u>87.47</u>
D Low	\$((68.80)) <u>70.52</u>	\$((74.04)) <u>75.76</u>	\$((66.30)) <u>67.96</u>	\$((66.30)) <u>67.96</u>	\$((64.57)) <u>67.80</u>
D Med	\$((79.00)) <u>80.98</u>	\$((84.24)) <u>86.22</u>	\$((76.26)) <u>78.17</u>	\$((76.26)) <u>78.17</u>	\$((78.37)) <u>82.29</u>
D Med-High	\$((101.44)) <u>103.98</u>	\$((106.68)) <u>109.22</u>	\$((96.38)) <u>98.79</u>	\$((96.38)) <u>98.79</u>	\$((93.72)) <u>98.41</u>
D High	\$((103.88)) <u>106.48</u>	\$((109.12)) <u>111.72</u>	\$((103.88)) <u>106.48</u>	\$((103.88)) <u>106.48</u>	\$((106.30)) <u>111.62</u>
E Med	\$((124.99)) <u>128.11</u>	\$((130.23)) <u>133.35</u>	\$((124.99)) <u>128.11</u>	\$((124.99)) <u>128.11</u>	\$((127.84)) <u>134.23</u>
E High	\$((146.10)) <u>149.75</u>	\$((151.34)) <u>154.99</u>	\$((146.10)) <u>149.75</u>	\$((146.10)) <u>149.75</u>	\$((149.39)) <u>156.86</u>

** Nonmetropolitan counties: Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Orielle, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla and Whitman.

WSR 16-05-029
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed February 9, 2016, 9:01 a.m., effective April 1, 2016]

Effective Date of Rule: April 1, 2016.

Purpose: Resident client protection program (RCPP) has been moved into adult protective services and the rules will be administered under chapters 388-71 and 388-106 WAC. References to the RCPP would thus be incorrect and are being repealed from chapter 388-78A WAC. Residential care services has coordinated to eliminate these sections at the same time home and community services is incorporating them into their WAC.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-78A-3390, 388-78A-3400, 388-78A-3410, 388-78A-3420, 388-78A-3430, 388-78A-3440, 388-78A-3450, 388-78A-3460, 388-78A-3470, and 388-78A-3480.

Statutory Authority for Adoption: RCW 74.08.090.

Other Authority: Chapter 18.20 RCW.

Adopted under notice filed as WSR 16-01-172 on December 22, 2015.

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

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

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

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

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

Date Adopted: February 4, 2016.

Katherine I. Vasquez
 Rules Coordinator

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-78A-3390 Resident protection program—Individual defined.
- WAC 388-78A-3400 Investigation of reports.
- WAC 388-78A-3410 Resident protection program—Notice to the individual of preliminary finding.
- WAC 388-78A-3420 Resident protection program—Notice to others of preliminary findings.

- WAC 388-78A-3430 Resident protection program—Disputing a preliminary finding.
- WAC 388-78A-3440 Hearing procedures to dispute preliminary finding.
- WAC 388-78A-3450 Resident protection program—Finalizing a preliminary finding.
- WAC 388-78A-3460 Resident protection program—Appeal of initial order.
- WAC 388-78A-3470 Resident protection program—Reporting final findings.
- WAC 388-78A-3480 Resident protection program—Disclosure of investigative and finding information.

WSR 16-05-032
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket TR-151079, General Order R-584—Filed February 9, 2016, 11:03 a.m., effective March 11, 2016]

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 16-07 issue of the Register.

WSR 16-05-033
PERMANENT RULES
PUBLIC EMPLOYMENT
RELATIONS COMMISSION

[Filed February 9, 2016, 12:44 p.m., effective March 11, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The amendments to WAC 391-08-120 eliminates the need for a party to "perfect" their electronic filing with the agency and other parties by mailing a paper copy of the same document on the same day that the electronic filing was made.

The amendment also clarifies that a filing by United States mail is complete when the individual places the document in the mail. The current standard makes filing complete when the agency actually receives the document.

Citation of Existing Rules Affected by this Order: Amending WAC 391-25-120 [391-08-120].

Statutory Authority for Adoption: RCW 28B.52.080, 41.56.090, 41.58.050, 41.59.110, 41.76.060, 41.80.080, 47.64.280(2), 49.39.060.

Adopted under notice filed as WSR 15-24-062 on November 24, 2015.

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

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

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

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

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

Date Adopted: February 9, 2016.

Dario de la Rosa
Representation
Case Administrator

AMENDATORY SECTION (Amending WSR 00-14-048, filed 6/30/00, effective 8/1/00)

WAC 391-08-120 Filing and service of papers.

~~((FILING OF PAPERS WITH THE AGENCY))~~

~~(1) Papers to be filed with the agency shall be filed at the commission's Olympia office. The executive director shall post, and from time to time revise as appropriate, a list containing the street and mailing addresses for filing by actual delivery of papers, the telephone number for filing by electronic telefacsimile transmission (fax), and the electronic mail (e-mail) address and software supported by the agency for filing by e-mail attachment.~~

~~(2) Papers may be filed by any of the following methods:~~

~~(a) FILING BY ACTUAL DELIVERY of papers to the agency (including filings delivered by United States mail) shall be subject to the following limitations:~~

~~(i) Only the original paper(s) shall be filed. No additional copies of papers are required.~~

~~(ii) The case number(s) shall be indicated on the front page of each document filed, except for petitions and complaints being filed to initiate proceedings before the agency.~~

~~(iii) Filing shall occur only upon actual receipt of the original paper by the agency during office hours.~~

~~(iv) Papers delivered to or left at the agency office after the close of business will be deemed to be filed on the next business day the office is open.~~

~~(b) FILING BY FAX shall be subject to the following limitations:~~

~~(i) Parties shall only transmit one copy of the paper, accompanied by a cover sheet or form identifying the party filing the paper, the total number of pages in the fax transmission, and the name, address, telephone number and fax number of the person sending the fax.~~

~~(ii) The original paper filed by fax shall be mailed to the commission's Olympia office on the same day the fax is transmitted.~~

~~(iii) The case number(s) shall be indicated on the front page of each document filed by fax, except for petitions and complaints being filed to initiate proceedings before the agency.~~

~~(iv) Filing by fax shall occur only when a complete legible copy of the paper is received by the agency. If a fax is not~~

~~received in legible form, it will be treated as if it had never been filed. A party attempting to file a paper by fax bears the risk that the paper will not be timely or legibly received, regardless of the cause.~~

~~(v) If receipt of a fax transmission commences after office hours, the paper will be deemed filed on the next business day the office is open.~~

~~(vi) Fax shall not be used to submit or revoke authorization cards for purposes of a showing of interest or cross-check under chapter 391-25 WAC.~~

~~(e) FILING BY E-MAIL ATTACHMENT shall be subject to the following limitations:~~

~~(i) Parties shall only transmit one copy of the paper, as an attachment to an e-mail message identifying the party filing the paper, the total number of pages in the attachment, the software used to prepare the attachment, and the name, address, telephone number and e-mail address of the person sending the e-mail message.~~

~~(ii) The original paper filed by e-mail attachment shall be mailed to the commission's Olympia office on the same day the e-mail message and attachment are transmitted.~~

~~(iii) The case number(s) shall be indicated on the front page of each document filed by e-mail attachment, except for petitions and complaints being filed to initiate proceedings before the agency.~~

~~(iv) Filing by e-mail attachment shall occur only when a complete legible copy of the paper is received by the agency. If an e-mail attachment is not received in legible form, or cannot be opened with software on the list promulgated by the executive director under this section, it will be treated as if it had never been filed. A party attempting to file a paper by e-mail attachment bears the risk that the paper will not be timely or legibly received, regardless of the cause.~~

~~(v) If an e-mail transmission is received by the agency after office hours, the paper will be deemed filed on the next business day the office is open.~~

~~(vi) E-mail shall not be used to submit or revoke authorization cards for purposes of a showing of interest or cross-check under chapter 391-25 WAC.~~

~~SERVICE ON OTHER PARTIES~~

~~(3) A party which files any papers with the agency shall serve a copy of the papers upon all counsel and representatives of record and upon unrepresented parties or upon their agents designated by them or by law. Service shall be completed no later than the day of filing, by one of the following methods:~~

~~(a) Service may be made personally, and shall be regarded as completed when delivered in the manner provided in RCW 4.28.080;~~

~~(b) Service may be made by first class, registered, or certified mail, and shall be regarded as completed upon deposit in the United States mail properly stamped and addressed.~~

~~(c) Service may be made by commercial parcel delivery company, and shall be regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.~~

~~(d) Service may be made by fax, and shall be regarded as completed upon production by the fax machine of confirmation of transmission, together with same day mailing of a~~

copy of the papers, postage prepaid and properly addressed, to the person being served.

(e) Service may be made by e-mail attachment, and shall be regarded as completed upon transmission, together with same day mailing of a copy of the papers, postage prepaid and properly addressed, to the person being served.

PROOF OF SERVICE

(4) On the same day that service of any papers is completed under subsection (3) of this section, the person who completed the service shall:

(a) Obtain an acknowledgment of service from the person who accepted personal service; or

(b) Make a certificate stating that the person signing the certificate personally served the papers by delivering a copy at a date, time and place specified in the certificate to a person named in the certificate; or

(c) Make a certificate stating that the person signing the certificate completed service of the papers by:

(i) Mailing a copy under subsection (3)(b) of this section; or

(ii) Depositing a copy under subsection (3)(c) of this section with a commercial parcel delivery company named in the certificate; or

(iii) Transmitting and mailing a copy under subsection (3)(d) or (e) of this section.

(5) Where the sufficiency of service is contested, an acknowledgment of service obtained under subsection (4)(a) of this section or a certificate of service made under subsection (4)(b) or (c) of this section shall constitute proof of service.) (1) Documents filed with the agency shall be filed at the Olympia office. The agency will post on its web site information containing the street address for filing by personal delivery, the mailing addresses for filing by mail, the telephone number for filing by fax transmission, and the e-mail address or other method to be used for electronic filing.

(2) Documents may be filed with the agency by one of the following methods:

(a) In person.

(b) By first class, registered, or certified mail.

(c) By commercial parcel delivery company.

(d) Electronically by e-mail, fax transmission, or other method posted by the agency.

(3) Documents filed with the agency shall be served upon all parties on the same day the documents are filed. Service shall be upon counsel and representatives of record, or upon unrepresented parties or upon their agents designated by them or by law.

(4) Unless otherwise ordered by the agency in a particular proceeding, filing and service is complete upon one of the following:

(a) Hand delivery.

(b) Depositing the documents, properly addressed and postage paid, in the U.S. mail.

(c) Acceptance of the documents for delivery by a parcel delivery company.

(d) Receipt of entire fax transmission by the recipient and receipt by the sending party of confirmation of receipt of the fax transmission. If receipt of a fax commences after

office hours, the paper will be deemed filed on the next business day the office is open.

(e) Receipt of the entire electronic transmission by the recipient. The metadata created by the successful transmission of the e-mail or electronic filing constitutes the time of service. If an electronic filing is received by the agency after office hours, the documents will be deemed filed on the next business day the office is open.

(5) On the same day that filing and service of documents is completed under subsection (3) of this section, the person who completed service shall:

(a) Obtain an acknowledgment of service from the person who accepted personal service under subsection (4)(a) of this section; or

(b) Make a certificate stating that the person signing the certificate completed service of the papers by:

(i) Personally delivering a copy under subsection (4)(a) of this section; or

(ii) Mailing a copy under subsection (4)(b) of this section; or

(iii) Depositing a copy under subsection (4)(c) of this section with a commercial parcel delivery company named in the certificate; or

(iv) Electronically transmitting the documents under subsection (4)(d) or (e) of this section.

(6) Where the sufficiency of service is contested, an acknowledgment of service obtained under subsection (5)(a) of this section or a certificate of service made under subsection (5)(b) of this section shall constitute proof of service.

WSR 16-05-034

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed February 9, 2016, 1:00 p.m., effective March 15, 2016]

Effective Date of Rule: March 15, 2016.

Purpose: The department is amending WAC 388-466-0150 Refugee employment and training services, to allow more exemption criteria for refugee employment and training requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 388-466-0150.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.08.090.

Adopted under notice filed as WSR 16-01-120 on December 18, 2015.

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

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

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

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

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

Date Adopted: February 8, 2016.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-18-004, filed 8/22/13, effective 10/1/13)

WAC 388-466-0150 Refugee employment and training services. (1) What are refugee employment and training services?

Refugee employment and training services provided to eligible refugees may include information and referral, employment oriented case management, job development, job placement, job retention, wage progression, skills training, on-the-job training, counseling and orientation, English as a second language, and vocational English training.

(2) Am I required to participate in refugee employment and training services?

If you are receiving refugee cash assistance (RCA) you are required to participate in refugee employment and training services, unless you are exempt.

(3) How do I know if I am exempt from mandatory employment and training requirements?

~~((a))~~ You may be exempt from participation in employment and training requirements if you are:

(a) An adult with a severe and chronic disability as defined below:

~~(i) ((You are needed in the home to personally provide care for your child under three months of age (see WAC 388-310-0300);))~~ You have been assessed by a DSHS SSI facilitator as likely to be approved for SSI and are required to apply for SSI. Your SSI application status may be verified through the SSI facilitator and/or state data exchange; or

(ii) Your disability is a severe and chronic mental, physical, emotional, or cognitive impairment that prevents you from working and is expected to last at least twelve months. Your disability must be verified by documentation from a behavioral health organization (BHO), and/or regional service area (RSA), or evidence from another medical or mental health professional; or

(b) Required to be in the home to care for another adult with disabilities when:

(i) The adult with disabilities cannot be left alone for significant periods of time;

(ii) No adult other than yourself is available and able to provide the care;

(iii) The adult with the disability is related to you;

(iv) You are unable to participate in work activities because you are required to be in the home to provide care; and

(v) The disability and your need to care for your disabled adult relative is verified by documentation from the developmental disabilities administration (DDA), division of vocational rehabilitation (DVR), home and community services (HCS), division of behavioral health and recovery (DBHR), and/or a behavioral health organization (BHO), and/or regional service area (RSA), or evidence from another medical or mental health professional.

~~((ii) You are))~~

(c) Sixty years of age or older.

~~((b) You can not be exempt from work and training requirements solely because of an inability to communicate in English))~~

(d) Unable to participate in work activities because you are the victim of family violence.

(4) If I am required to participate, what do I have to do?

You are required to:

(a) Register with your employment service provider;

(b) Accept and participate in all employment opportunities, training or referrals, determined appropriate by the department.

(5) What happens if I do not follow these requirements?

If you refuse without good reason to cooperate with the requirements, you are subject to the following penalties:

(a) If you are applying for refugee cash assistance, you will be ineligible for thirty days from the date of your refusal to accept work or training opportunity; or

(b) If you are already receiving refugee cash assistance, your cash benefits will be subject to financial penalties.

(c) The department will notify your voluntary agency (VOLAG) if financial penalties take place.

(6) What are the penalties to my grant?

The penalties to your grant are:

(a) If the assistance unit includes other individuals as well as yourself, the cash grant is reduced by the sanctioned refugee's amount for three months after the first occurrence. For the second occurrence the financial penalty continues for the remainder of the sanctioned refugee's eight-month eligibility period.

(b) If you are the only person in the assistance unit your cash grant is terminated for three months after the first occurrence. For the second occurrence, your grant is terminated for the remainder of your eight-month eligibility period.

(7) How can I avoid the penalties?

You can avoid the penalties, if you accept employment or training before the last day of the month in which your cash grant is closed.

(8) What is considered a good reason for not being able to follow the requirements?

You have a good reason for not following the requirements if it was not possible for you to stay on the job or to follow through on a required activity due to an event outside of your control. See WAC 388-310-1600(3) for examples.

WSR 16-05-035
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket A-151884, General Order R-585—Filed February 9, 2016, 1:24 p.m., effective March 11, 2016]

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 16-06 issue of the Register.

WSR 16-05-051
PERMANENT RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)

[Filed February 11, 2016, 3:51 p.m., effective April 1, 2016]

Effective Date of Rule: April 1, 2016.

Purpose: The agency is creating three WAC chapters to govern the Washington apple health fully integrated managed care program, which will go into effect April 1, 2016. The program integrates crisis, substance use disorder, physical health, and behavioral health services in fully integrated managed care regional service areas.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 16-01-173 on December 22, 2015.

Changes Other than Editing from Proposed to Adopted Version: WAC 182-538A-040:

"Mental health professional" means:

(a) A psychiatrist, psychologist, psychiatric nurse, or social worker as defined in chapters 71.05 and 71.34 RCW;

(b) A person who is licensed by the department of health as a mental health counselor, mental health counselor associate, marriage and family therapist, or marriage and family therapist associate;

(c) A person with a master's degree or further advanced degree in counseling or one of the social behavioral sciences from an accredited college or university who has at least two years of experience in direct treatment of persons with mental illness or emotional disturbance that was gained under the supervision of a mental health professional and is recognized by the department of social and health services;

(d) A person who meets the waiver criteria of RCW 71.24.260, which was granted before 1986;

(e) A person who had an approved waiver to perform the duties of a mental health professional that was requested by the regional support network (RSN) and granted by the mental health division before July 1, 2001; or

(f) A person who has been granted a time-limited exception of the minimum requirements of a mental health professional by the department of social and health services consistent with WAC 388-865-0265.

WAC 182-538A-160:

~~(6) See chapter 182-538B WAC and WAC 182-538A-160 for program integrity requirements for substance abuse prevention and treatment (SAPT) block grant funds.~~

WAC 182-538B-040:

(2) Washington apple health fully integrated managed care (FIMC) behavioral health wraparound services are:

~~(a) Not covered by medicaid funding and are funded by state-only federal block grant services (GFS/SAPT) funding.~~

~~(b) Available only through a managed care organization (MCO) contracted to provide FIMC services or behavioral health services only (BHSO).~~

(3) The MCO provides contracted nonmedicaid funded behavioral health wraparound services to medicaid enrollees in an FIMC regional service area:

(a) Within available resources;

(b) Based on medical necessity; and

(c) In order of priority to populations as identified by state and federal authorities.

(4) When ~~GFS/SAPT~~ **nonmedicaid** funding is exhausted, behavioral health wraparound services are no longer paid for and cannot be authorized regardless of medical necessity.

WAC 182-538B-210:

~~**WAC 182-538B-210 Program integrity requirements for substance abuse prevention and treatment block grant.** (1) The department of social and health services monitors:~~

~~(a) Substance abuse and mental health services administration (SAMHSA) block grant fund expenditures; and~~

~~(b) Substance abuse prevention and treatment (SAPT) block grant funds.~~

~~(2) A managed care organization (MCO) and its contractors work with the medicaid agency and the department to develop:~~

~~(a) Policies;~~

~~(b) Procedures;~~

~~(c) Reporting relationships; and~~

~~(d) Data collection processes and systems.~~

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 29, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 29, Amended 0, Repealed 0.

Date Adopted: February 11, 2016.

Wendy Barcus
Rules Coordinator

Chapter 182-538A WAC

WASHINGTON APPLE HEALTH FULLY INTEGRATED MANAGED CARE (FIMC)

NEW SECTION

WAC 182-538A-040 Washington apple health fully integrated managed care. (1) This chapter governs the services provided under the medicaid agency's Washington apple health fully integrated managed care (FIMC) medicaid contract.

(a) FIMC provides physical and behavioral health services to medicaid beneficiaries through managed care.

(b) FIMC includes enrollees receiving behavioral health services only (BHSO).

(c) FIMC services are available only through a contracted managed care organization (MCO) and its provider network.

(d) For behavioral health services provided to individuals outside of FIMC regional service areas, see chapters 388-865, 388-877, 388-877A, 388-877B, and 388-877C WAC.

(2) To provide physical and behavioral health services or BHSO under the FIMC medicaid contract, an MCO must contract with the agency.

(3) To be eligible to contract with the agency to provide FIMC services, the MCO must:

(a) Have a certificate of registration from the Washington state office of the insurance commissioner (OIC) that allows the MCO to provide the health care services;

(b) Accept the terms and conditions of the agency's contracts;

(c) Be able to meet the network and quality standards established by the agency;

(d) Successfully participate in an on-site readiness review conducted by the agency; and

(e) Be awarded a contract through a competitive process or an application process available to all qualified providers at the discretion of the agency.

(4) The agency reserves the right not to contract with any otherwise qualified MCO.

(5) Chapter 182-538 WAC applies to this chapter. If the rules are in conflict, this chapter takes precedence.

NEW SECTION

WAC 182-538A-050 Definitions. The following definitions and abbreviations and those found in chapters 182-500 and 182-538 WAC apply to this chapter.

"Administrative hearing" means an adjudicative proceeding before an administrative law judge or a presiding officer that is governed by chapters 34.05 RCW and 182-526 WAC.

"Appeal" means a request for review of an action under WAC 182-538-110 and 42 C.F.R. Sec. 438.400(b).

"Apple health adult coverage (AHAC)" means the range of services available to people eligible to receive health care coverage under the Washington apple health modified adjusted gross income (MAGI)-based adult coverage.

"Behavioral health" includes mental health, substance use disorders and conditions, and benefits related to treatment.

"Behavioral health administrative services organization (BH-ASO)" means an entity selected by the agency to administer behavioral health services and programs, including crisis services for all individuals in a defined regional service area, regardless of an individual's insurance status or ability to pay.

"Behavioral health services only (BHSO)" - The program in which enrollees only receive behavioral health benefits through a managed care delivery system.

"Brief intervention treatment" - Solution-focused and outcome-oriented cognitive and behavioral interventions intended to improve symptoms, resolve situational disturbances that are not amenable to resolution in a crisis service model of care, and which do not require long-term treatment to return the individual to previous higher levels of general functioning. This service is provided by or under the supervision of a mental health professional.

"Crisis services" - See WAC 182-538C-150.

"Division of behavioral health and recovery (DBHR)" means the department of social and health services designated state behavioral health authority to administer state-only, federal block grant, and medicaid-funded behavioral health programs.

"End enrollment" means ending the enrollment of an enrollee for one of the reasons outlined in WAC 182-538A-130.

"Fully integrated managed care (FIMC)" means the program covered by this chapter, under which behavioral health services are added to an agency managed care contract.

"Mental health professional" means:

(a) A psychiatrist, psychologist, psychiatric nurse, or social worker as defined in chapters 71.05 and 71.34 RCW;

(b) A person who is licensed by the department of health as a mental health counselor, mental health counselor associate, marriage and family therapist, or marriage and family therapist associate;

(c) A person with a master's degree or further advanced degree in counseling or one of the social behavioral sciences from an accredited college or university who has at least two years of experience in direct treatment of persons with mental illness or emotional disturbance that was gained under the supervision of a mental health professional and is recognized by the department of social and health services;

(d) A person who meets the waiver criteria of RCW 71.24.260, which was granted before 1986;

(e) A person who had an approved waiver to perform the duties of a mental health professional that was granted by the mental health division before July 1, 2001; or

(f) A person who has been granted a time-limited exception of the minimum requirements of a mental health professional by the department of social and health services consistent with WAC 388-865-0265.

"Patient days of care" means all voluntary patients and involuntarily committed patients under chapter 71.05 RCW, regardless of where in the state hospital the patients reside. Patients who are committed to the state hospital under chap-

ter 10.77 RCW are not included in the patient days of care. Patients who are committed under RCW 10.77.088 by municipal or district courts after failed competency restoration and dismissal of misdemeanor charges are not counted in the patient days of care until a petition for ninety days of civil commitment under chapter 71.05 RCW has been filed in court. Patients who are committed under RCW 10.77.086 by a superior court after failed competency restoration and dismissal of felony charges are not counted in the patient days of care until the patient is civilly committed under chapter 71.05 RCW.

"Regional service area (RSA)" means a single county or multi-county grouping formed for the purpose of health care purchasing and designated by the agency and the department of social and health services.

"Wraparound with intensive services (WISe)" is a program that provides comprehensive behavioral health services and support to:

- (a) Medicaid-eligible people age twenty or younger with complex behavioral health needs; and
- (b) Their families.

NEW SECTION

WAC 182-538A-060 Fully integrated managed care and choice. (1) Except as provided in subsection (2) of this section, the medicaid agency requires a client to enroll in a fully integrated managed care (FIMC) managed care organization (MCO) when that client:

- (a) Is eligible;
 - (b) Resides in a mandatory enrollment FIMC regional service area; and
 - (c) Is not exempt from FIMC enrollment.
- (2)(a) American Indian and Alaska native (AI/AN) clients and their descendants may choose one of the following:
- (i) Enrollment with an FIMC MCO available in their regional service area;
 - (ii) Enrollment with a primary care case management (PCCM) provider through a tribal clinic or urban Indian center available in their area, which includes mandatory enrollment into a behavioral health services only (BHSO) MCO; or
 - (iii) The agency's fee-for-service system, which includes mandatory enrollment into a BHSO MCO.
- (b) To enroll with an FIMC MCO or PCCM provider, an AI/AN client may:
- (i) Call the agency's toll-free enrollment line at 800-562-3022;
 - (ii) Mail or fax the following to the agency's unit responsible for FIMC enrollment:
 - (A) Form HCA 13-664; or
 - (B) Form HCA 13-862 found online at <https://www.hca.wa.gov/medicaid/forms/pages/index.aspx>.
 - (iii) Enroll online through the Washington Healthplanfinder at <https://www.wahealthplanfinder.org>; or
 - (iv) Go to the ProviderOne client portal at <https://www.waproviderone.org/client> and follow the prompts.
- (3) A client must enroll with an FIMC MCO available in the regional service area where the client resides.
- (4) The agency enrolls all family members with the same FIMC MCO, if available.

(5) If a family member is enrolled in the patient review and coordination (PRC) program, that family member must follow the rules in WAC 182-501-0135.

(6) When a client requests enrollment with an FIMC MCO or PCCM provider, the agency enrolls a client effective the first day of the current month a client becomes eligible.

(7) To enroll with an FIMC MCO, a client may:

(a) Call the agency's toll-free enrollment line at 800-562-3022;

(b) Mail or fax the following to the agency's unit responsible for FIMC enrollment:

(i) Form HCA 13-664; or

(ii) Form HCA 13-862 found online at <https://www.hca.wa.gov/medicaid/forms/pages/index.aspx>.

(c) Enroll online through the Washington Healthplanfinder at <https://www.wahealthplanfinder.org>; or

(d) Go to the ProviderOne client portal at <https://www.waproviderone.org/client> and follow the prompts.

(8) The agency assigns a client who does not choose an FIMC MCO or PCCM provider as follows:

(a) If the client has a family member or members enrolled with an FIMC MCO, the client is enrolled with that FIMC MCO;

(b) If the client has a family member or members enrolled with a PCCM provider, the client is enrolled with that PCCM provider;

(c) The client is reenrolled within the previous six months with their prior MCO plan if:

(i) The agency identifies the prior MCO and the program is available; and

(ii) The client does not have a family member enrolled with an agency-contracted MCO or PCCM provider.

(d) If the client has a break in eligibility of less than two months, the client will be automatically reenrolled with his or her previous MCO or PCCM provider and no notice will be sent; or

(e) If the client cannot be assigned according to (a), (b), (c), or (d) of this subsection, the agency assigns the client according to agency policy.

(9) An FIMC enrollee's selection of a primary care provider (PCP) or assignment to a PCP occurs as follows:

(a) An FIMC enrollee may choose:

(i) A PCP or clinic that is in the enrollee's FIMC MCO's provider network and accepting new enrollees; or

(ii) A different PCP or clinic participating with the enrollee's FIMC MCO's provider network for different family members.

(b) The FIMC MCO assigns a PCP or clinic that meets the access standards described in the relevant managed care contract if the enrollee does not choose a PCP or clinic.

(c) An FIMC enrollee may change PCPs or clinics for any reason, provided the PCP or clinic is within the enrollee's FIMC MCO's provider network and accepting new enrollees.

(d) An FIMC enrollee may file a grievance with the FIMC MCO if the FIMC does not approve an enrollee's request to change PCPs or clinics.

(e) Enrollees required to participate in the agency's PRC program may be limited in their right to change PCPs (see WAC 182-501-0135).

NEW SECTION

WAC 182-538A-067 Qualifications to become a managed care organization (MCO) in fully integrated managed care (FIMC) regional service areas. (1) In addition to subsection (2) of this section, see WAC 182-538A-060 regarding qualifications to become a managed care organization (MCO) in fully integrated managed care (FIMC) regional service areas.

(2) An MCO must contract with an agency-contracted behavioral health administrative service organization (BH-ASO) that maintains an adequate provider network to deliver services to clients in FIMC regional service areas.

NEW SECTION

WAC 182-538A-068 Qualifications to become a primary care case management (PCCM) provider in fully integrated managed care (FIMC) regional service areas. See WAC 182-538-068 regarding qualifications to become a primary care case management (PCCM) provider in fully integrated managed care (FIMC) regional service areas.

NEW SECTION

WAC 182-538A-070 Payments to managed care organizations (MCOs) in fully integrated managed care (FIMC) regional service areas. (1) In addition to the rules in this section, see WAC 182-538-070 regarding payments to managed care organizations (MCOs) in fully integrated managed care (FIMC) regional service areas.

(2) The agency pays MCOs a service-based enhancement rate for wraparound with intensive services (WISE) administered by a certified WISE provider who holds a current behavioral health agency license issued by the division of behavioral health and recovery (DBHR) under chapter 388-877 WAC.

(3) For crisis services, the MCO must determine whether the individual receiving the services is eligible for Washington apple health or if the individual has other insurance coverage.

(4) The MCO pays a reimbursement for each state hospital patient day of care that exceeds the MCO daily allocation of state hospital beds based on a quarterly calculation of the bed usage.

(a) The agency bills the MCO quarterly for state hospital patient days of care exceeding the MCO daily allocation of state hospital beds and the established rate of reimbursement.

(b) An MCO using fewer patient days of care than its quarterly allocation of state hospital beds receives a portion of the reimbursement collected proportional to its share of the total number of patient days of care that were not used at the appropriate state hospital.

(5) The agency may:

(a) Impose intermediate sanctions under 42 C.F.R. 438.700 and corrective action for substandard rates of clinical performance measures and for deficiencies found in audits and on-site visits;

(b) Require corrective action for findings for noncompliance with any contractual, state, or federal requirements;

(c) Impose sanctions for noncompliance with any contractual, state, or federal requirements not corrected; and

(d) Apply a monthly penalty assessment associated with poor performance on selected behavioral health performance measures.

NEW SECTION

WAC 182-538A-071 Payments to primary care case management (PCCM) providers in fully integrated managed care (FIMC) regional service areas. See WAC 182-538-071 for rules regarding payments to primary care case management (PCCM) providers in fully integrated managed care (FIMC) regional service areas.

NEW SECTION

WAC 182-538A-095 Scope of care for fully integrated managed care (FIMC) and behavioral health services only (BHSO) enrollees. (1) The rules in WAC 182-538-095 apply to this chapter. If the rules are in conflict, this chapter takes precedence.

(2) An enrollee in fully integrated managed care (FIMC) or behavioral health services only (BHSO) is eligible only for the scope services identified as covered in WAC 182-501-0060 and other program rules based on the enrollee's eligibility program, including the alternative benefit plan (ABP), categorically needy (CN), or medically needy (MN) programs.

(3) The managed care organization (MCO) covers services included under the FIMC medicaid contract for an FIMC or BHSO enrollee. An MCO may, at its discretion, cover services not required under the FIMC medicaid contract.

(4) The agency covers services identified as covered for an FIMC or BHSO enrollee that are not included in the FIMC medicaid contract.

(5) The MCO is not required to pay for services covered under the FIMC medicaid contract for an FIMC or BHSO enrollee if the services are:

(a) Determined not to be medically necessary for the enrollee as defined in WAC 182-500-0070;

(b) Received by the enrollee from a participating specialist that required prior authorization but were not prior authorized by the MCO;

(c) Nonemergency services received by the enrollee from nonparticipating providers that were not prior authorized by the MCO; or

(d) Received by the enrollee in a hospital emergency department for nonemergency medical conditions, except for a screening exam as described in WAC 182-538-100.

(6) The provider may bill the enrollee for noncovered services if the requirements of WAC 182-502-0160 are met.

NEW SECTION

WAC 182-538A-100 Managed care emergency services for fully integrated managed care (FIMC) enrollees. The managed care organization (MCO) covers emergency services for fully integrated managed care (FIMC) enrollees as described in WAC 182-538-100.

NEW SECTION

WAC 182-538A-110 The grievance system for fully integrated managed care (FIMC) managed care organizations (MCOs). Managed care enrollees in fully integrated managed care (FIMC) regional service areas may file grievances or appeal actions through the grievance system of managed care organizations (MCOs) as described in WAC 182-538-110.

NEW SECTION

WAC 182-538A-111 The administrative hearing process for primary care case management (PCCM) enrollees in FIMC regional service areas. See WAC 182-538-111 regarding the administrative hearing process for primary care case management enrollees in fully integrated managed care (FIMC) regional service areas.

NEW SECTION

WAC 182-538A-120 Fully integrated managed care (FIMC) enrollee request for a second medical opinion. Enrollees in fully integrated managed care (FIMC) regional service areas have a right to request a second medical opinion as described in WAC 182-538-120.

NEW SECTION

WAC 182-538A-130 Exemptions and ending enrollment in fully integrated managed care (FIMC). (1) Fully integrated managed care (FIMC) and behavioral health services only (BHSO) are mandatory for individuals in FIMC regional service areas. The medicaid agency enrolls a client into either FIMC or BHSO, depending on eligibility.

(2) WAC 182-538A-060 applies to disenrollment and choice.

(3) A client may end enrollment in FIMC if:

(a) The client has comparable coverage; or

(b) The client's request to end enrollment is approved by the agency under one of the following circumstances:

(i) The enrollee moves out of the FIMC regional service area;

(ii) Medically necessary care is unavailable from the MCO including, but not limited to, when:

(A) The MCO does not, because of moral or religious objections, deliver the service the enrollee seeks; or

(B) The enrollee needs related services performed at the same time and not all related services are available within the network and the enrollee's primary care provider or another provider determines receiving the services separately would subject the enrollee to unnecessary risk.

(4) If an enrollee ends enrollment in FIMC, the agency enrolls the enrollee in BHSO if the enrollee is eligible.

NEW SECTION

WAC 182-538A-140 Fully integrated managed care (FIMC) quality of care. WAC 182-538-140 applies to fully integrated managed care (FIMC) regional service areas.

NEW SECTION

WAC 182-538A-150 Apple health foster care program in fully integrated managed care regional service areas. The following apply to foster care enrollees in fully integrated managed care (FIMC) regional service areas:

(1) WAC 182-538-150; and

(2) WAC 182-538A-190.

NEW SECTION

WAC 182-538A-160 Program integrity requirements. (1) Chapters 182-502A and 182-520 WAC apply to this chapter. If the rules are in conflict, this chapter takes precedence.

(2) To comply with program integrity standards, including fraud and abuse, a managed care organization (MCO) must:

(a) Collect data on enrollees, providers, and services provided to enrollees through an encounter data system in a standardized format as specified by the agency for:

(i) Audits;

(ii) Investigations;

(iii) Identifications of improper payments and other program integrity activities;

(iv) Federal reporting (42 C.F.R. Sec. 438.242 (b)(1)); and

(v) Service verification.

(b) Perform ongoing analysis of utilization, claims, billing, and encounter data to detect overpayments;

(c) Disclose MCO ownership and control;

(d) Disclose any change in ownership of the MCO's subcontractors or providers that are not individual practitioners or a group of practitioners;

(e) Provide information on persons convicted of crimes through agreements with subcontractors and providers;

(f) Include program integrity requirements in the MCO's provider education program; and

(g) Verify provider compliance with all program integrity requirements in the fully integrated managed care (FIMC) medicaid contract.

(3) When an MCO has concluded a credible allegation of provider fraud has occurred, the MCO must make a referral to the medicaid fraud control unit within five business days of determination.

(4) The MCO must notify the department of social and health services office of fraud and accountability (OFA) of any cases in which the MCO believes there is a serious likelihood of enrollee fraud.

(5) The MCO is prohibited from paying for goods and services furnished by excluded persons with agency funds (see Social Security Act (SSA) Section 1903 (i)(2) of the act; 42 C.F.R. Sec. 455.104, 42 C.F.R. Sec. 455.106, and 42 C.F.R. Sec. 1001.1901(b)).

NEW SECTION

WAC 182-538A-170 Notice requirements. The notice requirements in chapter 182-518 WAC apply to fully integrated managed care (FIMC) and behavioral health only (BHSO) enrollees in FIMC regional service areas.

NEW SECTION

WAC 182-538A-180 Rights and protections. (1) Individuals have medicaid-specific rights when applying for, eligible for, or receiving medicaid-funded health care services.

(2) All applicable statutory and constitutional rights apply to all medicaid individuals including, but not limited to:

- (a) The participant rights under WAC 388-877-0600;
- (b) Applicable necessary supplemental accommodation services including, but not limited to:
 - (i) Arranging for or providing help to complete and submit forms to the agency;
 - (ii) Helping individuals give or get the information the agency needs to decide or continue eligibility;
 - (iii) Helping to request continuing benefits;
 - (iv) Explaining the reduction in or ending of benefits;
 - (v) Assisting with requests for administrative hearings;
- and
- (vi) On request, reviewing the agency's decision to terminate, suspend, or reduce benefits.
- (c) Receiving the name, address, telephone number, and any languages offered other than English of providers in a managed care organization (MCO);
- (d) Receiving information about the structure and operation of the MCO and how health care services are delivered;
- (e) Receiving emergency care, urgent care, or crisis services;
- (f) Receiving poststabilization services after receiving emergency care, urgent care, or crisis services that result in admittance to a hospital;
- (g) Receiving age-appropriate and culturally appropriate services;
- (h) Being provided a qualified interpreter and translated material at no cost to the individual;
- (i) Receiving requested information and help in the language or format of choice;
- (j) Having available treatment options and explanation of alternatives;
- (k) Refusing any proposed treatment;
- (l) Receiving care that does not discriminate against an individual;
- (m) Being free of any sexual exploitation or harassment;
- (n) Making an advance directive that states the individual's choices and preferences for health care services under 42 C.F.R., 489 Subpart I;
- (o) Choosing a contracted health care provider;
- (p) Requesting and receiving a copy of health care records;
- (q) Being informed the cost for copying, if any;
- (r) Being free from retaliation;
- (s) Requesting and receiving policies and procedures of the MCO as they relate to health care rights;
- (t) Receiving services in an accessible location;
- (u) Receiving medically necessary services in accordance with the early and periodic screening, diagnosis, and treatment (EPSDT) program under WAC 182-534-0100, if the individual is age twenty or younger;
- (v) Being treated with dignity, privacy, and respect;
- (w) Receiving treatment options and alternatives in a manner that is appropriate to an individual's condition;

- (x) Being free from seclusion and restraint;
- (y) Receiving a second opinion from a qualified health care professional within an MCO provider network at no cost or having one arranged outside the network at no cost, as provided in 42 C.F.R. Sec. 438.206(3);
- (z) Receiving medically necessary health care services outside of the MCO if those services cannot be provided adequately and timely within the MCO;
 - (aa) Filing a grievance with the MCO if the individual is not satisfied with a service;
 - (bb) Receiving a notice of action so that an individual may appeal any decision by the MCO that:
 - (i) Denies or limits authorization of a requested service;
 - (ii) Reduces, suspends, or terminates a previously authorized service; or
 - (iii) Denies payment for a service, in whole or in part.
 - (cc) Filing an appeal if the MCO fails to provide health care services in a timely manner as defined by the state or act within the time frames in 42 C.F.R. Sec. 438.408(b); and
 - (dd) Requesting an administrative hearing if an appeal is not resolved in an individual's favor.

NEW SECTION

WAC 182-538A-190 Behavioral health services only (BHSO). This section applies to enrollees receiving behavioral health services only (BHSO) under the fully integrated managed care (FIMC) medicaid contract.

- (1) The medicaid agency requires eligible clients in FIMC regional service areas to enroll in the BHSO program.
- (2) A BHSO enrollee in an FIMC regional service area may change managed care organizations (MCOs) but may not disenroll from the BHSO program.
- (3) For BHSO enrollees, the MCO covers the behavioral health benefit included in the FIMC medicaid contract.
- (4) WAC 182-538-110 applies to BHSO enrollees in FIMC regional service areas.
- (5) The agency assigns the BHSO enrollee to an MCO available in the area where the client resides.
- (6) A BHSO enrollee may change MCOs for any reason with the change becoming effective according to the agency's managed care policy.
- (7) The agency ends enrollment in BHSO managed care when the enrollee becomes eligible for any third-party health care coverage comparable to BHSO.

Chapter 182-538B WAC**BEHAVIORAL HEALTH WRAPAROUND SERVICES**NEW SECTION

WAC 182-538B-040 Behavioral health wraparound services. (1) This chapter governs nonmedicaid funded behavioral health services provided under the medicaid agency's behavioral health services wraparound contract.

- (2) Washington apple health fully integrated managed care (FIMC) behavioral health wraparound services are available only through a managed care organization (MCO) contracted to provide FIMC services or behavioral health services only (BHSO).

(3) The MCO provides contracted nonmedicaid funded behavioral health wraparound services to medicaid enrollees in an FIMC regional service area:

- (a) Within available resources;
- (b) Based on medical necessity; and
- (c) In order of priority to populations as identified by state and federal authorities.

(4) When nonmedicaid funding is exhausted, behavioral health wraparound services are no longer paid for and cannot be authorized regardless of medical necessity.

NEW SECTION

WAC 182-538B-050 Definitions. The following definitions and those found in chapters 182-500, 182-538, and 182-538A WAC apply to this chapter, unless otherwise stated.

"Action" means the denial or limited authorization of a service covered under the behavioral health services wraparound contract based on medical necessity.

"Available resources" means funds appropriated for the purpose of providing behavioral health wraparound services.

(a) This includes:

- (i) Federal funds, except those provided according to Title XIX of the Social Security Act; and
- (ii) State funds appropriated by the legislature for the purpose of providing services under the behavioral health administrative services organization contract.

(b) This does not include funds appropriated for the purpose of operating and administering the state psychiatric hospitals.

NEW SECTION

WAC 182-538B-110 Grievance system. (1) This section contains information about the managed care organization (MCO) grievance system for enrollees under the behavioral health services wraparound contract in fully integrated managed care (FIMC) regional service areas.

(a) The MCO must have a grievance system to allow enrollees to file grievances and seek review of an MCO action as defined in this chapter.

(b) The agency's hearing rules in chapter 182-526 WAC apply to administrative hearings requested by an enrollee to review the resolution of an enrollee's appeal of an MCO action.

(c) If a conflict exists between the requirements of this chapter and other rules, the requirements of this chapter take precedence.

(d) The MCO's policies and procedures regarding the grievance system must be approved by the agency.

(e) The MCO must maintain records of grievances and appeals.

(2) MCO grievance system. The MCO grievance system includes:

(a) A grievance process for addressing complaints about any matter that is not an action, which is called a grievance;

(b) An appeals process to address an enrollee's request for review of an MCO action;

(c) Access to an independent review by an independent review organization (IRO) under RCW 48.43.535 and WAC 182-526-0200;

(d) Access to the agency's administrative hearing process for review of an MCO's resolution of an appeal; and

(e) Allowing enrollees and their authorized representatives to file grievances and appeals orally or in writing. An MCO cannot require enrollees to provide written follow up for a grievance or an appeal the MCO received orally.

(3) The MCO grievance process.

(a) An enrollee or enrollee's authorized representative may file a grievance with an MCO. A provider may not file a grievance on behalf of an enrollee without the enrollee's written consent.

(b) An enrollee does not have a right to an administrative hearing in regards to the disposition of a grievance.

(c) The MCO must acknowledge receipt of each grievance either orally or in writing within two business days.

(d) The MCO must notify enrollees of the disposition of grievances within five business days of determination.

(4) The MCO appeals process.

(a) An enrollee, the enrollee's authorized representative, or a provider acting on behalf of the enrollee with the enrollee's written consent may appeal an MCO action.

(b) An MCO treats oral inquiries about appealing an action as an appeal to establish the earliest possible filing date for the appeal. The MCO confirms the oral appeal in writing.

(c) An MCO must acknowledge receipt of each appeal to both the enrollee and the requesting provider within three calendar days. The appeal acknowledgment letter sent by the MCO serves as written confirmation of an appeal filed orally by an enrollee.

(d) An appeal of an MCO action must be filed within ninety calendar days of the date on the MCO's notice of action.

(e) The MCO will not be obligated to continue services pending the results of an appeal or subsequent administrative hearing.

(f) The MCO appeals process:

(i) Provides the enrollee a reasonable opportunity to present evidence and allegations of fact or law, both in person and in writing;

(ii) Provides the enrollee and the enrollee's authorized representative opportunity before and during the appeals process to examine the enrollee's case file, including medical records and any other documents and records considered during the appeals process; and

(iii) Includes as parties to the appeal:

(A) The enrollee and the enrollee's authorized representative; and

(B) The legal representative of the deceased enrollee's estate.

(g) The MCO ensures that the individuals making decisions on appeals:

(i) Were not involved in any previous level of review or decision making; and

(ii) Are health care professionals who have appropriate clinical expertise in treating the enrollee's condition or disease if deciding either of the following:

- (A) An appeal of an action involving medical necessity;
or
- (B) An appeal that involves any clinical issues.
- (h) Time frames for resolution of appeals.
- (i) An MCO resolves each appeal and provides notice as expeditiously as the enrollee's health condition requires and no longer than three calendar days after the day the MCO receives the appeal.
- (ii) The MCO may extend the time frame by an additional fourteen calendar days if:
- (A) The enrollee requests the extension; or
- (B) The MCO determines additional information is needed and delay is in the interests of the enrollee.
- (i) Notice of resolution of appeal. The notice of the resolution of the appeal must:
- (i) Be in writing and be sent to the enrollee and the requesting provider;
- (ii) Include the results of the resolution of the appeal process and the date it was completed; and
- (iii) Include information on the enrollee's right to request an agency administrative hearing and how to do so as provided in the agency hearing rules in WAC 182-526-0200, if the appeal is not resolved wholly in favor of the enrollee.
- (5) Administrative hearing.
- (a) Only an enrollee or enrollee's authorized representative may request an administrative hearing. A provider may not request a hearing on behalf of an enrollee.
- (b) If an enrollee does not agree with the MCO's resolution of an appeal, the enrollee may file a request for an agency administrative hearing based on the rules in this section and the agency hearing rules in WAC 182-526-0200.
- (c) An MCO is an independent party and responsible for its own representation in any administrative hearing, independent review, appeal to the board of appeals, and any subsequent judicial proceedings.
- (d) An enrollee must exhaust the appeals process within the MCO's grievance system before requesting an administrative hearing with the agency.
- (6) Effect of reversed resolutions of appeals. If an MCO, a final order as defined in chapter 182-526 WAC, or an independent review organization (IRO) reverses a decision to deny or limit services, the MCO must authorize or provide the disputed services promptly and as expeditiously as the enrollee's health condition requires.
- (7) Grievance system termination. When available resources are exhausted, any appeals process, independent review, or administrative hearing process related to a request to authorize a service will be terminated, since services cannot be authorized without funding regardless of medical necessity.

NEW SECTION

WAC 182-538B-170 Notice requirements. Chapter 182-518 WAC applies to notice requirements in fully integrated managed care (FIMC) regional service areas.

Chapter 182-538C WAC

CRISIS-RELATED BEHAVIORAL HEALTH SERVICES

NEW SECTION

WAC 182-538C-040 Behavioral health services. (1) This chapter governs crisis-related and other behavioral health services provided under the medicaid agency's behavioral health administrative services organization (BH-ASO) contract.

(2) The BH-ASO contracts with the agency to provide behavioral health services within a fully integrated managed care (FIMC) regional service area.

(a) The BH-ASO provides the following services to all individuals, regardless of insurance status, income level, ability to pay, and county of residence:

(i) Mental health crisis services; and

(ii) Operation of a behavioral health ombuds.

(b) The BH-ASO may provide substance use disorder crisis services within available resources to all individuals, regardless of the individual's insurance status, income level, ability to pay, and county of residence.

(c) The BH-ASO provides the following services to individuals who are not eligible for medicaid coverage and are involuntarily or voluntarily detained under chapter 71.05 or 71.34 RCW, RCW 70.96A.140, or a less restrictive alternative (LRA) court order:

(i) Evaluation and treatment services;

(ii) Substance use disorder residential treatment services; and

(iii) Outpatient behavioral services, under an LRA court order.

(d) To be eligible to contract with the agency, the BH-ASO must:

(i) Accept the terms and conditions of the agency's contracts; and

(ii) Be able to meet the network and quality standards established by the agency.

(e) Services related to the administration of chapters 71.05 and 71.34 RCW and RCW 70.96A.140.

(3) The BH-ASO may provide contracted noncrisis behavioral health services to individuals in an FIMC regional service area:

(a) Within available resources;

(b) Based on medical necessity; and

(c) In order of priority to populations as identified by state and federal authorities.

(4) Within an FIMC regional service area, the BH-ASO is a subcontractor with all FIMC managed care organizations (MCOs) to provide crisis services for medicaid enrollees and the administration of involuntary treatment acts under RCW 70.96A.140 or chapter 71.05 or 71.34 RCW.

(5) For medicaid funded services subcontracted for by FIMC managed care organizations (MCOs) to the BH-ASO:

(a) Grievances and appeals must be filed with the FIMC MCO; and

(b) The grievance system rules in chapter 182-538 WAC apply instead of the grievance system rules in this chapter.

NEW SECTION

WAC 182-538C-050 Definitions. The definitions and abbreviations in this section and those found in chapter 182-500 WAC apply to this chapter. If conflict exists, this chapter takes precedence.

"Action" means the denial or limited authorization of a service covered under the behavioral health administrative services organization (BH-ASO) contract based on medical necessity.

"Available resources" means funds appropriated for the purpose of providing community behavioral health programs.

(a) This includes:

(i) Federal funds, except those provided according to Title XIX of the Social Security Act; and

(ii) State funds appropriated by the legislature for the purpose of providing services under the BH-ASO contract.

(b) This does not include funds appropriated for the purpose of operating and administering the state psychiatric hospitals.

"Behavioral health" means mental health and substance use disorder conditions and related benefits.

"Behavioral health administrative services organization (BH-ASO)" means an entity selected by the medicaid agency to administer behavioral health programs, including crisis services for individuals in a fully integrated managed care regional service area. The BH-ASO administers crisis services for all individuals in its defined regional service area, regardless of an individual's ability to pay.

"Complaint" - See "grievance."

"Crisis" means an actual or perceived urgent or emergent situation that occurs when:

(a) An individual's stability or functioning is disrupted; and

(b) There is an immediate need to resolve the situation to prevent:

(i) A serious deterioration in the individual's mental or physical health; or

(ii) The need for referral to a significantly higher level of care.

"Fully integrated managed care (FIMC)" means the program under which a managed care organization provides:

(a) Physical health services funded by medicaid; and

(b) Behavioral health services funded by other available resources as defined in this chapter.

"Grievance" means an expression of dissatisfaction made by or on behalf of an individual and referred to a behavioral health administrative services organization (BH-ASO) about any matter other than an action.

"Less restrictive alternative (LRA)" means court-ordered outpatient treatment in a setting less restrictive than total confinement.

"Noncrisis services" means services funded by non-medicaid funding sources that are provided to individuals who are not enrolled in Washington apple health or otherwise eligible for medicaid. These services may be provided at the discretion of the behavioral health administrative services organization (BH-ASO) within available resources, such as:

(a) Crisis stabilization;

(b) Outpatient mental health or substance use disorder services; and

(c) Withdrawal management.

"Patient days of care" means all voluntary patients and involuntarily committed patients under chapter 71.05 RCW, regardless of where in the state hospital the patients reside. Patients who are committed to the state hospital under chapter 10.77 RCW are not included in the patient days of care. Patients who are committed under RCW 10.77.088 by municipal or district courts after failed competency restoration and dismissal of misdemeanor charges are not counted in the patient days of care until a petition for ninety days of civil commitment under chapter 71.05 RCW has been filed in court. Patients who are committed under RCW 10.77.086 by a superior court after failed competency restoration and dismissal of felony charges are not counted in the patient days of care until the patient is civilly committed under chapter 71.05 RCW.

"Regional service area" means a single county or multi-county grouping formed for the purpose of health care purchasing and designated by the agency and the department of social and health services.

NEW SECTION

WAC 182-538C-070 Payment. (1) For crisis services, the behavioral health administrative services organization (BH-ASO) must determine whether the individual receiving the services is eligible for Washington apple health or if the individual has any other form of insurance coverage.

(2) For individuals receiving crisis services who do not have other insurance coverage, the BH-ASO is responsible for the cost of those services.

(3) The BH-ASO administers and pays for the evaluation of involuntary detention or involuntary treatment under chapters 71.05 and 71.34 RCW and RCW 70.96A.140.

(4) The BH-ASO pays a reimbursement for each state hospital patient day of care that exceeds the BH-ASO daily allocation of state hospital beds based on a quarterly calculation of the bed usage by the BH-ASO.

(a) The medicaid agency bills the BH-ASO quarterly for state hospital patient days of care exceeding the BH-ASO daily allocation of state hospital beds and the established rate of reimbursement.

(b) The BH-ASO using fewer patient days of care than its quarterly allocation of state hospital beds will receive a portion of the reimbursement collected proportional to its share of the total number of patient days of care that were not used at the appropriate state hospital.

NEW SECTION

WAC 182-538C-110 Grievance system for behavioral health administrative services organizations (BH-ASOs). (1) This section applies to the behavioral health administrative service organization (BH-ASO) grievance system for individuals within fully integrated managed care (FIMC) regional service areas.

(a) The BH-ASO must have a grievance system to allow an individual to file a grievance and seek review of a BH-ASO action as defined in this chapter.

(b) The agency's hearing rules in chapter 182-526 WAC apply to administrative hearings requested by an individual to review resolution of an appeal of a BH-ASO action.

(c) If a conflict exists between the requirements of this chapter and other rules, the requirements of this chapter take precedence.

(d) The BH-ASO must maintain records of grievances and appeals.

(2) The BH-ASO grievance system. The BH-ASO grievance system includes:

(a) A process for addressing a complaint about any matter that is not an action, which is called a grievance;

(b) An appeals process to address an individual's request for review of a BH-ASO action as defined in this chapter; and

(c) Access to the agency's administrative hearing process for an individual to seek review of a BH-ASO's resolution of an appeal.

(3) The BH-ASO grievance process.

(a) An individual or an individual's authorized representative may file a complaint with a BH-ASO. A provider may not file a complaint on behalf of an individual without written consent.

(b) There is no right to an administrative hearing in regards to the disposition of a complaint.

(c) The BH-ASO must notify individuals of the disposition of grievances within five business days of determination.

(4) The BH-ASO appeals process.

(a) An individual, the individual's authorized representative, or the provider acting with the individual's written consent may appeal a BH-ASO action.

(b) A BH-ASO must treat oral inquiries about appealing an action as an appeal to establish the earliest possible filing date for the appeal. The oral appeal must be confirmed in writing by the BH-ASO.

(c) The BH-ASO must acknowledge receipt of each appeal to both the individual and the provider requesting the service within three calendar days. The appeal acknowledgment letter sent by the BH-ASO serves as written confirmation of an appeal filed orally by an individual.

(d) An appeal of a BH-ASO action must be filed within ninety calendar days of the date of the notice of action.

(e) The BH-ASO will not be obligated to continue services pending the results of an appeal or subsequent administrative hearing.

(f) The BH-ASO appeals process:

(i) Provides the individual a reasonable opportunity to present evidence and allegations of fact or law, both in person and in writing;

(ii) Provides the individual and the individual's authorized representative opportunity before and during the appeals process to examine the individual's case file, including medical records and any other documents and records considered during the appeals process; and

(iii) Includes as parties to the appeal:

(A) The individual;

(B) The individual's legal representative; or

(C) The authorized representative of the deceased individual's estate.

(g) The BH-ASO ensures the individuals making decisions on appeals:

(i) Were not involved in any previous level of review or decision making; and

(ii) Are health care professionals with appropriate clinical expertise in treating the individual's condition or disease if deciding any of the following:

(A) An appeal of an action; or

(B) A grievance or appeal that involves any clinical issues.

(h) Time frames for resolution of appeals.

(i) A BH-ASO resolves each appeal and provides notice as expeditiously as the individual's health condition requires and no longer than three calendar days after the BH-ASO receives the appeal.

(ii) The BH-ASO may extend the time frame by fourteen additional calendar days if:

(A) The individual requests the extension; or

(B) The BH-ASO determines additional information is needed and the delay is in the interests of the individual.

(i) Notice of resolution of appeal. The notice of the resolution of the appeal must:

(i) Be in writing and be sent to the individual and the provider requesting the services;

(ii) Include the results of the resolution process and the date it was completed; and

(iii) Include notice of the right to request an administrative hearing and how to do so as provided in the agency hearing rules in chapter 182-526 WAC, if the appeal is not resolved wholly in favor of the individual.

(5) Administrative hearings.

(a) Only an individual or an individual's authorized representative may request an administrative hearing. A provider may not request a hearing on behalf of an individual.

(b) If an individual does not agree with the BH-ASO's resolution of an appeal, the individual may file a request for an agency administrative hearing based on this section and the agency hearing rules in chapter 182-526 WAC.

(c) The BH-ASO is an independent party and responsible for its own representation in any administrative hearing, appeal to the board of appeals, and any subsequent judicial proceedings.

(d) An individual must exhaust the appeals process within the BH-ASO's grievance system before requesting an administrative hearing with the agency.

(6) Effect of reversed resolutions of appeals. If the BH-ASO's decision not to provide services is reversed by the BH-ASO on appeal or through a final order from the administrative hearing process, the BH-ASO must authorize or provide the disputed services promptly and as expeditiously as the individual's health condition requires.

(7) Grievance system termination. When available resources are exhausted, any appeals or administrative hearing process related to a request for authorization of a noncrisis service will be terminated, since noncrisis services cannot be authorized without funding regardless of medical necessity.

NEW SECTION

WAC 182-538C-220 Covered crisis mental health services. (1) Crisis mental health services are intended to stabilize an individual in crisis to:

- (a) Prevent further deterioration;
- (b) Provide immediate treatment and intervention in a location best suited to meet the needs of the individual; and
- (c) Provide treatment services in the least restrictive environment available.

(2) Crisis mental health services include:

- (a) Crisis telephone support under WAC 388-877A-0230;
- (b) Crisis outreach services under WAC 388-877A-0240;
- (c) Crisis stabilization services under WAC 388-877A-0260;
- (d) Crisis peer support services under WAC 388-877A-0270; and
- (e) Emergency involuntary detention services under WAC 388-877A-0280.

(3) A facility providing any crisis mental health service to an individual must:

- (a) Be licensed by the department of social and health services as a behavioral health agency;
- (b) Be certified by the department of social and health services to provide crisis mental health services;
- (c) Have policies and procedures to support and implement the:
 - (i) Program-specific requirements in WAC 388-877A-0230 through 388-877A-0280 for each crisis mental health service provided; and
 - (ii) Department of corrections access to confidential mental health information requirements in WAC 388-865-0600 through 388-865-0640.

(4) A BH-ASO or its subcontractor providing crisis mental health services only is not required to meet the initial assessment, individual service plan, and clinical record requirements in WAC 388-877-0610, 388-877-0620, and 388-877-0640.

(5) A BH-ASO or its subcontractor must ensure crisis mental health services:

- (a) Are, with the exception of stabilization services, available twenty-four hours a day, seven days a week;
- (b) Include family members, significant others, and other relevant treatment providers, as necessary, to provide support to the individual in crisis; and
- (c) Are provided in a setting that is safe for the individual and staff members of the BH-ASO and its subcontractor.

NEW SECTION

WAC 182-538C-230 Covered substance use disorder detoxification services. (1) Chemical dependency detoxification services are provided to an individual to assist in the process of withdrawal from psychoactive substances in a safe and effective manner.

(2) A facility providing detoxification services to an individual must:

- (a) Be a facility licensed by the department of health under one of the following:

- (i) Chapter 246-320 WAC;
 - (ii) Chapter 246-322 WAC;
 - (iii) Chapter 246-324 WAC; or
 - (iv) Chapter 246-337 WAC.
- (b) Be licensed by the department of social and health services as a behavioral health agency;
- (c) Meet the applicable behavioral health agency licensure, certification, administration, personnel, clinical requirements, and behavioral health services administrative requirements; and
- (d) Have policies and procedures to support and implement the applicable requirements in WAC 388-877B-0110 through 388-877B-0130.
- (3) A BH-ASO or its subcontractor agency must:
- (a) Provide counseling to each individual that addresses the individual's:
 - (i) Chemical dependency and motivation; and
 - (ii) Continuing care needs and need for referral to other services.
 - (b) Maintain a list of resources and referral options that can be used by staff members to refer an individual to appropriate services.
 - (c) Post any rules and responsibilities for individuals receiving treatment, including information on potential use of increased motivation interventions or sanctions, in a public place in the facility.
 - (d) Provide tuberculosis screenings to individuals for the prevention and control of tuberculosis.
 - (e) Provide HIV/AIDS information and include a brief risk intervention and referral as indicated.

WSR 16-05-053**PERMANENT RULES
DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)

[Filed February 11, 2016, 5:26 p.m., effective March 13, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: New rules in chapter 388-845 WAC will support the Centers for Medicare and Medicaid decision to add wellness education to the department's Basic Plus and Core waivers and be in compliance with C.F.R. 441.510(d).

Statutory Authority for Adoption: RCW 71A.12.030.

Adopted under notice filed as WSR 16-01-113 on December 17, 2015.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 0, Repealed 0.
Date Adopted: February 11, 2016.

Katherine I. Vasquez
Rules Coordinator

Wellness Education

NEW SECTION

WAC 388-845-2280 What is wellness education?

Wellness education provides you with monthly individualized printed educational materials designed to assist you in managing health related issues and achieving wellness goals identified in your person-centered service plan that address your health and safety issues. Individualized educational materials are developed by the state, other content providers and the contracted wellness education provider. This service is available on the Basic Plus and Core Waivers.

NEW SECTION

WAC 388-845-2283 How are my wellness educational materials selected? Individualized educational materials are selected for you by the wellness education provider's algorithm and are based on your DDA assessment. Goals, diagnoses, treatments, conditions and other factors identified in your DDA assessment provide the basis for the algorithm to select educational materials for you. These goals, diagnoses, treatments, conditions and other factors may include, but are not limited to the following:

- (1) Diabetes - IDDM;
- (2) Diabetes - NIDDM;
- (3) COPD;
- (4) Cardiovascular disease;
- (5) Rheumatoid arthritis;
- (6) Traumatic brain injury;
- (7) Cerebral palsy;
- (8) Alzheimer's disease;
- (9) Anxiety disorder;
- (10) Asthma;
- (11) Autism;
- (12) Stroke;
- (13) Congestive heart failure;
- (14) Decubitus ulcer;
- (15) Depression;
- (16) Emphysema;
- (17) GERD;
- (18) Hypertension;
- (19) Hypotension;
- (20) Down's syndrome;
- (21) Fragile X syndrome;
- (22) Prader-Willi;
- (23) ADD;
- (24) ADHD;
- (25) Post-traumatic stress disorder;
- (26) Asperger's syndrome;
- (27) Hepatitis;

- (28) Paraplegia;
- (29) Quadriplegia;
- (30) Fetal alcohol syndrome/fetal alcohol effect;
- (31) Epilepsy;
- (32) Seizure disorder;
- (33) Sleep apnea;
- (34) Urinary tract infection;
- (35) Multiple sclerosis;
- (36) Falls;
- (37) Smoking;
- (38) Alcohol abuse;
- (39) Substance abuse;
- (40) Bowel incontinence;
- (41) Bladder incontinence;
- (42) Diabetic foot care;
- (43) Pain daily;
- (44) Sleep issues;
- (45) BMI = or greater than 25;
- (46) BMI less than 18.5;
- (47) Skin care (pressure ulcers, abrasions, burns, rashes);
- (48) Seasonal allergies;
- (49) Edema;
- (50) Poor balance;
- (51) Recent loss/grieving;
- (52) Conflict management;
- (53) Importance of regular dental visits;
- (54) ADA diet;
- (55) Cardiac diet;
- (56) Celiac diet;
- (57) Low sodium diet;
- (58) Goals; and
- (59) Parkinson's Disease.

NEW SECTION

WAC 388-845-2285 Are there limits to wellness education? Wellness education is a once a month service. In the basic plus waiver, you are limited to the aggregate service expenditure limits defined in WAC 388-845-0210.

NEW SECTION

WAC 388-845-2290 Who are qualified providers of wellness education? The wellness education provider must have the ability and resources to:

- 1) Receive and manage client data in compliance with all applicable federal HIPPA regulations, state law and rules and ensure client confidentiality and privacy;
- 2) Translate materials into the preferred language of the participant;
- 3) Ensure that materials are targeted to the participant's assessment and person-centered service plan;
- 4) Manage content sent to participants to prevent duplication of materials;
- 5) Deliver newsletters and identify any undeliverable client/representative addresses prior to each monthly mailing and manage any returned mail in a manner that ensures participants receive the monthly information; and
- 6) Contract with ALTSA or DDA to provide this service.

WSR 16-05-054
PERMANENT RULES
HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed February 12, 2016, 5:54 a.m., effective March 14, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The agency amended chapter 182-527 WAC to more clearly distinguish between rules that apply to Tax Equity and Fiscal Responsibility Act of 1982 liens (liens filed during a client's lifetime) and rules that apply to estate recovery. The agency added individual family service and community first choice to WAC 182-527-2742 to clarify that they are subject to estate recovery, and removed Washington medicaid integration partnership because it has been discontinued.

Citation of Existing Rules Affected by this Order: Repealing WAC 182-527-2700, 182-527-2733, 182-527-2737, 182-527-2754, 182-527-2790, 182-527-2810, 182-527-2820, 182-527-2830, 182-527-2840, 182-527-2850, 182-527-2860 and 182-527-2870; and amending WAC 182-527-2730, 182-527-2740, 182-527-2742, and 182-527-2750.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 16-01-104 on December 16, 2015.

Changes Other than Editing from Proposed to Adopted Version: WAC 182-527-2753 (2)(d) was changed as follows:

(2) A request for an administrative hearing must:

(d) Within twenty-eight days of the date on the agency's notice, be filed with served to the office of financial recovery either:

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 4, Repealed 12.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 4, Repealed 12.

Date Adopted: February 11, 2016.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-19-038, filed 9/11/13, effective 10/12/13)

WAC 182-527-2730 Definitions. The following definitions apply to this chapter:

"Contract health service delivery area (CHSDA)" means the geographic area within which contract health services will be made available by the Indian health service to

members of an identified Indian community who reside in the area as identified in 42 C.F.R. Secs. 136.21(d) and 136.22.

~~("Domestic partner" see WAC 182-500-0025. When the terms "domestic partner" or "domestic partnership" are used in this chapter, they mean "state-registered domestic partner" or "state-registered domestic partnership.")~~

"Estate" means all property and any other assets that pass upon the client's death under the client's will or by intestate succession ~~((pursuant to))~~ under chapter 11.04 ~~((RCW or under chapter))~~ or 11.62 RCW. The value of the estate will be reduced by any valid liability against the ~~((decedent's property at the time of death))~~ client's property when the client died. An estate also includes:

(1) For a client who died after June 30, 1995, and before July 27, 1997, nonprobate assets as defined by RCW 11.02.005, except property passing through a community property agreement; or

(2) For a client who died after July 26, 1997, and before September 14, 2006, nonprobate assets as defined by RCW 11.02.005.

(3) For a client who died on or after September 14, 2006, nonprobate assets as defined by RCW 11.02.005 and any life estate interest held by the ~~((recipient))~~ client immediately before death.

~~"Heir" means ((the decedent's surviving spouse and children (natural and adopted); or those persons who are entitled to inherit the decedent's property under a will properly executed under RCW 11.12.020 and accepted by the probate court as a valid will.~~

~~"Joint tenancy" means ownership of property held under circumstances that entitle one or more owners to the whole of the property on the death of the other owner(s), including, but not limited to, joint tenancy with right of survivorship)) a person entitled to inherit a deceased client's property under a valid will accepted by the court, or a person entitled to inherit under the Washington state intestacy statute, RCW 11.04.015.~~

"Life estate" means an ownership interest in a property only during the lifetime of the person ~~((s))~~ owning the life estate. ~~((In some cases, the ownership interest lasts only until the occurrence of some specific event, such as remarriage of the life estate owner. A life estate owner may not have the legal title or deed to the property, but may have rights to possession, use, income and/or selling their life estate interest in the property.))~~

"Lis pendens" means a notice filed in public records warning that title to certain real property is in litigation and the outcome of the litigation may affect the title.

"Long-term care services (LTC)" means, for the purposes of this chapter only, the services administered directly or through contract by the department of social and health services (DSHS) for clients of the home and community services division of ~~((the department of social and health services-))~~ DSHS ~~((s))~~ and the developmental disabilities administration of DSHS including, but not limited to, nursing facility care and home and community services.

~~("Medicaid" see WAC 182-500-0070.~~

~~"Medical assistance" see WAC 182-500-0070.~~

~~"Medicare savings programs" means the programs described in WAC 182-517-0300 that help a client pay some of the costs that medicare does not cover.)~~

~~"Property" ((Examples include, but are not limited to, personal property, real property, title property, and trust property as described below:)) means everything a person owns, whether in whole or in part.~~

~~(1) "Personal property" means any ((property that is not classified as real, title, or trust property in the definitions provided here)) movable or intangible thing a person owns, whether in whole or in part;~~

~~(2) "Real property" means land and anything growing on, attached to, or ((erected thereon)) built on it, excluding anything that may be removed without injury to the land;~~

~~(3) ("Title property" means, for the purposes of this chapter only, property with a title such as motor homes, mobile homes, boats, motoreycles, and vehicles.~~

~~(4)) "Trust property" means any type of property ((interest titled in, or held by, a trustee for the benefit of another person or entity.~~

~~"State-only funded long-term care" means the long-term care services that are financed with state funds only) held in trust for the benefit of another.~~

~~"Qualified long-term care insurance partnership" means an agreement between the Centers for Medicare and Medicaid services (CMS)((;)) and the Washington state insurance commission which allows for the disregard of any assets or resources in an amount equal to the insurance benefit payments that are made to or on behalf of ((an individual)) a person who is a beneficiary under a long-term care insurance policy that has been determined by the Washington state insurance commission to meet the requirements of section 1917 (b)(1)(C)(iii) of the act.~~

~~"Recover" or "recovery" means the agency or the agency's designee's receipt of funds to satisfy the client's debt.~~

NEW SECTION

WAC 182-527-2734 Liens during a client's lifetime.

For the purposes of this section, the term "agency" includes the agency's designee.

(1) When the agency may file.

(a) The agency may file a lien against the property of a Washington apple health client during the client's lifetime if:

(i) The client resides in a skilled nursing facility, intermediate care facility for individuals with an intellectual disability, or other medical institution under WAC 182-500-0050;

(ii) The agency has determined that the client cannot reasonably be expected to return home; and

(iii) None of the following people lawfully reside in the client's home:

(A) The client's spouse or state-registered domestic partner;

(B) The client's child who is age twenty or younger, or is blind or permanently disabled as defined in WAC 182-512-0050; or

(C) A client's sibling who has an equity interest in the home and who has been residing in the home for at least one

year immediately before the client's admission to the medical institution.

(b) If the client returns home from the medical institution, the agency releases the lien.

(2) **Amount of the lien.** The agency may file a lien to recoup the cost of all non-MAGI-based and deemed eligible services under WAC 182-503-0510 it correctly purchased on the client's behalf, regardless of the client's age on the date of service.

(3) Notice requirement.

(a) Before the agency may file a lien under this section, it sends notice via first class mail to:

(i) The client's last known address;

(ii) The client's authorized representative, if any;

(iii) The address of the property subject to the lien; and

(iv) Any other person known to hold title to the property.

(b) The notice states:

(i) The client's name;

(ii) The agency's intent to file a lien against the client's property;

(iii) The county in which the property is located; and

(iv) How to request an administrative hearing.

(4) Interest assessed on past-due debt.

(a) Interest on a past-due debt accrues at a rate of one percent per month under RCW 43.17.240.

(b) A lien under this section becomes a past-due debt when the agency has recorded the lien in the county where the property is located and:

(i) Thirty days have passed since the property was transferred; or

(ii) Nine months have passed since the lien was filed.

(c) The agency may waive interest if reasonable efforts to sell the property have failed.

(5) **Administrative hearing.** An administrative hearing under this section is governed by WAC 182-527-2753.

NEW SECTION

WAC 182-527-2738 Estate recovery—General right to recover. For the purposes of this section, the term "agency" includes the agency's designee.

(1) **When the agency may file.** After a Washington apple health client has died, the medicaid agency may file liens to recover the cost of services subject to recovery that were correctly paid on the client's behalf.

(2) Notice requirement.

(a) Before the agency may file a lien under this section, it sends notice via first class mail as follows:

(i) If the estate has a personal representative, the agency sends notification to:

(A) The personal representative; and

(B) Any known title holder.

(ii) If the estate has known heirs but no personal representative, the agency sends notification to:

(A) Any known heir; and

(B) Any known title holder.

(iii) If the estate has no personal representative and no known heirs, the agency sends notification to:

(A) The address listed on the title; and

(B) Any known title holder.

(b) The notice states:

(i) The agency's intent to file a lien against the deceased client's property;

(ii) The amount the agency seeks to recover;

(iii) The deceased client's name, identification number, date of birth, and date of death;

(iv) The county in which the property is located; and

(v) How to request an administrative hearing.

(3) The agency may not recover from the client's estate so long as there remains:

(a) A surviving spouse; or

(b) A surviving child who:

(i) Is age twenty or younger; or

(ii) Is blind or disabled as defined in WAC 182-512-0050.

(4) **Interest assessed on past-due debt.**

(a) Interest on a past-due debt accrues at a rate of one percent per month under RCW 43.17.240.

(b) A lien under this section becomes a past-due debt when the agency has recorded the lien in the county where the property is located and nine months have passed since the lien was recorded or a creditor's claim was filed, whichever is sooner.

(c) The agency may waive interest if reasonable efforts to sell the property have failed.

(5) **Administrative hearing.** An administrative hearing under this section is governed by WAC 182-527-2753.

AMENDATORY SECTION (Amending WSR 13-19-038, filed 9/11/13, effective 10/12/13)

WAC 182-527-2740 ((Age when recovery applies.))

Estate recovery—Age-related limitations. ((The client's age and the date when services were received determine whether the client's estate is liable for the cost of medical services provided. Subsection (1) of this section covers liability for medicaid services and subsection (2) covers liability for state-only funded long-term care services. An estate may be liable under both subsections:

(1) For a client who on July 1, 1994 was:

(a) Age sixty five or older, the client's estate is liable for medicaid services that were subject to recovery and provided on and after the date the client became age sixty five or after July 26, 1987, whichever is later;

(b) Age fifty five through sixty four years of age, the client's estate is liable for medicaid services that were subject to recovery and provided on and after July 1, 1994; or

(c) Under age fifty five, the client's estate is liable for medicaid services that were subject to recovery and provided on and after the date the client became age fifty five.

(2) Regardless of the client's age when the services were provided, the client's estate is liable for state-only funded long-term care services provided to:

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

(b) Clients of the developmental disabilities administration of DSHS on and after June 1, 2004.)) For the purposes of this section, the term "agency" includes the agency's designee.

(1) Liability for medicaid services.

(a) Beginning July 26, 1987, a client's estate is liable for medicaid services subject to recovery that were provided on or after the client's sixty-fifth birthday.

(b) Beginning July 1, 1994, a client's estate is liable for medicaid services subject to recovery that were provided on or after the client's fifty-fifth birthday.

(2) Liability for state-only-funded long-term care services.

(a) A client's estate is liable for all state-only-funded long-term care services provided by the home and community services division of the department of social and health services (DSHS) on or after July 1, 1995.

(b) A client's estate is liable for all state-only-funded long-term care services provided by the developmental disabilities administration of DSHS on or after June 1, 2004.

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

WAC 182-527-2742 ((Services subject to recovery.))

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

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

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

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

(i) Nursing facility services;

(ii) Home and community-based services; and

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

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

(i) Nursing facility services;

(ii) Home and community-based services;

(iii) Adult day health;

(iv) Medicaid personal care;

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

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

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

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

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

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

(iv) Premium payments to managed care organizations;

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

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

(ii) All institutional medicaid services described in (e) of this subsection;

(iii) Premium payments to managed care organizations; and

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

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

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

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

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

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

(C) Basic Plus waiver;

(D) CORE waiver;

(E) Community protection waiver;

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

(G) Medicaid personal care;

(H) Residential support waiver;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Volunteer chore services.) For the purposes of this section, the term "agency" includes the agency's designee.

The agency's payment for the following services is subject to recovery:

(1) State-only funded services, except:

(a) Adult protective services;

(b) Offender reentry community safety program services;

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

(d) Volunteer chore services.

(2) For dates of service beginning January 1, 2014:

(a) Basic Plus waiver services;

(b) Community first choice (CFC) services;

(c) Community option program entry system (COPES) services;

(d) Community protection waiver services;

(e) Core waiver services;

(f) Hospice services;

(g) Intermediate care facility for individuals with intellectual disabilities services provided in either a private community setting or in a rural health clinic;

(h) Individual and family services;

(i) Medicaid personal care services;

(j) New Freedom consumer directed services;

(k) Nursing facility services;

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

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

(n) Residential habilitation center services;

(o) Residential support waiver services;

(p) Roads to community living demonstration project services;

(q) The portion of the managed care premium used to pay for AL TSA-authorized long-term care services under the program of all-inclusive care for the elderly (PACE); and

(r) The hospital and prescription drug services provided to a client while the client was receiving services listed in this subsection.

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

(a) Medicaid services;

(b) Premium payments to managed care organizations (MCOs); and

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

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

(a) Medicaid services;

(b) Medicare premiums for people also receiving medicaid;

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

(d) Premium payments to MCOs.

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

(a) Adult day health services;

(b) Home and community-based services;

(c) Medicaid personal care services;

(d) Nursing facility services;

(e) Private duty nursing services; and

(f) The hospital and prescription drug services provided to a client while the client was receiving services listed in this subsection.

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

(a) Home and community-based services;

(b) Nursing facility services; and

(c) The hospital and prescription drug services provided to a client while the client was receiving services listed in this subsection.

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

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

(9) For dates of service beginning January 1, 2010. If a client was eligible for medicaid and the MSP, the client's estate is not liable for any sum paid to cover medical assistance cost-sharing benefits.

NEW SECTION

WAC 182-527-2746 Estate recovery—Asset-related limitations. For the purposes of this section, the term "agency" includes the agency's designee.

(1) **Before July 25, 1993.** For services received before July 25, 1993, that are subject to recovery, the agency may exempt:

(a) The first fifty thousand dollars of the estate's value at the time of the client's death; and

(b) Sixty-five percent of the remaining value of the estate.

(2) **July 24, 1993, through June 30, 1994.** For services that are subject to recovery that were received on or after July 25, 1993, through June 30, 1994, the agency exempts two thousand dollars' worth of personal property.

(3) **Life estate.**

(a) The agency may file a lien against a client's life estate interest in real property.

(b) The agency's lien against the property may not exceed the value of the client's life estate. Under this subsection, value means the fair market value of the property multiplied by the life estate factor that corresponds to the client's age on the client's last birthday. For a list of life estate factors,

see the life estate and remainder interest tables maintained by the Social Security Administration.

(c) The agency may not enforce a lien under this subsection against any property right that vested before July 1, 2005.

(4) **Joint tenancy.**

(a) The agency may file a lien against property in which a client was a joint tenant when the client died.

(b) The agency's lien against the property may not exceed the value of the client's interest in the property. Under this subsection, value means the fair market value of the property divided by the number of joint tenants on the day the client died.

(c) The agency may not enforce a lien under this subsection against any property right that vested before July 1, 2005.

(5) **Qualified long-term care partnership.**

(a) Assets designated as protected by a qualified long-term care partnership (QLTCP) policy issued after November 30, 2011, may be disregarded for estate recovery purposes if:

(i) The insured person's estate is the recipient of the estate recovery exemption; or

(ii) The insured person holds title to property which is potentially subject to a predeath lien and that person asserts the property is protected under the QLTCP policy.

(b) A person must provide clear and convincing evidence to the office of financial recovery that the asset in question was designated as protected, including:

(i) Proof of a valid QLTCP policy;

(ii) Verification from the LTC insurance company of the dollar amount paid out by the policy; and

(iii) A current department of social and health services QLTCP asset designation form when the QLTCP policy paid out more than was previously designated.

(c) The insured person's estate must provide clear and convincing evidence proving an asset is protected before the final recovery settlement.

(6) **Rules specific to American Indians and Alaska natives.**

(a) Certain properties belonging to American Indians/Alaska natives (AI/AN) are exempt from estate recovery if at the time of death:

(i) The deceased client was enrolled in a federally recognized tribe; and

(ii) The estate or heir documents the deceased client's ownership interest in trust or nontrust real property and improvements located on a reservation, near a reservation as designated and approved by the Bureau of Indian Affairs of the U.S. Department of the Interior, or located:

(A) Within the most recent boundaries of a prior federal reservation; or

(B) Within the contract health service delivery area boundary for social services provided by the deceased client's tribe to its enrolled members.

(b) Protection of trust and nontrust property under subsection (4) of this section is limited to circumstances when the real property and improvements pass from an Indian (as defined in 25 U.S.C. Chapter 17, Sec. 1452(b)) to one or more relatives (by blood, adoption, or marriage), including Indians not enrolled as members of a tribe and non-Indians,

such as spouses and stepchildren, that their tribe would nonetheless recognize as family members, to a tribe or tribal organization and/or to one or more Indians.

(c) Certain AI/AN income and resources (such as interests in and income derived from tribal land and other resources currently held in trust status and judgment funds from the Indian Claims Commission and the U.S. Claims Court) are exempt from estate recovery by other laws and regulations.

(d) Ownership interests in or usage rights to items that have unique religious, spiritual, traditional, and/or cultural significance or rights that support subsistence or a traditional life style according to applicable tribal law or custom.

(e) Government reparation payments specifically excluded by federal law in determining eligibility are exempt from estate recovery as long as such funds have been kept segregated and not commingled with other countable resources and remain identifiable.

AMENDATORY SECTION (Amending WSR 13-19-038, filed 9/11/13, effective 10/12/13)

WAC 182-527-2750 Estate recovery—Delay of recovery for undue hardship. ~~((The medicare agency or its designee delays recovery under this section when the agency or its designee determines that recovery would cause an undue hardship for an heir. This delay is limited to the period during which the undue hardship exists. The undue hardship must exist at the time of the client's death in order to be considered for a delay of recovery.))~~ For the purposes of this section, the term "agency" includes the agency's designee.

(1) If an undue hardship exists at the time of the client's death, an heir may ask the agency to delay recovery.

(a) Undue hardship exists only when:

~~((a) The estate subject to adjustment or))~~ (i) The property subject to recovery is the sole income-producing asset of ~~((one or more heirs and income is limited;~~

~~(b))~~ an heir;

(ii) Recovery would deprive an heir of shelter and the heir ~~((lacks the financial means to obtain and maintain))~~ can not afford alternative shelter; or

~~((e))~~ (iii) The client is survived by a state-registered domestic partner.

~~((2))~~ (b) Undue hardship does not exist ~~((when:~~

~~(a) The adjustment or recovery of the decedent's cost of assistance would merely cause the heir inconvenience or restrict his or her lifestyle; or~~

~~(b) The undue hardship was created as a result of estate planning methods by which the heir or deceased client divested, transferred or otherwise encumbered assets, in whole or in part, to avoid recovery from the estate.~~

~~(3) When a delay in recovery is not granted, the agency or its designee provides notice to the person who requested the delay of recovery. The agency's or its designee's notice includes information on how to request an administrative hearing to contest the agency's or its designee's denial.~~

~~(4) When a delay of recovery is granted under subsection (1)(a) or (b) of this section, the agency or its designee may revoke the delay of recovery if the heir(s):~~

~~(a) Fails to supply timely information and resource declaration when requested by the agency or its designee;~~

~~(b) Sells, transfers, or encumbers title to the property;~~

~~(c) Fails to reside full-time on the premises;~~

~~(d) Fails to pay property taxes and utilities when due;~~

~~(e) Fails to identify the state of Washington as the primary payee on the property insurance policies. The person granted the delay of recovery must provide the agency or its designee with documentation of the coverage status on an annual basis;~~

~~(f) Have a change in circumstances under subsection (1) of this section for which the delay of recovery due to undue hardship was granted; or~~

~~(g) Dies.~~

~~(5) When a delay of recovery is granted due to undue hardship, the agency or its designee has the option to:~~

~~(a) Apply a lien; and/or~~

~~(b) Accept a payment plan.~~

~~(6) A person may request an administrative hearing to contest the agency's or its designee's denial of delay of recovery due to undue hardship when that person suffered a loss because the delay was not granted.~~

~~(7) A request for an administrative hearing under this section must:~~

~~(a) Be in writing;~~

~~(b) State the basis for contesting the agency's or its designee's denial of the request for a delay of recovery due to an undue hardship;~~

~~(c) Include a copy of the agency's or its designee's denial;~~

~~(d) Be signed by the requester and include the requester's address and telephone number; and~~

~~(e) Be served, as described in WAC 182-527-2870, on the office of financial recovery (OFR) within twenty-eight calendar days of the date that the agency or its designee sent the decision denying the request for a delay of recovery.~~

~~(8) Upon receiving a request for an administrative hearing, the agency or its designee notifies persons known to have title to the property and other assets of the time and place of the administrative hearing.~~

~~(9) An adjudicative proceeding held under this section is governed by chapters 34.05 RCW and 182-526 WAC and this section. If a provision in this section conflicts with a provision in chapter 182-526 WAC, the provision in this section governs))~~ if the client or the heir created circumstances to avoid estate recovery.

(2) If the agency determines recovery would cause an undue hardship for an heir, the agency may delay recovery until the hardship no longer exists.

(3) If the agency denies an heir's request to delay recovery, the agency notifies the heir in writing. The notice includes instructions on how to request a hearing.

(4) If the agency grants a delay of recovery under this section, the heir must:

(a) Timely comply with any agency request for information or records;

(b) Not sell, transfer, or encumber the property;

(c) Reside on the property;

(d) Timely pay property taxes and utilities;

(e) Insure the property for its fair market value;

(f) Name the state of Washington as the primary payee on the property insurance policy;

(g) Provide the agency with a copy of the property insurance policy upon request;

(h) Continue to satisfy the requirements in subsection (1) of this section.

(5) If the heir dies, or violates any provision of subsection (4) of this section, the agency may begin recovery.

(6) If the agency denies the request, the heir may request an administrative hearing under WAC 182-527-2753.

NEW SECTION

WAC 182-527-2753 Hearings. For the purposes of this section, the term "agency" includes the agency's designee.

(1) An administrative hearing to contest action under this chapter determines only:

(a) In the case of a lien filed during the client's lifetime under WAC 182-527-2734:

(i) Whether the client can reasonably be expected to return home from the medical institution;

(ii) Whether the client, or the client's estate, holds legal title to the identified property; and

(iii) Whether the client received services subject to recovery.

(b) In the case of a lien filed after the client's death:

(i) The cost the agency correctly paid for services subject to recovery;

(ii) Whether the client, or the client's estate, holds legal title to the identified property; and

(iii) Whether the agency's denial of an heir's request for a delay of recovery for undue hardship under WAC 182-527-2750 was correct.

(2) A request for an administrative hearing must:

(a) Be in writing;

(b) State the basis for contesting the agency's proposed action;

(c) Be signed by the requestor and include the client's name, the requestor's address and telephone number; and

(d) Within twenty-eight days of the date on the agency's notice, be filed with the office of financial recovery either:

(i) In person at the Office of Financial Recovery, 712 Pear St. S.E., Olympia, WA 98504-0001; or

(ii) By certified mail, return receipt requested, to Office of Financial Recovery, P.O. Box 9501, Olympia, WA 98507-9501.

(3) Upon receiving a request for an administrative hearing, the office of administrative hearings notifies any known titleholder of the time and place of the administrative hearing.

(4) An administrative hearing under this subsection is governed by chapters 34.05 RCW and 182-526 WAC and this section. If a provision in this section conflicts with a provision in chapter 182-526 WAC, the provision in this section governs.

(5) Disputed assets must not be distributed while in litigation.

(6) Absent an administrative or court order to the contrary, the agency may file a lien twenty-eight calendar days after the date the agency mailed notice of its intent to file a lien.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-527-2700 Purpose.

WAC 182-527-2733 Estate liability.

WAC 182-527-2737 Deferring recovery.

WAC 182-527-2754 Assets not subject to recovery and other limits on recovery.

WAC 182-527-2790 Filing liens.

WAC 182-527-2810 Life estates and joint tenancy.

WAC 182-527-2820 Liens prior to death.

WAC 182-527-2830 Request for notice of transfer or encumbrance.

WAC 182-527-2840 Termination of request for notice of transfer or encumbrance.

WAC 182-527-2850 Notice of transfer or encumbrance.

WAC 182-527-2860 Interest assessed on past due debt.

WAC 182-527-2870 Serving notices on the office of financial recovery (OFR).

WSR 16-05-056

PERMANENT RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed February 12, 2016, 11:11 a.m., effective March 14, 2016]

Effective Date of Rule: March 14, 2016.

Purpose: These rule amendments are due to a review of the performance management confirmation (PMC) program's purpose and role. Current research on performance-based incentives and rewards and lessons learned since the program's inception were considered. This resulted in opportunities to improve the program's accountability and impact on agency performance. These rule amendments remove performance-based compensation from the PMC program but keep the ability to factor in individual performance when granting recognition leave and when making layoff decisions.

Citation of Existing Rules Affected by this Order: Repealing WAC 357-28-075; and amending WAC 357-01-230, 357-28-060, 357-28-080, 357-28-295, 357-37-050, 357-37-055, 357-37-060, 357-58-065, 357-58-095, 357-58-100, 357-58-105, 357-58-135, 357-58-425, 357-58-430, and 357-58-435.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 16-02-099 on January 5, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 15, Repealed 1.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 15, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 15, Repealed 1.

Date Adopted: February 12, 2016.

Roselyn Marcus
Assistant Director for
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 05-01-204, filed 12/21/04, effective 7/1/05)

WAC 357-01-230 Performance management confirmation. Approval granted by the director to an employer allowing the employer to ~~((link))~~ factor in individual employee performance ~~((to compensation or))~~ when granting recognition leave or when making layoff decisions.

AMENDATORY SECTION (Amending WSR 13-19-043, filed 9/13/13, effective 10/18/13)

WAC 357-28-060 When does an employee receive an increment increase? Unless adjusted under the provisions of WAC 357-28-070 ~~((or 357-28-075))~~, an employee must receive a two step increase to base salary on the periodic increment date. Increment increases continue until the employee reaches step L of the salary range.

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

WAC 357-28-080 How does an employee allocated to a class with a special pay salary range progress through the range? Unless adjusted under WAC 357-28-070 ~~((or 357-28-075))~~, employees allocated to a class with a special pay salary range must progress through the special pay salary range as defined in the compensation plan.

AMENDATORY SECTION (Amending WSR 05-01-205, filed 12/21/04, effective 7/1/05)

WAC 357-28-295 Who may provide performance recognition pay to employees? The director ~~((or employers who have received performance management confirmation for decentralized compensation administration))~~ may authorize additional pay to individuals or groups of employees on a lump sum basis to recognize outstanding accomplishments or the achievement of predefined work goals by individual employees or units. Any additional pay granted under this section is a premium that is not part of base salary.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-28-075 Can an employer accelerate or defer increment increases based on performance?

AMENDATORY SECTION (Amending WSR 05-01-194, filed 12/21/04, effective 7/1/05)

WAC 357-37-050 ~~((Can))~~ May an employer factor ~~((performance into compensation and))~~ in employee performance when granting recognition leave and when making layoff decisions? An employer may factor in an employee's performance ~~((into compensation and))~~ when granting recognition leave and when making layoff decisions if the employer has received performance management confirmation.

AMENDATORY SECTION (Amending WSR 05-01-194, filed 12/21/04, effective 7/1/05)

WAC 357-37-055 How does an employer receive performance management confirmation which enables them to factor in employee performance ~~((into compensation and))~~ when granting recognition leave and when making layoff decisions? Employers may request performance management confirmation from the director. The director will use the elements listed in WAC 357-37-060 to assess and evaluate an employer's readiness to fairly and objectively factor in employee performance ~~((into compensation and))~~ when granting recognition leave and when making layoff decisions. If the director determines that the employer has developed a performance management program that encompasses the necessary elements, the employer will be granted performance management confirmation.

AMENDATORY SECTION (Amending WSR 05-01-194, filed 12/21/04, effective 7/1/05)

WAC 357-37-060 What elements will the director evaluate to determine if an employer should be granted performance management confirmation? The director will evaluate the following elements to determine if an employer should receive performance management confirmation:

- (1) Executive commitment to a performance-based culture;
- (2) Present status of performance management in the organization;
- (3) Defined roles and responsibilities for implementing and sustaining a performance management system;
- (4) Policy and process for holding managers accountable for properly carrying out their roles and responsibilities in performance management;
- (5) Internal policies and procedures for a performance management system;
- (6) Strategy for communicating to employees regarding policies, procedures~~((:))~~ and timelines for performance management;

- (7) Performance management orientation and training for managers and supervisors;
- (8) Internal mechanisms for managing funding for performance-based ~~((compensation))~~ recognition leave;
- (9) Implementation of a performance and development plan for all employees subject to performance factor decisions; and
- (10) Process for monitoring and measuring success.

AMENDATORY SECTION (Amending WSR 11-23-054, filed 11/10/11, effective 12/13/11)

WAC 357-58-065 Definitions for WMS. The following definitions apply to chapter 357-58 WAC:

- (1) **Competencies.** Those measurable or observable knowledge, skills, abilities~~((;))~~ and behaviors critical to success in a key job role or function.
- (2) **Director.** State human resources director within the office of financial management.
- (3) **Dismissal.** The termination of an individual's employment for disciplinary purposes.
- (4) **Employee.** An individual working in the classified service. Employee business unit members are defined in WAC 357-43-001.

(5) **Evaluation points.** Evaluation points are the points resulting from an evaluation of a position using the managerial job value assessment chart.

(6) **Layoff unit.** A clearly identified structure within an employer's organization within which layoff options are determined in accordance with the employer's layoff procedure. Layoff units may be a series of progressively larger units within an employer's organization.

(7) **Management bands.** Management bands are a series of management levels included in the Washington management service. Placement in a band reflects the nature of management, decision-making environment and policy impact~~((;))~~ and scope of management accountability and control assigned to the position.

(8) **Performance management confirmation.** Approval granted by the director to an employer allowing the employer to ~~((link))~~ factor in individual employee performance ~~((to compensation or))~~ when granting recognition leave and when making layoff decisions.

(9) **Premium.** Pay added to an employee's base salary on a contingent basis in recognition of special requirements, conditions~~((;))~~ or circumstances associated with the job.

(10) **Reassignment.** A reassignment is an employer initiated movement of:

(a) A WMS employee from one position to a different position within WMS with the same salary standard and/or evaluation points; or

(b) A WMS position and its incumbent from one section, department~~((;))~~ or geographical location to another section, department~~((;))~~ or geographical location.

(11) **Review period.** The review period is a period of time that allows the employer an opportunity to ensure the WMS employee meets the requirements and performance standards of the position.

(12) **Salary standard.** Within a management band a salary standard is the maximum dollar amount assigned to a

position in those agencies that use a salary standard in addition to, or in place of, evaluation points.

(13) **Separation.** Separation from state employment for nondisciplinary purposes.

(14) **Suspension.** An absence without pay for disciplinary purposes.

(15) **Transfer.** A WMS transfer is an employee initiated movement from one position to a different position with the same salary standard and/or same evaluation points.

(16) **Washington general service (WGS).** Washington general service is the system of personnel administration that applies to classified employees or positions under the jurisdiction of chapter 41.06 RCW which do not meet the definition of manager found in RCW 41.06.022.

(17) **Washington management service (WMS).** Washington management service is the system of personnel administration that applies to classified managerial employees or positions under the jurisdiction of RCW 41.06.022 and 41.06.500.

AMENDATORY SECTION (Amending WSR 05-12-068, filed 5/27/05, effective 7/1/05)

WAC 357-58-095 May agencies provide ~~((progression))~~ salary increases for WMS employees? Employers may ~~((grant progression adjustments))~~ provide salary increases to WMS employees ~~((as follows:~~

~~((+)))~~ in recognition of the employee's demonstrated growth and development~~((; and/or~~

~~((2) If the employer has received performance management confirmation, in recognition of the employee's sustained excellence)).~~

NEW SECTION

WAC 357-58-096 How often may agencies provide salary increases for WMS employees? Salary increases for WMS employees are not on a predetermined schedule. Salary increases are granted in recognition of the employee's demonstrated growth and development.

AMENDATORY SECTION (Amending WSR 05-12-068, filed 5/27/05, effective 7/1/05)

WAC 357-58-100 Is there a limit for ~~((annual progression))~~ salary increases? ~~((Progression))~~ Salary increases initiated by the agency normally will not exceed a total of twenty-five percent during the tenure of an employee's appointment to a position as long as the position's duties are unchanged or would not evaluate higher if new duties were assigned.

AMENDATORY SECTION (Amending WSR 11-23-054, filed 11/10/11, effective 12/13/11)

WAC 357-58-105 When can exceptions to the ~~((progression))~~ salary increase limits be made? Only the director may grant requests for exception to the ~~((progression))~~ salary increase limit.

AMENDATORY SECTION (Amending WSR 11-23-054, filed 11/10/11, effective 12/13/11)

WAC 357-58-135 Who can provide lump sum performance recognition payment to employees? The director ~~((or an agency that has received performance management confirmation for decentralized compensation administration))~~ may provide additional pay to employees on a lump sum basis. Such payment to an individual or group of employees is to recognize outstanding performance or the achievement of predefined work goals. Any pay granted under this section is a premium that is not part of the base salary.

AMENDATORY SECTION (Amending WSR 05-12-071, filed 5/27/05, effective 7/1/05)

WAC 357-58-425 ~~((Can))~~ May an employer factor in employee performance ~~((into compensation and))~~ when granting recognition leave and when making layoff decisions for WMS employees? A general government employer may factor in an employee's performance ~~((into compensation and))~~ when granting recognition leave and when making layoff decisions if the employer has received performance management confirmation.

AMENDATORY SECTION (Amending WSR 11-23-054, filed 11/10/11, effective 12/13/11)

WAC 357-58-430 How does an employer receive performance management confirmation which enables them to factor in performance ~~((into compensation and))~~ when granting recognition leave and when making layoff decisions for WMS employees? Employers may request performance management confirmation from the director for WMS employees. The director will use the elements listed in WAC 357-58-435 to assess and evaluate an employer's readiness to fairly and objectively factor in performance ~~((into compensation and))~~ when granting recognition leave and when making layoff decisions. If the director determines that the employer has developed a performance management program that encompasses the necessary elements, the employer will be granted performance management confirmation.

AMENDATORY SECTION (Amending WSR 11-23-054, filed 11/10/11, effective 12/13/11)

WAC 357-58-435 What elements will the director evaluate to determine if an employer should be granted performance management confirmation? The director will evaluate the following elements to determine if an employer should receive performance management confirmation:

- (1) Executive commitment to a performance-based culture;
- (2) Present status of performance management in the organization;
- (3) Defined roles and responsibilities for implementing and sustaining a performance management system;
- (4) Policy and process for holding managers accountable for properly carrying out their roles and responsibilities in performance management;

- (5) Internal policies and procedures for a performance management system;
- (6) Strategy for communicating to employees regarding policies, procedures~~((s))~~ and timelines for performance management;
- (7) Performance management orientation and training for managers and supervisors;
- (8) Internal mechanisms for managing funding for performance-based ~~((compensation))~~ recognition leave;
- (9) Implementation of a performance and development plan for all employees subject to performance factor decisions; and
- (10) Process for monitoring and measuring success.

WSR 16-05-057

PERMANENT RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed February 12, 2016, 11:13 a.m., effective March 14, 2016]

Effective Date of Rule: March 14, 2016.

Purpose: To clarify that if a general government or higher education employee has a break in state service their periodic increment date (PID) is reset upon rehire. The amendment to WAC 357-28-056 clarifies that the PID is adjusted for leave without pay. Due to the proposal to repeal WAC 357-28-075 in the performance management rules, WAC 357-28-055 and 357-28-056 are amended to remove this reference.

Citation of Existing Rules Affected by this Order: Amending WAC 357-28-055 and 357-28-056.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 16-02-097 on January 5, 2016.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: February 12, 2016.

Roselyn Marcus
Assistant Director for
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 13-19-043, filed 9/13/13, effective 10/18/13)

WAC 357-28-055 How is the periodic increment date determined for a general government employee? (1) For a general government employee appointed to a position before July 1, 2005, the employee's periodic increment date as of June 30, 2005, is retained.

(2) For a general government employee appointed to a position on or after July 1, 2005, whose base salary is set at the minimum of the salary range, the periodic increment date is six months from the date of appointment.

(3) For a general government employee appointed to a position on or after July 1, 2005, whose base salary is set above the minimum but below step L of the salary range, the periodic increment date is twelve months from date of appointment.

(4) A general government employee appointed to a position on or after July 1, 2005, whose base salary is set at step L of the range will not have a periodic increment date set. If the employee later receives a new appointment, the periodic increment date will be set at that time, as described in this section.

(5) Once a general government employee's periodic increment date is set, it remains the same unless:

(a) The periodic increment date is advanced or postponed in accordance with WAC 357-28-070 (~~and 357-28-075~~); or

(b) The periodic increment date is adjusted for leave without pay in accordance with WAC 357-31-345.

(c) The periodic increment date is reset in accordance with subsections (2) and (3) of this section when an employee is rehired after a break in service.

AMENDATORY SECTION (Amending WSR 13-19-043, filed 9/13/13, effective 10/18/13)

WAC 357-28-056 How is the periodic increment date determined for a higher education employee? (1) For a higher education employee appointed to a position before July 1, 2005, the employee's periodic increment date as of June 30, 2005, is retained.

(2) For a higher education employee appointed to a position on or after July 1, 2005, whose base salary is set at the minimum of the salary range, the periodic increment date is six months from the date of appointment.

(3) For a higher education employee appointed to a position on or after July 1, 2005, whose base salary is set above the minimum but below step L of the salary range, the periodic increment date is twelve months from date of appointment.

(4) Once a higher education employee's periodic increment date is set, it remains the same unless:

(a) The periodic increment date is advanced or postponed in accordance with WAC 357-28-070 (~~and 357-28-075~~); or

(b) The employee is appointed to another position with a different salary range maximum. Upon subsequent appointment, the provisions of subsection (2) and (3) of this section apply.

(c) The periodic increment date is reset in accordance with subsections (2) and (3) of this section when an employee is rehired after a break in service.

(d) The periodic increment date is adjusted for leave without pay in accordance with WAC 357-31-346.

WSR 16-05-058

PERMANENT RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed February 12, 2016, 11:15 a.m., effective March 14, 2016]

Effective Date of Rule: March 14, 2016.

Purpose: These amendments address the temporary lay-off notice period, time frame and appeal rights when a temporary layoff is due to the failure of congress to pass a continuing resolution or a federal budget.

Citation of Existing Rules Affected by this Order: Amending WAC 357-46-064, 357-46-066, and 357-58-553.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 16-02-095 on January 5, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 3, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 3, Repealed 0.

Date Adopted: February 12, 2016.

Roselyn Marcus
Assistant Director
for Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 05-12-074, filed 5/27/05, effective 7/1/05)

WAC 357-46-064 Are there any limits to temporary layoff? Under the provisions of WAC 357-46-063, an employer may not:

(1) Furlough an employee for more than thirty calendar days in a calendar year; or

(2) Temporarily reduce an employee's regular work schedule to less than twenty hours a week for more than sixty calendar days in a calendar year.

The only exception to these limits is if the temporary lay-off is due to the failure of congress to pass a continuing resolution or a federal budget.

AMENDATORY SECTION (Amending WSR 10-23-040, filed 11/10/10, effective 12/13/10)

WAC 357-46-066 What is the notice requirement to temporarily layoff an employee? An employer must provide the employee seven calendar days' notice of temporary layoff. The temporary layoff notice must inform the employee of their status during temporary layoff and the expected duration of the temporary layoff. Notice of temporary layoff may be provided by using alternative methods as described in WAC 357-04-105.

In the event that a temporary layoff is implemented due to the failure of congress to pass a continuing resolution or a federal budget, an employer must provide the employee at least one calendar day's notice of temporary layoff. The temporary layoff notice must inform the employee of their status during temporary layoff. Notice of temporary layoff may be provided by using alternative methods as described in WAC 357-04-105.

NEW SECTION

WAC 357-52-014 Does an employee who has been temporarily laid off due to the failure of congress to pass a continuing resolution or a federal budget, have the right to appeal the temporary layoff? An employee who has been temporarily laid off due to the failure of congress to pass a continuing resolution or a federal budget does not have the right to appeal the temporary layoff.

AMENDATORY SECTION (Amending WSR 10-23-040, filed 11/10/10, effective 12/13/10)

WAC 357-58-553 What is the notice requirement to temporarily layoff a WMS employee? An employer must provide the WMS employee seven calendar days' notice of temporary layoff. The temporary layoff notice must inform the WMS employee of their status during temporary layoff and the expected duration of the temporary layoff. Notice of temporary layoff may be provided by using alternative methods as described in WAC 357-04-105.

In the event that a temporary layoff is implemented due to the failure of congress to pass a continuing resolution or a federal budget, an employer must provide the WMS employee at least one calendar day's notice of temporary layoff. The temporary layoff notice must inform the WMS employee of their status during temporary layoff. Notice of temporary layoff may be provided by using alternative methods as described in WAC 357-04-105.

**WSR 16-05-059
PERMANENT RULES
OFFICE OF**

FINANCIAL MANAGEMENT

[Filed February 12, 2016, 11:17 a.m., effective March 14, 2016]

Effective Date of Rule: March 14, 2016.

Purpose: To repeal the college recruitment program (CRP) rules because the original intent was to have a pool of

college graduates for employers to search from for positions which required a degree, but who possessed limited work experience. CRP rules are no longer necessary because the current recruitment rules give employers the flexibility to support their college recruitment efforts.

Citation of Existing Rules Affected by this Order: Repealing WAC 357-16-040, 357-16-045, and 357-16-050.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 16-02-096 on January 5, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 3.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 3.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 3.

Date Adopted: February 12, 2016.

Roselyn Marcus
Assistant Director
for Legal and Legislative Affairs

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|----------------|---|
| WAC 357-16-040 | What is the college recruitment program? |
| WAC 357-16-045 | What is the purpose of the college recruitment program? |
| WAC 357-16-050 | How does the college recruitment program operate? |

**WSR 16-05-062
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed February 12, 2016, 1:18 p.m., effective March 14, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The revisions removed the definition of kindergarten routes, changed the definition of district car routes to reflect current usage, defined prior year expenditures and aligned usage of prior year expenditures throughout the chapter, removed the transition process language, and made technical corrections.

Citation of Existing Rules Affected by this Order: Repealing WAC 392-141-370; and amending 392-141-310, 392-141-320, 392-141-360, 392-141-380, and 392-141-400.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 16-01-129 on December 18, 2015.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 5, Repealed 1.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 5, Repealed 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 4, 2016.

Randy Dorn
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 15-11-075, filed 5/19/15, effective 6/19/15)

WAC 392-141-310 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Superintendent" means the superintendent of public instruction.

(2) "District" means either a school district or an educational service district.

(3) "Charter school" means a public school operating under the provisions of chapter 28A.710 RCW.

(4) The definition of "school" includes learning centers or other agencies where educational services are provided.

(5) "Eligible student" means any student served by a district or charter school transportation program either by bus, district car, or individual arrangements meeting one or more of the following criteria:

(a) A student whose route stop is outside the walk area of the student's enrollment school site; or

(b) A student whose disability is defined by RCW 28A.155.020 and who is either not ambulatory or not capable of protecting his or her own welfare while traveling to or from school.

Districts determine which students are provided with transportation services; however, only eligible students qualify for funding under the operations allocation.

(6) "To and from transportation" means all transportation between route stops and schools both before and after the school day. To and from transportation includes transportation between home and school and transportation between schools, commonly referred to as shuttles. Transportation not authorized for state allocations under this definition includes,

but is not limited to, transportation for students participating in nonacademic extended day programs, field trips, and extracurricular activities.

(7) "Home to school transportation" means all student transportation between route stops and schools both before and after the school day. Home to school transportation does not include transportation between schools.

(8) "Basic program transportation" means students transported between home and school for their basic education. Basic program transportation includes those students who qualify under RCW 28A.155.020 for special services and are capable of protecting his or her own welfare while traveling to or from school and those students who are enrolled in gifted or bilingual programs or homeless students that do not require specialized transportation. Also included in basic program transportation is transportation required to comply with the school choice provisions of the Elementary Secondary Education Act.

(9) "Special program transportation" means home to school transportation for one of the following specialized programs:

(a) Special education programs provided for by chapter 28A.155 RCW and where transportation as a related service is included on the student's individual education plan or where transportation is required under the provisions of Section 504 of the Rehabilitation Act of 1973; or

(b) Students who require special transportation to a bilingual program in a centralized location; or

(c) Students who require special transportation to a gifted program in a centralized location; or

(d) Students who require special transportation to their school of origin as required by the provisions of the McKinney-Vento Homeless Assistance Act; or

(e) Students who require special transportation to a district operated head start, district operated early childhood education assistance program, or other district operated early education program.

(10) (~~"Kindergarten route" means a school bus providing home to school transportation for basic education kindergarten students operated between the beginning and end of the school day.~~

~~(11))~~ "Private party contract" means the provision of home to school transportation service using a private provider (not in a school bus). Private party contracts shall require criminal background checks of drivers and other adults with unsupervised access to students and assurances that any students transported be provided with child safety restraint systems that are age and weight appropriate. Vehicles used must meet school bus specifications established in chapter 392-143 WAC if they have a manufacturer's design capacity of greater than ten passengers, including the driver. However, a vehicle manufactured to meet the federal specifications of a multifunction school activity bus may be used.

~~((12))~~ (11) "In lieu transportation" means a contract to provide home to school transportation with a parent, guardian or adult student, including transportation on rural roads to access a school bus stop.

~~((13))~~ (12) "Count period" is the three consecutive school day window used for establishing the reported student count on home to school routes.

~~((14))~~ (13) The school year is divided into three "report periods," as follows: September - October, November - January, and February - April. These report periods are also referred to respectively as the fall, winter and spring reports. The count period must not fall within five school days of the end of the report period.

~~((15))~~ (14) "Combined student count" is the total number of basic program or special program eligible student riders reported during each report period. The combined student counts for the determination of funding consist of the prorated basic program and special program student counts from the prior year's spring report and the current year's fall and winter reports. The prior school year's fall, winter and spring student counts are used for the determination of the efficiency rating. The combined student counts are prorated based on the number of months in the respective report period. For a charter school in the first year of operation, the current year fall count shall be used as the prior year spring count to determine the combined student count.

~~((16))~~ (15) "Average distance to school" means the average of the distances from each school bus stop measured by the shortest road path to the assigned student's school of enrollment.

~~((17))~~ (16) "Prorated average distance" is calculated by taking the average distance to school weighted by the number of months in the corresponding report period. The prorated average distance used in calculating district allocation consists of the prorated average distance from the prior year's spring report and the current year's fall and winter reports. The prior school year's fall, winter and spring average distances are used for the determination of the efficiency rating.

~~((18))~~ (17) "Prorated number of destinations" is calculated by taking the number of learning centers a school district provides with home-to-school transportation service weighted by the number of months in the corresponding report period. The prorated number of destinations used in calculating district allocation consists of the prorated number of destinations from the prior year's spring report and the current year's fall and winter reports. The prior school year's fall, winter, and spring number of destinations are used for the determination of the efficiency rating.

~~((19))~~ (18) "Land area" is the area of the school district in square miles, excluding water and public lands, as determined by the superintendent. For educational service districts, the land area value will be determined by the superintendent from the contiguous area provided with transportation service.

~~((20))~~ (19) "Roadway miles" refers to the number of public roadway miles within the land area of the school district, as determined by the superintendent. For educational service districts, the roadway mile value will be determined by the superintendent from the roadway miles within the contiguous area provided with transportation service.

~~((21))~~ (20) "Walk area" is defined as the area around a school where the shortest safe walking route to school is less than one mile.

~~((22))~~ (21) "District car route" means ~~((home))~~ to and from school transportation where a district motor pool vehicle (not a school bus) is used to transport an eligible student or students. Any regularly scheduled home to school trans-

portation in a district car is required to be driven by an authorized school bus driver.

~~((23))~~ (22) "District car allocation" is calculated by multiplying the total annual district car route mileage by the rate of reimbursement per mile that is authorized for state employees for the use of private motor vehicles in connection with state business in effect on September 1st of each year.

~~((24))~~ (23) A "low ridership district" is defined as a district with an annual student count less than two hundred eighteen students.

~~((25))~~ (24) A "nonhigh" district is defined as a district meeting the eligibility requirements for a nonhigh district as established by the superintendent of public instruction's school apportionment and financial services section.

~~((26))~~ (25) A "transportation cooperative" is defined as two or more districts sharing transportation operations administrative functions. An interdistrict agreement for the provision of maintenance services on school buses does not constitute a transportation cooperative for the purposes of this chapter, regardless if the agreement qualifies as a transportation cooperative under the provisions of chapter 392-346 WAC, unless shared operations administrative functions are also included in the interdistrict agreement. A transportation cooperative has the option of reporting as a single entity.

~~((27))~~ (26) "Alternate funding system" means an additional funding system as provided in RCW 28A.160.191, defined by OSPI to adjust the allocation for low enrollment school districts, nonhigh school districts, school districts participating in interdistrict transportation cooperatives, and educational service districts operating special transportation services.

(27) "Prior year expenditures" means the total of school district transportation operations costs for to-and-from transportation for the prior school year. All revenue reported in transportation except for the state allocation for transportation operations is deducted from reported costs, including in lieu of depreciation allocations under the provisions of WAC 392-142-245 for districts contracting transportation services. Any adjustments as a result of audits or other adjustments to prior year costs shall not be included unless those adjustments are correcting the actual cost of transportation operations for the prior year. The basis for the prior year expenditures shall be the district financial statement. School districts are only required to report adjustments not reflected in the annual financial statement.

(28) "Expected allocation" means the initial amount of funding resulting from the regression analysis calculation.

(29) "Adjusted allocation" means the expected allocation plus any alternate funding system, calendar, or legislative adjustments.

(30) For a district, "actual allocation" means the lesser of the ~~((previous year's actual reported transportation))~~ prior year expenditures including adjustments by the legislature or the adjusted allocation. For a charter school, the actual allocation is a final amount to be allocated for transportation services using the process described in this chapter, plus any funding provided under chapter 392-142 WAC.

(31) "Efficiency evaluation" refers to the statistical evaluation of efficiency of a school district's transportation operation using linear programming of the data required by the

funding formula and the number of buses used on home-to-school routes. Each school district is separately compared to an individualized statistical model of a district having similar site characteristics. The efficiency evaluation is expressed as a percentage efficiency rating.

(32) A district's "transportation funding percentage" is calculated by dividing the district's actual allocation by the district's (~~approved to and from transportation~~) prior year expenditures.

(33) The "state median percent funded" is determined by calculating each district's transportation funding percentage and taking the median value by sorting the total number of reporting districts in descending order and selecting the middle value. If there is an even number of districts, the bottom value in the top half shall be used.

AMENDATORY SECTION (Amending WSR 15-11-075, filed 5/19/15, effective 6/19/15)

WAC 392-141-320 Reporting requirements. (1)

Reports shall be submitted by each district or charter school to the superintendent no later than the last business day in October, the first business day in February, and the first business day in May. These reports shall reflect to the extent practical the planned student transportation program for the entire report period and which is in operation during the ridership count period. The superintendent shall have the authority to make modifications or adjustments in accordance with the intent of RCW 28A.160.150. Each district or charter school shall submit the data required on a timely basis as a condition to the continuing receipt of student transportation allocations.

(2) In each report period, districts shall report such operational data and descriptions, as required by the superintendent to determine the operations allocation for each district, including:

- (a) School bus route information;
- (b) Student count information; and
- (c) An update to the estimated total car mileage for the current school year.

(3) For the fall report, districts shall report to the superintendent as required:

(a) An annual school bus mileage report including the total to and from school bus miles for the previous school year, and other categories as requested;

(b) An annual report of each type of fuel purchased for student transportation service for the previous school year, including quantity and cost. This report shall be considered part of the district's annual financial statement for the purposes of RCW 28A.160.170(2); and

(c) An annual report as required by RCW 28A.300.540 of the number of students transported to their school of origin as required by the McKinney-Vento Homeless Assistance Act for the previous school year, and the total mileage and additional cost of such transportation. These costs may include, but are not limited to:

(i) Transportation service that serves only student(s) under McKinney-Vento. Districts may determine costs based upon route mileage and an average per mile cost for operation of the bus or vehicle. Driver time may be taken from actual

driver costs records if such records are maintained, or may be determined using an average driver costs factor.

(ii) Incremental revisions in route at the start or end of a route to accommodate McKinney-Vento transportation, if separately identified, may be included based upon route mileage and an average per mile cost for operation of the bus or vehicle.

(iii) Costs for public transportation or other contracted services for transporting McKinney-Vento student(s).

(iv) Nondriver transportation staff positions whose job duties are predominately overseeing or routing services to McKinney-Vento students. If the position duties encompass other non-McKinney-Vento areas, then only the costs directly related to McKinney-Vento transportation shall be included and such costs shall be determined using federal time and effort reporting procedures.

No indirect or allocated costs may be included in this reporting.

(4) In each report period, charter schools shall report student counts.

AMENDATORY SECTION (Amending WSR 15-11-075, filed 5/19/15, effective 6/19/15)

WAC 392-141-360 Operation allocation computation. (1) The operation allocation shall be calculated using the following factors:

- (a) The combined student count of basic program students;
- (b) The combined student count of special program students;
- (c) The district's prorated average distance;
- (d) The district's total land area;
- (e) The district's prorated number of destinations;
- (f) If the district is a nonhigh district, the answer to the following question: Does the district provide transportation service for the high school students residing in the district?
- (g) Any other district data element as described by the superintendent in the annual operations bulletin. In order for a data element to be included, it must be found to be statistically significant for two consecutive school years.

For each district, an expected allocation is determined using the coefficients resulting from a regression analysis of (a) through (g) of this subsection, evaluated statewide against the total of all school district's prior (~~school year's total to and from transportation~~) year expenditures. If a data element is determined not to be statistically significant, it shall not be included in the calculation of the allocation. The coefficients will be determined using the prior school year fall, winter, and spring reports and prior (~~school~~) year expenditures.

(2) For the calculation of the regression analysis coefficients, the (~~allowable transportation~~) prior year expenditures for each district shall be adjusted as required by the legislature.

(3) The adjusted allocation is the result of modifying the expected allocation by:

- (a) Adding any district car mileage reimbursement; and
- (b) Adding any adjustment resulting from the alternate funding systems identified in WAC 392-141-380; and

(c) Making any deduction resulting from an alternate school year calendar approved by the state board of education under the provisions of RCW 28A.305.141; and

(d) Making any adjustment as required by the legislature.

(4) Each district's actual allocation for student transportation operations is the lesser of the district's prior ~~((school year's total allowable student transportation))~~ year expenditures adjusted as required by the legislature or the adjusted allocation. ~~((Districts contracting for student transportation operations shall have any payments in lieu of depreciation under the provisions of WAC 392-142-245 deducted from the district's allowable transportation expenditures.))~~

(5) The funding assumption for the transportation operation allocation is that kindergarten through twelfth grade (K-12, or whatever grades are enrolled in district schools) school transportation services are provided by the district five days per week, to and from school, before and after the regular school day and operating one hundred eighty days per school year. K-12 service being provided on any other basis is subject to corresponding proration of the operation allocation.

AMENDATORY SECTION (Amending WSR 15-11-075, filed 5/19/15, effective 6/19/15)

WAC 392-141-380 Alternate funding systems for low enrollment districts, nonhigh districts, districts participating in interdistrict transportation cooperatives, and educational service districts operating special transportation services. ~~((After the transition period described in WAC 392-141-370,))~~ The superintendent shall adjust the amount of the transportation operation allocation for low ridership, non-high, districts in interdistrict transportation cooperatives, and educational service districts operating special transportation services in the following manner:

(1) The district's prior school year's transportation funding percentage is compared to the state median percent funded;

(2) If the district's prior year transportation funding percentage is greater than the state median percent funded no adjustment is made; and

(3) If the district's prior year transportation funding percentage is less than the state median percent funded, the allocation shall be adjusted by the difference between the state median percent funded and the district's prior year transportation funding percentage.

AMENDATORY SECTION (Amending WSR 15-11-075, filed 5/19/15, effective 6/19/15)

WAC 392-141-400 Efficiency evaluation review. (1) Each school district's efficiency evaluation will be reviewed annually by the regional transportation coordinators. If a school district's efficiency rating is less than ninety percent, the regional transportation coordinator shall review the school district's transportation operation to identify the factors impacting the ability of the school district to operate an efficient student transportation system. Such factors will include those within the school district's controls and those factors that are beyond the school district's control.

(2) Completed regional transportation coordinator reports on the review of school district efficiency evaluation

will be provided to the legislature prior to December 1st of each year. School districts will be provided an opportunity to respond to the conclusions of the regional transportation coordinator evaluation and such comments will be included in the report to the legislature. Also included in the report are any actions identified by a school district in response to the regional transportation coordinator evaluation.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 392-141-370 Transition and hold harmless provisions.

WSR 16-05-063

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed February 12, 2016, 1:25 p.m., effective March 14, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The rule change enables the agency to allow the retention of required records in electronic format and describes notification responsibilities when a licensee has had any professional license disciplined by a governmental agency.

Citation of Existing Rules Affected by this Order: Amending WAC 308-124C-110 and 308-124C-115.

Statutory Authority for Adoption: RCW 18.85.041.

Adopted under notice filed as WSR 16-01-099 on December 16, 2015.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: February 12, 2016.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124C-110 Accuracy and accessibility of records. (1) Accuracy. All required real estate records shall be accurate, posted and kept up to date.

(2) Location. All required real estate records shall be kept at an address where the real estate firm is licensed to maintain a real estate office. Transactions that have been closed for at least one year can be maintained at one central facility located in Washington. Transactions not stored at the firm location must be available upon demand of the department and maintained in a manner to be readily retrievable. A listing of all transactions must be maintained at the firm's licensed office for all the transactions stored at the remote facility. All records shall be retained and available for inspection by the director or the director's authorized representative for a minimum of three years.

(3) Alternative storage. Records may be stored (~~on permanent storage media, such as optical disk or microfilm, or other storage media, provided the retrieval process does not permit modification of the documents~~) electronically or on remote devices provided retrieval of all documents is immediate. Retrieval must be possible at the firm's licensed office and allow for viewing and printing (~~(the document in its original form. The permanent media storage shall be nonerasable and prevent changes to the stored documents or records)~~) of all documents. To include, but not limited to, initial listing agreement, price reductions or changes in status, initial offers, all counter offers, electronic communications, negotiations, trust account records, and final disposition of the transaction. The designated broker must maintain equipment at firm's location in good repair to allow viewing and printing upon demand by the department. The document storage (~~(media)~~) must be indexed to allow for immediate retrieval of all documents.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124C-115 Suit or complaint notification.

Every licensee shall, within twenty days after service or knowledge thereof, notify the real estate program of the following:

(1) Any criminal complaint, information, indictment, or conviction (including a plea of guilty or nolo contendere) in which the licensee is named as a defendant.

(2) Entry of a civil court order, verdict, or judgment, against the licensee in any court of competent jurisdiction in which the subject matter therein involves any real estate or business-related activity by the licensee. Notification is required regardless of any pending appeal.

(3) Any professional license, certification, or permit held by the licensee which was fined, suspended, revoked, or refused by any governmental agency or entity or can limit the licensee's ability to practice an occupation or profession.

WSR 16-05-064

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed February 12, 2016, 1:31 p.m., effective March 14, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department will be using an outside vendor for taking and processing fingerprints for background checks.

The rule change describes the licensee's responsibilities for providing fingerprints for background checks.

Citation of Existing Rules Affected by this Order: Amending WAC 308-124A-700, 308-124A-727, and 308-124A-775.

Statutory Authority for Adoption: RCW 18.85.171.

Other Authority: RCW 18.85.041.

Adopted under notice filed as WSR 16-01-086 on December 15, 2015.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: February 12, 2016.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124A-700 Application for a license—Fingerprinting. (1) New applicants applying for their first broker's license under chapter 18.85 RCW will be required to submit to a fingerprint (~~(card)~~) background check with the department's authorized vendor.

(2) Applicants applying for their first managing broker's license using alternative qualifications will be required to submit to a fingerprint (~~(card)~~) background check with the department's authorized vendor.

(3) Fingerprint (~~(cards and)~~) background checks are required for every active renewal every six years. If the department background check was within the last six years, then no new background check is required to activate a license.

(4) An application submitted without the required fingerprint (~~(card)~~) background check is considered incomplete.

(5) (~~(When a fingerprint card is rejected, the licensee or applicant must submit to the department a new fingerprint card within twenty-one calendar days of written notice to the address of record with the real estate program. Failure to submit a new fingerprint card will result in a suspension of the real estate license until the fingerprint card is received by the department.~~

~~(6) If the fingerprint card is rejected, the applicant must pay a new fee for fingerprinting and background processing.)~~ When fingerprints are rejected, the department will contact the licensee or applicant via the e-mail address on file with the department. The licensee or applicant must follow

the authorized vendor's procedures for resubmitting fingerprints within twenty-one calendar days of the date the department sends the e-mail. Failure to follow the vendor's fingerprint procedures within twenty-one days will result in a suspension of the real estate license until the vendor's fingerprint procedures are followed. The licensee or applicant will be responsible for any additional fees due.

AMENDATORY SECTION (Amending WSR 10-06-078, filed 3/1/10, effective 7/1/10)

WAC 308-124A-727 Application as broker license for interim period. Applicants for a broker's license may commence working on or after the postmark date of delivery to the department ~~((or on or after the date of hand delivery to the real estate program.))~~ of the following:

- (1) Notice of passing the examination;
- (2) License application form;
- (3) ~~((Fingerprint card.))~~ Verification that the department's authorized vendor fingerprint process was followed; and
- (4) License ~~((and fingerprint))~~ fees.

The completed license application form shall serve as an interim license for a period up to forty-five days unless grounds exist to take disciplinary action against the license under RCW 18.235.130 and 18.85.361.

AMENDATORY SECTION (Amending WSR 10-15-055, filed 7/15/10, effective 8/15/10)

WAC 308-124A-775 Real estate fees. These fees are applicable to all original licenses, examination services, and fee generating services issued or performed after July 1, 2010, and all renewals for existing licenses with expiration date after July 1, 2010. The fees for an original license and renewal include a ten dollar fee which is assessed for the real estate research center for the real estate broker and the real estate managing broker licenses. The following fees shall be charged by the department of licensing:

Title of Fee	Fee
Real estate broker:	
Application/examination	\$138.25
Reexamination	138.25
Original license	146.25
License renewal	146.25
Late renewal with penalty	172.75
Duplicate license	26.50
Certification	26.50
Name or address change, transfer or license activation	0.00
Real estate managing broker:	
Application/examination	\$138.25
Reexamination	138.25
Original license	210.00
License renewal	210.00

Title of Fee	Fee
Late renewal with penalty	236.50
Duplicate license	26.50
Certification	26.50
Name or address change, transfer or license activation	0.00
Real estate firm and assumed name license:	
Original license	\$200.00
License renewal	200.00
Late renewal with penalty	226.50
Name or address change	0.00
Duplicate license	26.50
Certification	26.50
Real estate branch:	
Original license	\$189.50
License renewal	189.50
Late renewal with penalty	216.50
Certification	26.50
Duplicate license	26.50
Name or address change, transfer or license activation	0.00
Fingerprint processing	((35.25)) <u>per vendor schedule</u>
Subsequent fingerprint processing	((30.00)) <u>per vendor schedule</u>
Fingerprints rejected by the department, Washington state patrol or FBI ((will)) <u>may</u> necessitate subsequent fingerprint processing fees.	
((Fingerprinting fee does not include the cost of obtaining prints. Applicants will be responsible for obtaining their fingerprints for their cards.)) <u>Fingerprint rolling fee per vendor schedule.</u>	

**WSR 16-05-065
PERMANENT RULES
BUILDING CODE COUNCIL**

[Filed February 12, 2016, 4:14 p.m., effective July 1, 2016]

Effective Date of Rule: July 1, 2016.

Purpose: To provide editorial corrections to chapter 51-54A WAC. The filing will clarify that the base code edition is the 2015 International Fire Code in WAC 51-54A-003 and 51-54A-007. In WAC 51-54A-0101 the reference to Appendix K/Wildland Urban Interface Code will be restated as Appendix N. Finally, a code reference in WAC 51-54A-1104 will be corrected to cite 1104.2.5 instead of 1104.2.4.

Citation of Existing Rules Affected by this Order:
Amending WAC 51-54A-003, 51-54A-007, 51-54A-0101,
and 51-54A-1104.

Statutory Authority for Adoption: RCW 19.27.031.

Other Authority: RCW 19.27.074.

Adopted under notice filed as WSR 15-24-121 on
December 1, 2015.

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

Number of Sections Adopted at Request of a Nongov-
ernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Ini-
tiative: New 0, Amended 4, Repealed 0.

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

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

Date Adopted: February 3, 2016.

Steve Simpson
Council Chair

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

WAC 51-54A-003 International Fire Code. The
(~~2012~~) 2015 edition of the International Fire Code, pub-
lished by the International Code Council is hereby adopted
by reference with the following additions, deletions, and
exceptions.

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

WAC 51-54A-007 Exceptions. The exceptions and
amendments to the International Fire Code contained in the
provisions of chapter 19.27 RCW shall apply in case of con-
flict with any of the provisions of these rules.

Codes referenced which are not adopted through RCW
19.27.031 or chapter 19.27A RCW shall not apply unless
specifically adopted by the authority having jurisdiction. The
(~~2012~~) 2015 International Wildland Urban Interface Code
is included in this code as Section 8100 with amendments
found in Appendix Chapter (~~(K)~~) N.

The provisions of this code do not apply to temporary
growing structures used solely for the commercial production
of horticultural plants including ornamental plants, flowers,
vegetables, and fruits. "Temporary growing structure" means
a structure that has the sides and roof covered with polyeth-
ylene, polyvinyl, or similar flexible synthetic material and is
used to provide plants with either frost protection or
increased heat retention. A temporary growing structure is
not considered a building for purposes of this code.

The provisions of this code do not apply to the construc-
tion, alteration, or repair of temporary worker housing except

as provided by rule adopted under chapter 70.114A RCW or
chapter 37, Laws of 1998 (2SSB 6168). "Temporary worker
housing" means a place, area, or piece of land where sleeping
places or housing sites are provided by an employer for his or
her employees or by another person, including a temporary
worker housing operator, who is providing such accommoda-
tions for employees, for temporary, seasonal occupancy, and
includes "labor camps" under RCW 70.54.110.

The manufacture, storage, handling, sale and use of fire-
works shall be governed by chapter 70.77 RCW and by chap-
ter 212-17 WAC and local ordinances consistent with chapter
212-17 WAC.

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

**WAC 51-54A-0101 Section 101—Scope and general
requirements.**

101.2.1 Appendices. Provisions in the appendices shall not
apply unless specifically adopted. The State Building Code
Council has determined that a local ordinance adopting
Appendix (~~(K)~~) N Wildland Urban Interface Code may be
adopted by any local government upon notification of the
council.

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

**WAC 51-54A-1104 Means of egress for existing
buildings.**

1104.1 General. Means of egress in existing buildings shall
comply with Section 1030 and 1104.2 through (~~(1104.24)~~)
1104.25.

EXCEPTION: Means of egress conforming to the requirements of the
building code under which they were constructed and
Section 1030 shall not be required to comply with
1104.2 through 1104.22 and (~~(1104.24)~~) 1104.25.

WSR 16-05-070

PERMANENT RULES

HORSE RACING COMMISSION

[Filed February 16, 2016, 7:05 a.m., effective March 18, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Adds a definition for a "vendor" and updates
and corrects both outdated and amended ones.

Citation of Existing Rules Affected by this Order:
Amending WAC 260-12-010.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 16-02-067 on Janu-
ary 4, 2016.

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

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

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

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

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

Date Adopted: February 12, 2016.

Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 13-03-057, filed 1/11/13, effective 2/11/13)

WAC 260-12-010 Definitions. The definitions in this section apply throughout these rules unless the context requires otherwise.

(1) "Added money." Money added to the purse of a race by the association, or other fund, in the amount paid by owners for nominations, entry, and starting fees.

(2) "Allowance race." An overnight race for which there is no claiming price established.

(3) "Also eligible."

(a) A number of eligible horses, properly entered, which were not drawn for inclusion in a race, but which become eligible according to preference or lot if an entry is scratched prior to the scratch time deadline; or

(b) In a trial race, the next preferred contestant that is eligible to participate when an entry is scratched, pursuant to the written conditions of the race.

(4) "Apprentice jockey." A jockey who has not won a certain number of races within a specific period of time who is granted an extra weight allowance as provided in WAC 260-32-370(9).

(5) "Apprentice allowance." A five pound weight allowance given to an apprentice jockey (~~ranging from five to ten pounds~~).

(6) "Authorized agent." A person appointed by a written document signed by the owner with authority to act for the owner.

(7) "Assistant trainer." A person employed by a licensed trainer whom has the authority to represent the trainer in all racing matters. An assistant trainer may also perform all the duties of a groom.

(8) "Association." Any person or persons, associations, or corporations licensed by the commission to conduct parimutuel wagering on a race meet.

(9) "Association employee." Any person hired by a racing association.

(10) "Association grounds." All real property utilized by the association in the conduct of its race meeting, including the race track, grandstand, concession stands, offices, barns, stable area, and parking lots and any other areas under the jurisdiction of the commission.

(11) "Bar shoe." A special shoe with a solid bar that runs across the rear of the shoe for extra protection.

(12) "Barn superintendent." An association employee who is responsible to assign stalls and maintain records of number of horses in a trainer's care on a daily basis.

(13) "Bit." The metal mouthpiece on a bridle used to guide and control a horse.

(14) "Bleeder." A horse that demonstrates exercise induced pulmonary hemorrhaging.

(15) "Blinkers." A hood with different size cups to limit the peripheral vision of a horse.

(16) "Breakage." The remaining cents after parimutuel payoffs are rounded down to a dime or nickel.

(17) "Breeder." For thoroughbreds, the breeder is the owner of the horse's dam at the time of foaling. For quarter horses, appaloosas, arabians and paint horses, the breeder is the owner of the dam at the time of service.

(18) "Cheek pieces." Two pieces of sheepskin or other material which are attached to the cheek pieces of a bridle which may restrict vision.

(19) "Claiming." The act of buying a horse out of a race for a specific price.

(20) "Claim box." A box in a specified location where a claim must be deposited to be valid.

(21) "Claiming race." Races in which horses are entered subject to being claimed for a specified price.

(22) "Clerk of scales." An official who weighs the jockeys prior to and after each race.

(23) "Clocker." An official that times horses when horses are performing an official workout.

(24) "Colors." Racing silks with owners' distinct designs and color worn by jockeys while racing.

(25) "Colt." Male horse under the age of five.

(26) "Commission."

(a) The (~~five-member~~) three-member commission established by RCW 67.16.012; or

(b) The state agency known as the Washington horse racing commission.

(27) "Condition book." A book issued by the racing secretary with specific eligibility conditions for scheduled races.

(28) "Coupled entry." Two or more horses running as a single betting interest for parimutuel wagering purposes.

(29) "Daily double." Type of wager calling for the selection of the winner of two consecutive races.

(30) "Dead heat." Two or more horses in an exact tie at the finish line.

(31) "Denial." The refusal to grant an applicant a license after the applicant has made application for a license, but prior to the individual performing the duties associated with the license.

(32) "Eligible." A horse that is qualified to start in a race as established by the racing secretary's conditions.

(33) "Engagement." A commitment given by a jockey or his/her agent to accept a mount in a specified race.

(34) "Entry."

(a) A horse eligible for and entered in a race.

(b) Two or more horses which are entered or run in a race with common ownership.

(35) "Equipment." Tack carried or used on a racehorse including whips, blinkers, tongue ties, muzzle, nosebands, bits, shadow rolls, martingales, breast plates, bandages, boots and plates.

(36) "Exacta." A wager involving selecting the first two finishers in a race in exact order.

(37) "Exercise rider." A person licensed by the commission to ride horses for the purpose of exercising. Exercise riders working at a race track must be licensed as "Exercise rider - track," while those working at the farm or training centers must be licensed as "Exercise rider - farm" if the trainer wishes to provide their employee industrial insurance coverage under the horse industry account.

(38) "Field." The total horses scheduled to run in a race.

(39) "Filly." A female horse four years and younger.

(40) "Front leg wraps." Bandages that extend at least four inches up the horse's front legs for support.

(41) "Furlong." One-eighth of a mile, two hundred twenty yards, or six hundred sixty feet.

(42) "Furosemide." Generic term for a medication used for the treatment of bleeders.

(43) "Furosemide list." A list of horses maintained by the official veterinarian eligible to race in this jurisdiction on furosemide.

(44) "Gelding." A male horse that has been castrated.

(45) "Groom." A person licensed by the commission who is employed by a licensed trainer to care for the trainer's horses.

(46) "Handicap."

(a) A race in which the racing secretary designates the weight to be carried for each horse.

(b) Making wagering selections on the basis of a horse's past performances.

(47) "Handle." Total amount of money wagered in the parimutuel pool for a race, race card, or a race meet.

(48) "Horse."

(a) A registered filly, mare, colt, horse, gelding or ridgling of a breed that is eligible to race in the state of Washington.

(b) Any male horse five years old or older.

(49) "Intact male." Any male horse, colt, or ridgling.

(50) "Inquiry." A review of a race conducted by the board of stewards to determine if a racing violation was committed.

(51) "Jockey." A person licensed by the commission to ride a horse in a race meet, whether a jockey or an apprentice jockey.

(52) "Jockey fee." The money paid to a jockey for riding in a race.

(53) "Maiden." A horse, which at the time of starting in a race, has never won a race on the flat in any country, at a track which is covered by a recognized racing publication showing the complete results of the race. A maiden who has been disqualified after finishing first is still considered a maiden.

(54) "Mare." A female horse five years old or older.

(55) "Minus pool." A mutuel pool caused when one horse is heavily bet and after all mandatory deductions there is not enough money in the pool to pay the legally prescribed minimum on each winning wager.

(56) "Morning line." A handicapper's approximate odds quoted in the program.

(57) "Mutuel field." A group of horses, with no common ties, coupled by the association for wagering purposes in a single race.

(58) "Net pool price calculations." The method of calculating the parimutuel pools when international pools are conducted (WAC 260-48-800).

(59) "Nerved" or "heel nerved." A horse upon which a digital neurectomy has been performed.

(60) "Nomination." The naming of a horse to a certain race or series of races generally accompanied by payment of a prescribed fee.

(61) "Objection." When a claim of foul is lodged by a jockey, owner, or trainer following the running of the race.

(62) "Official."

(a) When the board of stewards has determined that the order of finish of a race is correct for the mutuel payouts.

(b) An individual designated to perform functions to regulate a race meet.

(63) "Off-track betting." Parimutuel wagering on horse races conducted at a location other than the racing association's grounds, often referred to as a satellite location.

(64) "Optional claiming race." A race offered in which horses may be entered either for a claiming price or under specific allowance conditions.

(65) "Overnight race." A contest for which entries close at a time set by the racing secretary.

(66) "Overweight." Extra weight carried by the jockey that is greater than the listed weight in the official program.

(67) "Owner." Any person licensed by the commission with an ownership interest in a horse, including a lessee. An interest only in the winnings of a horse does not constitute part ownership.

(68) "Owners' bonus." A percentage of the gross mutuel pool the association is required by RCW 67.16.102 to withhold to be paid to owners of Washington bred horses at the conclusion of the meet based on the owner's horse finishing first, second, third or fourth.

(69) "Paddock." Enclosure or area where horses are saddled prior to the post parade.

(70) "Paddock judge." An official who monitors the saddling of the horses before a race to ensure consistent equipment on each horse and supervises the paddock.

(71) "Penalty weight." Additional weight to be carried by the horse as stated in the condition book.

(72) "Pick n." A type of wager requiring the patron to select the winners of a specified number of consecutive races.

(73) "Pick three." A type of wager requiring the patron to select the winners of three consecutive races.

(74) "Place." To finish second in a race.

(75) "Poles." Markers positioned around the track indicating the distance to the finish line.

(76) "Pony rider." A person licensed by the commission to escort horses either in the morning during training or in the afternoon during racing. A pony rider may not exercise horses. Pony riders working at a race track must be licensed as "Pony rider - track," while those working at the farm or training centers must be licensed as "Pony rider - farm" if the trainer wishes to provide their employee industrial insurance coverage under the horse industry account.

(77) "Post." The starting position on the track.

(78) "Post parade." Horses passing in front of the stewards stand and public prior to warming up for the race.

(79) "Post position." Position assigned to the horse to break from the starting gate determined by lot at the time of the draw of the race.

(80) "Post time." The scheduled time for the horses to arrive at the starting gate for a race.

(81) "Program/paper trainer." A licensed trainer who, solely for the purposes of the official race program, is identified as the trainer of a horse that is actually under the control of and trained by another person who may or may not hold a current trainer's license.

(82) "Purse." The amount of prize money offered by the racing association for each race.

(83) "Protest." A complaint filed regarding a horse running in a race that is filed in writing with the board of stewards.

(84) "Quinella." A wager in which the patron selects the first two finishers regardless of order.

(85) "Race meet." The dates of live horse racing that have been approved by the commission. (Also refer to RCW 67.16.010.)

(86) "Racing plates." Shoes designed for racehorses, usually made of aluminum.

(87) "Racing secretary." An official who drafts conditions of each race and accepts entries and conducts the post position draw of the races.

(88) "Receiving barn." Structure where horses may be identified prior to proceeding to the paddock.

(89) "Recognized race meet." Any race meet involving parimutuel wagering held under the sanction of a racing authority.

(90) "Retired horse." A horse that at the time of sale or gift is no longer fit to race. No retired horse is eligible to run in a race under the jurisdiction of the commission.

(91) "Revocation." The cancellation of an existing license for a minimum of three hundred sixty-five days and up to an indefinite period of time (e.g., life-time). Individuals revoked are ineligible for a license during the period of revocation. Individuals revoked are banned from all facilities under the jurisdiction of the commission during the period of their revocation.

(92) "Ridgling." A male horse with one or both testicles undescended.

(93) "Scale of weights." Fixed weight assignments to be carried by horses according to age, sex, distance, and time of year.

(94) "Scratch." Withdrawing an entered horse from the race after the closing of entries.

(95) "Scratch time." The established deadline for the withdrawal of entries from a scheduled performance.

(96) "Sex allowance." Weight allowance given to fillies and mares when competing against males.

(97) "Show." To finish third in a race.

(98) "Simulcast." Broadcasting a live race from another racing association for purposes of parimutuel wagering on that race, or sending a broadcast of a live race to another racing association for purposes of parimutuel wagering on that race.

(99) "Spouse groom." The spouse of a trainer, licensed by the commission and permitted to perform all the duties of a groom, but is not extended industrial insurance coverage under the horse industry account.

(100) "Stake race." A race for which nominations close more than seventy-two hours in advance of its running and for which owners or nominators contribute money toward its purse, or a race for which horses are invited by an association to run for a guaranteed purse of thirty thousand dollars or more without payment of nomination, entry, or starting fees.

(101) "Stallion." A male horse or colt which can be used for breeding purposes.

(102) "Standard price calculations." A method of calculating the parimutuel payoffs used mostly when calculating pools nationally.

(103) "Starter."

(a) A horse is a "starter" for a race when the stall doors of the starting gate open in front of it at the time the starter dispatches the horses; or

(b) An official responsible for dispatching the horses from the starting gate.

(104) "Starter's list." A list, maintained by the official starter, of horses that have been unruly when loading in the starting gate. Horses on the starter's list are ineligible to enter.

(105) "Starter race." An allowance or handicap race restricted to horses who have started for a specific claiming price or less.

(106) "Stewards." The officials designated by the commission responsible for enforcing the rules of racing.

(107) "Stewards' list." A list, maintained by the stewards, of horses which are ineligible to enter for various reasons, e.g., poor performance, ownership disputes, etc.

(108) "Suspension." The temporary loss of license privileges for a specific period of time (not to exceed three hundred sixty-five days), or until specific conditions are met. All suspensions for a specific period of time will be in calendar days; with the exception of riding suspensions, which will be race days. Individuals suspended may be banned from all facilities under the jurisdiction of the commission during the period of their suspension.

(109) "Test barn." The enclosure to which selected horses are taken for post race testing.

(110) "Tongue tie." Bandage or other apparatus used to tie down a horse's tongue to prevent the tongue from getting over the bit, which can affect the horse's breathing and the jockey's ability to control the horse.

(111) "Trainer." A person who holds a valid trainer's license who has a horse eligible to race under his/her care, custody, or control at the time of entry.

(112) "Trifecta." A wager picking the first three finishers in exact order in a specific race.

(113) "Turf course." A racing surface comprised of grass.

(114) "Vendor." Any individual or business which offers a product or service in the restricted area of the grounds.

(115) "Veterinarian's list." A list of horses ineligible to enter due to sickness, lameness, or other conditions as determined by an official veterinarian.

~~((115))~~ (116) "Walk over." A race that has only one participant.

~~((116))~~ (117) "Washington bred." A horse that was foaled in the state of Washington.

~~((117))~~ (118) "Washington race track." A race track licensed and regulated by the commission during the track's licensed race meet and periods of training.

~~((118))~~ (119) "Weigh-in." The clerk of scales weighing of a jockey immediately follows the race.

~~((119))~~ (120) "Weigh-out." The clerk of scales weighing of a jockey prior to a race.

~~((120))~~ (121) "Weight allowance." A reduction in weight to be carried by a horse as established by the conditions for each race.

~~((121))~~ (122) "Workout" or "official workout." An exercise at moderate to extreme speed for a predetermined distance of a horse as required in WAC 260-40-105 to make a horse eligible to be entered or run in a race.

strip when not in use. The ambulance must be a vehicle that restricts view of the injured horse and large enough to accommodate a horse in distress. The ambulance must be able to navigate on the racetrack during all weather conditions and transport a horse off the racing surface. The ambulance must be equipped with:

(a) Large, portable screens to shield a horse from public view;

(b) A system to facilitate loading an injured horse;

(c) Adequate means of loading a horse that is down;

(d) A rear door and a door on each side;

(e) A shielded area for the person who is attending to the horse; and

(f) An adequate area for the storage of water and veterinary drugs and equipment.

(2) A racing association may not conduct a race unless an equine ambulance or an official veterinarian approved substitute is available.

(3) The ~~((official veterinarian))~~ equine ambulance, its supplies and attendants and the operating procedures for the equine ambulance are subject to review and approval by the official veterinarian.

WSR 16-05-071

PERMANENT RULES

HORSE RACING COMMISSION

[Filed February 16, 2016, 7:06 a.m., effective March 18, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To correct a typographical error discovered in the rule.

Citation of Existing Rules Affected by this Order: Amending WAC 260-20-165.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 16-02-069 on January 4, 2016.

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

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

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

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

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

Date Adopted: February 12, 2016.

Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 07-11-115, filed 5/18/07, effective 6/18/07)

WAC 260-20-165 Equine ambulance. (1) A racing association must provide an equine ambulance staffed by trained personnel on association grounds each day that the racetrack is open for racing or training. The ambulance must be properly ventilated and kept at an entrance to the racing

WSR 16-05-072

PERMANENT RULES

HORSE RACING COMMISSION

[Filed February 16, 2016, 7:06 a.m., effective March 18, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Adds a time restriction in which a trainer can assume responsibility for a horse that was previously in their care to curtail entry day transfer[s] that attempt to circumvent the number of horses a trainer may enter in an overnight race.

Citation of Existing Rules Affected by this Order: Amending WAC 260-28-100.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 16-02-068 on January 4, 2016.

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

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

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

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

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

Date Adopted: February 12, 2016.

Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 07-07-007, filed 3/8/07, effective 4/8/07)

WAC 260-28-100 Change of trainers. (1) If an owner changes trainers, he/she must notify the racing commission within seventy-two hours. This form must be signed by the new trainer acknowledging that he/she accepts responsibility for the horse or horses, and by the previous trainer to release any obligations in connection with the horse or horses.

(2) Following a transfer of trainers, the horse may not be transferred back to the original trainer for a minimum of thirty days without approval of the board of stewards.

WSR 16-05-073
PERMANENT RULES
HORSE RACING COMMISSION

[Filed February 16, 2016, 7:07 a.m., effective March 18, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Adds a section to define who must obtain a "vendors" license to provide products and services in the restricted area.

Citation of Existing Rules Affected by this Order: Amending chapter 260-36 WAC.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 16-02-066 on January 4, 2016.

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

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

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

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

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

Date Adopted: February 12, 2016.

Douglas L. Moore
Executive Secretary

NEW SECTION

WAC 260-36-055 Vendors license required. (1) Any individual or business that offers a service or product for a fee in the restricted area of the grounds must obtain a vendors license. These services include, but are not limited to:

- (a) Feed and bedding;
- (b) Equine massage or dentistry;
- (c) Farriers;
- (d) Horse transportation;
- (e) Tack and supplies; and
- (f) Vitamins and supplements.

(2) For horse transportation companies, the manager or owner of the business must obtain a license.

Drivers designated for the route that normally includes the track must obtain a service employee license.

(3) The commission may require proof of a Washington state business license prior to licensure.

WSR 16-05-083
PERMANENT RULES
DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed February 16, 2016, 11:15 a.m., effective March 18, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 246-817-110 Dental licensure—Initial eligibility and application requirements and 246-817-150 Licenses—Persons licensed or qualified out-of-state who are faculty at school of dentistry—Conditions. ESSB 5810 (chapter 72, Laws of 2015) modified RCW 18.32.100 deleting the sworn oath requirement on the dentist's license application. The adopted rule removes the requirement that license applications be notarized.

Citation of Existing Rules Affected by this Order: Amending WAC 246-817-110 and 246-817-150.

Statutory Authority for Adoption: RCW 18.32.0365.

Other Authority: RCW 18.32.100 as amended by ESSB 5810 (chapter 72, Laws of 2015).

Adopted under notice filed as WSR 15-19-141 on September 22, 2015.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: November 23, 2015.

Charles Hall, DDS, Chair
Dental Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 08-23-019, filed 11/6/08, effective 12/7/08)

WAC 246-817-110 Dental licensure—Initial eligibility and application requirements. To be eligible for Washington state dental licensure, the applicant must provide:

(1) A completed application and fee. The applicant must submit a signed(~~(-notarized)~~) application and required fee as defined in WAC 246-817-990;

(2) Proof of graduation from a dental school approved by the DQAC:

(a) DQAC recognizes only those applicants who are students or graduates of dental schools in the United States or Canada, approved, conditionally or provisionally, by the Commission on Dental Accreditation of the American Dental Association. The applicant must have received, or will receive, a Doctor of Dental Surgery (DDS) or Doctor of Dental Medicine (DMD) degree from that school;

(b) Other dental schools which apply for DQAC approval and which meet these adopted standards to the DQAC's satisfaction may be approved, but it is the responsibility of a school to apply for approval and of a student to ascertain whether or not a school has been approved;

(3) Proof of successful completion of the National Board Dental Examination Parts I and II, or the Canadian National Dental Examining Board Examination. An original scorecard or a certified copy of the scorecard shall be accepted. Exception: Dentists who obtained initial licensure in a state prior to that state's requirement for successful completion of the national boards, may be licensed in Washington, provided that the applicant provide proof that their original state of licensure did not require passage of the national boards at the time they were initially licensed. Applicants need to meet all other requirements for licensure;

(4) Proof of graduation from an approved dental school. The only acceptable proof is an official, posted transcript sent directly from such school, or in the case of recent graduates, a verified list of graduating students submitted directly from the dean of the dental school. Graduates of nonaccredited dental schools must also meet the requirements outlined in WAC 246-817-160;

(5) A complete listing of professional education and experience including college or university (predental), and a complete chronology of practice history from the date of dental school graduation to present, whether or not engaged in activities related to dentistry;

(6) Proof of completion of seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8;

(7) Proof of malpractice insurance if available, including dates of coverage and any claims history;

(8) Written certification of any licenses held, submitted directly from another licensing entity, and including license number, issue date, expiration date and whether applicant has been the subject of final or pending disciplinary action;

(9) Proof of successful completion of an approved:

(a) Practical/clinical examination; or

(b) A qualifying postgraduate residency program, approved by or administered under the direction of the DQAC;

(10) Proof of successful completion of an approved written jurisprudence examination;

(11) A recent 2" x 2" photograph, signed, dated, and attached to the application;

(12) Authorization for background inquiries to other sources may be conducted as determined by the DQAC, including but not limited to the national practitioner data bank and drug enforcement agency. Applicants are responsible for any fees incurred in obtaining verification of requirements;

(13) Any other information for each license type as determined by the DQAC.

AMENDATORY SECTION (Amending WSR 11-11-073, filed 5/17/11, effective 6/17/11)

WAC 246-817-150 Licenses—Persons licensed or qualified out-of-state who are faculty at school of dentistry—Conditions. (1) The department shall provide an application for faculty licensure upon receipt of a written request from the dean of the University of Washington, School of Dentistry.

(2) Applicants for faculty licensure shall submit a signed(~~(-notarized)~~) application, including applicable fees, and other documentation as required by the DQAC.

(3) The dean of the University of Washington, School of Dentistry, or his designee, shall notify the department of health of any changes in employment status of any person holding a faculty license.

WSR 16-05-087
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed February 16, 2016, 3:26 p.m., effective April 1, 2016]

Effective Date of Rule: April 1, 2016.

Purpose: The pension discount rate is the interest rate used to account for the time value of money when evaluating the present value of future pension payments. Currently WAC 296-14-8810 sets the pension discount rate at 6.4 percent. The department has worked with the workers' compensation advisory committee to develop a plan for reducing the pension discount rate annually, through 2022, until it reaches 4.5 percent. The purpose of this rule making is to reduce the current pension discount rate to 6.3 percent in 2016.

Statutory Authority for Adoption: RCW 51.04.020, 51.44.070(1), 51.44.080.

Adopted under notice filed as WSR 16-01-164 on December 22, 2015.

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

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

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

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

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

Date Adopted: February 16, 2016.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 15-02-061, filed 1/6/15, effective 4/1/15)

WAC 296-14-8810 Pension tables, pension discount rate and mortality tables. (1) The department uses actuarially determined pension tables for calculating pension annuity values, required pension reserves, and actuarial adjustments to monthly benefit amounts.

(a) The department's actuaries calculate the pension tables based on:

- (i) Mortality tables from nationally recognized sources;
- (ii) The department's experience with rates of mortality, disability, and remarriage for annuity recipients; and
- (iii) A pension discount rate of ~~((6-4))~~ 6.3 percent.

(b) The department's actuaries periodically investigate whether updates to the mortality tables relied on or the department's experience with rates of mortality, disability, and remarriage by its annuity recipients warrant updating the department's pension tables.

(2) To obtain a copy of any of the department's pension tables, contact the department of labor and industries actuarial services.

WSR 16-05-088

PERMANENT RULES

DEPARTMENT OF HEALTH

(Veterinary Board of Governors)

[Filed February 16, 2016, 3:36 p.m., effective March 18, 2016]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 246-934-100 Sexual misconduct, the veterinary board of governors has modified the rule to clarify what forcible or nonconsensual acts are within the definition of sexual misconduct by a veterinary provider.

Citation of Existing Rules Affected by this Order: Amending WAC 246-934-100.

Statutory Authority for Adoption: RCW 18.92.030 and 18.130.050.

Adopted under notice filed as WSR 15-19-057 on September 11, 2015.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-934-100(2), the word "sexual" was added before the word "contact" to specify that sexual contact as described in the rule constitutes sexual misconduct. The omission of the word was an administrative error during the revision of an earlier version of the rule.

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

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

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

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

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

Date Adopted: December 7, 2015.

Ethan C. Nelson, DVM
Board Chair

AMENDATORY SECTION (Amending WSR 07-06-027, filed 2/28/07, effective 3/31/07)

WAC 246-934-100 Sexual misconduct. (1) A health care provider shall not engage, or attempt to engage, in sexual misconduct with a key party, inside or outside the health care setting. Key party initiation or consent does not excuse or negate the health care provider's responsibility. Sexual misconduct shall constitute grounds for disciplinary action. Sexual misconduct includes, but is not limited to:

- (a) Sexual intercourse;
- (b) Touching the breasts, genitals, anus or any sexualized body part;
- (c) Rubbing against a key party for sexual gratification;
- (d) Kissing, touching, fondling or caressing of a romantic or sexual nature;
- (e) Encouraging masturbation or other sex act in the presence of the health care provider;
- (f) Masturbation or other sex act by the health care provider in the presence of the key party;
- (g) Suggesting the possibility of a sexual or romantic dating relationship;
- (h) Discussing the sexual history, preferences or fantasies of the health care provider;
- (i) Any behavior, gestures, or expressions that may reasonably be interpreted as seductive or sexual;
- (j) Making statements regarding the key party's body, sexual history, or sexual orientation;
- (k) Any verbal or physical contact which may reasonably be interpreted as sexually demeaning;
- (l) Taking sexually explicit photographs or films of a key party;
- (m) Showing a key party sexually explicit photographs.

(2) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense as defined in RCW 9.94A.-030.

(3) A health care provider shall not:

- (a) Offer to provide health care services or professional knowledge in exchange for sexual favors;
- (b) Use health care information to contact the key party for the purpose of engaging in sexual misconduct or to meet the health care provider's sexual needs.

~~((4))~~ (4) A health care provider shall not engage, or attempt to engage, in the activities listed in subsection (1) of this section with a former key party when:

- (a) There is a significant likelihood that the key party will seek or require additional services from the health care provider; or
- (b) The provider uses or exploits the trust, knowledge, influence or emotions derived from the professional relationship; or

(c) The health care provider uses or exploits privileged information or access to privileged information to meet the health care provider's sexual needs.

~~((4))~~ (5) When evaluating whether a health care provider is attempting to engage, or has engaged, in sexual misconduct, the board may consider factors~~((7))~~ including, but not limited to:

(a) Documentation of a formal termination and the circumstances of termination of the health care provider-patient relationship;

(b) Transfer of care to another health care provider;

(c) Duration of the health care provider-patient relationship;

(d) Amount of time that has passed since the last health care services were rendered to the patient;

(e) Communication between the health care provider and the key party between the last health care services rendered and commencement of the personal relationship;

(f) Nature of the patient's health condition during and since the professional relationship;

(g) The key party's emotional dependence and vulnerability; and

(h) Normal revisit cycle for the profession and service.

~~((5))~~ (6) These rules do not prohibit:

(a) Providing health care services in case of emergency where the services cannot or will not be provided by another health care provider;

(b) Contact that is necessary for legitimate health care purpose and that meets the standard of care appropriate to the profession; or

(c) Providing health care services for a legitimate health care purpose to an animal patient for a key party who is in a preexisting, established personal relationship with a health care provider where there is no evidence of, or potential for, exploiting the key party.

~~((6))~~ (7) Sexual conduct or sexual contact with an animal as defined in RCW 16.52.205 is unprofessional conduct. Violation of RCW 16.52.205 will be reported to the appropriate jurisdiction.

WSR 16-05-097

PERMANENT RULES

UNIVERSITY OF WASHINGTON

[Filed February 17, 2016, 8:35 a.m., effective March 28, 2016]

Effective Date of Rule: March 28, 2016.

Purpose: To amend chapter 478-120 WAC, Student conduct code for the University of Washington, and WAC 478-108-010 Matters subject to brief adjudication. The proposed amendments to the student conduct code are designed to clarify expectations for students' conduct while making the chapter easier to navigate. Several of the new proposed sections draw heavily from the existing WAC chapter by pulling out important concepts or rights that were buried in multiple sections of the current conduct code into their own sections. This amended code more clearly outlines students' rights and responsibilities while preserving the general procedures for imposing disciplinary sanctions through the informal hear-

ing, the university disciplinary committees, the faculty appeal board, and the president's office.

Also included is an amendment to WAC 478-108-010, which lists those matters subject to a brief adjudicative process at the university, now clarifying that they include proceedings before a university disciplinary committee.

Citation of Existing Rules Affected by this Order: Repealing WAC 478-120-025 and 478-120-050; and amending WAC 478-108-010, 478-120-010, 478-120-020, 478-120-030, 478-120-040, 478-120-065, 478-120-075, 478-120-085, 478-120-095, 478-120-100, 478-120-105, 478-120-115, 478-120-125, 478-120-135, 478-120-140, and 478-120-145.

Statutory Authority for Adoption: RCW 28B.20.130.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 16-01-180 on December 22, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 8, Amended 11, Repealed 0; Federal Rules or Standards: New 8, Amended 11, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 10, Amended 16, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 10, Amended 16, Repealed 2.

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

Date Adopted: February 11, 2016.

Rebecca Goodwin Deardorff
Director of Rules Coordination

AMENDATORY SECTION (Amending WSR 14-17-097, filed 8/19/14, effective 9/19/14)

WAC 478-108-010 Matters subject to brief adjudication. This rule is adopted in accordance with RCW 34.05.482 through 34.05.494, the provisions of which are hereby adopted. Brief adjudicative procedures shall be used in all matters related to:

(1) Appeals from residency classifications under RCW 28B.15.013 as established in chapter 478-160 WAC;

(2) Appeals from traffic and parking violations, and skateboard impoundment, as provided for in chapters 478-116, 478-117 and 478-118 WAC;

(3) Challenges to contents of educational records as provided for in chapter 478-140 WAC;

(4) Proceedings under the animal control policy as detailed in chapter 478-128 WAC;

(5) Requests for reconsideration of admission decisions as provided for in WAC 478-160-060;

(6) Appeals of library charges as provided in chapter 478-168 WAC;

(7) Reviews of denials of public records requests as provided in chapter 478-276 WAC;

(8) Federal financial aid appeals as provided for by federal law; ~~(and)~~

(9) Collection of outstanding debts owed by students or employees; and

(10) Disciplinary proceedings before a university disciplinary committee as provided in chapter 478-120 WAC.

AMENDATORY SECTION (Amending WSR 07-23-068, filed 11/19/07, effective 12/20/07)

WAC 478-120-010 Student conduct code—Authority. Pursuant to chapter 34.05 RCW and the authority granted by RCW 28B.20.130, the board of regents of the University of Washington has established the following ~~((regulations on))~~ rules regarding student conduct and student discipline.

NEW SECTION

WAC 478-120-012 Preamble. The University of Washington (university) is a public institution responsible for providing instruction in higher education, for advancing knowledge through scholarship and research, and for providing related services to the community. As a center of learning, the university also has the obligation to maintain conditions conducive to the freedom of inquiry and expression to the maximum degree compatible with the orderly conduct of its functions. For these purposes, the university is governed by rules, regulations, procedures, policies, and standards of conduct, including this conduct code, that safeguard its functions and protect the rights and freedoms of all members of the university community.

NEW SECTION

WAC 478-120-014 Definitions. For the purposes of this conduct code, the following definitions apply:

(1) **"Advisor"** is a person selected by a respondent or a complainant to provide support and guidance in hearings under this conduct code.

(2) **"Allegation of misconduct"** is any report of an alleged violation of this conduct code, which may include, but is not limited to, a police report, an incident report, a witness statement, other documentation, or a verbal report or written statement from a complainant or a third party.

(3) **"Attorney"** is a person permitted to practice law in Washington state.

(4) **"Complainant"** is a student or another member of the university community who reports that a violation of this conduct code has been committed against him or her. In any case involving an allegation of sexual misconduct as defined in this conduct code, a complainant is afforded certain rights under this conduct code including, but not limited to:

(a) The right to be informed of all orders issued in the disciplinary case in which he or she is a complainant;

(b) The right to appeal to the faculty appeal board an initial order issued by a conduct officer;

(c) The right to request presidential review of an initial order issued by the faculty appeal board; and

(d) The right to be accompanied to all hearings by an advisor and/or an attorney.

(5) **"Conduct officer"** is a university official who has the authority to initiate disciplinary proceedings, conduct investigations and informal hearings, and issue initial orders under this conduct code.

(6) **"FERPA"** refers to the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) and its implementing regulations (34 C.F.R. Part 99).

(7) **"Initial order"** refers to an initial written decision issued in a disciplinary matter by a conduct officer, a university disciplinary committee, or the faculty appeal board in accordance with the provisions of this conduct code.

(8) **"Parties"** means collectively the conduct officer and the respondent. In any case involving an allegation of sexual misconduct, any complainant may elect to participate as a party in accordance with the provisions of this conduct code.

(9) **"Proceedings"** means all processes related to the investigation and adjudication of a disciplinary matter under this conduct code including, but not limited to, investigations, informal and formal hearings, administrative review, and requests for reconsideration of a final order.

(10) **"Respondent"** is any student accused of misconduct under this conduct code. Each respondent is afforded certain rights including, but not limited to:

(a) The right to be informed of all orders issued in the respondent's disciplinary case;

(b) The right to appeal an initial order issued by a conduct officer and a university disciplinary committee;

(c) The right to request a presidential review of an initial order issued by the faculty appeal board; and

(d) The right to be accompanied to all hearings by an advisor and/or an attorney.

(11) **"Sexual misconduct"** includes committing, or aiding, soliciting, or attempting the commission of, the following prohibited conduct: Sexual assault, sexual harassment, sexual exploitation, indecent exposure, relationship violence, stalking, and domestic violence.

(12) **"Student"** is any person enrolled in or taking courses at or through the university, either full-time or part-time, including credit, noncredit, online, and nondegree courses, and any person who has been notified of acceptance for admission by the university. A student who withdraws from a course or from the university, or completes his or her courses after the date of an alleged violation, or who is not enrolled for a particular quarter or quarters, but has a continuing relationship with the university, is still considered a student for purposes of this conduct code.

(13) **"Student organization"** is a group of students that has complied with the requirements for university recognition or who otherwise are granted any rights or privileges by the university as a university affiliate. Student organizations include, but are not limited to, athletic teams or clubs, registered student organizations (RSOs), university service clubs, and sororities and fraternities. (Student organizations are also subject to the process and procedures outlined in the *RSO Policy Guide* and/or the organization's applicable recognition agreement.)

(14) **"University community"** includes all university students and employees. It also includes guests of and visitors to the university during the time they are present on university premises.

(15) "**University official**" is an employee of the university performing his or her assigned administrative, professional, or paraprofessional duties.

(16) "**University premises**" includes all of the university's campus buildings, grounds, and facilities, all of its extension and research locations, and all other university-leased, owned, or managed buildings, grounds, and facilities, including its global learning centers and study abroad program sites, as well as university sponsored and/or hosted online platforms.

NEW SECTION

WAC 478-120-016 Statement of jurisdiction. (1) This conduct code applies to all students from the time of admission through the actual conferral of a degree, including any period between terms of enrollment.

(2) The university shall have the authority to hold students accountable under this conduct code for misconduct that occurs on any university premises or in connection with any university-sponsored event or activity.

(3) The university may also hold students accountable under this conduct code for off campus misconduct (i.e., misconduct that does not occur on university premises or in the context of a university-sponsored event or activity) that the university reasonably determines adversely affects a university interest. Nothing in this subsection shall be construed as being intended to protect any person or class of persons from injury or harm.

(4) Disciplinary proceedings may be initiated under the conduct code regardless of whether or not the incident in question is the subject of criminal or civil proceedings.

(5) Nothing in this conduct code shall be construed to limit academic action that may be taken by schools, colleges, or programs against a respondent based on an established violation of this conduct code that demonstrates a failure to meet the academic and/or professional standards of the school, college, or program.

(6) Other departments or units of the university have proceedings separate and distinct from this conduct code. For example:

(a) Campus parking and traffic regulations are under the general jurisdiction of the transportation services department and the police department at the University of Washington Seattle campus and under the jurisdiction of public safety officers at the University of Washington Bothell and Tacoma campuses. See chapters 478-116, 478-117 and 478-118 WAC.

(b) The library fines appeals committee has the authority to consider appeals of library charges. See chapter 478-168 WAC.

(7) Nothing in this conduct code will be construed to deny students their legally and/or constitutionally protected rights.

AMENDATORY SECTION (Amending WSR 13-14-002, filed 6/19/13, effective 7/20/13)

WAC 478-120-020 Standards of conduct. (1) ((The university is a public institution having special responsibility for providing instruction in higher education, for advancing

knowledge through scholarship and research, and for providing related services to the community. As a center of learning, the university also has the obligation to maintain conditions conducive to freedom of inquiry and expression to the maximum degree compatible with the orderly conduct of its functions. For these purposes, the university is governed by the rules, regulations, procedures, policies, and standards of conduct that safeguard its functions and protect the rights and freedoms of all members of the academic community.

(2)) Admission to the university carries with it the presumption that students will conduct themselves as responsible members of the ((academic)) university community. As a condition of enrollment, all students assume responsibility to observe standards of conduct that will contribute to the pursuit of academic goals and to the welfare of the ((academic)) university community. That responsibility includes, but is not limited to:

(a) Practicing high standards of academic and professional honesty and integrity;

(b) Respecting the rights, privileges, and property of others ~~((members of the academic community and visitors to the campus, and refraining from any conduct that would interfere with university functions or endanger the health, welfare, or safety of other persons))~~;

(c) Refraining from any conduct that would substantially disrupt or materially interfere with university operations;

(d) Refraining from any conduct that would cause harm to or endanger the health, safety, or welfare of other persons; and

(e) Complying with the rules, regulations, procedures, policies, standards of conduct, and orders of the university and its schools, colleges, ((and)) departments((-

(3) ~~Specific instances of misconduct include, but are not limited to:~~

(a) ~~Conduct that intentionally and substantially obstructs or disrupts teaching or freedom of movement or other lawful activities on university premises or in connection with any university-sponsored event or activity and is not constitutionally and/or legally protected;~~

(b) ~~Physical abuse of any person, or conduct intended to threaten imminent bodily harm or to endanger the health or safety of any person on university premises;~~

(c) ~~Conduct on university premises constituting a sexual offense, whether forcible or nonforcible, such as rape, sexual assault, or sexual harassment;~~

(d) ~~Malicious damage to or malicious misuse of university property, or the property of any person where such property is located on university premises;~~

(e) ~~Refusal to comply with any lawful order to leave university premises or any portion thereof;~~

(f) ~~Possession or use of firearms, explosives, dangerous chemicals or other dangerous weapons or instrumentalities on university premises, except for authorized university purposes, unless prior written approval has been obtained from the university chief of police, or any other person designated by the president of the university (see WAC 478-124-020 (2)(c)) (legal defense sprays are not covered by this section);~~

(g) ~~The possession, use, distribution, or manufacture of controlled substances (as defined in chapter 69.50 RCW or Title 21 U.S.C. Sec. 802), or of alcohol, on university prem-~~

ises or during university-sponsored activities, where such possession, use, distribution, or manufacture is illegal under federal, state, or local law;

~~(h) Intentionally inciting others to engage immediately in any unlawful activity, which incitement leads directly to such conduct on university premises;~~

~~(i) Hazing, or conspiracy to engage in hazing, which includes:~~

~~(i) Any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group, that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending the university; and~~

~~(ii) Conduct associated with initiation into a student organization or living group, or any pastime or amusement engaged in with respect to an organization or living group not amounting to a violation of (i)(i) of this subsection, but including such conduct as humiliation by ritual act and sleep deprivation. Consent is no defense to hazing. Hazing does not include customary athletic events or other similar contests or competitions;~~

~~(j) Falsely reporting a violation of the student conduct code.~~

~~(4) Disciplinary action may be taken in accord with this chapter regardless of whether that conduct also involves an alleged or proven violation of law.~~

~~(5) An instructor has the authority to exclude a student from any class session in which the student is disorderly or disruptive. If the student persists in the disorderly or disruptive conduct, the instructor should report the matter to the dean of the school or college, or, at the University of Washington Bothell and Tacoma campuses, to the dean or director of the program in which the student is enrolled. (See WAC 478-120-030(3).)~~

~~(6) Nothing herein shall be construed to deny students their legally and/or constitutionally protected rights), units, and programs.~~

~~(2) The disciplinary sanctions specified in WAC 478-120-040 may be imposed on any student or student organization found to have committed, to have assisted with the commission of, or to have attempted to commit any act of misconduct that is in violation of the general standards of conduct in subsection (1) of this section, or any of the prohibited conduct specified in WAC 478-120-024.~~

NEW SECTION

WAC 478-120-024 Prohibited conduct. Specific instances of misconduct include, but are not limited to:

(1) **Abuse of others.** Abuse of others includes assault and other forms of physical abuse of any person, or any conduct intended to threaten bodily harm or to endanger the health or safety of any person.

(2) **Abuse of the student conduct process.** Abuse of the student conduct process includes:

(a) Knowingly making false allegations of misconduct under this conduct code;

(b) Attempting to coerce a person not to make a report or to participate in proceedings under this conduct code;

(c) Attempting to influence the impartiality or participation of a member of a university disciplinary committee or the faculty appeal board, any conduct officer, or any reviewing officer; or

(d) Influencing or attempting to influence another person to commit an abuse of the student conduct process.

(3) **Academic misconduct.** Academic misconduct includes:

(a) "Cheating," which includes, but is not limited to:

(i) The use of unauthorized assistance in taking quizzes, tests, or examinations; or

(ii) The acquisition, use, or distribution of unpublished materials created by another student without the express permission of the original author(s).

(b) "Falsification," which is the intentional use or submission of falsified data, records, or other information including, but not limited to, records of internship or practicum experiences or attendance at any required event(s). Falsification also includes falsifying scientific and/or scholarly research.

(c) "Plagiarism," which is the submission or presentation of someone else's words, composition, research, or expressed ideas, whether published or unpublished, without attribution. Plagiarism includes, but is not limited to:

(i) The use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment; or

(ii) The unacknowledged use of materials prepared by another person or acquired from an entity engaging in the selling of term papers or other academic materials.

(d) Prohibited collaboration.

(e) Engaging in behavior specifically prohibited by an instructor in the course of class instruction or in a course syllabus.

(f) Multiple submissions of the same work in separate courses without the express permission of the instructor(s).

(g) Taking deliberate action to destroy or damage another's academic work in order to gain an advantage for oneself or another.

(h) The recording of instructional content without the express permission of the instructor(s), and/or the dissemination or use of such unauthorized records.

(4) **Acts of dishonesty.** Acts of dishonesty include:

(a) Knowingly furnishing false information to any university official;

(b) Impersonating, or providing false information in the name of, any university official;

(c) Forging, altering, or misusing any university document or record, or instrument of identification;

(d) Falsely claiming an academic credential; and

(e) Providing dishonest or misleadingly incomplete information or answers on application forms or in response to other official university requests for information.

(5) **Aiding, solicitation, and attempt.** The following conduct is prohibited:

(a) Aiding or abetting another student or student organization in the commission of any misconduct prohibited by this conduct code;

(b) Requesting, hiring, or encouraging another person to commit any act of misconduct prohibited by this conduct

code, either intending that the other person commit the misconduct or with the knowledge that the other person intends to commit the misconduct; or

(c) Attempting to commit any act of misconduct prohibited by this conduct code.

(6) **Alcohol violations.** The unlawful possession, use, distribution, or manufacture of alcohol is prohibited. A conduct officer may elect not to initiate disciplinary action under this subsection against a student who, while in the course of helping another student seek medical assistance, admits to the unlawful possession or use of alcohol. Generally, no disciplinary action under this subsection will be initiated against a complainant or another reporting student, who admits to the possession or use of alcohol (in violation of this subsection) in connection with an incident of sexual misconduct.

(7) **Computer abuses.** Computer abuses include, but are not limited to:

(a) Unauthorized use of university computer resources;

(b) Use of another person's university user name and/or password;

(c) Use of university computing facilities and resources to interfere with the work of another student, an instructor, or other university official;

(d) Use of university computing facilities or resources to send intimidating, harassing, or threatening messages;

(e) Use of a computer or software to interfere with normal operations of the university's computing systems;

(f) Use of the university's computing facilities or resources in violation of any law, including copyright laws; and

(g) Any violation of the university's computer use policies.

(8) **Creating a public nuisance in neighboring communities.** In furtherance of the university's interest in maintaining positive relationships with its surrounding communities, the university shall have the authority to hold students accountable under this conduct code for misconduct within any residential or commercial communities adjacent to a university campus as follows:

(a) A student or a student organization may be subject to disciplinary proceedings if the university is made aware that the student or student organization has been contacted by a law enforcement agency regarding, and is determined to have engaged in, conduct that is in violation of a state statute or municipal ordinance and has a direct quality of life impact on community residents or businesses, including, but not limited to: Creating a public nuisance due to noise, residential disturbance, intentional destruction of property, urinating in public, or criminal trespass.

(b) A first minor violation under (a) of this subsection will not subject the student or student organization to disciplinary sanctions under this conduct code; however, the student or student organization may receive a letter regarding the expectations of university community members as residents in the area. This letter shall constitute a warning that repeated misconduct under this subsection may result in the imposition of disciplinary sanctions.

(c) A second violation of this subsection will result in the initiation of disciplinary proceedings under this conduct code.

(9) **Discriminatory harassment.** Discriminatory harassment is language or conduct directed at a person because of the person's race, color, creed, religion, national origin, citizenship, sex, age, pregnancy, marital status, sexual orientation, gender identity or expression, disability, or veteran status that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or the person's ability to participate in or benefit from the university's programs, services, opportunities, or activities.

(10) **Disruption or obstruction.**

(a) Disruption or obstruction includes intentionally and substantially obstructing or disrupting, through words or conduct, the teaching or learning environment of any university educational setting, or any university functions or activities.

(b) An instructor has the authority to exclude a student from any individual class session or other academic activity in which the student is disorderly or disruptive and such conduct may also be subject of disciplinary proceedings under this conduct code.

(11) **Domestic violence.** Domestic violence includes:

(a) The infliction of physical harm, bodily injury, assault, or the fear of imminent physical harm, bodily injury or assault committed against a family or household member. Family or household members include:

(i) A current or former spouse or intimate partner;

(ii) A person with whom the person shares a child in common;

(iii) A person with whom one is cohabitating or has cohabitated; or

(iv) A person with whom one resides including a roommate, suitemate, or housemate.

(b) Sexual assault of one family or household member by another family or household member; or

(c) Stalking, as defined in subsection (23) of this section, of one family or household member by another family or household member.

(12) **Drug violations.**

(a) The possession, use, distribution, or manufacture of controlled substances (as defined in chapter 69.50 RCW or Title 21 U.S.C. Sec. 802) on university premises or during university sponsored activities where such possession, use, distribution, or manufacture is illegal under federal, state, or local law is prohibited.

(b) The possession, use, distribution, or growing of marijuana in all forms is prohibited on university premises or during university sponsored activities.

(c) A conduct officer may elect not to initiate disciplinary action under this subsection against a student who, while in the course of helping another student seek medical assistance, admits to the unlawful possession or use of drugs. Generally, no disciplinary action under this subsection will be initiated against a complainant or another reporting student, who admits to the use or possession of drugs (in violation of this subsection) in connection with an incident of sexual misconduct.

(13) **Failure to comply.** Failure to comply includes:

(a) Any failure to comply with the directions of a university official acting in the performance of his or her duties and/or the failure to identify oneself to a university official when requested to do so.

(b) Any failure to comply with the rules, regulations, procedures, policies, standards of conduct, or any order or directive of the university or any of its schools, colleges, and departments.

(c) Any failure to comply with any interim measures implemented pursuant to WAC 478-120-038.

(14) **Harassment or bullying.** Harassment or bullying is language or conduct that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or a person's ability to participate in or benefit from the university's programs, services, opportunities, or activities.

(15) **Hazing.**

(a) Hazing includes any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group, that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person. Hazing activities may include, but are not limited to, encouraging or promoting the abuse of alcohol; striking another person whether by use of any object or any part of one's body; causing someone to experience excessive fatigue or physical and/or psychological shock; and causing someone to engage in degrading or humiliating games or activities that create a risk of serious mental, emotional, and/or physical harm. Consent of a victim or victims is not a defense to an allegation of hazing.

(b) Hazing does not include generally accepted practice, training, and conditioning activities, or activities reasonably designed to test a participant's ability to meet eligibility requirements for established athletic events such as intramural or club sports, intercollegiate athletics, or other similar contests or competitions.

(16) **Indecent exposure.** Indecent exposure includes the exposure of a person's genitals or other private body parts when done in a place or manner in which such exposure is likely to cause affront or alarm, or is against generally accepted standards of decency. Breast feeding or expressing breast milk is not indecent exposure.

(17) **Possession or use of firearms, explosives, dangerous chemicals, or other dangerous weapons.**

(a) Firearms, explosives, dangerous chemicals, or other dangerous weapons or instrumentalities are not permitted on university premises, except for authorized university purposes, or unless prior written approval has been obtained from the chief of the university police department, or any other university official designated by the president of the university.

(b) Firearms include, but are not limited to, what are commonly known as air guns or rifles, BB guns, and pellet guns, and any instrument used in the propulsion of shot, shell, bullets, or other harmful objects by:

(i) The action of gunpowder or other explosives;

(ii) The action of compressed air; or

(iii) The power of springs or other forms of propulsion.

(c) The exhibition or display of a replica or a dangerous weapon prohibited under this subsection is also prohibited if done in a manner, and at a time or place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

(18) **Relationship violence.** Relationship violence, also referred to as "dating violence," is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

(a) The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(b) For the purposes of this definition, relationship or dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

(c) Relationship or dating violence does not include acts covered under the definition of domestic violence.

(19) **Retaliation.** Retaliation includes engaging or attempting to engage in any action, directly or indirectly, including through a third party, that is intended to harass, intimidate, or improperly influence any person who:

(a) Files a complaint, grievance, or allegation of misconduct under any university policy or rule or under any law;

(b) Participates in and/or cooperates with an investigation;

(c) Appears as a witness at a hearing; or

(d) Opposes an unlawful act, discriminatory practice, or policy.

(20) **Sexual assault.**

(a) Sexual assault is sexual contact with another person without, or that exceeds, that person's consent.

(b) For the purposes of this subsection, "sexual contact" includes:

(i) Any touching of another person for the purposes of sexual gratification; or

(ii) Any penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ, of another person.

(c) For the purposes of this subsection:

(i) "Consent" means that at the time of and throughout the sexual contact, there are actual words or conduct indicating freely given agreement between the parties to engage in the sexual contact.

(A) Past consent does not imply future consent.

(B) Consent given to one person does not imply consent given to another person.

(C) Consent to one sexual act does not imply consent to other sexual acts.

(D) Lack of resistance to sexual contact does not imply consent.

(E) Consent can be withdrawn at any time.

(ii) Consent cannot be given or granted by a person who, at the relevant time, cannot understand the facts, nature, extent, or implications of the sexual contact for any reason including, but not limited to, being asleep, unconscious, mentally or physically impaired due to an intellectual or other dis-

ability, or mentally or physically incapacitated due to the effects of drugs or alcohol.

(A) Indicators that a person may be incapacitated by drugs or alcohol and therefore, cannot grant consent include, but are not limited to: Stumbling, falling down, an inability to stand or walk on their own, slurred speech or incoherent communication, an inability to focus their eyes or confusion about what is happening around them, passing out, or vomiting.

(B) A failure to exhibit any of these behaviors does not necessarily mean that a person is capable of giving consent or is not incapacitated.

(d) Sexual contact is not consensual when force or coercion is threatened or used to gain acquiescence.

(i) Force includes the use of physical violence, physical force, threats, or intimidation to overcome resistance or gain agreement to sexual contact.

(ii) Coercion includes using pressure, deception, or manipulation to cause someone to agree to sexual contact against that person's will, without the use of physical force. Pressure can mean verbal or emotional pressure.

(e) Sexual assault also includes sexual contact with a person who is under the statutory age of consent in accordance with chapter 9A.44 RCW.

(f) Use of alcohol or drugs is not a valid defense to a violation of this subsection.

(21) **Sexual exploitation.** Sexual exploitation includes:

(a) Taking nonconsensual or abusive advantage of another for one's own sexual benefit, or for the sexual benefit of anyone other than the one being exploited;

(b) Compelling another by threat or force to engage in sexual conduct or activity;

(c) Transmitting, distributing, publishing, or threatening to transmit, distribute, or publish photos, video, or other recordings of a private and sexual nature where such transmission, publication, or distribution is without the consent of the subject(s) and is likely to cause emotional distress to the subject(s);

(d) Taking or making photographs, films, or digital images of the private body parts of another person without that person's consent;

(e) Causing or attempting to cause the impairment of another person to gain nonconsensual sexual advantage over that person;

(f) Prostituting another person;

(g) Knowingly allowing another to surreptitiously watch otherwise consensual sexual activity; or

(h) Taking, making, or directly transmitting nonconsensual video or audio recordings of sexual activity.

(22) **Sexual harassment.** Sexual harassment is language or conduct of a sexual nature that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance or a person's ability to participate in or benefit from the university's programs, services, opportunities, or activities.

(23) **Stalking.**

(a) Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(i) Fear for the person's safety or safety of others; or

(ii) Suffer substantial emotional distress.

(b) For the purposes of this subsection, "course of conduct" means two or more acts including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

(c) For the purposes of this subsection, "substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

(24) **Theft.** Theft is the taking of property or services without express permission of the owner. This includes, but is not limited to, taking, possessing, or aiding another to take university property or services, or property belonging to members of the university community.

(25) **Unauthorized keys, entry or use.** The unauthorized possession, duplication, or use of keys (including conventional keys, key cards, or alphanumeric passcodes) to any university premises is prohibited, as is the unauthorized entry upon or use of university premises or property. Providing keys to an unauthorized person or providing access to an unauthorized person is also prohibited.

(26) **Unauthorized recording.** The following conduct is prohibited:

(a) Making audio, video, digital recordings, or photographic images of a person without that person's consent in a location where that person has a reasonable expectation of privacy.

(b) Storing, sharing, publishing, or otherwise distributing such recordings or images by any means.

(27) **Vandalism.** Vandalism includes maliciously damaging or misusing university property, or the property of any member of the university community.

(28) **Violation of disciplinary sanctions.** The violation of any term or condition of any final disciplinary order issued under this conduct code, or the failure to complete a disciplinary sanction in the specified time frame, may be grounds for additional disciplinary action.

(29) **Violation of law.** Any conduct that would constitute a violation of any federal, state, or local criminal law may be the subject of disciplinary proceedings under this conduct code.

NEW SECTION

WAC 478-120-026 Reporting violations of the student conduct code and initiating conduct proceedings. (1) Persons who believe that a violation of this conduct code has been committed may contact and make a report to the vice-president for student life at University of Washington Seattle, or the chancellors of University of Washington Bothell or Tacoma, or their authorized delegates, which includes the director of community standards and student conduct at University of Washington Seattle, the dean of student affairs at

University of Washington Bothell, and the dean of student engagement at University of Washington Tacoma.

(2) Violations involving academic misconduct should be reported to the dean of the appropriate school or college at the University of Washington Seattle, or the dean or program director at the University of Washington Bothell and Tacoma, or their authorized delegates.

(3) Only the following university officials may initiate disciplinary action under this conduct code:

(a) The vice-president for student life at University of Washington Seattle;

(b) The chancellors at University of Washington Bothell and Tacoma;

(c) Deans of a school or college (including the graduate school) at University of Washington Seattle; and

(d) Deans or directors of any school or program at University of Washington Bothell or Tacoma.

The above named university officials may delegate the authority to initiate disciplinary proceedings to members of their respective staffs and to students. They may also establish student or student-faculty-staff hearing bodies to advise or to act for them in disciplinary matters.

(4) The university may hold the granting or conferral of a respondent's degree if the respondent is the subject of a preliminary investigation or other disciplinary proceedings under this conduct code until at least the conclusion of all disciplinary proceedings.

AMENDATORY SECTION (Amending WSR 14-17-097, filed 8/19/14, effective 9/19/14)

WAC 478-120-030 General procedures for disciplinary sanctions. (1) This section describes the general process under the student conduct code for enforcing the university's rules, regulations, procedures, policies, standards of conduct, and orders. The specific procedures to be used at each step of the process are described in the following sections of this chapter. In all situations, whether handled formally or informally, basic standards of fairness will be observed in the determination of:

(a) ~~((The truth or falsity of the charges against the student;~~

~~(b)))~~ Whether the alleged misconduct violates this code; and if so,

~~((e)))~~ (b) The sanctions to be imposed, if any.

The criteria for judging student misconduct shall include, but not be limited to, the standards of conduct as stated in ~~((WAC 478-120-020 and 478-120-025))~~ this conduct code. Informal hearings ~~((shall use the procedures in))~~ and hearings before the university disciplinary committees shall be conducted as brief adjudicative proceedings under chapter 34.05 RCW ((governing brief adjudicative proceedings)). Formal hearings conducted by the faculty appeal board shall follow the procedures required by chapter 34.05 RCW for formal adjudicative proceedings. Informal settlements may be conducted under the authority of RCW 34.05-060.

(2) ~~((Persons who believe that a violation of the student conduct code has been committed should contact the vice-president for student life at the University of Washington~~

~~Seattle campus, or the chancellor of the University of Washington Bothell or Tacoma campuses, whichever is appropriate-~~

~~(3) Only the vice president for student life, the dean of the school or college at the University of Washington Seattle or, at the University of Washington Bothell and Tacoma campuses, the dean or director of the program in which a student is enrolled or the chancellors of the University of Washington Bothell and Tacoma campuses, may initiate disciplinary proceedings against a student under this code of conduct. (See WAC 478-120-050.) The deans, the vice president for student life, or the chancellors of the University of Washington Bothell and Tacoma campuses may delegate the authority to initiate disciplinary proceedings consistent with this chapter to members of their staffs and to students. They may also establish student or student-faculty hearing bodies to advise or to act for them in disciplinary matters. The person initiating a disciplinary proceeding shall be referred to as the initiating officer-~~

~~(4)))~~ The ~~((initiating))~~ conduct officer will begin a disciplinary proceeding by holding, or directing a member of his or her staff to hold, an informal hearing with the ~~((student charged with misconduct. Based on this informal disciplinary hearing, the initiating officer may choose to exonerate the student, dismiss the action, impose an appropriate sanction, and/or refer the matter to the appropriate university disciplinary committee. (See WAC 478-120-065.) If the initiating officer identifies a potential or existing exceptional circumstance, as defined in WAC 478-120-100 (3)(b)(i);~~

~~"Exceptional circumstances exist when:~~

~~(A) The sanction of dismissal has been recommended; or~~

~~(B) The student has been charged with hazing; or~~

~~(C) The sanction of restitution (in excess of three hundred dollars) has been recommended; or~~

~~(D) Suspension has been recommended," the matter shall be referred directly to the faculty appeal board. (See WAC 478-120-100.)~~

~~(5) Students))~~ respondent consistent with WAC 478-120-065.

(3) In cases not involving an allegation of sexual misconduct, respondents have the right to appeal any sanction imposed at an informal hearing to the appropriate university disciplinary committee, except that when such sanction identifies an existing or potential exceptional circumstance as defined in WAC 478-120-100 (3)(b)(i), the matter shall be referred ((directly)) to the faculty appeal board. Appeal rights in cases involving an allegation of sexual misconduct are provided for in WAC 478-120-137.

~~((6)))~~ (4) Any decisions of the university disciplinary committees may be appealed to the faculty appeal board. ((All decisions of the university disciplinary committees identifying existing or potential exceptional circumstances as defined in WAC 478-120-100 (3)(b)(i) shall be referred directly to the faculty appeal board.)) In addition, the university disciplinary committees may, at any time, at their discretion, refer a matter ~~((directly))~~ consistent with WAC 478-120-095. The faculty appeal board performs distinct functions. In most cases, the faculty appeal board conducts an administrative review. In certain cases ~~((defined))~~ as described in WAC 478-120-100(3) and 478-

120-115(1)), the faculty appeal board conducts a formal hearing.

~~((7))~~ (5) Any decision based on a formal hearing conducted by the faculty appeal board may be appealed to the president of the university or the president's delegate for a final review. All orders of dismissal shall be reviewed by the president or the president's delegate. Orders entered by the president or the president's delegate are final. (See WAC 478-120-125.)

~~((8))~~ (6) The president or delegate, or chancellors or their delegates, may take emergency disciplinary action when a student's conduct threatens the health, welfare, or safety of the university community or members thereof or poses an ongoing threat of substantially disrupting or materially interfering with university activities or operations. (See WAC 478-120-140.)

~~((9))~~ When questions of mental or physical health are raised in conduct cases, the dean, the vice-president for student life, the chancellors of the University of Washington Bothell and Tacoma campuses or their delegates, the university disciplinary committees, or the faculty appeal board may request the student to appear for examination before two physician consultants designated by the dean of the school of medicine. The physician consultants may call upon the student health center for any other professional assistance they deem necessary. After examining the student and/or consulting with the student's personal physician, the physician consultants shall make a recommendation to the dean, the vice-president for student life, the chancellor of the University of Washington Bothell or Tacoma campuses, whichever is appropriate, or their delegates, the appropriate university disciplinary committee, or the faculty appeal board as to whether the case should be handled as a disciplinary matter or as a case for medical or other treatment. Any decision made based upon the recommendation of the physician consultants may be appealed in accordance with the provisions of this chapter.

~~((10))~~ (7) The following persons conducting proceedings under this chapter shall have the authority to issue protective orders and subpoenas: Deans, or at the University of Washington Bothell and Tacoma campuses, the dean or director of the program in which the student is enrolled, the vice-president for student life, the chancellors of the University of Washington Bothell and Tacoma campuses, or the chairs of their respective university disciplinary committees, the chair of the faculty appeal board, and the president or his or her delegate.

~~((11))~~ (8) In a case involving an ~~((alleged))~~ allegation of sexual ~~((offense))~~ misconduct, the ~~((accuser))~~ complainant and the ~~((accused))~~ respondent are entitled to the same opportunities to have others present during a disciplinary hearing and they shall both be informed of the outcome of such disciplinary proceeding.

~~((12))~~ (9) Any final order resulting from a disciplinary proceeding shall become a part of the ~~((student's))~~ respondent's disciplinary record ~~((, unless the student is exonerated. (See))~~ and be maintained in accordance with WAC 478-120-145. ~~((~~

~~((13))~~ (10) In accord with ~~((the Family Educational Rights and Privacy Act))~~ FERPA and pursuant to RCW

34.05.250, all hearings conducted under this chapter generally will be held in closed session out of respect for the privacy of all the students involved. However, the students involved may waive in writing this requirement and request a hearing in open session, and the ~~((initiating))~~ conduct officer or presiding officer shall conduct the hearing in a room that will accommodate a reasonable number of observers. The ~~((initiating))~~ conduct officer or presiding officer may exclude from the hearing room any persons who are disruptive of the proceedings and may limit the number who may attend the hearing in order to afford safety and comfort to the participants and orderliness to the proceedings. To ensure the privacy of all students involved, no cameras or recording devices shall be permitted except for the official recording by the university.

NEW SECTION

WAC 478-120-032 Participation of advisors and attorneys. Any party and, in any case involving an allegation of sexual misconduct, a complainant, may, at their own expense, be accompanied by an advisor and/or an attorney to any proceeding conducted under this conduct code. Persons admitted to practice law in the state of Washington may advise, but may not participate in an informal hearing and in a hearing before a university disciplinary committee, and may represent a party at a hearing before the faculty appeal board. The chair of a university disciplinary committee or the faculty appeal board or a conduct officer in an informal hearing has the discretion to impose reasonable conditions upon the participation of an advisor and/or an attorney.

NEW SECTION

WAC 478-120-034 Service of notices and orders and time limits. (1) Service of all university notices of hearing, initial orders, final orders, and orders on reconsideration shall be by electronic mail addressed to the respondent's, and in any case involving an allegation of sexual misconduct, the complainant's university-issued e-mail address, or such alternative e-mail address as may have been provided to the university in writing. Service by electronic mail is complete at the moment the e-mail is sent to such address. In the alternative, service of university notices of hearing, initial orders, final orders, and orders on reconsideration may also be accomplished by personal service or by posting it in the United States mail, properly addressed, and postage prepaid. Service by mail is complete upon deposit in the United States mail.

(2) Students have an ongoing obligation to update their address via MyUW.

(3) The time limits for appealing an initial order shall be determined based upon the date of service of the initial order. The time limit for seeking judicial review of a final order shall be determined based upon the date of service of the final order, except as otherwise provided in this chapter.

(4) In computing any period of time under this conduct code, the day of service of any order, notice, or other document is not counted. The last day of the applicable period of time is counted. If the last day of the applicable period of time falls on a Saturday, Sunday, or official state holiday (which

includes the day after Thanksgiving), the period ends on the next business day.

NEW SECTION

WAC 478-120-036 Standard and burden of proof.

The applicable standard of proof in all disciplinary hearings is the "preponderance of evidence" standard. This means that, in order for a respondent to be held responsible for a violation of this conduct code, the conduct officer, the university disciplinary committee, or the faculty appeal board must conclude, based on all of the evidence in the record, that it is more likely than not that the respondent engaged in an act or acts of misconduct. The burden of proof in a hearing before a university disciplinary committee or the faculty appeal board rests with the party seeking to establish that the violation occurred.

NEW SECTION

WAC 478-120-038 Interim measures.

(1) After receiving a report of alleged sexual misconduct or other serious misconduct, the university may implement interim measures which may include, but are not limited to:

(a) A no-contact order prohibiting direct or indirect contact, by any means, with a complainant, a respondent, a reporting student, other specified persons, and/or a specific student organization;

(b) Reassignment of on-campus housing; or

(c) Changes to class schedules, assignments, or test schedules.

(2) Interim measures will remain in place until lifted or modified by the university official who implemented the interim measures.

(3) Implementation of any interim measure does not assume any determination of, or create any presumption regarding responsibility for, a violation under this conduct code.

AMENDATORY SECTION (Amending WSR 96-10-051, filed 4/29/96, effective 5/30/96)

WAC 478-120-040 Disciplinary sanctions. (1) One or more of the following disciplinary sanctions may be imposed for any violation ~~(s of the student)~~ of this conduct code:

~~((1)) (a) Disciplinary ((warnings and reprimands— Action may be taken to warn or to reprimand a student for violation of university rules, regulations, procedures, policies, standards of conduct, or orders. Warnings and reprimands must always be made in writing and)) reprimand. A respondent may be issued a written reprimand. Reprimands shall include a statement that continuation or repetition of the specific conduct or other misconduct ((will normally result in one or more of the more serious)) may result in additional disciplinary sanctions((- Restitution, disciplinary probation, suspension, or dismissal)).~~

~~((2)) (b) Restitution((- An individual student)). A respondent may be required to make restitution for damage or other loss of property and for injury to persons. A failure to pay, or to make in writing university-approved arrangements to pay restitution, will result in ((cancellation of the student's~~

~~registration and will prevent the student)) a hold being placed on the respondent's registration preventing the respondent from registering ((with)) at the university.~~

~~((3)) (c) Disciplinary probation((- A student)). A respondent may be placed on disciplinary probation (meaning formal conditions are imposed on ((a student's)) the respondent's continued attendance) ((for violation of university rules, regulations, procedures, policies, standards of conduct, or orders)). The time period ((and conditions, if any;)) for the disciplinary probation and any conditions shall be specified. Disciplinary probation serves as a warning to a ((student)) respondent that further misconduct will raise the question of suspension or dismissal from the university. Failure to fulfill conditions of the disciplinary probation in a timely manner will extend the probationary period (and the conditions) and may result in additional disciplinary sanctions, including possible suspension or dismissal.~~

~~(d) Loss of privileges. A respondent may be denied specified privileges for a designated period of time such as the privilege to participate in a particular campus activity and may be restricted from any or all university premises based on the misconduct for a specific duration.~~

~~((4)) (e) Suspension((- A student)). A respondent may be suspended (i.e., temporarily separated) from the university for ((violation of university rules, regulations, procedures, policies, standards of conduct, or orders. The time period and)) a specified period of time. Conditions((- if any, for the)) of suspension ((shall)) may be imposed and will be specified. Except as otherwise specified in the disciplinary order, all conditions must be fulfilled before the end of the suspension period. Failure to fulfill all conditions of suspension in a timely manner will extend the suspension period and any conditions, and may result in additional disciplinary sanctions. Suspension serves as a warning ((to a student)) that further misconduct will raise the question of dismissal from the university. The university may place a hold on a suspended student's registration and may withhold the conferral of the student's degree, during the suspension period.~~

~~((5)) (f) Dismissal((- A student's enrollment in)). A respondent may be dismissed (i.e., permanently separated) from the university ((may be terminated for violation of university rules, regulations, procedures, policies, standards of conduct, or orders.~~

~~(6) Forfeiture(-)).~~

~~(g) Sanctions for hazing. In addition to other sanctions, a student who participates in hazing of another shall forfeit any entitlement to state funded grants, scholarships, or awards for a specified period of time.~~

~~((7) A suspension or dismissal is considered a serious sanction and will be imposed only after the completion of the formal due process review provided for in this code.) (2) In determining an appropriate sanction for a violation of this conduct code, the seriousness of the misconduct, the impact on the university community, and a respondent's past disciplinary record will be considered. The use of alcohol or drugs by a respondent will not be considered a mitigating factor in imposing discipline.~~

~~(3) If a respondent withdraws from the university (or fails to reenroll) before completing a sanction, the sanction must be completed prior to or upon the respondent's reenroll-~~

ment, depending on the nature of the sanction. Completion of disciplinary sanctions may be considered in applications for readmission to the university.

AMENDATORY SECTION (Amending WSR 14-17-097, filed 8/19/14, effective 9/19/14)

WAC 478-120-065 Informal disciplinary hearings.

(1) A dean, the vice-president for student life, or, at the University of Washington Bothell and Tacoma campuses, the chancellors or the dean or director of the program in which the student is enrolled, or their delegates, may initiate a disciplinary proceeding by conducting, or directing a member of his or her staff to conduct, an informal hearing with the ~~((student accused of misconduct))~~ respondent. This informal disciplinary hearing may be nothing more than a face-to-face meeting between the ~~((initiating))~~ conduct officer or staff person and the ~~((student))~~ respondent, and no special notice of the meeting is required. The purpose of this informal disciplinary hearing is to provide an opportunity for the ~~((student))~~ respondent to respond to allegations of misconduct before disciplinary action is taken ~~((, and the student))~~. The respondent waives any rights to an informal hearing by his or her failure to attend and the conduct officer may place a hold on a respondent's registration and/or transcript, or make a decision and issue an initial order without the input of the respondent.

(2) During an informal disciplinary hearing, the ~~((student))~~ respondent must be provided with the following information:

(a) An explanation of the student conduct process;

~~((b))~~ (b) The alleged misconduct ((and the reasons for the university's belief that the student engaged in the misconduct));

~~((c))~~ (c) The specific section(s) of the student conduct code allegedly violated; and

~~((d))~~ (d) The possible sanctions that may be imposed.

(3) Following the informal disciplinary hearing, the conduct officer may conduct further investigation including, but not limited to, additional interviews of the complainant, the respondent, and any witnesses.

(4) Based on the findings of ~~((an))~~ the informal hearing and any further investigation, the ~~((initiating))~~ conduct officer shall enter in writing ~~((one of the following orders))~~:

(a) An order exonerating the ~~((student or))~~ respondent, dismissing the disciplinary proceeding if it appears that there has been no misconduct, or finding that a preponderance of the evidence does not establish a violation of this conduct code;

(b) An initial order (subject to appeal and/or review as provided in this conduct code), imposing ~~((a))~~ one or more of the disciplinary sanctions specified in WAC 478-120-040;

(c) An order referring the matter to the appropriate university disciplinary committee; and/or

(d) An order referring the matter ~~((directly))~~ to the faculty appeal board because exceptional circumstances as defined in WAC 478-120-100 (3)(b)(i) may exist.

~~((4))~~ (5)(a) If the initial order imposes a sanction and exceptional circumstances as defined in WAC 478-120-100 (3)(b)(i) exist, the matter shall be referred ((directly)) to the faculty appeal board and the ((student)) respondent, and in

the case involving an allegation of sexual misconduct, a complainant, shall be informed that he or she has the right to request a formal hearing according to the procedures set forth in WAC 478-120-075(3). Supplemental procedures applicable to cases involving an allegation of sexual misconduct are set forth in WAC 478-120-137.

(b) If the initial order imposes a sanction, but exceptional circumstances do not exist and the case does not involve an allegation of sexual misconduct, then the ~~((student must))~~ respondent shall be informed that he or she has twenty-one calendar days from the date of the service of the initial order ~~((or twenty five calendar days from the date of the mailing of the initial order))~~ to request a hearing before the appropriate university disciplinary committee. If the ~~((student))~~ respondent chooses not to appeal, the order becomes the final order.

~~((5))~~ (6) Within ten days of the conclusion of the ((hearing and any associated)) conduct officer's investigation((s)), the ((student)) respondent, and in any case involving an allegation of sexual misconduct, the complainant, shall be provided with a written order which shall include a statement of the decision, the reasons for the decision, and information about appealing the decision. No unfavorable action may be taken against the ((student)) respondent until the ((student)) respondent has been given such notice and information. ((In a case involving an alleged sexual offense, both the accuser and the accused shall be informed of the outcome of that hearing.)) In a case where the ((student)) respondent is a minor, the disciplinary sanctions imposed may be reported to the ((student's)) respondent's parents or legal guardian at the discretion of the ((initiating)) conduct officer.

~~((6))~~ A student may request a hearing by the appropriate university disciplinary committee at any time during these informal proceedings. If such a request is made, the matter shall be referred to the appropriate university disciplinary committee.))

(7) The official record of this informal hearing shall consist of all documents prepared or considered by the dean, the vice-president for student life, or, at the University of Washington Bothell and Tacoma campuses, the chancellors, or the dean or director of the program in which the ~~((student))~~ respondent is enrolled, or their delegates, with regard to the dispute at hand.

AMENDATORY SECTION (Amending WSR 14-17-097, filed 8/19/14, effective 9/19/14)

WAC 478-120-075 Appeals. Any initial order may be appealed by timely submission of a written petition to the appropriate body. An order only referring a matter from one hearing body to another, not determining the matter on its merits, is not an initial order.

(1) If ~~((a student does not appeal to))~~ no appeal is filed with the appropriate body within twenty-one days of service of the initial order ((or within twenty five calendar days of the date when the university mailed the initial order to the student);)) the right to appeal is waived and the order becomes final((-

~~((a))~~ All initial orders shall be hand delivered or delivered by mail.

~~(b) Any student involved in a disciplinary hearing is required to provide his or her current and accurate address to the office of the vice-president for student life or the office of the chancellor for the University of Washington Bothell or Tacoma campuses, whichever is appropriate, or their delegates), except that any initial order imposing the sanction of dismissal shall be subject to review in accordance with WAC 478-120-125.~~

(2) All petitions for appeal must be made in writing to the appropriate authority (the appropriate chair of one of the university disciplinary committees (Seattle, Bothell or Tacoma), the chair of the faculty appeal board, or the president). The petition must state the reasons for the appeal and indicate points of disagreement with the initial order.

(3) If a student wishes to request a formal hearing before the faculty appeal board, the student's written petition for appeal must also state that a formal hearing is being requested and must identify the specific exceptional circumstances (as defined in WAC 478-120-100 (3)(b)(i)) warranting such a hearing. When conducting administrative reviews of ~~((informal hearings))~~ initial orders, the faculty appeal board shall make any inquiries necessary to ascertain whether the proceeding must be converted to a formal disciplinary hearing.

(4) Additional provisions regarding appeals in cases involving an allegation of sexual misconduct are set forth in WAC 478-120-137.

(5) After conducting the appropriate review, the appeal body ~~((or the president))~~ may sustain, reduce, or vacate the sanction imposed by the initial order, except if that review is in the form of a formal hearing before the faculty appeal board, that board may increase any sanction.

~~((5))~~ (6) Review by the president or the president's delegate shall be conducted in accordance with WAC 478-120-125.

(7) Only the president or the president's delegate may issue a final order of dismissal.

~~((6))~~ (8) Sanctions, if any, will be imposed only after an order becomes final, except for actions taken under WAC 478-120-140.

AMENDATORY SECTION (Amending WSR 14-17-097, filed 8/19/14, effective 9/19/14)

WAC 478-120-085 The university disciplinary committees. Each University of Washington campus shall have its own university disciplinary committee. The university disciplinary committees shall consist of a nonvoting chair, at least three voting faculty members, and at least three voting student members. The committees shall be maintained for the purpose of providing hearings for disciplinary actions that have been initiated by the deans or, at the University of Washington Bothell and Tacoma campuses, the dean or director of the program in which a ~~((student))~~ respondent is enrolled, the vice-president for student life at the University of Washington Seattle campus, the chancellors of the University of Washington Bothell and Tacoma campuses, or their delegates.

(1) The president of the University of Washington Seattle campus and the chancellors of the University of Washington Bothell and Tacoma campuses shall designate a member

of the faculty or administration to serve as chair of each respective university disciplinary committee for a term of one year. All chairs may be reappointed for consecutive terms.

(a) The chairs shall ensure that all procedural safeguards and guidelines are followed. Accordingly, the chairs shall decide all procedural questions that arise in relation to hearings, including rulings on evidence (as defined in WAC 478-120-095(3)) and challenges to the impartiality of committee members. The chairs shall have the discretion to regulate all aspects of the proceedings.

(b) The chairs shall take whatever steps are necessary to ensure that hearings are conducted in a safe and orderly manner.

(2) The ~~((three))~~ voting faculty members of each university disciplinary committee shall be selected ~~((at random from))~~ by the faculty senate at the University of Washington Seattle, or at the University of Washington Bothell and Tacoma campuses, their respective faculty assembly or organization to serve one-year terms. Voting faculty members may ~~((not))~~ be reappointed to consecutive terms.

~~((a))~~ Panels of eligible faculty members shall be randomly selected to serve on the committees in the order in which they were selected, except that at the University of Washington Seattle each faculty member of the committees must represent a different faculty senate group.

~~((b))~~ Faculty members must have been members of the faculty for at least one year ~~((and hold the position of assistant professor or higher))~~ in order to be eligible to serve as voting members of the university disciplinary committees.

(3) The ~~((three))~~ voting student members of the university disciplinary committees shall be selected ~~((at random))~~ from each student body to serve one-year terms. Student members of the committees may not be reappointed.

(a) ~~((Panels of eligible))~~ For each university disciplinary committee, students shall be selected ((randomly from the entire full-time student body to serve as committee members or alternates in the order in which they were selected, except that)) from a pool of students who express interest in serving on the committee and at the University of Washington Seattle at least one member must be a professional or graduate student and the other ((two)) members must represent different undergraduate classes.

(b) To be eligible to serve on the university disciplinary committees, students must be full-time and in good standing with the university.

(4) In addition to the chairs, a quorum shall be two faculty members and two student members. The chairs shall select alternates from the panels of eligible faculty or students as needed to produce a quorum.

(5) Committee members may be disqualified from a particular hearing for bias, prejudice, conflict of interest, or any other reason which may prevent him or her from serving as an impartial judge of the matter before the committees.

(a) Committee members may excuse themselves for any of the causes set forth in this section by submitting a written statement to the appropriate committee chair stating facts and reasons for the disqualification.

(b) A student before any of the university disciplinary committees may challenge the impartiality of a committee member by written petition. The appropriate chair shall deter-

mine whether to grant the petition and excuse the committee member from the case, and shall state the facts and reasons for that determination in writing.

(c) Any person who has been delegated the authority to initiate disciplinary proceedings is disqualified from serving as a member of the university disciplinary committees.

(6) The appropriate chair may relieve a member of his or her university disciplinary committee from serving on that committee for a particular case, for a specific period of time, or for the rest of the year after the member submits a written request to the chair.

(7) Members of the university disciplinary committees shall begin their terms on the first day of classes of ~~((winter))~~ autumn quarter. Those terms shall expire on the first day of classes of the next ~~((winter))~~ autumn quarter, except that cases in process shall be continued until a decision is reached. ~~((The new panels of committee members shall be identified by the outgoing chairs, or by the person designated by the appropriate chair, through random procedures established by the chair.))~~

AMENDATORY SECTION (Amending WSR 14-17-097, filed 8/19/14, effective 9/19/14)

WAC 478-120-095 Hearings before the university disciplinary committees. The purpose of a hearing before a university disciplinary committee is to provide all parties with an opportunity to present evidence and argument before disciplinary sanctions are imposed on a ~~((student))~~ respondent. A university disciplinary committee may not hear any cases involving an allegation of sexual misconduct. Based on the evidence presented at this hearing, the committee shall determine whether the ~~((student))~~ respondent has engaged in the alleged misconduct. If there is a finding of misconduct, the committee shall then determine the appropriate sanction to be imposed.

(1) When a hearing is scheduled before a university disciplinary committee, the chair of the appropriate committee shall provide the ~~((student))~~ respondent with written notice of the following information:

(a) The time and place of the hearing;

(b) The allegations of misconduct against the ~~((student))~~ respondent;

(c) A list of all witnesses who may be called to testify;

(d) A description of all documentary and real evidence to be presented at the hearing, including a copy of ~~((his or her))~~ the respondent's disciplinary file; and

(e) The sanctions that may be imposed at the hearing if the allegations of misconduct are found to be true.

(2) The chair of each committee shall adhere to the following procedures at all disciplinary hearings:

(a) The ~~((student))~~ respondent shall be provided with a reasonable opportunity (at least seven days) to gather evidence, contact witnesses, and prepare a defense for the hearing.

(b) The ~~((student))~~ respondent may be accompanied by an advisor and/or an attorney of the ~~((student's))~~ respondent's choice.

(c) The ~~((student))~~ respondent is entitled to hear all testimony and examine all evidence that is presented at the hear-

ing. In response, the ~~((student))~~ respondent may present evidence and witnesses on his or her own behalf and may ask questions of any other witnesses.

(d) No ~~((student))~~ respondent shall be compelled to give self-incriminating evidence.

(3) Evidence shall be admissible at the hearing if it is the type of evidence that reasonably prudent members of the university community would rely upon in the conduct of their affairs.

(4) The ~~((initiating))~~ conduct officer (the appropriate dean, or at the University of Washington Bothell and Tacoma campuses, dean or director of the program in which the ~~((student))~~ respondent is enrolled, the vice-president for student life, the chancellors of the University of Washington Bothell and Tacoma campuses, or their delegates) must prove by a preponderance of the evidence presented at the hearing that the ~~((student))~~ respondent has engaged in the alleged misconduct. The committee shall base its factual determination solely on the evidence presented at the hearing.

(a) Decisions of the university disciplinary committee will be made based on a simple majority vote of the committees.

(b) If a university disciplinary committee cannot reach a decision by simple majority vote, an order shall be entered referring the matter to the faculty appeal board. ~~((Where))~~ In cases where the faculty appeal board determines that exceptional circumstances may exist, the ~~((student))~~ respondent shall be notified of the right to request a formal hearing. Otherwise, the faculty appeal board shall ~~((conduct an administrative review as provided under WAC 478-120-100 (1) and (2)))~~ make a decision based upon its review of the record of the hearing before the university disciplinary committee.

(5) If at any time after a matter has been referred to a university disciplinary committee the appropriate chair determines that the matter should properly be before the faculty appeal board, the chair may refer the matter to the faculty appeal board and shall provide the ~~((student))~~ respondent with written notice of the referral ~~((and of the opportunity to request a formal hearing if exceptional circumstances exist. (See WAC 478-120-100 (3)(b)(i)).))~~ Any case involving an allegation of sexual misconduct shall be referred to the faculty appeal board.

(6) If the committee determines that the ~~((student))~~ respondent has violated the university's rules, regulations, procedures, policies, standards of conduct, or orders, it shall then determine the appropriate sanction to be imposed. When determining the appropriate sanction, the committee shall ~~((review the evidence presented at the hearing and the student's past record of conduct at the university))~~ consider the factors listed in WAC 478-120-040(2).

(7) The chair of the appropriate university disciplinary committee shall provide the ~~((student))~~ respondent with a written statement of the committee's decision within ten days of the conclusion of the hearing. This written statement shall include the committee's factual findings, the conclusions that have been drawn from those findings, the reasons for those conclusions, and the sanctions, if any, to be imposed. If sanctions are imposed, the ~~((student))~~ respondent must also be informed of the appropriate procedures for appealing the committee's decision to the faculty appeal board. ~~((In a case~~

involving an alleged sexual offense, both the accuser and the accused shall be informed of the outcome of the hearing.) In a case where the ((student)) respondent is a minor, the written statement of the committee's decision may be reported to the ((student's)) respondent's parents or legal guardian at the discretion of the chair of the appropriate university disciplinary committee.

(8) This written statement of the committee's decision shall be the committee's initial order. If ((the student chooses not to)) no appeal is filed, the initial order of the appropriate university disciplinary committee becomes the final order at the end of the appeal period set forth in WAC 478-120-075(1)((, except that orders of dismissal shall be referred to the president)).

(9) ((The student)) A respondent may choose to present evidence to the chair of the appropriate university disciplinary committee rather than at a hearing before the full committee. The ((student's)) respondent's waiver of the right to a hearing before a university disciplinary committee must be submitted in writing to the chair of the appropriate committee. The chair will submit the ((student's)) respondent's evidence and arguments to the full committee and the committee will make its decision based on the chair's report.

(10) All proceedings of the committees will be conducted with reasonable dispatch and be terminated as soon as possible, consistent with fairness to all parties involved. The chair shall have the discretion to continue the hearing.

(11) An adequate summary of the proceedings will be kept. Such a summary shall include all documents that were considered by the appropriate committee and may include ((a tape)) an audio recording of the testimony and any other documents related to the hearing.

~~((12) A report of a university disciplinary committee shall, upon written request and release by the student or students involved, and subject to the requirements of the Family Educational Rights and Privacy Act, be made available to members of the university community through the vice president for student life, or the office of the chancellor at the University of Washington Bothell or Tacoma campuses, whichever is appropriate, or their delegates.))~~

AMENDATORY SECTION (Amending WSR 07-23-068, filed 11/19/07, effective 12/20/07)

WAC 478-120-100 Faculty appeal board. There shall be a single faculty appeal board which will serve all University of Washington campuses. The faculty appeal board shall be composed of at least seven members of the faculty to be appointed by the chair of the faculty senate after consultation with the faculty council on student affairs, to include one faculty member from each of the University of Washington Bothell and Tacoma campuses. The chair of the faculty senate shall appoint one of the members to be the chair of the faculty appeal board. The faculty appeal board shall conduct either administrative reviews or formal hearings and the procedures to be used shall depend on the nature of the appeal before the board. Cases may be heard by the entire board or by panels of no fewer than three board members.

(1) The faculty appeal board may conduct an administrative review when exceptional circumstances do not exist or

((the)) a student has not requested a formal hearing in writing.

(2) The procedures for conducting such administrative review are set forth in WAC 478-120-105. The chair shall maintain a record of all administrative reviews conducted by the faculty appeal board. At a minimum, such a record shall include all documents that were considered by the board and may include ((a tape)) an audio recording of all testimony and all other documents related to the review.

(3) The faculty appeal board shall conduct a formal hearing when:

(a) The ((student)) respondent, and in a case involving an allegation of sexual misconduct, a complainant, requests a formal hearing before the faculty appeal board in writing setting forth the exceptional circumstances that exist (see below); and

(b) The chair reviews the student's written request and determines that exceptional circumstances do exist. Additionally, the faculty appeal board may conduct a formal hearing in other circumstances as the board deems appropriate. If the faculty appeal board does not conduct a formal hearing, it shall conduct an administrative review of the prior decision.

(i) Exceptional circumstances exist when:

(A) The sanction of dismissal has been recommended; or

(B) The ((student)) respondent has been charged with hazing; or

(C) The sanction of restitution (in excess of three hundred dollars) has been recommended; or

(D) Suspension has been recommended.

(ii) If the faculty appeal board decides not to grant a ((student's)) written request for a formal hearing, the chair shall provide the ((student)) parties with a written copy of the board's decision ((and a brief statement of the reasons for)) denying the ((petition)) request for a formal hearing within ninety days as specified in WAC 478-120-115((2)) (3).

(c) The faculty appeal board shall also conduct a formal hearing as provided in the supplemental provisions set forth in WAC 478-120-137 for cases involving an allegation of sexual misconduct.

(4) If a matter is referred directly to the faculty appeal board and there is no initial order, then the faculty appeal board shall determine whether exceptional circumstances exist or could exist. If exceptional circumstances exist or could exist, then the board shall notify the ((student)) respondent and in any case involving an allegation of sexual misconduct, the complainant, in writing that he or she has twenty-one days from the date of service of the notice ((or twenty five days from the date of mailing the notice)) to request a formal hearing. If ((the student fails to make such a)) no such request is made, any right to a formal hearing is waived.

(5) Formal hearings conducted by the faculty appeal board shall be according to the procedural guidelines set forth in WAC 478-120-115 and chapter 34.05 RCW.

(a) At the conclusion of the formal hearing, the faculty appeal board shall enter an initial order based on the findings of that hearing. That initial order shall include a written statement of the board's decision and the basis for that decision, including procedures for appealing the decision to the president or president's delegate. The initial order shall be pro-

vided to the ~~((student))~~ parties within ~~((ninety))~~ sixty days of the conclusion of the hearing unless the faculty appeal board determines that an extension of time (which shall not exceed thirty additional days) is warranted and informs the parties of such extension. In a case involving an ~~((alleged))~~ allegation of sexual ~~((offense))~~ misconduct, both the ~~((accuser and the accused))~~ respondent and the complainant shall be informed of the board's decision. In a case where the ~~((student))~~ respondent is a minor, the board's decision may be reported to the ~~((student's))~~ respondent's parents or legal guardian at the discretion of the ~~((initiating))~~ conduct officer.

(b) An initial order from a formal hearing may be appealed to the president of the university or the president's delegate for a final ~~((administrative))~~ review.

(c) If ~~((the student chooses not to))~~ no appeal is timely submitted, the initial order of the faculty appeal board shall become the final order, except that orders of dismissal entered by the faculty appeal board shall be reviewed by the president or the president's delegate in accordance with WAC 478-120-125.

(6) The record in cases in which the faculty appeal board conducts a formal hearing shall be as specified in WAC 478-120-115~~((+5))~~ (20).

(7) Board members may be disqualified from a particular formal hearing for bias, prejudice, conflict of interest, or any other reason which may prevent them from serving as impartial judges of the matter before the board.

(a) A committee member may excuse himself or herself for any of the causes set forth in this section by submitting a written statement to the board chair stating facts and reasons for the disqualification.

(b) A student before the faculty appeal board may challenge the impartiality of a board member by written petition. The chair shall determine whether to grant the petition and excuse the board member, stating the facts and reasons for the determination in writing.

(c) Faculty who have been delegated the authority to initiate disciplinary proceedings are disqualified from serving as members of the faculty appeal board.

(8) At the discretion of the chair, board members may be excused from a particular hearing on the basis of compelling personal need after submitting a written request to the chair explaining the basis of the request.

AMENDATORY SECTION (Amending WSR 96-10-051, filed 4/29/96, effective 5/30/96)

WAC 478-120-105 Administrative review by the faculty appeal board. (1) The faculty appeal board may conduct administrative review when exceptional circumstances do not exist or ~~((the student has not requested a))~~ no formal hearing has been requested. When the faculty appeal board determines that administrative review is appropriate, the chair shall notify all parties of that decision. The notice to the parties shall include a statement of:

(a) The allegations of misconduct against the ~~((student))~~ respondent;

(b) The sanctions that were recommended by the ~~((initiating))~~ conduct officer or the university disciplinary committee, if any; and

(c) A date by which any voluntarily submitted written briefs or statements must be submitted.

(2) When the faculty appeal board conducts an administrative review, the board may base its review on:

(a) All documents and any recordings considered by the initiating officer or the university disciplinary committee; ~~((or))~~

(b) Oral and/or written argument ~~((of both parties; or))~~ submitted by any party; and

(c) Additional evidence.

(3) At the conclusion of its review, the faculty appeal board shall enter an order. An initial order may be appealed and a final order may not be appealed~~((except that final orders of dismissal shall be reviewed by the president or the president's delegate)).~~ The ~~((student shall be provided with a))~~ written order ~~((which))~~ shall include a ~~((written))~~ statement of the board's decision within ten days of the conclusion of the review and information on rights of appeal, if any. In a case involving an ~~((alleged sexual offense))~~ allegation of sexual misconduct, both the ~~((accuser and the accused))~~ respondent and any complainant shall be informed of the outcome of the review. In a case where the ~~((student))~~ respondent is a minor, the board's decision may be reported to the ~~((student's))~~ respondent's parents or legal guardian at the discretion of the chair of the faculty appeal board.

AMENDATORY SECTION (Amending WSR 96-10-051, filed 4/29/96, effective 5/30/96)

WAC 478-120-115 Formal hearings before the faculty appeal board. (1) The faculty appeal board shall conduct a formal hearing when exceptional circumstances exist and ~~((the student has requested in writing))~~ a request for a formal hearing has been made. The faculty appeal board shall also conduct formal hearings as provided in the supplemental provisions for cases involving an allegation of sexual misconduct set forth in WAC 478-120-137. Additionally, the faculty appeal board may conduct a formal hearing in other circumstances as the board deems appropriate.

(2) Within thirty days after receipt of a written petition for a formal hearing before the faculty appeal board, the board shall notify the requesting party of any obvious errors or omissions in the party's petition, request any additional information the board wishes to obtain and is permitted by law to require, and notify the requesting party of the name, mailing address, and telephone number of an office or person who may be contacted regarding the formal hearing.

(3) Within ninety days after receipt of a written petition for formal hearing or within ninety days after the party's response to a timely request from the board as provided in subsection ~~((+))~~ (2) of this section, the board shall either deny the formal hearing or commence the formal hearing.

(4) Once the board decides to conduct a formal hearing, the chair of the faculty appeal board shall schedule the time and place of the hearing and give not less than seven days advance written notice of the hearing to all parties. That notice shall include:

(a) The names and addresses of all parties to whom notice is being given, and if known, the names and addresses of their representatives;

(b) The name, business address, and telephone number of the person designated to represent the university at the hearing;

(c) The official file number and name of the proceeding;

(d) The name, mailing address, and telephone number of the chair of the faculty appeal board;

(e) A statement of the time, place, and nature of the hearing;

(f) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(g) A reference to the particular sections of university rules that are involved;

(h) A short and plain statement of the charges against the ~~(student)~~ respondent; and

(i) A statement that a student requesting the hearing who fails to attend the hearing or otherwise respond to this notice may lose his or her right to a formal hearing.

(5) Hearings before the faculty appeal board shall be conducted in accordance with the provisions of this conduct code, the Administrative Procedure Act (chapter 34.05 RCW), and the model rules of procedure (chapter 10-08 WAC). To the extent there is a conflict between the conduct code and the model rules, this conduct code shall control.

(6) The faculty appeal board will make its own determination based on the record of the hearing before the faculty appeal board.

(7) If a student requesting the hearing fails to attend or participate in a formal hearing, the faculty appeal board may (serve upon all parties):

(a) Hold the hearing and issue an initial order based on a preponderance of evidence presented at the hearing; or

(b) Issue a default or other dispositive order which shall include a statement of the grounds for the order. Within seven days after service of a default order ~~(, the)~~ or other dispositive order, a student may file a written ~~(motion requesting)~~ request that the order be vacated, and stating the grounds relied upon.

~~((6) The student)~~ (8) Each party may be represented by ~~(counsel)~~ an attorney and/or be accompanied by an advisor of ~~(the student's)~~ that party's choice. No student shall be compelled to give self-incriminating evidence. However, a negative inference can be drawn from a refusal to testify or to answer a particular question.

~~((7))~~ (9) The chair shall determine whether discovery is to be available, and, if so, which forms of discovery may be used. The chair may condition the use of discovery procedures on a showing of necessity and unavailability by other means. In exercising such discretion, the chair shall consider:

(a) Whether all parties are represented by counsel;

(b) Whether undue expense or delay in bringing the case to a hearing will result;

(c) Whether the use of discovery will promote the orderly and prompt conduct of the proceeding; and

(d) Whether the interests of justice will be promoted.

(e) The chair may decide whether to permit the taking of depositions, the requesting of admissions, or any other procedures authorized by rules 26 through 37 of the superior court rules.

~~((8))~~ (10) At appropriate stages of the hearing, the chair may give all parties an opportunity to submit and respond to

briefs, motions, proposed findings of fact and conclusions of law, and proposed initial or final orders. To the extent necessary for a full disclosure of all relevant facts and issues, the chair shall afford ~~((both))~~ the parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence. A party filing a pleading, brief, or other ~~(paper))~~ documents with the chair shall serve copies on all other parties at the same time submitted to the chair.

~~((9))~~ (11) Evidence, including hearsay evidence, is admissible if it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Evidence is not admissible if it is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The chair shall decide all procedural questions and make rulings on the admissibility of evidence, ~~(and))~~ motions, objections, and on challenges to the impartiality of board members, unless a hearing examiner is appointed as provided below. The Washington rules of evidence shall serve as guidelines for those rulings on the admissibility of evidence.

~~((10))~~ (12) All testimony of parties and witnesses shall be made under oath or affirmation. The parties are responsible for informing their witnesses of the time and place of the hearing.

(13) At the discretion of the chair, and where the rights of the parties will not be prejudiced thereby, all or part of any hearing, including the testimony of witnesses, may be conducted by telephone, video, or other electronic means. Each party in the hearing must have an opportunity to participate effectively in, to hear, and if technically and economically feasible, to see the entire proceeding while it is taking place. Such measures may be taken to accommodate concerns raised by a complainant, a respondent, or any witness.

~~((11))~~ (14) The faculty appeal board may appoint ~~(an)~~ a hearing examiner to conduct the actual hearing, which includes managing administrative matters before, during, and following a hearing, and ruling on any motions, objections, procedural questions, and the admissibility of evidence. The decision to use a hearing examiner requires the approval of a majority of the board members. The hearing examiner will then conduct the hearing and if requested by the board, will submit a detailed report to the faculty appeal board according to the provisions of this section.

(a) ~~(If a hearing examiner conducts the hearing, an audio recording of the hearing must be kept, and the recording and any transcription thereof must be provided to the board.)~~ The hearing examiner will have all the authority of the chair of the faculty appeal board with regard to hearing procedures and will be responsible for maintaining the official record of the hearing, including an audio or video recording of the hearing, and transmitting the full official record to the chair following the hearing.

(b) The faculty appeal board may, at its option, request the hearing examiner to provide recommendations as to findings, conclusions, and decisions, but those recommendations shall not be binding on the board. The ~~(hearing examiner shall transmit to the board the full and complete record of the hearing and the)~~ board shall make its own findings, conclusions, and decisions based on the official record.

~~(c) ((The hearing examiner will make initial rulings on the use of discovery, the admissibility of evidence, and the procedures for the hearing.~~

~~((d))~~ The hearing examiner must be ~~((a member of the bar))~~ an attorney permitted to practice law in Washington state. Any member of the faculty appeal board who is also a member of the Washington state bar, including the chair, may serve as the hearing examiner.

~~((12))~~ (15) The chair of the faculty appeal board may issue subpoenas and enter protective orders. A party may request in writing that the chair issue a subpoena for the attendance of a witness at the hearing. The requesting party is responsible for serving the subpoena upon the witness.

~~((13) Members of the faculty appeal board must avoid ex parte communications with any party involved in the hearing regarding any issue other than communications necessary to maintaining an orderly procedural flow to the hearing.)~~

(16) All communications with the chair and/or members of the faculty appeal board, except for communications necessary to procedural aspects of maintaining an orderly process, must be in the presence of, or with a copy to, all other parties. Ex parte communications received by the chair or members of the board must be placed on the record, and ~~((the other party))~~ all other parties must be informed of the ex parte communication and given an opportunity to respond on the record.

~~((14))~~ (17) At the conclusion of a hearing, and following the submission of all evidence, any written closing arguments, and any proposed orders by the parties, the board shall determine, whether based on a preponderance of the evidence, the respondent is responsible for violating this conduct code and, if so, what sanction(s) are to be imposed. The faculty appeal board shall have the full authority to impose any of the sanctions specified in WAC 478-120-040, subject to review in accordance with this conduct code. (All orders of dismissal are subject to review by the president in accordance with WAC 478-120-125.) Decisions will be determined by majority vote. Findings, conclusions, and decisions by the faculty appeal board shall be based exclusively on the evidence of record from the hearing and on matters officially noted in the record.

~~((15))~~ (18) The board shall enter an initial order which shall be served in writing on ~~((the student))~~ all parties within ~~((ninety))~~ sixty days after conclusion of the hearing or after submission of memos, briefs, or proposed findings, whichever is later, unless the period is waived or extended for good cause shown. ~~((The student shall be informed of procedures for appealing the decision. If the student does not appeal the board's initial order within the time set out in WAC 478-120-075(1), the initial order of the board shall become the final order, except all orders of dismissal shall be reviewed by the president or the president's delegate.~~

~~(16))~~ The board's initial order shall:

(a) Include a statement of findings of fact and conclusions with any findings based substantially on credibility of evidence or demeanor of witnesses so identified;

(b) Specify the section(s) of this conduct code that the respondent is responsible for violating, if any;

(c) Indicate the sanction(s) imposed, if any;

(d) Provide a statement regarding the availability of presidential review and the applicable time limits; and

(e) Include a statement of the circumstances under which the board's initial order, without further notice, may become a final order.

(19) An initial order issued by the faculty appeal board will become a final order if the respondent (or a complainant in any case involving an allegation of sexual misconduct) does not submit a request for review in accordance with WAC 478-120-125 within twenty-one days of service of the initial order, except that any initial order imposing dismissal will be automatically forwarded to the president for review under WAC 478-120-125.

(20) The chair shall maintain an official record of the hearing. The record shall contain those items specified in RCW 34.05.476.

AMENDATORY SECTION (Amending WSR 96-10-051, filed 4/29/96, effective 5/30/96)

WAC 478-120-125 Review by the president of the university. (1) Any initial order of the faculty appeal board that is based on the findings of a formal hearing may be appealed for a final review to the president or the president's delegate ~~((The student must submit))~~ by a respondent, and in any case involving an allegation of sexual misconduct, a complainant (regardless of whether the complainant participated as a party in the hearing before the faculty appeal board). Upon the submittal of such an appeal, the complainant will be considered a party to the final review. An appeal must be submitted to the president and the conduct officer in writing within twenty-one days of service of the board's initial order ~~((, or twenty-five days of mailing the order, unless the order specifies a different time limit))~~ for which review is sought. Upon receipt, the president (or president's delegate) shall promptly serve all other parties with a copy of the appeal. Any appeal shall ~~((specify the portion of the board's order to which exception is taken and shall refer to the evidence of record which is relied upon to support the petition))~~ include the reasons for the appeal. However, the president or the president's delegate shall review all orders of dismissal, regardless of whether ~~((the))~~ a student appeals. In a case imposing dismissal, any request for review submitted by a respondent or, in a case involving an allegation of sexual misconduct, a complainant, will be considered concurrently with the president's (or president's delegate's) automatic review of the matter.

(2) The president or the president's delegate shall consider the entire record of the disciplinary proceeding or such portion as may be ~~((cited))~~ specified by the ~~((student))~~ parties. At the president's or the president's delegate's discretion, the parties may also supplement the record with additional evidence.

(3) The parties may present their arguments to the president or the president's delegate in writing, and the president or the president's delegate may, at his or her discretion, afford each party an opportunity for oral argument.

(4) Any review by the president or the president's delegate will be conducted in accordance with RCW 34.05.464.

(5) All communications with the president or president's delegate, except for communications necessary to procedural aspects of maintaining an orderly process, must be in the presence of, or with a copy to, all other parties. Ex parte communications received by the president or president's delegate must be placed on the record, and all other parties must be informed of the ex parte communication and given an opportunity to respond on the record.

(6) After reviewing the record and considering the arguments of ~~((the two))~~ all parties, the president or the president's delegate shall enter a final order disposing of the matter or remanding the case for further proceedings ~~((and provide the student with a copy of that order))~~. A final order shall include, or incorporate by reference to the initial order, all matters required by RCW 34.05.461(3). A copy of the final order shall be served upon all parties.

~~((5))~~ (7) In a case involving an ~~((alleged sexual offense))~~ allegation of sexual misconduct, both the ~~((accuser and the accused))~~ respondent and the complainant shall be informed of the outcome of the review. In a case where the ~~((student))~~ respondent is a minor, the decision of the president or the president's delegate may be reported to the ~~((student's))~~ respondent's parents or legal guardian at the discretion of the president or president's delegate.

~~((6))~~ (8) Notwithstanding any other provisions of this chapter, and before an initial order issued under this conduct code becomes final, the president or the president's delegate may ~~((review the order))~~ determine that the initial order should be reviewed. Upon such determination, a complainant, in any case involving an allegation of sexual misconduct, if not already a party in the hearing before the faculty appeal board, shall be given the opportunity to participate as a party for the purposes of review by the president or the president's delegate. Notice of the president's (or president's delegate's) decision to review any initial order under this subsection shall be provided to all parties. Any such review shall be in ~~((accord))~~ accordance with RCW 34.05.464 and/or 34.05.491.

AMENDATORY SECTION (Amending WSR 96-10-051, filed 4/29/96, effective 5/30/96)

WAC 478-120-135 Reconsideration of final orders.

(1) Within ten days of the service of a final order from the president or the president's delegate, ~~((the student))~~ any party may file a request for reconsideration, stating in writing specific reasons for the request. The request shall be directed to the president or the president's delegate who issued the final order, and the conduct officer. Upon receipt, the president (or president's delegate) shall promptly serve all other parties with a copy of the request for reconsideration.

(2) A request for reconsideration does not stay the effectiveness of a final order.

(3) A request for reconsideration is only intended to correct obvious mistakes in the judgment or order and should not be used to reargue the case. Filing a request for reconsideration is not a prerequisite for ~~((obtaining))~~ seeking judicial review ~~((, and denial of the request))~~ in accordance with chapter 34.05 RCW. An order denying reconsideration or a notice

provided for in subsection (4)(b) of this section is not subject to judicial review.

~~((3))~~ The request for reconsideration shall be promptly considered. If, within twenty days from the date the request is filed, the president or president's delegate does not either (a) dispose of the request, or (b) serve the student with a written notice specifying the date by which it will act upon the request, the request is deemed to be denied. (4) If a request for reconsideration is timely and properly submitted, the time for filing a petition for judicial review of a final order does not commence until the university disposes of the request for reconsideration. The request for reconsideration is automatically deemed to have been denied if, within twenty days from the date the request for reconsideration is timely submitted, the president or president's delegate who issued the final order does not either:

(a) Dispose of the request; or

(b) Serve the parties with a written notice specifying the date by which he or she will act upon the request.

(5) Unless the request for reconsideration is deemed denied under subsection (4) of this section, the request shall be disposed of by the same president or president's delegate, who issued the final order, if reasonably available. The disposition shall be in the form of a written order denying the request, granting the request and dissolving or modifying the final order, or granting the request and setting the matter for further hearing.

NEW SECTION

WAC 478-120-137 Supplementary provisions regarding sexual misconduct. (1) Investigations and adjudications of cases involving an allegation of sexual misconduct will be conducted by university officials who receive regular (no less than annual) training on issues related to sexual misconduct. The requirement applies to conduct officers, all members of the faculty appeal board, the president, and the president's delegates. The specific training requirements shall be established by the university's Title IX coordinator.

(2) All cases involving an allegation of sexual misconduct shall be subject to the following supplementary provisions:

(a) The conduct officer will concurrently serve both the respondent and any complainant(s) with a copy of the conduct officer's initial order.

(b) Either a complainant or the respondent may appeal such initial order to the faculty appeal board in accordance with this conduct code, and both the respondent and any complainant shall receive notice of any appeal and notice of any hearing before the faculty appeal board. An initial order by a conduct officer in a case involving an allegation of sexual misconduct may be subject to review by the faculty appeal board as follows:

(i) Initial order imposes sanction and exceptional circumstances exist. If the initial order imposes a sanction and exceptional circumstances as defined in WAC 478-120-100 (3)(b)(i) exist, the matter shall be referred to the faculty appeal board and both the respondent and any complainant shall each have twenty-one calendar days from the date of service of the initial order to request a formal hearing accord-

ing to the procedures set forth in WAC 478-120-075(3). (The respondent and any complainant shall be informed that the faculty appeal board may increase a sanction imposed in an initial order only if a formal hearing is held.) If no timely request for a formal hearing is submitted, the faculty appeal board shall conduct administrative review in accordance with WAC 478-120-105.

(ii) Initial order imposes sanction, but no exceptional circumstances exist. If the initial order imposes a sanction and exceptional circumstances as defined in WAC 478-120-100 (3)(b)(i) do not exist, the respondent and any complainant shall each have twenty-one calendar days from the date of service of the initial order to submit an appeal to the faculty appeal board. If a timely appeal is submitted by either the respondent or any complainant, the faculty appeal board shall conduct a formal hearing in accordance with this conduct code. If no timely appeal is submitted by either the respondent or any complainant, all rights of appeal are waived and the order becomes the final order.

(iii) Initial orders do not impose a sanction. If the initial order does not impose a sanction, any complainant shall have twenty-one calendar days from the date of service of the initial order to submit an appeal to the faculty appeal board. (The respondent shall be informed that the complainant has this right, and that such an initial order shall not become final at least until the period for any complainant to submit an appeal has elapsed.) If a timely appeal is submitted by any complainant, the faculty appeal board shall conduct a formal hearing in accordance with this conduct code. If no timely appeal is submitted, all rights of appeal are waived and the order becomes the final order.

Any appeal petition must state the reasons for the appeal. Any appeal petition must be submitted to the faculty appeal board and to the conduct officer, who will promptly provide a copy of the appeal to any other party.

(c) If a formal hearing is held by the faculty appeal board in a case involving an allegation of sexual misconduct, such hearing shall be conducted in accordance with WAC 478-120-100 and 478-120-115 and the following supplementary procedures shall also apply:

(i) Both the respondent and any complainant shall be provided with the notice of a formal hearing as specified in WAC 478-120-115 (2), (3), and (4). Both the respondent and any complainant will have the right to participate as a party in the hearing including, but not limited to, the right to be represented by an attorney and/or be accompanied by an advisor, to call witnesses, to cross-examine witnesses, and to submit documentary evidence. A complainant (with or without an attorney and/or an advisor) may attend the formal hearing in its entirety, regardless of whether the complainant decides to participate as a party.

(ii) The respondent and a complainant may not ask questions of each other directly, but will be allowed to submit written questions to the chair of the faculty appeal board, who will ask any relevant and appropriate questions submitted by these parties. The chair has the discretion to accept, reject, or rephrase any question submitted by the respondent or a complainant.

(iii) Both the respondent and any complainant shall be concurrently served with all orders issued by the faculty appeal board.

(d) In any case involving an allegation of sexual misconduct, any complainant shall have the same rights as the respondent to participate as a party in any administrative review under WAC 478-120-105, to appeal a faculty appeal board's initial order to the president of the university under WAC 478-120-125, to participate as a party in any appeal to the president, and to seek reconsideration of a final order under WAC 478-120-135. In the event that a complainant timely appeals an initial order, such order shall not become final until that appeal is resolved. Any notices or orders issued by the president shall be concurrently served on the respondent and any complainant(s), in addition to the conduct officer.

(e) Except as otherwise provided in this section, cases involving an allegation of sexual misconduct will be subject to all the other applicable provisions for this conduct code.

AMENDATORY SECTION (Amending WSR 14-17-097, filed 8/19/14, effective 9/19/14)

WAC 478-120-140 Emergency authority of the president and chancellors of the university. If there is reasonable cause to believe that a student's conduct represents a threat to the health, safety, or welfare of the university or any member of the university community, or poses an ongoing threat of substantially disrupting or materially interfering with university activities or operations, the president, the president's delegate, the vice-president for student life, the chancellors of the University of Washington Bothell and Tacoma campuses, or the chancellors' delegates, may immediately suspend that student from participation in any or all university functions or privileges.

(1) In such an emergency situation, ~~((the president, the president's delegate, the vice president for student life, the chancellors, or the chancellors' delegates,))~~ the university official placing the student on emergency suspension shall issue a written order to be served upon the student describing the terms of the emergency suspension and the reasons for ~~((imposing))~~ the emergency suspension. The order shall be effective immediately and emergency suspension shall, unless otherwise specified in the emergency suspension order, remain in effect until the conclusion of all disciplinary proceedings. The order shall advise the student that he or she may provide information in writing at any time as to why emergency suspension should not be continued or why it should be made less restrictive.

(2) The matter shall then be referred to the appropriate ~~((disciplinary campus official))~~ conduct officer, who shall proceed as quickly as feasible to ~~((complete any proceedings that would be required if the matter did not involve an immediate danger))~~ set the informal hearing. At the informal hearing, the student shall be given an opportunity to provide information as to why emergency suspension should not be continued or why it should be less restrictive.

(3) To the extent permissible under applicable law, in any case involving an allegation of sexual misconduct, a complainant may also be provided with notice of the respon-

dent's emergency suspension and any terms of the emergency suspension that directly relate to the complainant.

(4) If a final order is entered exonerating a respondent, any emergency suspension order shall be lifted by the university official who issued the order.

AMENDATORY SECTION (Amending WSR 14-17-097, filed 8/19/14, effective 9/19/14)

WAC 478-120-145 Recording and maintenance of records. (1) Records related to disciplinary proceedings shall be maintained consistent with university records retention policies and this conduct code.

(2) The president, vice-president for student life at the University of Washington Seattle campus ((ø)), the chancellors of the University of Washington Bothell and Tacoma campuses, or their delegates, shall keep records ((ø)) related to all disciplinary actions reported to their respective offices and may notify the dean or director of the college, school, or program, in which a respondent is enrolled, of any action related to disciplinary proceedings involving the respondent, provided that the school official to whom the information is being disclosed has a legitimate educational interest in receiving such information, as permitted by FERPA.

(3) Records related to disciplinary ((records)) proceedings shall be kept separate from academic records, and respondents' official academic transcripts ((of a student's academic record)) shall not contain ((no)) any notation of ((any)) disciplinary action taken pursuant to this conduct code.

((2)) (4) The deans of a college or school at the University of Washington Seattle, ((ø)) the dean or directors of ((the)) a program ((in which the student is enrolled)) at the University of Washington Bothell and Tacoma campuses ((initiating disciplinary action)), or their delegates, shall maintain records related to all disciplinary matters reported to their respective offices and shall ((report in writing to)) notify the office of the vice-president for student life, ((ø)) the office of the chancellor for the University of Washington Bothell or Tacoma campuses, whichever is appropriate, or their delegates, ((all cases in which disciplinary action is taken. The dean at the University of Washington Seattle)) of any disciplinary action imposed against a respondent, who is enrolled in their college, school, or program. The university officials named in this section shall also inform the appropriate registrar of any action affecting a student's official standing in the university ((The office of the vice-president for student life, or the office of the chancellor for the University of Washington Bothell or Tacoma campuses, shall notify the dean of the college or school or director of the program in which the student is enrolled of any disciplinary action it takes and also shall notify the registrar or campus officer of student affairs of any action affecting a student's official standing in the university.

((3)) (e.g., suspension or dismissal).

(5) The chairs of the faculty appeal board and university disciplinary committees shall maintain the official record (as indicated in RCW 34.05.476) of each disciplinary hearing until a final order is issued or entered. At such time the respective chair will transmit the official record to the vice-president for student life, the chancellor for the University of

Washington Bothell, or the chancellor for the University of Washington Tacoma, whoever is appropriate, or their delegates, who will maintain the official record in accordance with this section.

(6) Disciplinary records of ((students)) respondents not exonerated shall be maintained ((by the vice-president for student life, or the chancellor at the University of Washington Bothell or Tacoma campuses, whichever is appropriate, or their delegates, and the registrar)) for seven years after the resolution of all disciplinary ((action has been taken and/or after)) proceedings (including the resolution of any petition for judicial review filed in superior court) or until the administrative purpose for retention has been served, whichever is later. Final orders imposing suspension or dismissal may be maintained indefinitely.

((4)) ~~Disciplinary records of exonerated students shall not be maintained.~~

(5) ~~Notwithstanding any other provision of this section, the vice-president for student life, or the chancellor at the University of Washington Bothell or Tacoma campuses, whichever is appropriate, or their delegates, at their discretion, upon written request by the student, may expunge the student's disciplinary record.~~

(6) ~~Records and information regarding student disciplinary proceedings are subject to the provisions of the Family Educational Rights and Privacy Act and supporting regulations (20 U.S.C. 1232g).~~ (7) Student disciplinary records are "education records" as defined by FERPA and may only be disclosed consistent with FERPA and ((ø)) chapter 478-140 WAC.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 478-120-025 Off-campus conduct.

WAC 478-120-050 Jurisdiction.